PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [Square brackets and strikethrough] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 24. HEMP PROGRAM


Phillip Wright, Administrator for Agriculture and Consumer Protection, Texas Department of Agriculture, has determined that there will be significant fiscal impact to state government as a result of implementing the proposed rules. The program and all associated direct and indirect costs will be absorbed by TDA during the first year at a minimum. TDA does not expect any cost to local governments at this time. As hemp production has not been legal in Texas, TDA lacks sufficient information to estimate revenues or engage in cost recovery calculations for this program at this time. However, TDA anticipates that it will be able to recover the costs of the program based on the number of licenses issued and sampling conducted. As a reference, Kentucky Department of Agriculture issued 1030 applications and 1000 permits, and the Tennessee Department of Agriculture received 2600 applications for the 2019 growing season under their Hemp Research Pilot Programs, which limited hemp production to research purposes only, in accordance with the Agriculture Act of 2014. Since the proposed rules allow for hemp production outside and beyond research purposes, in accordance with the 2018 Farm Bill and HB 1325, TDA anticipates a higher number of applications received and permits issued for Texas' 2020 growing season compared to Kentucky's and Tennessee's 2019 growing season.

Mr. Wright has also determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit as a result of administering the proposed rules will be to provide Texas farmers with new agricultural opportunities to produce and handle hemp. As with many state regulations, affected producers and industry will absorb costs associated with the compliance of these rules. However, TDA lacks sufficient data to quantify the effect on small and micro-businesses at this time. The cost of compliance with the rules related to hemp production will depend on various factors, including the size of the operation. TDA does not anticipate that there will be an adverse fiscal impact on rural communities related to the implementation of this proposal. Any potential increases in the cost of doing business will be offset by the increased marketing and sales opportunities for Texas producers.

Mr. Wright has also provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.0221. As a result of implementing the proposal, for the first five years the proposed rules are in effect:

(1) the TDA Hemp Program will be created;
(2) an additional 7.1 full time employee positions may be created over the course of 5 years, and no existing Department staff positions will be eliminated; and
(3) there may be an increase in future legislative appropriations to the Department of at least $3,127,336 to cover costs to include the creation of new employee positions, and the regulation and administration of the hemp program, over the course of 5 years.

Additionally, Mr. Wright has determined that for the first five years the proposed rules are in effect:

(1) there will be an increase in fees paid to the Department, as this program is entirely new and TDA is required to assess license and/or inspection fees in order to implement or finance this program;
(2) new regulations will be created by the proposal;
(3) the number of individuals subject to the proposal will increase, as this is a new program; and
(4) the proposal will positively affect the Texas economy by allowing producers to grow hemp in the State.

The Texas Department of Agriculture invites comments on the proposed new rules from any member of the public. Comments may be submitted to Philip Wright, Administrator for Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to RuleComments@TexasAgriculture.gov. Comments must be received by TDA no later than Monday, February 10, 2020.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§24.1 - 24.4

New Title 4, Part 1, Chapter 24, Hemp Program, Subchapters A through J, is proposed in compliance with the 2018 Farm Bill
and HB 1325, which authorize the Department to establish rules concerning the production of hemp in the State of Texas.

The proposal is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

§24.1 Definitions.

Words used in this chapter in the singular form shall be deemed to impart the plural, and vice versa, as the case may demand. For the purposes of provisions and regulations of this chapter, unless the context otherwise requires, the following terms shall mean:

(1) "Act" means Texas House Bill 1325, relating to the production and regulation of hemp in Texas, as codified in Chapters 121 and 122 of the Code.

(2) "Acceptable hemp THC level" means a delta-9-tetrahydrocannabinol content concentration level on a dry weight basis, that, when reported with the laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3% or less. For example, if the reported delta-9-tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/- 0.06%, the measured delta-9-tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of "acceptable hemp THC level" affects neither the statutory definition of hemp, in 7 U.S.C. §1639o(1) and Texas Agriculture Code §121.001, nor the definition of "marihuana," in 21 U.S.C. §802(16) and in Texas Health and Safety Code §481.002(26).

(3) "Administrative action" includes a denial, revocation or suspension of a license, or an assessed penalty.

(4) "Applicant" means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the Department's hemp program.

(5) "Cannabis" means a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis are subspecies thereof. Cannabis refers to any form of the plant in which the delta-9-tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

(6) "Certified or Approved hemp seed" means seed that meets the legal standards for seed quality and labeling required by Texas and federal law, the legal standards of the jurisdictions from where the seed is originally sold and produced, and the additional hemp seed quality and labeling requirements required by the Department.

(7) "Comissioner" means the Commissioner of the Texas Department of Agriculture.

(8) "Contiguous" means all of the lots in or on a location owned or controlled by one owner or tenant, or the same owner and tenant, and no lot is separated from the other lots on the location by different ownership or control, or a public right of way, a navigable waterway, or an area greater than sixty feet.

(9) "Controlled Substance" is defined in Tex. Health & Safety Code §481.002(5). The term does not include hemp, as defined by Tex. Agric. Code §121.001, or the tetrahydrocannabinols in hemp.

(10) "Conviction" means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this chapter, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this chapter.

(11) "Corrective action plan" means a plan established by the Department for a licensed hemp producer to correct a negligent violation or non-compliance with the hemp program, this chapter, or other state or federal statute.

(12) "Criminal History Report" means the results of a criminal background investigation conducted by the Department.

(13) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or recklessly.

(14) "Cultivate" as defined by Tex. Agric. Code §122.001(1) means to plant, irrigate, cultivate or harvest a hemp plant.

(15) "Days" means business days unless otherwise specified.

(16) "Decarboxylation" means the removal or elimination of carboxyl group from a molecule or organic compound.

(17) "Decarboxylated" means the completion of the chemical reaction that converts THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-acid.

(18) "Delta-9 tetrahydrocannabinol or THC or Delta-9-THC" means the primary psychoactive component of cannabis. For the purposes of this chapter, the terms delta-9-THC and THC are interchangeable.

(19) "Department or TDA" means the Texas Department of Agriculture.

(20) "Drug Enforcement Administration or DEA" means the United States Drug Enforcement Administration.

(21) "DPS" means the Texas Department of Public Safety.

(22) "Dry weight basis" means the ratio of the amount of moisture in a sample to the amount of dry solid in a sample. Dry weight is a basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. The percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

(23) "Entity" means a corporation, general partnership, joint stock company, association, limited partnership, limited liability partnership, limited liability company, series limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization. The term
entity includes a domestic or foreign entity defined in Texas Business Organizations Code §1.102 that will be, or proposes to be, in hemp production within the State of Texas.

(24) "Facility" means a location with a legal description and is within the legal control of a person or entity. A facility may consist of multiple fields, greenhouses, storage, and/or lots.

(25) "Farm Service Agency or FSA" means an agency of the United States Department of Agriculture.

(26) "Field" means an outdoor area of land consisting of one or more lots on which the producer will produce or store hemp.

(27) "Final test" means the last Department-authorized laboratory test conducted from a final sample collected.

(28) "Final sample" means the last Department-authorized sample collected from a lot.

(29) "Gas chromatography or GC" means a type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.

(30) "Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object. This includes GPS coordinates.

(31) "Greenhouse" means any indoor structure consisting of one or more lots on which the producer will produce or store hemp.


(33) "GPS" means Global Positioning System.

(34) "Handle" as defined by Tex. Agric. Code §122.001(3) means to possess or store a hemp plant on premises owned, operated, or controlled by a license holder for any period of time, or in a vehicle for any period of time other than during the actual transport of the plant from a premises owned, operated or controlled by a license holder to a premises owned, operated or controlled by another license holder, or a person licensed under Tex. Health & Safety Code, Chapter 443. "Handle" also means to harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing. "Handle" also includes the disposal of cannabis plants that are not hemp for purposes of chemical analysis and disposal of such plants.

(35) "Harvest" means to cut, gather, take, or remove all or part of the cannabis plants growing in a lot or lots, for the purpose of disposal, cloning, distribution, processing, storage, sale, or any other use. "Harvest" does not include transplants from one lot to another lot if both lots are within the same license holder's control, and the plants are transplanted according to the hemp program rules and procedures.

(36) "Hemp" or "industrial hemp" as defined Tex. Agric. Code §121.001 means the plant species Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(37) "Hemp research license" means a license issued to an institution of higher education to produce or handle hemp for research purposes.

(38) "High-performance liquid chromatography or HPLC" means a type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. HPLC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.

(39) "Information sharing system" means the database which allows the Department to share Texas hemp program information with federal and state agencies.

(40) "Institution of higher education" has the meaning assigned by Texas Education Code §61.003.

(41) "Key participants" means a sole proprietor, a partner in a general partnership, a general partner in a limited partnership, or a person with executive managerial control in an entity. A person with executive managerial control includes persons such as a trustee, independent or dependent executor or administrator of an estate, chief executive officer, managing member, manager, president, vice president, general partner, chief operating officer and chief financial officer, or their equivalents. This definition does not include non-executive employees such as farm, field, or shift managers that do not make financial planning decisions and that do not vote or exercise control of an entity.

(42) "Law enforcement agency" means any federal or Texas law enforcement agency.

(43) "License" as defined by Tex. Agric. Code §122.001(6) means a hemp producer or handler license issued by the Department.

(44) "License holder" as defined by Tex. Agric. Code §122.001(7) means an individual or business entity holding a license.

(45) "License holder who transplants" means a license holder who cultivates cannabis plants for the purpose of transplanting all living parts of such cannabis plants according to Department rules and procedures.

(46) "Lot" means a contiguous area in a facility, field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area.

(47) "Marijuana or marihuana" means all parts of the plant Cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. The term "marihuana" does not include hemp and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. "Marihuana" means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.

(48) "Measurement of Uncertainty (MU)" means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

(49) "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this chapter.

(50) "Nonconsumable hemp product" as defined by Tex. Agric. Code §122.001(8) means a product that contains hemp, other than a consumable hemp product as defined by Tex. Health & Safety Code §443.001. The term includes cloth, cordage, fiber, fuel, paint, paper, particleboard, construction materials, and plastics derived from hemp.
"Permit or lot permit" means a document issued by the Department authorizing a license holder to produce or handle a hemp crop within a lot.

"Person" means an individual or entity, unless otherwise indicated.

"Phytocannabinoid" means the Cannabinoid chemical compounds found in the cannabis plant, two of which are delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD).

"Postdecarboxylation" means a value determined after the process of decarboxylation that determines the total potential delta-9 tetrahydrocannabinol content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, and gas chromatography, through which THC-A is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC-A intact, and requires a conversion calculation of that THC-A to calculate total potential THC in a given sample. See the definition for decarboxylation.

"Processing" means converting an agricultural commodity into a marketable form.

"Produce" means to cultivate hemp plants in Texas.

"Producer" means a person who produces hemp. A producer also means a person who stores the hemp plants they produced within Department-registered locations.

"Program or hemp program" means the process created by the state of Texas and federal statutes and regulations to facilitate the regulation and cultivation of hemp as a crop.

"Reverse distributor" means a person who is registered with the DEA in accordance with 21 C.F.R. §1317.15 to dispose of marijuana.

"Sample" means a composite, representative portion from one variety of hemp plants in a hemp lot, collected prior to harvest in accordance with Department guidelines and procedures.

"Sample collection date" means the date a hemp sample is collected by the Department or an authorized entity. To determine the sample collection date, the Department may take into consideration events of force majeure or unusual circumstances, including situations beyond a reasonable person's control.

"Sampler" means a person or entity authorized by the Department to conduct the sampling and collection of hemp plants.

"Seed source" means the origin of the seed or propagules as determined by the Department.

"Signing authority" means an individual of a sole proprietorship, or an officer or agent of an entity with written authorization to commit the entity to a binding agreement or verify the contents of a governmental document.

"Specimen" means a cutting taken from a hemp plant.

"Storage" means any structure or container, whether temporary or permanent in nature, in which the producer or handler will store hemp. "Storage" does not include containers used to deliver samples.

"The Code" means the Texas Agriculture Code.

"Transplant" means to move a fully germinated seedling, mature plant, cutting, or clone from one lot and to replant it in another permanent lot under the control of the same license holder, for later harvest by the same license holder. "Transplant" also means a plant, cutting, or clone that has been moved from its initial lot of germination or cultivation for the purpose being transplanted.

"Transport manifest" includes a shipping certificate, cargo manifest or transport document developed by the Department or a U.S. authority, authorizing transport of a hemp product within the State of Texas, any other state, the United States of America, or its territories.

"TPIA" means the Texas Public Information Act, Texas Government Code, Chapter 52.

"Unique ID" means the unique identifier established by the Department's hemp program.

"USDA" means the United States Department of Agriculture.

"U.S. authority" means the United States of America, USDA or a sub-agency thereof, a state, a US territory, or an Indian Nation, or federal, state or local law enforcement agency.

§24.2. Information Submitted to the United States Secretary of Agriculture.

(a) Not more than thirty (30) days after receiving and compiling the following information, the Department shall provide to the United States Secretary of Agriculture, or the Secretary's designee, the following information related to Department-licensed producers, in accordance with the Department's Information Gathering and Sharing Procedure:

(1) Full name of individual or entity, residential or principal business address, telephone number, email address, name and title of each key participant of the entity, and employer identification number, if applicable;

(2) Street address, and to the extent practicable, geospatial location for each production location where hemp will be produced in Texas;

(3) Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp;

(4) The total acreage of hemp planted, or square footage for greenhouses, harvested and if applicable, disposed; and

(5) The status and license number of the license holder.

(b) The Department shall provide real-time updates to USDA for all information that it reports to USDA under this rule, 7 C.F.R. §990.3, or 7 C.F.R. §990.70.

§24.3. Record Retention.
The Department shall collect and retain, for a period of at least three (3) calendar years information for every license holder, and location where the Department has approved hemp to be produced, handled, or sampled and collected.

§24.4. Information Submitted to the Department Subject to Open Records Act.

(a) Except as established in subsection (b) of this section, information and documents generated or obtained by the Department in connection with the program shall be subject to disclosure pursuant to the TPIA.

(b) With the exception of information that must or may be reported or provided to USDA, the DEA, DPS, or local law enforcement, the Department shall withhold all personally identifiable information.
from disclosure as required or permitted by the TPIA, including physical address, mailing address, driver's license numbers, background checks, geospatial location, telephone, and email addresses.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2019.

TRD-201904998
Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 463-7476

SUBCHAPTER B. FEES
4 TAC §§24.5 - 24.7

The proposal is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

§24.5. Schedule of Licensing and Registration Fees.
(a) The initial application fee shall be at least $100 for each license application.
(b) The renewal fee shall be at least $100 for each annual license renewal application.
(c) The participation fee shall be at least $100. A participation fee shall be assessed for the following, at a minimum for:
   (1) each facility;
   (2) each lot; and
   (3) a processor registration.
(d) The facility modification fee shall be at least $500 for each modified facility.

(a) The laboratory registration fee shall be in an amount established by the Department.
(b) The fee for sampling and collection conducted by the Department shall be $300.
(c) The license holder shall be responsible for all fees payable to a licensed sampler contracted with the Department to conduct sampling and collection under the Department's hemp program.
(d) The license holder shall be responsible for all fees related to the actual shipment or transport of a hemp sample to the laboratory.
(e) The license holder shall be responsible for all testing fees payable to the laboratory.

§24.7. Other Fees.

(a) The fee for each Department-issued transport manifest shall be in an amount established by the Department.
(b) The fee for the organic certification of hemp shall be in an amount established by the Department.
(c) The fee to participate in an optional marketing program shall be in an amount established by the Department.
(d) The fee for certification of seed or plants shall be in an amount established by the Department.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2019.

TRD-201904999
Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 463-7476

SUBCHAPTER C. LICENSING
4 TAC §§24.8 - 24.19

The proposal is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designate the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

§24.8. License Application.
(a) Any person who wishes to produce, handle, or sample and collect hemp at any location in the State of Texas shall submit to the Department annually a completed license application in a form prescribed by the Department.
(b) A person who does not hold a valid license from the Department shall not produce, handle, or sample and collect hemp within the State of Texas.
(c) An applicant shall pay the required annual fee for each application, renewal or modification of a license.
(d) A license shall not be issued unless:
   (1) the application is submitted online to the Department;
   (2) the application is complete and accurate;
   (3) the applicant has completed a Department mandatory orientation course;
   (4) the applicant for a sampler license has completed an additional Department sampling and collection training course;
   (5) the applicant has paid all required fees, in the amounts established by the Department or statute;
(6) the applicant’s criminal history confirms that all key participants covered by the license have not been convicted of a felony, under state or federal law, relating to a controlled substance within the past ten (10) years, unless the person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018;

(7) the application contains no false statements or misrepresentations and the applicant has not previously submitted an application with any false statements or misrepresentations; and

(8) the applicant's hemp license has not been terminated or suspended.

(e) Each applicant shall provide the following information for each license application:

(1) full name, Texas address, telephone number, and email address;

(2) if the applicant is submitting an application on behalf of an entity, the full name of the entity, the principal Texas business location address, the full names, titles, addresses, and emails of key participants, the full name, title, and email of the applicant who will have signing authority, and the Texas taxpayer ID number;

(3) for a producer or handler license;

(A) street address and geospatial location including GPS for each facility where hemp will be cultivated or stored; and

(B) proof of ownership or control over the location where hemp will be cultivated or stored.

(4) for a sampler license, proof of a contract with the Department to conduct sampling and collection under the Department’s hemp program; and

(5) all other information required by the Department.

(f) Licenses will not be automatically renewed, and must be renewed annually prior to license expiration. Renewal applications are subject to the same terms, information collection requirements, and approval criteria as required for initial applications.

(g) A license holder must submit a license modification if there is any change to the information submitted in the application including, but not limited to, sale of a business, a change in or new location of the facility for the production, handling, or storage of hemp in Texas, or a change in the key participants.

(h) The Department shall notify each applicant by letter or email of the denial or approval of the person’s application.

§24.9. Ineligibility for a License.

(a) A person under the age of eighteen (18) years of age at the time the application is submitted to the Department is ineligible for a license.

(b) A person who has had a hemp license revoked by the Department, USDA, another state, Indian nation, or U.S. territory is ineligible to apply for participation in the Department hemp program for a period of five (5) years from the date of revocation. Upon application following the five-year exclusionary period, the Department may deny an application for any lawful reason, including previous conduct that occurred while licensed by the Department, USDA, another state, Indian nation, or U.S. territory.

(c) A person who is or has been convicted of a felony relating to a controlled substance under federal law or the law of any state may not, before the 10th anniversary of the date of the conviction, hold a license or be a governing person of a business entity that holds a license unless the person was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018.

(d) A person who falsifies any information contained in a license application to the Department, or has previously submitted an application to the Department, USDA, another state, Indian nation, or U.S. territory with any materially false statements or misrepresentations is ineligible for a license.

(e) A person is ineligible for a sampler license unless they have a valid contract with the Department to conduct sampling and collection under the Department's hemp program. A sampler license is invalid upon the termination or expiration of a contract with the Department to conduct sampling and collection under the Department's hemp program.


(a) The applicant shall submit a complete application with all required components and attachments.

(b) The applicant's history with other TDA programs, if any, shall demonstrate a willingness to comply with the Department's rules and instructions from Department staff.

(c) The applicant shall be in good standing with TDA.

(d) The applicant must not have a criminal conviction described in this subchapter.

§24.11. Criminal Background Check.

(a) Each applicant, including each key participant of an entity, shall undergo and pay for an annual criminal background check.

(b) Each license holder must undergo and pay for an additional criminal background check if it changes or adds, prior to the anniversary date of its license, a key participant not previously identified on an application or renewal application.

(c) Each license holder or applicant is required to pay, as a condition to initial or continued licensure under the program, all required criminal background check fees assessed by the Department.


(a) A license applicant may appeal the denial of a license application.

(b) If the Department sustains an applicant's appeal of a licensing denial, the applicant will be issued a license.

(c) If the Department denies an appeal, the applicant's license application will be denied. The applicant may request a formal adjudicatory proceeding within 30 days in writing to review the decision. Such proceeding shall be conducted pursuant to Chapter 12 of the Code.


(a) As an initial and continuing condition of licensure under the Department’s hemp program, a license holder consents to entry on and inspection of all locations identified in an initial or renewal application, and all land and premises where hemp or other cannabis plants or materials are located. Such consent includes representatives of the Department or U.S. authority, who may enter such location(s), land, and premises with or without cause, and with or without advance notice.

(b) As an initial and continuing condition of licensure under the Department's hemp program, a license holder has a legal duty and obligation to destroy, at the license holder's expense, in accordance with DEA reverse distributor regulations found at 21 C.F.R. §1317.15,
and without compensation from the State of Texas, USDA or the federal government, any:

(1) material found in excess of an acceptable hemp THC level;

(2) plants located in an area that is not licensed by the Department; and

(3) plants not accounted for in required reporting to the Department;

(c) A license holder shall not sell, assign, loan, transfer, pledge or otherwise dispose of, alienate or encumber a license. A license is not transferrable upon the death of a license holder, except upon the death of a license holder the independent or dependent executor of the deceased license holder may contract with another license holder to cultivate, harvest, handle, test, and convey the hemp crop existing at the time of the license holder's death.

(d) A license holder shall not produce or handle hemp in any location other than the location listed in an initial or renewal application or facility addition or modification request.

(e) A license holder, other than a Hemp Research License Holder, shall not interplant hemp with any other crop without express written permission from the Department.

(f) A license holder shall comply with restrictions established by the Department limiting the movement of hemp plants and plant parts.

(g) A license holder shall ensure that at any time hemp is in transit, whether in intrastate or interstate commerce, a Department issued transport manifest shall be available for inspection upon the request of a representative of the Department, or U.S. authority.

(h) Upon request from a representative of the Department, or U.S. authority, a license holder shall immediately produce a copy of his or her license for inspection.

(i) A license holder shall notify the Department of any interaction with any U.S. authority, within twenty-four (24) hours following such interaction, by telephone call to the Department and follow-up in writing to the Department within three (3) calendar days of the occurrence.

(j) A license holder shall notify the Department of any theft of cannabis materials, whether growing or not.

(k) A license holder shall report to the USDA, Agricultural Marketing Service (AMS), or Farm Service Agency (FSA), consistent with USDA requirements:

(1) their license or authorization number, street address, and facility and lot geospatial location, including all transplantation areas, where hemp is and will be produced;

(2) the acreage dedicated to the production of hemp, or greenhouse indoor square footage dedicated to the production of hemp, and the total acreage or square footage of hemp planted, harvested and if applicable, disposed; and

(3) any change in the facility or lot geospatial location or amount of acreage dedicated to the production of hemp, and any change in the facility or lot geospatial location or amount of greenhouse indoor square footage dedicated to the production of hemp, including the total acreage or square footage of hemp planted, harvested and if applicable, disposed due to said changes.

(l) Failure to comply with this chapter, or any procedure or process established by the Department related to the cultivation, handling, sampling and collection, processing, testing, storage or transport of hemp, or any request by the Department related to the cultivation, handling, sampling and collection, processing, testing, storage or transport of hemp, shall constitute grounds for appropriate enforcement action including, without limitation, the assessment of administrative penalties, the requirement to undertake corrective action, the denial of an initial or renewal application, the revocation of a license, the referral to other state and federal agencies for civil or criminal action, or any combination of such remedies by the Department.


(a) A license holder shall not produce or handle any cannabis that is not hemp.

(b) A license holder shall not produce or handle hemp or other cannabis on a facility unless the facility is identified on an application, renewal application or facility addition or modification request approved by the Department.

(c) Hemp shall be physically segregated from other crops unless prior approval is obtained in writing from the Department.

(d) An applicant or license holder shall not include any real property on an application or facility addition or modification request that is not owned or completely controlled by the applicant or license holder, to produce or handle hemp.

(e) A license holder shall not produce or handle hemp or other cannabis on real property owned by or leased from:

(1) a person who is ineligible for licensure under the Department’s hemp program; or

(2) a person whose application or renewal application for participation in the Department’s hemp program was denied, or whose license was terminated or revoked.

(f) The legal cultivation of cannabis in another state pursuant to the authorization granted by said state shall not prevent a person from holding a license in Texas.

(g) A person who holds a producer and sampler license with the Department shall not conduct the sampling and collection of their own hemp product.

§24.15. License Holders Who Transplant.

(a) In order to be eligible to transplant cannabis plants:

(1) a license holder must acquire a lot permit for the initial area of cultivation, and a lot permit for each final transplantation area.

(2) a license holder who transplants must indicate in the lot permit application for the initial area of cultivation, all final transplantation areas, and anticipated dates of transplants; and

(3) a license holder who transplants shall maintain all recordkeeping required for each lot permit, including submission of all lot reports.

(b) The area where a license holder who transplants initially cultivates cannabis plants and the final transplantation areas shall constitute separate lots. The license holder who transplants shall pay the associated fee for each lot permit.

(c) In the event the initial area of cultivation is not within the same facility as the final transplantation area, the license holder who transplants must request a transport manifest from the Department before transporting a lot of cannabis plants to a separate facility for transplanting purposes. A transport manifest shall be valid for five (5) days from the date of issuance.
(d) A sale or transfer of a lot of cannabis plants from a license holder to another license holder for transplant is considered a harvest.

§24.16. Facility Addition or Modification.

(a) A license holder who elects to produce or handle hemp in a facility other than the facility specified by the geospatial location in the applicant's original licensing application shall register the new facility by submitting a facility addition or modification request form and obtain written approval from the Department for the new facility.

(b) In the event the geospatial location of a facility previously registered with the Department changes, the license holder must submit a facility addition or modification request form and obtain written approval from the Department for the modified facility.

(c) Once a license holder obtains approval from the Department, the license holder may cultivate, handle or produce hemp at the newly added or modified facility.

(d) The Department shall not process or approve a facility addition or modification request until the Department has received the required forms and fees.

§24.17. Lot Permit.

(a) A license holder must acquire a lot permit from the Department for each lot where the license holder intends to produce or handle hemp prior to producing or handling hemp. The applicant shall submit, at a minimum the license number, geospatial location of the lot where the hemp variety will be planted, the facility where the lot is located, and anticipated dates of cultivation.

(b) An application that is missing required information shall be subject to denial.

(c) A change in the geospatial location of a lot where the hemp variety will be planted will be considered by the Department as a new lot.

§24.18. Reporting and Recordkeeping.

(a) License holders shall maintain records and reports of all hemp plants acquired, produced, handled, sampled and collected, or disposed of at least three years, using a Department form.

(b) All records shall be maintained and made available for inspection by Department inspectors, US authorities, or their representatives, during reasonable business hours. The following records must be made available:

1. records regarding acquisition of hemp seed or cultivars;
2. records regarding production of hemp;
3. records regarding handling of hemp;
4. records regarding sampling and collection of hemp;
5. records regarding disposal of all cannabis plants that, upon testing by the Department, the license holder, or US authority, exceeds the acceptable hemp THC level; and
6. records regarding the transport or proposed transport of hemp, including transport manifests.

(c) All reports and records required to be submitted to the Department as part of participation in this program which include confidential data or business information, including but not limited to information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular license holder or their customers, shall be received by, and at all times kept in the custody and control of, the Department and its employees in accordance with the requirements of TexReg and the Department’s information security procedures and policies. Confidential data or business information may be shared with US authorities, or their designees. License holders are responsible for identifying all of the license holder's confidential data or business information, including but not limited to information constituting a trade secret or trade positions, financial conditions, or business operations of the particular license holder or its customers which the license holder deems to be protected from disclosure by the Department. Such identification must be made by separate written communication to the Department specifically identifying the information sought to be protected by the license holder.


(a) All persons who intend to process nonconsumable hemp products shall register with the Department.

(b) Only a processor registered with the Department shall process nonconsumable hemp products in the State of Texas.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2019.

TRD-201905000
Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 463-7476

SUBCHAPTER D. INSPECTIONS, SAMPLING AND COLLECTION

4 TAC §§24.20 - 24.23

The proposal is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.


(a) The Department, the DEA, DPS, and local law enforcement agencies, along with their representatives and employees, shall be provided with complete and unrestricted access to all hemp plants, whether growing or harvested, and all facilities used for the production and storage of all hemp in all locations where hemp is produced or handled.

(b) The Department or its representative shall conduct random inspections of license holders to verify the production and handling of hemp complies with applicable state and federal law.

(c) During a scheduled sample collection, the producer or an authorized representative of the producer shall be present at each lot undergoing sampling and testing.

(a) Sampling and Collection Notification.

(1) A completed sample request form from a license holder shall be submitted to the Department at least fifteen (15) days prior to the expected harvest date.

(2) The Department's receipt of a sample request form triggers a site inspection and sample collection by the Department or its representative.

(b) Sampling and Collection.

(1) The material selected for sampling will be determined by the Department's Sampling and Collection Procedure.

(2) If the license holder fails to complete harvest within fifteen (15) days of sample collection, a secondary sample of each lot to be harvested shall be collected and submitted for testing. The license holder must notify the Department of a delay in harvesting by submitting another, or second, complete, sample request form to initiate a second or subsequent sample collection from each lot to be harvested.

(3) The Department will grant or conduct no more than two (2) sample requests per lot. The Department may grant or conduct additional sample requests under unusual circumstances, including an event unforeseeable by a reasonable person.

(4) A separate sample must be taken for each lot.

(5) Samples shall be labeled and prepared for transport to the laboratory for testing in accordance with the Department's Sampling and Collection Procedure.


(a) A license holder shall provide a lot report to the Department no later than the 30th day after a final sample is collected from a lot, or no later than 180 days from the lot permit issue date, whichever is earlier.

(b) A lot report shall be provided using a Department form and must contain the following information at a minimum, regarding the particular lot:

(1) license holder account number;

(2) facility ID and lot ID;

(3) sample(s) ID(s) and test ID(s);

(4) disposition of cannabis plant materials produced or handled within the lot (e.g., harvest, disposal, transplanting, cloning, distribution, processing, sale, or other use) and any Department-issued transport manifest;

(5) total acres or square footage of cannabis plant material produced or handled; and

(6) a certified statement indicating whether or not any living cannabis plants remain in any lot identified in the lot report. In the event any living cannabis plants remain in any lot identified in the lot report, the license holder shall further provide a certified statement indicating whether the license holder intends to dispose of or cultivate the remaining, living cannabis plants.

(c) The license holder shall report and certify disposal of cannabis plants to the Department in the lot report and include a description of the date and method of disposal.

(d) In the event the license holder cultivates the remaining, living cannabis plants, the license holder shall register the location(s) of the remaining, living cannabis plants as new lots and pay the applicable participation fee.

§24.23. Other Activities.

(a) A license holder shall not harvest a cannabis crop prior to samples being collected.

(b) The license holder shall harvest the crop not more than 15 days following the date of sample collection by the Department, unless specifically authorized in writing by the Department.

(c) Prior to processing, cannabis from harvested lots shall not be commingled with cannabis from other harvested lots or other material without prior permission from the Department.

(d) A license holder may not sell or use harvested plants unless a test of the sample(s) for the lot associated with the harvested plants is at or below the acceptable hemp THC level.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2019.

TRD-201905001
Ferrie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 463-7476

SUBCHAPTER E. TESTING

4 TAC §§24.24 - 24.29

The proposal is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorizes the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

§24.24. Testing Laboratory.

(a) Registration.

(1) An independent testing laboratory, or a laboratory in an institution of higher education, must be registered with the Department before performing any test related to the Department hemp program.

(2) An independent testing laboratory or a laboratory in an institution of higher education shall submit a complete application for registration in a form prescribed by the Department.

(3) An independent testing laboratory or a laboratory in an institution of higher education must be accredited by an independent accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 and must be registered with DEA.

(b) Registered Laboratories

(1) A list of Department-registered laboratories shall be available to license holders on the Department website.

(2) A license holder may test a hemp sample using a registered laboratory in accordance with Tex. Agric. Code §122.151(c).

Analytical testing for purposes of detecting the concentration levels of delta-9 tetrahydrocannabinol (THC) in the flower material of the cannabis plant shall meet the following standards:

1. laboratory quality assurance must ensure the validity and reliability of test results;
2. analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose) and that the laboratory can successfully perform the testing;
3. the demonstration of testing validity must ensure consistent, accurate analytical performance; and
4. method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this subchapter.


(a) Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate the measurement of uncertainty.

(b) At a minimum, analytical testing of samples for delta-9 tetrahydrocannabinol concentration levels must use post-decarboxylation or other similarly reliable methods approved by the Department.

(c) The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp into delta-9 tetrahydrocannabinol (THC) and the test result reflect the total available THC derived from the sum of the THC and THCA content. Testing methodologies meeting these requirements include, but are not limited to, gas or liquid chromatography with detection.

(d) Alternative testing protocols will be considered by the Department if they are comparable and similarly reliable to the baseline established under the Department program. Alternative testing protocols must be requested of the Department in writing and approved in writing by the Department, provided they meet the requirements of this subchapter.

§24.27. Testing Procedure.

(a) The laboratory shall test samples in accordance with the Department "Testing Procedure".

(b) The laboratory shall maintain the chain of custody of each sample using a form prescribed by the Department.

(c) The laboratory shall retain the sample for a minimum of thirty (30) business days from the sample collection date.

§24.28. Reporting Test Results.

(a) The laboratory shall send the test results electronically to the Department and license holder no later than the fourteenth (14th) business day from the sample collection date.

(b) The total delta-9 tetrahydrocannabinol concentration level shall be determined and reported on a dry weight basis. Additionally, measurement of uncertainty (MU) must be estimated and reported with the test results.

(c) Any sample test result showing with at least 95% confidence that the THC content of the sample exceeds the acceptable hemp THC level shall be conclusive evidence that one or more cannabis plants or plant products from the lot represented by the sample contain a THC concentration in excess of that allowed. If the results of a test conclude that the THC levels of a sample conclusively exceed the acceptable hemp THC level, the laboratory will promptly notify the producer and the Department or its authorized agent.

§24.29. Retest.

(a) A license holder may request a retest of the original sample within five (5) days from the date the license holder receives the results of the first test.

(b) A license holder requesting a retest must use the laboratory that conducted the initial test.

(c) The laboratory shall use the original sample, used in the first test, for the retest.

(d) The results of the retest are final.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2019.

TRD-201905002
Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 463-7476

SUBCHAPTER F. DISPOSAL

4 TAC §24.30, §24.31

The proposal is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.


(a) The license holder shall submit a completed disposal report to the Department no later than seven (7) days after the license holder receives a final test result exceeding the acceptable hemp THC level.

(b) The Department's receipt of a disposal report triggers a potential field inspection by the Department or its representative.

(c) The Department will inform the license holder no later than seven (7) days after receiving the disposal report of the approved method of disposal.

45 TexReg 254   January 10, 2020   Texas Register
The proposal is made under §§121.003, 121.004, and §122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

§24.32. Complaints.

(a) Any person with cause to believe that any provision of the Code or this chapter, related to the Department hemp program, has been violated or not complied with by a license holder, may file a complaint with the Department. The Department will accept either a written or oral complaint, but may require the completion and signing of a complaint form before conducting an investigation into the circumstances or situation giving rise to the complaint.

(b) Upon receipt of an acceptable complaint, the Department will investigate the complaint and make a written report.

(c) The Department's written report will be made available to the public to the extent authorized by the TPIA.

(d) The Department shall, as soon as possible, notify the person(s) believed to be responsible for the acts, omissions, circumstance(s) and situation(s) described in the complaint, and the owner or lessee of the land where the incident(s) allegedly occurred of the existence of the complaint.

(e) The Department will not find a violation based solely on the uncorroborated statements of an anonymous or unidentified complainant. However, the Department routinely investigates all such complaints. The Department will determine the extent of the investigation and resources which are necessary to address any particular complaint.


(a) A hemp producer shall be subject to enforcement for negligently producing hemp and for negligently producing cannabis (marijuana) which exceeds the acceptable hemp THC level.

(b) Negligent violations shall include, but not be limited to:

1. Failure to provide a legal description or geospatial location of the facility on which the license holder produces or stores hemp;
2. Failure to obtain a license or other required authorization from the Department; or
3. Production of cannabis with a delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level.

(c) Hemp producers do not commit a negligent violation under this chapter if they make reasonable efforts to grow hemp, and after sampling and testing, the cannabis (marijuana) does not produce a test result showing a delta-9 tetrahydrocannabinol concentration for the lot’s sample of more than 0.5 percent on a dry weight basis.

(d) For each negligent violation, the Department will issue a Notice of Violation and require the license holder to submit a corrective action plan. The Department will review the corrective action plan and determine if the corrective action plan meets the requirements of 7 C.F.R. §§900, the Code, this chapter, and the Department's other requirements. If the Department approves the corrective action plan, the license holder shall comply with the corrective action plan to cure the negligent violation. If the Department denies the corrective action plan, the license holder's license shall be revoked. Corrective action plans will be in place for a minimum of two (2) years from the date of their approval. Corrective action plans will, at a minimum, include:

1. The date by which the license holder shall correct each negligent violation;
2. Steps to correct each negligent violation; and
3. A description of the written procedures to demonstrate compliance with applicable law and the Department's policies and procedures, which may include additional reporting requirements to show such compliance.

(e) A license holder that negligently violates this chapter shall not, as a result of that violation, be subject to any criminal enforcement action in Texas.
If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

A license holder that negligently violates the terms of a license three (3) times in a five-year period shall have their license revoked and be ineligible to produce hemp for a period of five (5) years, beginning on the date of the third violation.

The Department or any U.S. authority along with their authorized representatives and employees shall conduct inspections to determine if the corrective action plan has been implemented.

### §24.34. Violations with a Culpable Mental State Greater than Negligence.

(a) In addition to being subject to license suspension, license revocation, and monetary civil penalty procedures established in this chapter, a person who is found by the Department to have violated any statute or administrative regulation governing that person’s participation in the hemp program with a culpable mental state greater than negligence shall be subject to the reporting requirements established in this section.

(b) The Department shall immediately report a person who is found by the Department to have violated any statute or administrative regulation governing that person’s participation in the hemp program with a culpable mental state greater than negligence to the following law enforcement agencies:

1. the Attorney General of the United States;
2. the Texas Department of Public Safety;
3. the Office of the Texas Attorney General; and
4. other law enforcement authorities with jurisdiction over the producer’s acts or omissions that are the subject of the report.

### §24.35. License Suspension.

(a) The Department may issue a notice of suspension to a license holder if the Department or its representative receives credible evidence establishing that a license holder has:

1. engaged in conduct, being either an act or omission, violating a provision of this chapter; or
2. failed to comply with a written order from the Department related to negligence as defined in this chapter.

(b) Any license holder whose license has been suspended shall not cultivate, handle or remove hemp or cannabis from any location where hemp or cannabis was located at the time when the Department issued its notice of suspension, without prior written authorization from the Department.

(c) Any person whose license has been suspended shall not produce or handle hemp during the period of suspension.

(d) A license holder whose license has been suspended may appeal that decision in accordance with this subchapter.

(e) A license holder whose license has been suspended and not restored on appeal may have their license restored after a waiting period of one year from the date of the suspension, subject to the terms of a five-year revocation.

(f) A license holder whose license has been suspended may be required to complete a corrective action plan to fully restore the license.

### §24.36. License Revocation.

The Department shall immediately revoke a license if a person:

1. pleads guilty to, or is convicted of, any felony related to a controlled substance under Texas law, federal law or the law of any other state;
2. made a false statement or provided false information or documentation to the Department or its representatives, with a culpable mental state greater than negligence; or
3. is found to be growing cannabis exceeding the acceptable level of THC with a culpable mental state greater than negligence, or negligently violated this chapter three (3) times in five (5) years.

### §24.37. Penalties.

Section 12.020 of the Code, which provides for the assessment of administrative penalties, applies to a person who violates the Code or this chapter. Failure to pay an administrative penalty assessed by a final order of the Department is a violation of this chapter. Failure to pay a final judgment which assesses a civil penalty in which express findings of a violation are made, and which was entered pursuant to the Code or this chapter, shall also constitute a violation of this chapter.

### §24.38. Appeals.

(a) Persons who believe they are adversely affected by the assessment of an administrative action may appeal such decision to the Department.

(b) If the Department sustains the appeal of an administrative action, the person will retain their license and not be subject to the administrative action proposed by the Department in all or part.

(c) If the Department denies the appeal of an administrative action, the license will be revoked or suspended and any administrative action will be imposed. The person may request a formal adjudicatory proceeding in accordance with Chapter 12 of the Code.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2019.
TRD-201905004
Ferjie Ruiz Montanosas
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 463-7476

**Subchapter H. Transportation**

4 TAC §§24.39 - 24.43

The proposal is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

### §24.39. Transport Manifest Required.

(a) A Department-issued transport manifest shall be required for the transportation of hemp outside a facility where the hemp is produced.
§24.42. Transplants Originating Outside the State of Texas Prohibited.

To the extent authorized by the laws and Constitution of the United States, no person shall bring into the State of Texas a cannabis trans-plant that originated from cannabis plants germinated outside of the State of Texas. A license holder may only cultivate cannabis transplants originating from cannabis plants germinated in Texas.

§24.43. Mixed Cargo Prohibited.

A person transporting hemp plant material in the State of Texas shall not concurrently transport any cargo that is not hemp material.

The agency certifies that legal counselor has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2019.

TRD-201905005
Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture

Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 463-7476

SUBCHAPTER I. HEMP SEED

4 TAC §§24.44 - 24.48

The proposal is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

§24.44. Certified or Approved Hemp Seed.

(a) The Department shall maintain and make available to license holders a list of businesses that sell hemp seeds certified or approved for production, sale, offered for sale, or distributed within the State of Texas.

(b) A person may not sell, offer for sale, distribute or use hemp seed in the State of Texas unless the seed is certified or approved by the Department.

§24.45. License Required to Sell, Possess, Hold or Purchase Hemp Seed.

After May 1, 2020, A person or entity may not sell, possess, hold or purchase hemp seed unless that person holds a valid and active license issued by the Department for the production and handling of hemp.

§24.46. Hemp Seed Quality and Labeling Requirements.

(a) Hemp seed sold, offered for sale, distributed, or used in the State of Texas must meet the legal standards for seed quality and seed labeling required by Texas and federal law, as well the legal standards of the jurisdictions from where the seed is originally sold and produced.

(b) Hemp seed sold, offered for sale, distributed, or used in the State of Texas must also meet the additional hemp seed quality and labeling requirements as provided for by the Department.

(c) Hemp seed sold, offered for sale, distributed, or used in the State of Texas must contain a clear, legible statement on the label in English in addition to any other language on the label indicating the:

(1) specific variety of the hemp seed;
(2) the seller or distributor; and
(3) the location and jurisdiction of origin of the hemp seed.

§24.47. Hemp Seed Recordkeeping.

A person who sells, offers to sell, distributes, or uses hemp seed in Texas shall maintain records indicating:

(1) the origin of the hemp seed for five (5) years;
(2) the person or entity from whom the person purchased the hemp seed;
(3) any documentation indicating certification or approval of the provenance, quality, and variety of the hemp seed; and
(4) the location and jurisdiction of origin of the hemp seed.

§24.48. Certification or Approval of Hemp Seed.

(a) A person may request the certification or approval of a hemp seed for a particular variety by submitting a completed form prescribed by the Department.

(b) A person requesting for the certification or approval of hemp seed for a particular variety shall provide the following information to the Department:

(1) name of kind and variety;
(2) a statement concerning the variety's origin, and the breeding procedure used, in its development including evidence of stability (evidence of stability must include any field test reports and sample test results demonstrating the hemp seed was used to grow hemp plants which tested within the acceptable hemp THC Level);
(3) a completed objective form for the crop as provided by the Department Seed Quality Program, if such form is available. The completed objective description form as provided by the U.S. Plant Variety Protection Office may be used in lieu of the Texas form;
(4) a statement delineating the geographic area or areas of adaptation of the variety; and
(5) such other information as may be requested by the Department which may include but is not limited to:

(A) special characteristics of the seed and of the plant as it passes through the seedling stage and flowering stage; and

(B) other evidence of performance of the variety (date, graphs, charts, pictures, etc.) supporting the identity of the variety, if
known. If statements or claims are made concerning performance characteristics, such as yield, tolerance to insects or diseases, or lodging, there must be evidence to support such statements. Statistical analysis of data is encouraged.

(c) The Department may gather the information described in this section to conduct research and analysis to determine the quality and viability of hemp seed varieties for approval by the Department. The Department may partner with Texas A&M University or a State of Texas institution of higher education to conduct research and analysis pertaining to hemp seed varieties.

(d) The Department may revoke a hemp seed variety certification or approval if it determines that the hemp seed variety does not meet the standards described in this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2019.
TRD-201905006
Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture

Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 463-7476

SUBCHAPTER J. AGRICULTURAL OR ACADEMIC HEMP RELATED RESEARCH

4 TAC §24.49, §24.50
The proposal is made under §§121.003, 121.004, and 122.051 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of hemp production, and authorize the Department to adopt rules to coordinate, implement and enforce the hemp program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12, 121 and 122 of the Code are affected by the proposal.

§24.49. Hemp Research License.
(a) Texas A&M University or a Texas institution of higher education may apply for a license to produce and handle hemp for agricultural or academic research. A license issued to Texas A&M University or a Texas Institution of higher education pursuant to this section is known as a "Hemp Research License."

(b) In order to obtain a hemp research license, Texas A&M University or a Texas institution of higher education must submit an application and required fees to the Department.

(c) A hemp research license holder must comply with and is solely responsible for compliance with all state and federal laws, rules, and guidelines pertaining to the production and handling of hemp in addition to the laws, rules, and guidelines of any other jurisdiction where such hemp research license holder may produce or handle hemp.

(a) An applicant for a hemp research license must also submit a research plan providing the following information:

1. a detailed statement specifying the nature and purpose of the hemp related research to be conducted;
2. all locations where hemp related research will be conducted;
3. the varieties of hemp to be utilized for the research purposes;
4. such other information as may be requested by the Department.

(b) A hemp research license holder must also submit an annual research plan detailing the location, activities, and the results of the hemp related research conducted by the hemp research license holder during the previous twelve (12) month period. Trade secret or patent information developed due to hemp research may be omitted from the annual research plan so long as there is a necessity for the research institution to protect such information.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2019.
TRD-201905007
Ferjie Ruiz Hontanosas
Assistant General Counsel
Texas Department of Agriculture

Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 463-7476

TITLE 13. CULTURAL RESOURCES
PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION
CHAPTER 2. GENERAL POLICIES AND PROCEDURES
SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION
13 TAC §2.51
The Texas State Library and Archives Commission (Commission) proposes to revise 13 TAC §2.51, Public Records Fees.

FISCAL NOTE. Mark Smith, State Librarian and Director for the commission, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Smith has also determined that for the first five-year period the amended rules are in effect, the public benefit will be clarity and consistency in charging for copies or reproductions of public records. While the proposed amendments may result in costs incurred by persons requesting copies or reproductions of public records from the commission, the anticipated costs depend on the specific request and cannot be predicted. Furthermore, the costs are consistent with the charges established by the Office of the Attorney General for providing costs of public information under Government Code,
Chapter 552 or authorized by specific statutes related to providing reproductions.

LOCAL EMPLOYMENT IMPACT STATEMENT. There is no effect on the local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT. The commission has determined that the proposed amendments do not require an environmental impact analysis because these amendments are not major environmental rules under Texas Government Code §2001.0225.

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Smith has also determined that there will be no impact on rural communities, small businesses, or microbusinesses as a result of implementing these amendments and, therefore, no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. The commission has determined that during the first five years the proposed amendments would be in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or the elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations. Implementation may cause an increase in fees paid to the commission; however, these fees are authorized by Government Code, §552.262 and Government Code, §441.196 and are only charged to persons requesting copies or reproductions of public records. The proposed amendments will not create a new regulation or expand, limit, or repeal an existing regulation. The proposed amendments will not result in an increase or decrease in the number of individuals subject to the rule and will not affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be directed to Jalain Chubb, Director, Archives and Information Services, Box 12927, Austin, Texas 78711-2927, or by fax (512) 463-2306, or by email to rules@tsl.texas.gov. Comments will be accepted for 30 days after publication in the Texas Register.

STATUTORY AUTHORITY. The amendments are proposed under Government Code, §552.230, which authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied; and, more specifically, Government Code, §441.193, which provides the commission shall adopt rules regarding public access to the archival state records and other historical resources in the post-session of the commission; and Government Code, §441.196, which provides the commission may sell copies of state archival records and other historical resources in its possession at a price not exceeding 25 percent above the cost of publishing or producing the copies.

CROSS REFERENCE TO STATUTE. Government Code, Chapters 441 and 552.

§2.51. Public Records Fees.

(a) [Charges for Public Records and Library Resource Materials.] The Texas State Library will charge the fees established by the Office of the Attorney General at 1 TAC §§70.1 - 70.12 (relating to Cost of Copies of Public Information) and the amounts described in subsection (b) of this section for providing any person the following:

(1) Reproductions [for reproductions] of materials from its collections of library and archival materials that are maintained for public reference, for copies

(2) Copies of public records of other agencies stored in the State Records Center, for copies

(3) Records [records] of the commission, [in accordance with the Office of the Attorney General's rules concerning Cost of Copies of Public Information (1 TAC §§70.1 - 70.12) and as follows:]

(b) The Texas State Library will maintain a fee schedule outlining the charges for providing information to any individual and review the schedule annually. In addition to the fees described in subsection (a) of this section and listed on the fee schedule, the library will charge as follows:

(1) Certification of copies is $5.00 [$1.00] per instrument, which may include several pages with certification required only once. If certification is requested on each page, the cost is $5 per instrument if the instrument consists of 5 pages or less or $1 per page if the instrument consists of more than 5 pages.

(2) If a customer requests items printed from digital information resources, the items will be billed at the page rate for paper copies.

(3) If a customer requests printing of large format materials held in the Texas State Archives, the charge will be assessed at an established [per inch] rate available on the agency fee schedule. The rate will be reviewed on an annual basis. If material must first be digitized, an additional fee of $5.50 will be charged.

(4) [Supplies, postage, shipping, and other expenses are billed at actual costs.]

(5) [The charge for duplication of non-standard materials from the [The library will arrange for the duplication of photographic images in its] archival collections is the actual [for $10.00 per image plus] commercial [photo] reproduction cost plus 25% of that cost [costs and postage].]

(6) Digital images of photographic materials held in the Texas State Archives may be provided. If any materials must first be digitized prior to duplication, an additional fee to cover the cost of digitization, available on the agency fee schedule, [a fee of $3.00, or $5.50 for large format items] will be charged.

(7) A customer will be billed for third party access or use charges. Examples of services where use charges might occur include:

(A) Digital information resources available through online services;

PROPOSED RULES  January 10, 2020  45 TexReg 259
(B) Document delivery or interlibrary loan services for providing materials or copies.

(7) [(a)] The minimum charge for any service requiring preparation of an invoice is $1.00.

(c) [(b) Reproduction of Copyrighted Materials.] Reproduction of copyrighted materials will be carried out in conformance with the copyright law of the United States (Title 17, United States Code).

(d) [(c) Labor Charges.] The library will charge for labor, overhead, computer programming, computer resource time, and remote document retrieval, when applicable, as authorized by the rules established by the Office of the Attorney General. [The library will not charge for labor or overhead to retrieve materials or records or research questions. If computer programming is necessary, the library will charge for labor to retrieve digital information in response to an information request.]

(e) [(d) Records of Third Parties.] The library will not provide copies of or access to the records of other agencies housed in the State Records Center without written permission of the agency.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.
TRD-201904957
Angela Kent
Head of Reference
Texas State Library and Archives Commission
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 463-5426

13 TAC §2.76

The Texas State Library and Archives Commission (commission) proposes new 13 TAC §2.76, Enhanced Contract Monitoring.

Government Code, §2261.253(c) requires each state agency to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

SUMMARY. Proposed §2.76 establishes that the commission will identify contracts that require enhanced contract or performance monitoring by considering several factors, including the total dollar amount of the contract, contract duration, vendor past performance, impacts of contract delay or failure, and the risk of fraud, waste, or abuse. The proposed rule also provides direction for procedures and notification of serious issues or risks that are identified with respect to a monitored contract and states the exceptions for specific contract types that do not require enhanced monitoring.

FISCAL NOTE. Mark Smith, State Librarian and Director for the commission, has determined that for each of the first five years the proposed new section is in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering the rule, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Smith has also determined that for the first five-year period the proposed new section is in effect, the public benefit will be the enhanced monitoring of mission contracts. There are no anticipated economic costs for persons required to comply with the proposed new section.

LOCAL EMPLOYMENT IMPACT STATEMENT. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and §2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT. The commission has determined that the proposed new section does not require an environmental impact analysis because the proposed new section is not a major environmental rule under Texas Government Code §2001.0225.

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Smith has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing the proposed new section and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. The commission has determined that during the first five years the proposed new section would be in effect, no government program would be created or eliminated. Implementation of the proposed new section would not require the creation of new employee positions or the elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations. Implementation would not require an increase or decrease in fees paid to the commission. The proposed new section will not create a new regulation or expand, limit, or repeal an existing regulation. The proposed new section will not result in an increase or decrease in the number of individuals subject to the rule and will not affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed new section may be directed to Donna Osborne, Chief Operations and Fiscal Officer, Box 12927, Austin, Texas, 78711-2927, by email at rules@tsl.texas.gov, or by fax (512) 463-3560. Comments will be accepted for 30 days after publication in the Texas Register.

STATUTORY AUTHORITY. The new section is proposed under Government Code, §2261.253, which requires each state agency to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

CROSS REFERENCE TO STATUTE. Government Code, §2261.253.

§2.76. Enhanced Contract Monitoring.
(a) The commission will identify contracts that require enhanced contract or performance monitoring.

(b) In determining which contracts require enhanced contract or performance monitoring, the commission will consider factors including:

1. total dollar amount of contract;
2. total contract duration;
3. vendor past performance;
4. user and business process impacts of contract failure or delay;
5. risk of fraud, waste, or abuse;
6. special circumstances of the project; and
7. scope of goods or services provided.

(c) The director and librarian or designee will provide information on contracts that require enhanced monitoring to the commission. The commission will also be notified immediately of any serious issue or risk that is identified with respect to a contract subject to enhanced contract monitoring.

(d) This section does not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904958
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 463-5591

SUBCHAPTER C. GRANT POLICIES
DIVISION 1. GENERAL GRANT GUIDELINES
13 TAC §§2.111, 2.117, 2.118

The Texas State Library and Archives Commission (Commission) proposes amendments to 13 TAC §§2.111, General Selection Criteria, 2.117, Grant Review and Award Process, and 2.118, Decision Making Process.

The proposed amendments respond to directions from the Sunset Commission to adjust grant award criteria and scoring to better disperse grant funding to a wider pool of libraries.

SUMMARY. The proposed amendment to 13 TAC §2.111 adds to the general grant selection criteria consideration of improved access to funding for libraries that have not received grants from the agency within a specified time frame to be determined by the agency or with limited resources.

The proposed amendment to 13 TAC §2.117 provides that a person may not serve as a peer reviewer for a grant category with which the reviewer is associated with an applicant or with an application, or who stands to benefit directly from an application.

The proposed amendment to 13 TAC §2.118 allows the agency to award extra points to libraries that have not received a grant from the agency within a specified time frame to be determined by the agency or with limited resources.

FISCAL NOTE. Mark Smith, State Librarian and Director for the Commission, has determined that for each of the first five years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Smith has also determined that for the first five-year period the amended rules are in effect, the public benefit will be that the agency may be able to distribute grants to a wider range of Texas libraries.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and §2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT. The Commission has determined that the proposed amendments do not require an environmental impact analysis because these amendments are not major environmental rules under Texas Government Code §2001.0225.

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Smith has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Commission staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specified in Texas Government Code §2006.0221. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be directed to Jennifer Peters, Director of Library Development & Networking, via email...
STATUTORY AUTHORITY. The amended section is proposed under Texas Government Code §441.135 that requires the Commission to establish a program of grants and adopt by rule the guidelines for awarding grants, and Texas Government Code §441.136 that allows the Commission to proposed rules necessary to the administration of the program of state grants.

§2.111. General Selection Criteria.

(a) Grants shall be awarded based on guidelines that reflect applicable state or federal priorities and mandates. The grant guidelines issued by the agency will specify the timetable, forms, procedures, and any supplemental criteria or requirements applicable to a particular grant for that year. Grant guidelines include the goals describing the purpose of the grant program, applicant eligibility requirements, description of the services to be provided, applicable priorities and restrictions, and the selection criteria and the process to evaluate grant applications and select awards. Selection criteria and requirements are designed to select applications that provide the best overall value to the state.

(b) The general selection criteria include:

1. Applicant eligibility;
2. Relevance to goals;
3. Program impact;
4. Program scope and quality;
5. The cost of proposed service;
6. Measurability of service impact; and
7. Compliance with requirements.

(c) The commission may consider additional factors in determining best value, including:

1. Financial ability to perform services;
2. State and regional service needs and priorities;
3. Improved access for poorly served areas and populations;
4. Improved access to funding for libraries that have not received grants from the agency within a specified time frame to be determined by the agency or that have limited resources;
5. Ability to continue services after grant period; and

§2.117. Grant Review and Award Process.

(a) Agency staff will review each application for the following:

1. Legal eligibility of the institution to participate in a grant program and appropriate authorizing signature;
2. Conformance to the federal and state regulations pertaining to grants;
3. Inclusion of unallowable costs;
4. Errors in arithmetic or cost calculations;
5. Submission of all required forms;
6. Compliance with submission procedures and deadlines; and
7. Relevance and appropriateness of the project design and activities to the purpose of the grant program.

(b) Agency staff will raise issues and questions regarding the needs, methods, staffing and costs of the applications. Staff will also raise concerns regarding the relevance and appropriateness of the project design and activities to the purpose of the grant program. Staff comments will be sent to the review panel with the applications for consideration by the panel.

(c) Applicants will be sent a copy of the staff comments to give applicants an opportunity to respond in writing. Applicants may not modify the proposal in any way; however, applicants’ responses to staff comments will be distributed to the panel.

1. Applications with significant errors, omissions, or eligibility problems will not be rated. Applications in which the project design and activities are not relevant and appropriate to the purpose of the grant program will be ineligible.

2. Agency staff will be available to offer technical assistance to reviewers.

(d) Applications will be scored using the following process:

1. The peer reviewers will review all complete and eligible grant applications forwarded to them by agency staff and complete a rating form for each. Each reviewer will evaluate the proposal in relation to the specific requirements of the criteria and will assign a value, depending on the points assigned to each criterion.

2. No reviewer who is associated with an applicant or who stands to benefit directly from an application will serve on the review panel for the grant program in which the application is submitted for that grant cycle. Any reviewer who is associated with a potential applicant in the respective category must inform the agency and their organization about a potential conflict of interest. [with an application, or who stands to benefit directly from an application will evaluate that application.] Any reviewer who feels unable to evaluate a particular application fairly may choose not to review that application.

3. Reviewers will consider and assess the strengths and weaknesses of any proposed project only on the basis of the documents submitted. Considerations of geographical distribution, demographics, type of library, or personality will not influence the assessment of a proposal by the review panel. The panel members must make their own individual decisions regarding the applications. The panel may discuss applications but the panel’s recommendations will be compiled from the individual assessments, not as the result of a collective decision or vote.

4. Reviewers may not discuss proposals with any applicant before the proposals are reviewed. Agency staff is available to provide technical assistance to reviewers. Agency staff will conduct all negotiations and communication with the applicants.

5. Reviewers may recommend setting conditions for funding a given application or group of applications (e.g., adjusting the project budget, revising project objectives, modifying the timetable, amending evaluation methodology, etc.). The recommendation must include a statement of the reasons for setting such conditions. Reviewers who are ineligible to evaluate a given proposal will not participate in the discussion of funding conditions.

6. Reviewers will submit their evaluation forms to the agency. In order to be counted, the forms must arrive before the specified due date.

To be considered eligible for funding by the commission, any application must receive a minimum adjusted mean score of more than 60 percent of the maximum points available. However, eligibility does not guarantee funding. The commission may also choose to award extra points to libraries that have not received funding within a specified time frame to be determined by the agency or that have limited resources. To reduce the impact of scores that are exceedingly high or low, or otherwise outside the range of scores from other reviewers, agency staff will tabulate the panel's work using calculations such as an adjusted mean score.

1. Applications will be ranked in priority order by score for consideration by the commission.

2. If insufficient funds remain to fully fund the next application, the staff will negotiate a reduced grant with the next ranked applicant.

3. If the panel recommends funding an application that, for legal, fiscal, or other reasons, is unacceptable to the staff, a contrary recommendation will be made. The applicant will be informed of this situation prior to presentation to the commission and may negotiate a revision to the application. A positive recommendation to the commission will be contingent upon successfully completing these negotiations prior to the commission meeting.

4. If the panel is unable to produce a set of recommendations for funding, the agency staff will use the same evaluation procedures to develop recommendations to the commission.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904955
Jennifer Peters
Director of Library Development and Networking
Texas State Library and Archives Commission
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 463-5456

CHAPTER 7. LOCAL RECORDS
SUBCHAPTER D. RECORDS RETENTION SCHEDULES
13 TAC §7.125

The Texas State Library and Archives Commission (Commission) proposes amendments to 13 TAC §7.125, relating to local government retention schedule EL (Records of Elections and Voter Registration).

The proposed amendments include revisions necessary to keep the schedule up to date with current laws and administrative rules, and to improve retention of public records.

SUMMARY. The proposed amendments to §7.125(a)(10) revise record series and guidance related to voter registration and election records. Specifically, Senate Bill 5, 85th C.S. Legislative Session, revised the retention period for precinct election records, which set the retention period for many other election and voter registration series. A new series was created to account for provisions made through House Bill 2910, 86th Legislature.

The following proposed amendments appear in the Attached Graphic of §7.125(a)(10).

The proposed amendment to the introduction of the schedule removes obsolete language and adds applicable language to keep it consistent with other updated local schedules.

The proposed amendment to EL3100-01a, EL3100-01b, EL3100-01c, EL3100-03b, EL3100-03c(1), EL3100-04a(1), EL3100-04c(2), EL3100-06a, EL3100-10a, EL3100-10c, EL3100-10e, EL3100-11a, EL3100-11b(1) and (2), EL3150-06d, and EL3150-06e are affected by the changes made to Election Code, Section 66.058(a) made by Senate Bill 5, which mandates a 22-month retention period.

The proposed amendment to EL3100-01a corrects the legal citation from 84.037 to 84.037a, the subsection that addresses retention.

The proposed amendment to EL3100-10a additionally removes the citation of Section 172.116e, as it was repealed in 2015.

The proposed amendment to EL3100-10c removes the phrase "held in 1986 and subsequent years" and "until the end of the year in which the primary election is held" and replaced it with "for 22 months" to be consistent with how Election Code, Section 172.114 is worded currently.

The proposed amendment to EL3100-11b adjusts the description to be consistent with language in the law in Election Code, Section 211.007.

The proposed amendment to EL3125-03b removes the citation for Section 172.118e, as it was repealed in 2017.

The proposed amendment to EL3125-04 is amended to add candidates to the title and splits the retention period into two sub-series to provide a triggering event for non-elected candidates.

The proposed amendment to EL3150-02a corrects the legal citation from Election Code, Section 13.003(d) to 13.035(d).

The proposed amendment to EL3150-06g adds a new record series to provide for supporting documentation provided to keep personal information related to voter registration confidential.

The proposed amendment to EL3150-07a revises the retention period from Destroy at option to AV, to remain consistent with other series and schedules.

FISCAL NOTE. Craig Kelso, Director, State & Local Records Management Division, has determined that for each of the first five-years the proposed amendments are in effect, there will not be a fiscal impact on state or local government as a result of enforcing or administering these amendments, as proposed.

PUBLIC BENEFIT/COST NOTE. Mr. Kelso has also determined that for the first five-year period the amended rules are in effect, the public benefit will be that the amended schedules will help to provide better management of records by improving retention of public records and will increase access to those records by the public.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; there-

ENVIRONMENTAL IMPACT STATEMENT. The Commission has determined that the proposed amendments do not require an environmental impact analysis because these amendments are not major environmental rules under the Texas Government Code §2001.0225.

COSTS TO REGULATED PERSONS. The proposed new section does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Kelso has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required.

GOVERNMENT GROWTH IMPACT STATEMENT. Commission staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specified in Texas Government Code §2006.0221. During the first five years that the amendments would be in effect, the proposed amendments will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments may be directed to Megan Carey, Manager, Records Management Assistance, via email rules@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas, 78711-2927. Comments will be accepted for 30 days after publication in the Texas Register.

STATUTORY AUTHORITY. The amended section is proposed under Texas Government Code §441.158 that requires the Commission to adopt records retention schedules by rule and requires the Commission to provide records retention schedules to local governments, and Texas Government Code §441.160 that allows the commission to revise the schedules.

CROSS REFERENCE TO STATUTE. The proposed amendments implement Texas Government Code §441.158 and §441.160, as well as Texas Senate Bill 5, 86th C.S. Legislative Session, which repealed the six-month retention period for elections involving a non-federal office. No other statutes, articles, or codes are affected by these amendments.


(a) The following records retention schedules, required to be adopted by rule under Government Code §441.158(a) are adopted.

1. Local Schedule GR: Records Common to All Local Governments, Revised 5th Edition.
   Figure: 13 TAC §7.125(a)(1) (No change.)

   Figure: 13 TAC §7.125(a)(2) (No change.)

   Figure: 13 TAC §7.125(a)(3) (No change.)

   Figure: 13 TAC §7.125(a)(4) (No change.)

   Figure: 13 TAC §7.125(a)(5) (No change.)

   Figure: 13 TAC §7.125(a)(6) (No change.)

   Figure: 13 TAC §7.125(a)(7) (No change.)

   Figure: 13 TAC §7.125(a)(8) (No change.)

   Figure: 13 TAC §7.125(a)(9) (No change.)

    [Figure: 13 TAC §7.125(a)(10)]

    Figure: 13 TAC §7.125(a)(11) (No change.)

    Figure: 13 TAC §7.125(a)(12) (No change.)

(b) The retention periods in the records retention schedules adopted under subsection (a) of this section serve to amend and replace the retention periods in all editions of the county records manual published by the commission between 1978 and 1988. The retention periods in the manual, which were validated and continued in effect by Government Code §441.159, until amended, are now without effect.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904988
Megan Carey
Government Information Analyst
Texas State Library and Archives Commission
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 463-5449


45 TexReg 264 January 10, 2020 Texas Register
TITLE 19. EDUCATION
PART 2. TEXAS EDUCATION AGENCY
CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER’S RULES ON SCHOOL FINANCE

19 TAC §61.1011

The Texas Education Agency (TEA) proposes repeal of §61.1011, concerning additional state aid for tax reduction. The proposed repeal is necessary because the authorizing statute expired September 1, 2017.

BACKGROUND INFORMATION AND JUSTIFICATION: Prior to September 1, 2017, Texas Education Code (TEC), §42.2516, allowed school districts to be held harmless for the loss in local tax collections for maintenance and operations caused by the compression of adopted tax rates by one third. Section 61.1011, adopted under former TEC, §42.2516, detailed the calculation of the hold harmless levels for each district, known as revenue targets, as well as how to determine whether hold harmless money was needed or if the state and local revenue received through formula funding was sufficient so that hold harmless money would not have been needed.

Since the provisions of former TEC, §42.2516, which provided for the calculation of additional state aid for tax reduction, expired September 1, 2017, there is no longer a need for a rule detailing the calculations.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal an existing regulation. The proposed repeal would remove from rule provisions relating to the additional state aid for tax reduction allotment, which expired September 1, 2017.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state’s economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be removing outdated provisions from rule to coincide with changes to the authorizing statute. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data or reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins January 10, 2020, and ends February 10, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on January 10, 2020. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §42.2516, which, prior to September 1, 2017, provided for hold harmless payments for school districts for the loss of local tax collections due to the tax rate compression instituted in 2006. Former TEC, §42.2516(g), authorized the commissioner to adopt rules necessary to implement additional state aid for tax reduction.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §42.2516, as this section existed before the expiration of subsections (b)-(f) on September 1, 2017.

§61.1011. Additional State Aid for Tax Reduction (ASATR).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904947
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 475-1497
SUBCHAPTER FF. COMMISSIONER’S RULES CONCERNING VETERANS AND MILITARY DEPENDENTS [COMMISSIONER’S RULES CONCERNING HIGH SCHOOL DIPLOMAS FOR CERTAIN VETERANS]

DIVISION 2. MILITARY-CONNECTED STUDENTS

19 TAC §61.1063

The Texas Education Agency (TEA) proposes new §61.1063, concerning purple star campus designation. The proposed new rule would implement Senate Bill (SB) 1557, 86th Texas Legislature, 2019, by adopting in rule the criteria campuses must demonstrate in order to qualify for and earn the Purple Star Designation.

BACKGROUND INFORMATION AND JUSTIFICATION: SB 1557, 86th Texas Legislature, 2019, added Texas Education Code (TEC), §33.909, establishing the Purple Star Campus Designation and criteria campuses must demonstrate to earn the designation. TEC, §33.909, specifies that for a campus to earn the designation, the campus must designate a campus-based military liaison, create or maintain a webpage with information specific to military-connected families, establish or maintain a current campus transition program, and offer one of three initiatives: a resolution showing support for military connected students and families, recognition of the Month of the Military Child or Military Family Month with relevant events hosted by the campus, or partnership with a school liaison officer to encourage and provide opportunities for active duty military members to volunteer in local schools.

Proposed new 19 TAC Chapter 61, School Districts, Subchapter FF, Commissioner’s Rules Concerning Veterans and Military Dependents, Division 2, Military-Connected Students, §61.1063, Purple Star Campus Designation, would address the requirements of TEC, §33.909, as follows.

Proposed new subsection (a) would set forth the purpose of the proposed new rule in accordance with TEC, §33.909.

Proposed new subsection (b) would establish definitions for terms used in the proposed new rule.

Proposed new subsection (c) would delineate the criteria required for campuses who voluntarily apply to earn the designation as a Purple Star Campus.

Proposed new subsection (c)(1) would list the requirements related to designating a campus-based military liaison and the duties of the liaison, including supporting military-connected students and their families, ensuring students are properly identified in the Texas Student Data System Public Education Information Management System (TSDS PEIMS), providing supports and services for students and families based on their unique needs and high mobility, and offering professional development opportunities for staff members.

Proposed new subsection (c)(2) would list the requirements related to creating and maintaining a webpage that includes information specific to mitigating barriers as military-connected students transition in and out of Texas public schools.

Proposed new subsection (c)(3) would list the requirements related to a campus transition program led by the military liaison or student leaders or ambassadors to assist with introductions to the school environment and school processes.

Proposed new subsection (c)(4) would reiterate the statutory requirement to offer at least one of the following initiatives: a resolution showing support for military connected students and families, participation in the Month of the Military Child or Military Family Month, or partner with school liaison officer to provide opportunities for active duty military members to volunteer in the local schools.

Proposed new subsection (d) would specify provisions related to the TEA application and renewal process for Purple Star Campus Designation.

FISCAL IMPACT: Matt Montano, deputy commissioner for special populations, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, who apply to earn the designation. Application for the designation is voluntary.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations for campuses who voluntarily apply and to earn the Purple Star Campus Designation. The proposal would lay out the criteria for school districts and open-enrollment charter schools to earn the designation.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to the rule’s applicability; and would not positively or adversely affect the state’s economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Montano has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be establishing in rule the criteria and requirements for Purple Star Campus Designation. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have new data reporting for campuses to submit through the agency’s application process demonstrating that a campus has met
criteria to be designated as a Purple Star Campus. Application for the designation is voluntary.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would require that a campus-based staff member submit the application to demonstrate that the campus has met the criteria to earn the designation.

PUBLIC COMMENTS: The public comment period on the proposal begins January 10, 2020, and ends February 10, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on January 10, 2020. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §33.909, which establishes the criteria campuses must demonstrate in order to qualify to apply for and earn the Purple Star Campus Designation. TEC, §33.909(e), requires the Texas Education Agency to adopt rules necessary to administer this statute.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §33.909.

§61.1063. Purple Star Campus Designation.

(a) Purpose. In accordance with Texas Education Code (TEC), §33.909, a campus may qualify to earn the Purple Star Designation if the campus meets criteria demonstrating supports and resources for its military-connected student population.

(b) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

(1) Military-connected student--A student enrolled in a school district or an open-enrollment charter school who is a dependent of a current or former member of the United States military, Texas National Guard, or reserve force in the United States military or who was a dependent of a member of the United States military, Texas National Guard, or reserve force in the United States military who was killed in the line of duty.

(2) School liaison officer--An individual who works for the federal or state government and serves as the primary point of contact for school related matters on military installations. School liaison officers represent, inform, and assist commanding officers and military families with school issues; coordinate with local school systems; and create collaborative partnerships between the military and schools.

(c) Criteria. To qualify to apply for designation as a Purple Star Campus, a campus must meet the following requirements.

(1) Campus-based military liaison. A campus must designate an assigned staff member as a military liaison.

(A) The campus-based military liaison may be:

(i) a campus counselor;

(ii) a teacher;

(iii) a campus administrator such as a principal or an assistant principal;

(iv) another campus staff member who supports highly mobile students.

(B) The campus-based military liaison must support military-connected students and their families by:

(i) serving as the point of contact and working collaboratively between military-connected students and their families and the campus;

(ii) maintaining familiarity with enrollment processes, records transfer, existing community resources, and student supports;

(iii) ensuring military-connected students are identified and properly coded through the Texas Student Data System Public Education Information Management System (TSDS PEIMS);

(iv) determining campus-based supports and services available to military-connected students based on their unique needs, including their high mobility;

(v) assisting in coordinating campus-based programs relevant to military-connected students; and

(vi) attending professional development or training annually to learn and understand topics related to the transition of military-connected students and their families.

(C) The campus-based military liaison must offer professional development opportunities for staff members on issues related to military-connected students. Such issues include, but are not limited to:

(i) military culture;

(ii) deployments and family separations;

(iii) the Interstate Compact on Educational Opportunity for Military Children;

(iv) the TSDS PEIMS military student identifier;

(v) mitigating the effects of high mobility;

(vi) issues that address the physical and mental effects of military service, including post-traumatic stress disorder, traumatic brain injury, and other physical injuries;

(vii) supporting students connected to veterans;

(viii) supporting students with a parent or guardian in the national guard or reserve; and

(ix) supporting students with a parent or guardian who has fallen in the line of duty.

(2) Webpage. A campus must create and maintain an easily accessible webpage that includes the following information for military-connected students and their families.

(A) Relocation. The military-connected student and family support webpage must include information regarding relocation to the campus such as introductions to school environment and processes, enrollment information in extracurricular activities and clubs, tutoring opportunities, student code of conduct, and contact information of pertinent school staff.

(B) Enrollment and registration. The military-connected student and family support webpage must provide information regarding the process and requirements for enrollment, including:
(i) a checklist of required documentation needed to enroll at the campus, which may include information such as copies of student records, transcripts, and residence documentation; and

(ii) eligibility requirements for free public school prekindergarten, as required by TEC, §29.153, for a child of an active duty member of the armed forces, national guard, or reserve component of the armed forces, who is ordered to active duty by proper authority.

(C) Academic planning. The military-connected student and family support webpage must provide a link to information on course sequences, advanced classes available on campus, and information on the Interstate Compact on Educational Opportunity for Military Children, as specified in TEC, Chapter 162.

(D) Counseling and support services. The military-connected student and family support webpage must provide eligibility, application, and referral information offered specifically to military-connected families for counseling and support services on or off a military installation.

(E) Campus-based military liaison. The military-connected student and family support webpage must provide the contact information and duties of the campus’s designated military liaison.

(3) Campus transition program.

(A) Introductions to the school environment and school processes by the campus-based military liaison or by campus-based student leaders or ambassadors, if determined appropriate by the campus-based military liaison, must be provided to new military-connected students.

(B) Any student leaders or ambassadors should be supported or sponsored by a campus-based staff member such as:

(i) the campus-based military liaison;

(ii) a campus counselor;

(iii) a teacher;

(iv) a campus administrator such as a principal or an assistant principal; or

(v) another staff member who supports highly mobile students.

(C) Any student leaders or ambassadors should participate in the following activities:

(i) organizing and hosting newcomer social events throughout the school year that give military-connected students and families an opportunity to learn about campus culture, processes, and the community;

(ii) facilitating guided tours of the campus, including the library, nurse’s office, counseling office, gym, and cafeteria; and

(iii) accompanying the new student to lunch the first week of school.

(4) Initiatives. A campus must offer at least one of the following initiatives:

(A) a resolution showing support for military-connected students and families;

(B) participation in the Month of the Military Child or Military Family Month; or

(C) partnership with a school liaison officer to encourage and provide opportunities for active duty military members to volunteer in the local schools, speak at a school assembly, or host a school field trip.

(d) Application and renewal.

(1) The campus-based military liaison must complete the Texas Education Agency (TEA) Purple Star Campus Designation application available on the TEA website.

(2) Campus designation criteria must be met and submitted in the application.

(3) The Purple Star Campus Designation will be awarded every school year beginning with the 2020-2021 school year.

(4) Campuses that satisfy the criteria and are awarded the Purple Star Campus Designation are eligible to recertify the designation every two school years.

(5) Campuses not selected for award of the Purple Star Campus Designation will be given an opportunity to appeal the decision of non-selection through an appeal process explained in the non-selection notification.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904948
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 475-1497

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

28 TAC §§21.4901 - 21.4904


EXPLANATION. The new rules interpret and implement SB 1264, which prohibits balance billing for certain health benefit claims under certain health benefit plans; provides exceptions to balance billing prohibitions; and authorizes an independent dispute resolution process for claim disputes between certain out-of-network providers and health benefit plan issuers and administrators.

45 TexReg 268 January 10, 2020 Texas Register
SB 1264’s balance billing protections generally apply to enrollees of health benefit plans offered by insurers and health maintenance organizations that the department regulates, as well as to the Texas Employees Group, the Texas Public School Employees Group, and the Texas School Employees Uniform Group. The changes to law made by the bill apply to health care and medical services or supplies provided on or after January 1, 2020.

The new rules implement the exceptions to balance billing prohibitions found in Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111. The exceptions to balance billing prohibitions are only applicable in non-emergencies when a health benefit plan enrollee elects to receive covered health care or medical services or supplies from a facility-based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or from a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider.

For many consumers, a surprise balance bill can be financially ruinous, which in turn will likely dissuade some consumers from seeking necessary or advisable medical care in the future. To protect consumers, SB 1264 prohibits many out-of-network providers from balance billing patients except in a very narrow set of circumstances. The proposed rules are necessary to prevent unscrupulous providers from exploiting the law’s narrow exceptions to the balance billing prohibition, which would negatively impact the health and financial welfare of consumers. Without the new rules, a provider could demand that a patient sign away his or her balance billing protections mere moments before the patient receives surgery or some other medical care. Furthermore, without the new rule, the provider could slip an inconspicuous SB 1264 notice amongst a number of other forms that the enrollee must review prior to the procedure. Patients could be forced to make tough financial and health-related decisions in an extremely vulnerable state, potentially without even knowing the balance billing protections they would be waiving. And if a patient hesitates or refuses to waive their balance billing protections shortly before the procedure, there could be significant health consequences if treatment is delayed or refused because of arguments over billing between patient and provider.

On December 18, 2019, the department adopted 28 TAC §§21.4901 - 21.4904 under emergency rulemaking procedures, to be effective on January 1, 2020. The emergency rules will be withdrawn at the time these proposed rules become effective.

New §21.4901 addresses the purpose and applicability of new Subchapter OO.

New §21.4902 provides that words and terms defined in Insurance Code Chapter 1467 have the same meaning when used in Subchapter OO, unless the context clearly indicates otherwise.

New §21.4903 clarifies that, for purposes of the exceptions to the balance billing prohibitions, an enrollee’s election is only valid if the enrollee has a meaningful choice between an in-network provider and an out-of-network provider, the enrollee was not coerced by another provider or their health benefit plan into selecting the out-of-network provider, and the enrollee signs a notice and disclosure statement at least ten business days before the service or supply is provided acknowledging that the enrollee may be liable for a balance bill and chooses to proceed with the service or supply anyway. Only an out-of-network provider that chooses to balance bill an enrollee is required to provide a notice and disclosure statement to the enrollee. The out-of-network provider may choose to participate in SB 1264’s claim dispute resolution process instead of balance billing an enrollee. New §21.4903 also adopts by reference the notice and disclosure statement that must be filled out by the out-of-network provider and given to the enrollee if the provider chooses to balance bill.

New §21.4904 requires health benefit plans to help their enrollees determine their financial responsibility for a service or supply for which a notice and disclosure statement has been provided, consistent with Insurance Code §1661.002.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Nancy Clark, chief of staff, has determined that during each year of the first five years the proposed new rules are in effect, there will be no fiscal impact on state and local governments as a result of enforcing or administering the proposed rules, other than that imposed by statute. This determination was made because the proposed rules do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed rules. The cost analysis in the Public Benefit and Cost Note section of this proposal may apply to providers, such as hospitals, that are owned by state or local governments. Pursuant to Insurance Code §752.003, other state agencies may be involved in enforcing balance billing prohibitions.

Ms. Clark does not anticipate any effect on local employment or the local economy as a result of the proposed rules.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new rules are in effect, Ms. Clark expects that administering the proposed new rules will have the public benefit of implementing Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111, and Chapter 1467, by clarifying when exceptions to balance billing prohibitions are permitted and by prescribing the required notice and disclosure statement an out-of-network provider can optionally provide to an enrollee. The proposed rules will also help protect many health care patients from surprise balance bills, consistent with the intent of SB 1264.

Ms. Clark expects that the proposed new rules may increase the administrative costs associated with the maintenance of signed notice and disclosure statements for providers who choose to balance bill and that are subject to the rules. The cost to maintain these documents is expected to be negligible. Providers already maintain patients’ health and billings records, and the new notice and disclosure statement form may be stored with other documents commonly used by providers.

Providers who choose to balance bill and who are subject to the proposed rules may experience increased administrative costs associated with providing the notice and disclosure statement to an enrollee. However, the obligation to provide a notice and disclosure statement to an enrollee is based in statute. Thus, any increased administrative costs are a direct result of SB 1264, not the proposed rules. Furthermore, the obligation to provide the notice and disclosure statement is only applicable if the provider chooses to balance bill an enrollee.

Providers may also experience a financial impact related to final claim reimbursement if prohibited from balance billing. How-
ever, because the balance billing prohibitions were enacted in SB 1264, any financial impact is due to statute and not these proposed rules. Furthermore, providers may choose to balance bill enrollees or participate in SB 1264’s dispute resolution process based on their own estimate of final reimbursement.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

The department has determined that the proposed new rules may have an adverse economic effect on small or micro businesses. However, the department does not expect the minimal costs associated with the proposed rules to have a disproportionate economic impact on small or micro businesses. The department has determined that the proposed new rules will not have an adverse economic impact on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses and rural communities. The department estimates that the proposed new rules have the potential to affect thousands of hospitals, other health facilities, individual physicians, surgical assistants, and other health providers that qualify as small or micro businesses, but only if the provider chooses to balance bill and is subject to the proposed rules. There are at least 43,000 licensed physicians in Texas, and the Comptroller estimates that about 14,000 may be small employers. The Comptroller also estimates that there may be about 30,000 ambulatory health care service employers, 500 medical and diagnostic laboratories, and 160 hospitals that are small employers.

The department considered the following alternatives to minimize any adverse impact on small or micro businesses while still accomplishing the proposal’s objectives:

(1) The department considered not proposing the new rules, but ultimately rejected this option in order to ensure SB 1264’s balance billing protections are properly implemented for the protection of consumers. The new rules are necessary to prevent unscrupulous providers from exploiting the law’s narrow exceptions to the balance billing prohibition, which would cause consumer harm. Without the new rules, a provider could demand that a patient sign away his or her balance billing protections mere moments before the patient receives surgery or some other medical care. Furthermore, without the new rule, the provider could slip an inconspicuous SB 1264 notice amongst a number of other forms that the enrollee must review prior to the procedure. Patients could be forced to make tough financial and health-related decisions in an extremely vulnerable state, potentially without even knowing the balance billing protections they would be waiving. And if a patient hesitates or refuses to waive their balance billing protections shortly before the procedure, there could be significant health consequences if treatment is delayed or refused because of arguments over billing between patient and provider. To ensure SB 1264’s balance billing protections are properly implemented for the protection of consumers, the department has rejected this option.

(2) The department also considered exempting small or micro businesses from the requirements of the rule, but ultimately rejected this option for the same reasons outlined above. Additionally, exempting small or micro business from the proposed rules would result in enrollees receiving the notice and disclosure statement in some instances and not others, resulting in even greater confusion and potential harm for those SB 1264 is intended to protect.

(3) Finally, the department also considered imposing lesser requirements on small or micro businesses, but ultimately rejected this option for the same reasons outlined above. Imposing lesser requirements on small or micro businesses would come at the expense of the enrollees SB 1264 was intended to protect. Furthermore, having different sets of requirements for providers based on their status as a small or micro business would cause confusion for the enrollees, the agencies enforcing these rules, and the providers themselves.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. Insurance Code §§752.003 and §1467.003 provide that Government Code §2001.0045 does not apply to a rule proposed and adopted under those sections. Because these rules are proposed under Insurance Code §§752.003 and §1467.003, these rules are not subject to Government Code §2001.0045. Nevertheless, even if §2001.0045 was applicable, the department is not required to repeal or amend another rule because the proposed rules are necessary to implement SB 1264 and to protect the health and financial welfare of the residents of this state, as previously explained.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed rules are in effect the proposed rule:

- will not create a government program;
- will not require the creation of new employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will increase the number of individuals subject to the rule’s applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner’s right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on February 10, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2819 at 1:00 p.m. central time, on February 4, 2020, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The department requests that parties who plan to speak at the hearing send their written comments (or a summary of their testimony) to ChiefClerk@tdi.texas.gov by noon January 28, to facilitate a meaningful discussion.
(2) the enrollee is not coerced by a provider or health benefit plan issuer or administrator when making the election. A provider engages in coercion if the provider charges or attempts to charge a non-refundable fee, deposit, or cancellation fee for the service or supply prior to the enrollee's election; and

(3) the out-of-network provider or the agent or assignee of the provider provides written notice and disclosure to the enrollee and obtains the enrollee's written consent, as specified in subsection (c) of this section.

(c) If an out-of-network provider elects to balance bill an enrollee, rather than participate in claim dispute resolution under Insurance Code Chapter 1467 and Subchapter PP of this title, the out-of-network provider or agent or assignee of the provider must provide the enrollee with the notice and disclosure statement specified in subsection (e) of this section prior to scheduling the non-emergency health care or medical service or supply. To be effective, the notice and disclosure statement must be signed and dated by the enrollee no less than 10 business days before the date the service or supply is performed or provided. The enrollee may rescind acceptance within five business days from the date the notice and disclosure statement was signed, as explained in the notice and disclosure statement form.

(d) Each out-of-network provider must maintain a copy of the notice and disclosure statement, signed and dated by the enrollee, for four years. The provider must provide the enrollee with a copy of the signed notice and disclosure statement on the same date the statement is signed.

(e) The department adopts by reference Form AH025 as the notice and disclosure statement to be used under this section. The notice and disclosure statement may not be modified, including its format or font size, and must be presented to an enrollee as a stand-alone document and not incorporated into any other document. The form is available from the department by accessing its website at www.tdi.texas.gov/forms.

(f) A provider who seeks and obtains an enrollee's signature on a notice and disclosure statement under this section is not eligible to participate in claim dispute resolution under Insurance Code Chapter 1467 and Subchapter PP of this title.


Consistent with Insurance Code §1661.002, a health benefit plan issuer or administrator must assist an enrollee with evaluating the enrollee's financial responsibility for a health care or medical service or supply based on the information in the notice and disclosure statement provided to the enrollee under §21.4903 of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904963

James Person

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 676-6584

♦   ♦   ♦

TITLE 30. ENVIRONMENTAL QUALITY

PROPOSED RULES  January 10, 2020  45 TexReg 271
PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 305. CONSOLIDATED PERMITS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §305.64 and the repeal of §305.149.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements. This rulemaking would correct a typographical error in §305.64 (Transfer of Permits). Additionally, this rulemaking would repeal §305.149 (Time Limitation for Construction of Commercial Hazardous Waste Management Units), because the statutory authority for this rule was repealed.

As part of this rulemaking, the commission is proposing revisions to 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, concurrently in this issue of the Texas Register.

Section by Section Discussion

In addition to the proposed revisions associated with this rulemaking, various non-substantive changes are proposed to update references or correct grammar. These changes are non-substantive and are not specifically discussed in the Section by Section Discussion portion of this preamble.

§305.64, Transfer of Permits

The commission proposes to amend §305.64(c) to remove a misplaced space between 'transfer' and 'or' in the word "transferor," which made the language unclear.

§305.149, Time Limitation for Construction of Commercial Hazardous Waste Management Units

The commission proposes the repeal of §305.149. The statutory basis for this section, THSC, §361.0232, was repealed.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rulemaking.

This rulemaking addresses necessary changes to provide consistency with state law and improve readability.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated will be coordination with state law and improved readability. The proposed repeal of §305.149 is necessary because the state law that authorized the regulation was repealed.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The rulemaking would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rulemaking is in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rulemaking is in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation; however, it does repeal a regulation that is no longer required by state law. This proposed repeal may decrease the number of individuals subject to its applicability. During the first five years, the proposed rulemaking should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment of §305.64 is procedural in nature; and the proposed repeal of §305.149 is necessary because THSC, §361.0232 was repealed. Neither of these changes is specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, the proposed rulemaking would correct a typographical error to ensure there is no confusion regarding the rule language and repeal obsolete rule requirements.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule
is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed rulemaking does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Water Code and THSC that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the proposed rulemaking affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program (CMP).

Written comments on the consistency of this rulemaking with the CMP goals and policies may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 6, 2020, at 10:00 a.m. in Building E, Room 201S, at the commission’s central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-085-335-WS. The comment period closes on February 11, 2020. Copies of the proposed rulemaking can be obtained from the commission’s website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Jarita Sepulvedo, Industrial and Hazardous Waste Permits Section, (512) 239-4413.

SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §305.64

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §§5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and Texas Health and Safety Code (THSC), §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed amendment implements THSC, Chapter 361.

§305.64  Transfer of Permits.

(a) A permit is issued in personam and may be transferred only upon approval of the commission. No transfer is required for a corporate name change, as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Except as provided otherwise in subsection (g) of this section, either the transferee or the permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

(1) the name and address of the transferee;

(2) date of proposed transfer;

(3) if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility, including proof of such financial responsibility to become effective when the transfer becomes effective;

(4) a fee of $100 to be applied toward the processing of the application, as provided in §305.53(a) of this title (relating to Application Fee);

(5) a sworn statement that the application is made with the full knowledge and consent of the permittee if the transferee is filing the application; and

(6) any other information the executive director may reasonably require.

(c) If no agreement regarding transfer of permit responsibility and liability is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation associated therewith is assumed by the transferee, effective on the date of the ap-
proved transfer. This section is not intended to relieve a transferor of any liability.

(d) The executive director must be satisfied that proof of any required financial responsibility is sufficient before transmitting an application for transfer to the commission for further proceedings.

(e) If a person attempting to acquire a permit causes or allows operation of the facility before approval is given, such person shall be considered to be operating without a permit or other authorization.

(f) The commission may refuse to approve a transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been entirely met. The commission shall also consider the prior compliance record of the transferee, if any.

(g) For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 changes in the ownership or operational control of a facility may be made as Class 1 modifications with prior written approval of the executive director in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), until the new owner or operator has demonstrated compliance with the requirements of Chapter 37, Subchapter P of this title. The new owner or operator must demonstrate compliance with the requirements of Chapter 37, Subchapter P of this title within six months of the date of the change of ownership or operational control of the facility. Prior to the executive director issuing the permit modification transferring the permit, the new owner or operator must provide proof of financial assurance in compliance with Chapter 37, Subchapter P of this title. Upon demonstration to the executive director of compliance with Chapter 37 of this title (relating to Financial Assurance), the executive director shall notify the old or new owner or operator that he no longer needs to comply with Chapter 37, Subchapter P of this title as of the date of demonstration.

(h) The commission may transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds one or more of the following:

1. the permittee no longer owns the permitted facilities;
2. the permittee is about to abandon or cease operation of the facilities;
3. the permittee has abandoned or ceased operating the facilities; and
4. there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.

(i) The commission may transfer a permit involuntarily after notice and an opportunity for hearing, for any of the following reasons:

1. the permittee no longer owns or controls the permitted facilities;
2. if the facilities have not been built, and the permittee no longer has sufficient property rights in the site of the proposed facilities;
3. the permittee has failed or is failing to comply with the terms and conditions of the permit;
4. the permitted facilities have been or are about to be abandoned;
5. the permittee has violated commission rules or orders;
6. the permittee has been or is operating the permitted facilities in a manner which creates an imminent and substantial endangerment to the public health or the environment;
7. foreclosure, insolvency, bankruptcy, or similar proceedings have rendered the permittee unable to construct the permitted facilities or adequately perform its responsibilities in operating the facilities; or
8. transfer of the permit would maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state and/or would minimize the damage to the environment; and
9. the transferee has demonstrated the willingness and ability to comply with the permit and all other applicable requirements.

(j) The commission may initiate proceedings in accordance with the Texas Water Code, Chapter 13, for the appointment of a receiver consistent with this section.

(k) For standard permits, changes in the ownership or operational control of a facility may be made as a Class 1 modification to the standard permit with prior approval from the executive director in accordance with §305.69(k) of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.
TRD-201904972
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 239-6812

SUBCHAPTER G. ADDITIONAL CONDITIONS FOR HAZARDOUS AND INDUSTRIAL SOLID WASTE STORAGE, PROCESSING, OR DISPOSAL PERMITS

30 TAC §305.149
Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024,
which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed repeal implements THSC, Chapter 361.

§305.149. Time Limitation for Construction of Commercial Hazardous Waste Management Units.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904973
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality

Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 239-6812

SUBCHAPTER P. EFFLUENT GUIDELINES AND STANDARDS FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) PERMITS

30 TAC §305.541

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §305.541, concerning Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System (TPDES) Permits. A

Background and Summary of the Factual Basis for the Proposed Rule

House Bill (HB) 2771 (86th Texas Legislature, 2019) requires the TCEQ to submit a delegation request by September 1, 2021, to seek authority from the United States Environmental Protection Agency (EPA) to issue federal permits for discharges of produced water, hydrostatic test water, and gas plant effluent into water in the state resulting from certain oil and gas activities under the National Pollutant Discharge Elimination System (NPDES) program. Additionally, HB 2771 transfers permitting authority for these discharges from the Railroad Commission of Texas (RRC) to the TCEQ upon delegation of authority for these discharges from EPA to the TCEQ.

This rulemaking is one of several steps necessary to implement HB 2771. The proposed rulemaking would amend §305.541 to adopt by reference the EPA’s effluent limitations guidelines for the oil and gas extraction point source category and the centralized waste treatment category (40 Code of Federal Regulations (CFR) Parts 435 and 437).

Section Discussion

§305.541, Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System (TPDES) Permits

The commission proposes an amendment to §305.541(a) to improve readability and to adopt by reference the current federal regulations in 40 CFR Parts 435 and 437, but noting that the term “produced wastewater” will be used in place of the term “produced water” in the federal regulations, in order to distinguish between the federal definition of “produced water” and the commission jurisdiction under Texas Water Code, §26.131. The proposed rulemaking would ensure that these federal effluent limitation guidelines are adopted in state regulations, which is necessary prior to seeking NPDES delegation authority from the EPA to issue permits for discharges of produced water, hydrostatic test water, and gas plant effluent from oil and gas facilities.

EPA promulgated the Oil and Gas Extraction Effluent Guidelines and Standards (40 CFR Part 435) in 1979, and amended the regulations in 1993, 1996, 2001, and 2016. These regulations establish effluent limitation guidelines using best practicable control technology currently available (BPT), best available technology economically achievable (BAT), and best conventional pollutant control technology (BCT); performance standards for new sources; and pretreatment standards applicable to wastewater discharges from field exploration, drilling, production, well treatment, and well completion activities. These activities take place on land, in coastal areas, and offshore. The Oil and Gas regulations apply to conventional and unconventional oil and gas extraction, with the exception of coalbed methane.

EPA promulgated the Centralized Waste Treatment (CWT) Effluent Guidelines and Standards (40 CFR Part 437) in 2000 and amended the rule in 2003. These regulations establish effluent limitation guidelines using BPT, BAT, and BCT; performance standards for new sources; and pretreatment standards applicable to CWT facilities. CWT facilities treat or recover metal-bearing, oily, and organic wastes, wastewater, or used material received from off-site. The CWT industry handles wastewater treatment residuals and industrial process by-products that come from other industries, including the oil and gas exploration and production industry.

The commission proposes §305.541(b) to define “produced water” as that term is used in Texas Water Code, §26.131. Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

This proposed rulemaking addresses changes required to begin implementation of HB 2771. The proposed rule would adopt by reference certain effluent limitation guidelines in federal regulations. Regulated entities subject to these guidelines are not currently required to obtain discharge authorization from the commission because they are permitted by the EPA and the RRC.

At a future date, if the EPA delegates authority to the commission, then fiscal implications will be anticipated for the agency and the state. On May 17, 2019, the Legislative Budget Board estimated the legislation’s impact in their fiscal note for HB 2771.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated will be compliance with state law.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

PROPOSED RULES   January 10, 2020   45 TexReg 275
Rural Communities Impact Assessment
The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The amendment would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment
No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

Small Business Regulatory Flexibility Analysis
The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

Government Growth Impact Statement
The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rule does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation, nor does the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state’s economy.

Draft Regulatory Impact Analysis Determination
The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. "Major environmental rule" is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking would adopt by reference the EPA’s effluent limitations guidelines for the oil and gas extraction point source category and the centralized waste treatment category (40 CFR Parts 435 and 437). The rulemaking does not meet the definition of "Major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the commission finds that this rulemaking is not a "Major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a state agency’s adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the rulemaking does not exceed a standard set by federal law, rather it adopts by reference EPA’s effluent limitations guidelines for the oil and gas extraction point source category and the centralized waste treatment category (40 CFR Parts 435 and 437). Also, the rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. Finally, the rulemaking was not developed solely under the general powers of the agency; but is required by HB 2771. Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed rulemaking does not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invites public comment regarding this Draft Regulatory Impact Analysis Determination. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment
The commission performed an assessment of this rule in accordance with Texas Government Code, §2007.043. This rulemaking would adopt by reference the EPA’s effluent limitations guidelines for the oil and gas extraction point source category and the centralized waste treatment category (40 CFR Parts 435 and 437). This rule would not constitute either a statutory nor a constitutional taking of private real property. This rulemaking would impose no burdens on private real property because the proposed rule neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

Consistency with the Coastal Management Program
The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rule in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rule includes protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and ensuring sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rule includes policies for discharges of wastewater from oil and gas exploration and production.

The proposed rulemaking is consistent with the above goals and policies by requiring wastewater discharges from oil and gas exploration and production facilities to comply with federal effluent limitation guidelines to protect water resources.
Promulgation and enforcement of the rule would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rule is consistent with these CMP goals and policies and the rule would not create or have a direct or significant adverse effect on any CNRAs.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 4, 2020, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/ecomments/.

File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-118-305-OW. The comment period closes on February 11, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Laurie Fleet, Water Quality Division, at (512) 239-5445.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which establishes that the commission, by rule, shall establish and approve all general policy of the commission; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; and TWC, §5.120, which requires the commission to administer the law so as to promote the conservation and protection of the quality of the state’s environment and natural resources.

The proposed amendment implements House Bill 2771 (86th Texas Legislature, 2019).


(a) Except to the extent that they are less stringent than the Texas Water Code or the rules of the commission, the following federal regulations are adopted by reference, as amended:

(1) 40 Code of Federal Regulations (CFR) Parts 400 - 402, 404 - 434, 436, 438 - 440, 443, 446 - 448, and 451 - 471 [400 - 471, except 40 CFR Part 403], which are in effect as of the date of the Texas Pollutant Discharge Elimination System (TPDES) program authorization; [as amended, and 40 CFR Parts]

(2) 40 CFR Part 435 (which is in effect as of the date of the TPDES program authorization for discharges subject to this part), except where 40 CFR Part 435 uses the term "produced water" the commission shall instead use the term "produced wastewater":

(3) 40 CFR Part 437 (Federal Register, Volume 68, December 22, 2003), [Volume 65, December 22, 2000];

(4) 40 CFR Part 441 (Federal Register, Volume 82, June 14, 2017);

(5) 40 CFR Part 442 (Federal Register, Volume 65, August 14, 2000);

(6) 40 CFR Part 444 (Federal Register, Volume 65, January 27, 2000);

(7) 40 CFR Part 445 (Federal Register, Volume 65, January 19, 2000);

(8) 40 CFR Part 449 (Federal Register, Volume 77, May 16, 2012); and

(9) 40 CFR Part 450 (Federal Register, Volume 79, March 6, 2014) [as amended, and adopted by reference].

(b) For the purposes of the commission’s implementation of Texas Water Code, §26.131, "produced water" is defined as all wastewater associated with oil and gas exploration, development, and production activities, except hydrostatic test water and gas plant effluent, that is discharged into water in the state, including waste streams regulated by 40 CFR Part 435.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904954

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 293-1806

CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes amendments to §§335.1, 335.2, 335.10 - 335.13, 335.24, 335.31, 335.43, 335.63, 335.69, 335.71, 335.76, 335.78, 335.91, 335.112, 335.152, 335.251, 335.281, 335.282, 335.331, 335.501, 335.504, 335.590, and 335.602; and new §335.281.

Background and Summary of the Factual Basis for the Proposed Rules

The federal hazardous waste program is authorized under the Resource Conservation and Recovery Act of 1976 (RCRA), §3006. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program. State authorization is a rulemaking
process through which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission must adopt new regulations regularly to meet the changing federal regulations.

Texas received authorization of its hazardous waste "base program" under RCRA on December 26, 1984. Texas received authorization of revisions to its base hazardous waste program on February 17, 1987 (Clusters I and II). Texas submitted further revisions to its hazardous waste program and received final authorization of those revisions on March 15, 1990; July 23, 1990; October 21, 1991; December 4, 1992; June 27, 1994; November 26, 1997; October 18, 1999; September 11, 2000; June 14, 2005 (parts of Clusters III - X); March 5, 2009 (parts of Clusters XI - XV); May 7, 2012 (parts of Clusters IX and XV - XVIII); November 3, 2014 (parts of Clusters XIX - XXI); and December 21, 2015 (parts of Clusters XX - XXIII).

The commission proposes in this rulemaking certain parts of RCRA Rule Clusters XXIV, XXV, and XXVII that implement revisions to the federal hazardous waste program which were made by EPA between April 8, 2015 and November 30, 2018. Both mandatory and optional federal rule changes in these clusters are proposed to be adopted. Although not necessary to maintain authorization, EPA also recommends that the optional federal rule changes be incorporated into the state rules. Establishing equivalency with federal regulations will enable Texas to operate all delegated aspects of the federal hazardous waste program in lieu of the EPA.

Vacatur of Comparable Fuels and Gasification Rule

In the April 8, 2015, issue of the Federal Register (80 FR 18777), the EPA implemented vacatures, ordered by the United States Court of Appeals for the District of Columbia Circuit on June 27, 2014, of regulations associated with the comparable fuels exclusion and the gasification exclusion. The vacatur eliminated the exclusions and reinstated the regulatory status in effect prior to their adoption with respect to the materials subject to this rule.

Coal Combustion Residual Co-Disposition Rule

In the April 17, 2015, issue of the Federal Register (80 FR 21302), the EPA codified a list of wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are not subject to hazardous waste regulations when co-disposed with coal combustion residuals.

Imports and Exports of Hazardous Waste Rule

In the November 28, 2016, issue of the Federal Register (81 FR 85696), the EPA amended existing regulations regarding the export and import of hazardous wastes from and into the United States. EPA made these changes to provide greater protection to human health and the environment by: 1) making existing export and import related requirements more consistent with the current import-export requirements for shipments between members of the Organization for Economic Cooperation and Development; 2) enabling electronic submittal to EPA of all export and import-related documents (e.g., export notices, export annual reports); and 3) enabling electronic validation of consent in the Automated Export System for export shipments subject to RCRA export consent requirements prior to exit. The import and export regulations were promulgated under the Hazardous Waste and Solid Waste Amendments of 1984 which are administered by the EPA and are not delegable to states.

The Imports and Exports of Hazardous Waste Rule repealed 40 Code of Federal Regulations (CFR) Part 262, Subparts E and F (Exports of Hazardous Waste; and Imports of Hazardous Waste), which contained 40 CFR §§262.50 - 262.58 and §262.60 (Applicability; Definitions; General requirements; Notification of intent to export; Special manifest requirements; Exception reports; Annual reports; Recordkeeping; International agreements; and Imports of hazardous waste). Further information on the removal of sections and integration of all import and export requirements into 40 CFR Part 262, Subpart H (Transboundary Movements of Hazardous Waste for Recovery or Disposal), can be found in the Section by Section Discussion of this preamble for individual sections impacted by these revisions.

Safe Management of Recalled Airbags Rule

In the November 30, 2018, issue of the Federal Register (83 FR 61552), the EPA conditionally exempted the collection of airbag waste from hazardous waste requirements. EPA concluded that the conditional exemption would facilitate dealerships, salvage yards, and others' ability to conduct more expedited removal of defective and recalled airbag inflators and would facilitate safer and environmentally sound disposal. The conditions for exemption mirror the requirements for management of recalled airbags established by the United States Department of Transportation for the recalled airbags.

Promulgation of House Bill 1953

Additionally, the commission proposes this rulemaking to partially implement House Bill (HB) 1953, 86th Texas Legislature, 2019. HB 1953 amended Texas Health and Safety Code (THSC), §361.003 (Definitions) and §361.119 (Regulation of Certain Facilities as Solid Waste Facilities), and added THSC, §361.041 (Treatment of Post-Use Polymers and Recoverable Feedstocks as Solid Waste). These statutory enactments created a new conditional exclusion from the definition of solid waste and from regulations for the management of municipal and industrial solid waste for owners and operators of facilities that convert plastics and certain other nonhazardous recyclable material through pyrolysis or gasification. The conditional exclusion is dependent upon two factors: 1) the facility owner or operator demonstrating that the primary function of the facility is to convert materials that have a resale value greater than the cost of converting the materials for beneficial use; and 2) that solid waste generated from converting the materials is disposed at an authorized solid waste management facility. The implementation of HB 1953 in Chapter 335 would only be applicable to material that would be classified as nonhazardous industrial solid waste if discarded because the commission intends to implement the exclusion enacted by HB 1953 applicable to municipal solid waste in a future rulemaking.

All proposed new rules and rule changes are discussed further in the Section by Section Discussion portion of this preamble.

As part of this rulemaking the commission is proposing revisions to 30 TAC Chapter 305, Consolidated Permits, concurrently in this issue of the Texas Register.
Section by Section Discussion

In addition to the proposed amendments associated with this rulemaking, various stylistic, non-substantive changes are being proposed to update rule language to current Texas Register style and format requirements. These changes are generally non-substantive and not specifically discussed in the Section by Section Discussion portion of this preamble.

§335.1, Definitions

The commission proposes §335.1(7) to add the definition of "AES filing compliance date" to conform to federal regulations promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696). Specifically, this amendment would add the definition of "AES filing compliance date" that is consistent with the definition of "AES filing compliance date" in 40 CFR §260.10 (Definitions). EPA established December 31, 2017, as the AES filing compliance date in the August 29, 2017, issue of the Federal Register (82 FR 41015).

The commission proposes §335.1(8) to add the definition of "Airbag waste" to conform to the federal regulations promulgated in the November 30, 2018, issue of the Federal Register (83 FR 61552). Specifically, this amendment would add the definition of "Airbag waste" that is consistent with the definition of "Airbag waste" in 40 CFR §260.10.

The commission proposes §335.1(9) to add the definition of "Airbag waste collection facility" to conform to federal regulations promulgated in the November 30, 2018, issue of the Federal Register (83 FR 61552). Specifically, this amendment would add the definition of "Airbag waste collection facility" that is consistent with the definition of "Airbag waste collection facility" in 40 CFR §260.10.

The commission proposes §335.1(10) to add the definition of "Airbag waste handler" to conform to federal regulations promulgated in the November 30, 2018, issue of the Federal Register (83 FR 61552). Specifically, this amendment would add a definition of "Airbag waste handler" that is consistent with the definition of "Airbag waste handler" in 40 CFR §260.10. The commission proposes to renumber the subsequent paragraphs accordingly to account for the additional definitions.

The commission proposes to delete existing §335.1(32) to remove the definition of "Consignee" to conform to federal regulations promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696). Specifically, this amendment would remove the definition of "Consignee" consistent with the repeal of 40 CFR §262.51 and the definition of "Consignee.

The commission proposes §335.1(53) to add the definition of "Electronic import-export reporting compliance date" to conform to federal regulations promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696). Specifically, this amendment would add the definition of "Electronic import-export reporting compliance date" that is consistent with the definition of "Electronic import-export reporting compliance date" in 40 CFR §260.10.

The commission proposes to delete existing §335.1(66) to remove the definition of "Gasification" to conform to federal regulations promulgated in the April 8, 2015, issue of the Federal Register (80 FR 18777). Specifically, this amendment would remove the definition of "Gasification" consistent with the removal of the definition from 40 CFR §260.10.

The commission proposes §335.1(70) to add the definition of "Gasification." This amendment would implement HB 1953 by adding the definition of "Gasification" consistent with the definition of "Gasification" under THSC, §361.003 (Definitions).

The commission proposes §335.1(71) to add the definition of "Gasification facility." This amendment would implement HB 1953 by adding a new definition of "Gasification facility" consistent with the definition of "Gasification facility" under THSC, §361.003.

The commission proposes to amend renumbered §335.1(84) to revise the definition of "Incinerator" to establish in proposed §335.1(84)(B) that incinerators are not a "Gasification facility" or "Pyrolysis facility" managing "Recoverable feedstock" consistent with the "Gasification facility" and "Pyrolysis facility" definitions enacted by HB 1953 under THSC, §361.003.

The commission proposes to amend renumbered §335.1(106) to revise the definition of "Manifest" to conform with the proposed title revision for §335.10.

The commission proposes §335.1(130) to add the definition of "Post-use polymers." This amendment implements HB 1953 for the purposes of material that would be classified as non-hazardous industrial solid waste if discarded. The commission would accomplish this by adding a definition of "Post-use polymers" consistent with the conditional exclusion under THSC, §361.041 (Treatment of Post-Use Polymers and Recoverable Feedstocks as Solid Waste), and the definition of "Post-use polymers" under THSC, §361.003.

The commission proposes to delete existing §335.1(128) to remove the definition of "Primary exporter" to conform to federal regulations promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696). Specifically, this amendment would remove the definition of "Primary exporter" consistent with the repeal of 40 CFR §262.51 and the definition of "Primary exporter.

The commission proposes §335.1(136) to add the definition of "Pyrolysis." This amendment would implement HB 1953 by adding a definition of "Pyrolysis" consistent with the definition of "Pyrolysis" under THSC, §361.003.

The commission proposes §335.1(137) to add the definition of "Pyrolysis facility." This amendment would implement HB 1953 by adding a new definition of "Pyrolysis facility" consistent with the definition of "Pyrolysis facility" under THSC, §361.003.

The commission proposes to delete existing §335.1(132) to remove the definition of "Receiving country" to conform to federal regulations promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696). Specifically, this amendment would remove the definition of "Receiving country" consistent with the repeal of 40 CFR §262.51 and the definition of "Receiving country.

The commission proposes §335.1(139) to add the definition of "Recognized trader" to conform to federal regulations promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696). Specifically, this amendment would add a definition of "Recognized trader" that is consistent with the definition of "Recognized trader" in 40 CFR §260.10.

The commission proposes §335.1(140) to add the definition of "Recoverable feedstock." This amendment would implement HB 1953 by adding a definition of "Recoverable feedstock" consis-
tent with the definition of "Recoverable feedstock" under THSC, §361.003.

The commission proposes to amend renumbered §335.1(154)(A)(iv) of the definition of "Solid waste." This amendment proposes to adopt by reference revisions promulgated in the April 8, 2015, issue of the Federal Register (80 FR 18777) and November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Vacatur of the Comparable Fuels and Gasification Rule and Imports and Exports of Hazardous Waste Rule, respectively. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citations for 40 CFR §261.4(a) and §261.39 (Exclusions; and Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recyling). Additionally, the adoption by reference of §261.4(a)(16) and §261.38 were removed.

The commission proposes to further amend renumbered §335.1(154)(A)(iv) to adopt by reference revisions promulgated in the April 8, 2015, issue of the Federal Register (80 FR 18777) to incorporate changes associated with the Vacatur of the Comparable Fuels Rule and the Gasification Rule revisions. The commission proposes to accomplish the adoption of these revisions by removing the references for 40 CFR §261.4(a)(16) and §261.38, and subclauses (I) - (VIII), consistent with the removal of these sections and language from federal regulations.

The commission proposes §335.1(154)(A)(v) to implement the new conditional exclusion from the definition of "Solid waste" enacted by HB 1953 under THSC, §§361.003, 361.041, and 361.119. The amendment would implement the statutory changes by creating a new exception from the definition of "Solid waste" for post-use polymers and recovered feedstocks processed through pyrolysis or gasification at a "Pyrolysis facility" or "Gasification facility," as those terms are defined in proposed §335.1, and are converted into materials that have a resale value greater than the cost of converting the materials for subsequent beneficial reuse and that the solid waste generated from converting the materials is disposed of in a solid waste management facility authorized under THSC, Chapter 361.

The commission proposes to amend renumbered §335.1(154)(D) to revise the citations for Table 1 to Figure: 30 TAC §335.1(154)(D)(iv) to be consistent with the renumbering of the paragraphs in §335.1. Furthermore, Table 1 is proposed to be revised to remove the inappropriate digit after the clause in the abbreviated citations within the column headings.

Additionally, the commission proposes to amend §335.1(154)(l) to implement the new conditional exclusion enacted by HB 1953 under THSC, §§361.003, 361.041, and 361.119. The amendment would implement the statutory changes by adding facility operators to the persons that are required by §335.1(154)(l) to provide appropriate documentation demonstrating that they meet the terms of an exclusion or exemption from the definition of "Solid waste" or from waste regulations. Specifically, this amendment would implement THSC, §361.119 which exempts facility owners and operators, that convert nonhazardous recyclable materials through "Pyrolysis" or "Gasification", as those terms are defined in §335.1, from regulation under THSC, §361.119 upon demonstration that the primary function of the facility is to convert the materials into materials that have a resale value greater than the cost of converting the materials for subsequent beneficial reuse and that the solid waste generated from converting the materials is disposed of in a solid waste management facility authorized under THSC, Chapter 361.

The commission proposes to delete existing §335.1(162) to remove the definition of "Transit country" to conform to federal regulations promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696). Specifically, this amendment would remove the definition of "Transit country" consistent with the repeal of 40 CFR §262.51 and the definition of "Transit country."

The commission proposes to delete existing §335.1(171) to remove the definition of "United States Environmental Protection Agency (EPA) acknowledgment of consent" to conform to federal regulations promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696). Specifically, this amendment would remove the definition of "United States Environmental Protection Agency (EPA) acknowledgment of consent" consistent with the repeal of 40 CFR §262.51. The definition of "EPA Acknowledgment of Consent (AOC)" in 40 CFR §262.81 (Definitions) is adopted by reference as published in the November 28, 2016, issue of the Federal Register (81 FR 85696) in §335.76 (Additional Requirements Applicable to International Shipments).

The commission proposes to amend renumbered §335.1(186)(C) to revise the definition of "User of the electronic manifest system" to conform with the proposed title revision for §335.10.

§335.2, Permit Required

The commission proposes to amend §335.2(g) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citation for 40 CFR §261.4(e) and (f). Specifically, the EPA amended existing regulations to add 40 CFR §261.4(e)(4), which placed a mass limit of 25 kilograms (kg) on imported or exported treatability study samples for eligibility with exemptions from hazardous waste regulations.

§335.10, Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

The commission proposes to amend §335.10 to revise the section title by removing the words "and Primary Exporters of Hazardous Waste." The proposed title reflects the removal of the term "Primary Exporters" from 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste).

The commission proposes to amend §335.10(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by removing the references to 40 CFR §§262.54, 262.55, and 262.60, which were repealed in this federal rulemaking; adding the reference for 40 CFR Part 262, Subpart H; and amending the Federal Register citation for the Appendix to 40 CFR Part 262. Additionally, the commission proposes to amend §335.10(a)(1) to remove the reference to "primary exporters."

The commission also proposes to amend §335.10(c) to remove the exceptions for 40 CFR §262.54 and §262.55, which is proposed to be removed from §335.10(a).

§335.11, Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste
The commission proposes to amend §335.11(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citations for 40 CFR §263.20 (The manifest system), and the Appendix to 40 CFR Part 262.

The commission proposes to further amend §335.11(a) to remove the exceptions for §335.10(d) and (e), which apply solely to shipments of Class 1 waste, and to revise the citation for §335.10 to conform with the proposed title revision for §335.10.

§335.12, Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities

The commission proposes to amend §335.12(a) and (b) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citations for 40 CFR §264.71 (Use of manifest system); §265.71 (Use of manifest system); and the Appendix to 40 CFR Part 262.

The commission proposes to further amend §335.12(a) to revise the citation for

§335.10 to conform with the proposed title revision for §335.10.

§335.13, Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

The commission proposes to amend §335.13 to revise the section title by removing "and Primary Exporters of Hazardous Waste." The proposed title reflects the removal of the term "Primary Exporters" from 40 CFR Part 262.

The commission proposes §335.13(a). Proposed §335.13(a) contains the language in existing §335.13(m), which is proposed for deletion. Proposed subsection (a) clarifies that generators that generate less than 100 kg of hazardous or Class 1 waste, or less than the quantities of acutely hazardous waste listed in §335.78 (Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) are not subject to the requirements of §335.13. The commission proposes to re-letter subsequent subsections accordingly.

The commission proposes to amend re-lettered §335.13(b) to remove the document identification "(S1)" for the Waste Shipment Summary, which no longer applies.

The commission proposes to delete existing §335.13(b), to remove the requirement for exporters of hazardous or Class 1 waste to complete a Waste Shipment Summary.

The commission proposes to delete existing §335.13(c). The Foreign Waste Shipment Summary requirement is no longer needed since the changes associated with the Imports and Exports of Hazardous Waste Rule allow for improved tracking of hazardous waste imports and exports.

The commission proposes to amend re-lettered §335.13(c) to remove the document identification "(S1)" for the Waste Shipment Summary, which no longer applies; the requirement for the Foreign Waste Shipment Summary, and the document identification "(F1)" the reference to "in-state/out-of-state primary exporter;" and the last sentence, "Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection."

The commission proposes to delete existing §335.13(e) to remove the graphic representation illustrating generator, waste type, shipment type, and report method because it is no longer needed.

The commission proposes to delete existing §335.13(h) to remove the reference for "primary exporter/importer."

The commission proposes to amend re-lettered §335.13(f) to remove the references to "primary exporter," revise the citation for §335.10 to conform with the proposed title revision for §335.10, and to replace the phrase "a minimum of" with "at least."

The commission proposes to amend re-lettered §335.13(h) to remove the references to "primary exporter."

The commission proposes to delete existing §335.13(n) to remove the references to "primary exporters;" 40 CFR §262.51; 40 CFR §262.56; and the annual report requirement contained within 40 CFR §262.56.

The commission proposes to amend re-lettered §335.13(j) to remove the references to "primary exporters;" 40 CFR Part 262, Subpart A: 40 CFR §262.51; and 40 CFR §262.58(a)(1); and to clarify that any person who exports or imports hazardous waste is subject to requirements in 40 CFR §262.12 and 40 CFR Part 262, Subpart H, which are proposed to be adopted by reference in §335.76(a).

§335.24, Requirements for Recyclable Materials and Nonhazardous Recyclable Materials

The commission proposes to amend §335.24(c)(1) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by revising the language in §335.24(c)(1) to be consistent with the language in revised 40 CFR §261.6(a)(3)(i), which clarifies that exports and imports of recyclable industrial ethyl alcohol are subject to the requirements of revised 40 CFR Part 262, Subpart H; and to move the language in existing §335.24(c)(1)(B) to the of §335.24(c)(1). The commission further proposes to delete current §335.24(c)(1)(A), which contains references to 40 CFR §§262.53, 262.55, 262.56, and 262.57; and 40 CFR Part 262, Subpart E, which have been repealed and reserved in the federal revisions.

The commission proposes to amend §335.24(c)(3) to adopt by reference revisions promulgated in the April 8, 2015, issue of the Federal Register (80 FR 18777) to incorporate changes associated with the Vacutainer of the Comparable Fuels Rule and the Gasification Rule. The commission proposes to accomplish the adoption of these revisions by adding a dated Federal Register citation for 40 CFR §261.4(a)(12). Specifically, 40 CFR §261.4(a)(12)(i) was revised.

The commission proposes to amend §335.24(g) to revise the citations for §335.10 and §335.13 to conform with the proposed title revisions for §335.10, and §335.13.

The commission proposes to amend §335.24(o) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of
these revisions by revising the language in §335.24(o) to be consistent with the language in revised 40 CFR §261.6(a)(5), which clarifies that hazardous waste that is exported or imported for recovery is subject to 40 CFR Part 262, Subpart H.

§335.31, Incorporation of References

The commission proposes to amend §335.31 to adopt by reference the revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Import and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by revising the Federal Register citation for 40 CFR §260.11 (Incorporation by reference). The change revised the list of guidance materials available for purchase from the Organization for Economic Co-operation and Development.

§335.43, Permit Required

The commission proposes to amend §335.43(a) and (b) to replace the reference to the predecessor agency, Texas Natural Resource Conservation Commission, with the current agency, Texas Commission on Environmental Quality.

§335.63, EPA Identification Numbers

The commission proposes §335.63(c) to incorporate the federal revisions published in the November 28, 2016, issue of the Federal Register (81 FR 85696) associated with the Imports and Exports of Hazardous Waste Rule. Proposed §335.63(c) would require all "Recognized traders" in Texas, as defined in proposed §335.1(139), to receive an EPA identification number prior to arranging for imports or exports of hazardous wastes. The proposed language is consistent with revised 40 CFR §262.12(d).

§335.69, Accumulation Time

The commission proposes to amend §335.69(m) to revise the citation for §335.10 to conform with the proposed title revision for §335.10.

§335.71, Biennial Reporting

The commission proposes to amend §335.71 to adopt by reference the federal revisions published in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by adding the publication date to the Federal Register citation for 40 CFR §262.41.

§335.76, Additional Requirements Applicable to International Shipments

The commission proposes to amend §335.76(a) to adopt by reference the federal revisions published in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by clarifying that all transboundary movements of hazardous waste are subject to 40 CFR Part 262, Subpart H and §262.12 (EPA identification numbers).

The commission proposes to amend §335.76(b) to clarify that imports of industrial solid waste are subject to Chapter 335. The commission proposes to further amend §335.76(b) to delete §335.76(b)(1) - (5), as all transboundary movements of hazardous waste are made subject to the requirements of 40 CFR Part 262, Subpart H adopted by reference in proposed §335.76(a), and these paragraphs are no longer needed.

The commission proposes to amend §335.76(c) to adopt by reference the federal revisions published in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by clarifying that hazardous waste exporters are subject to a separate annual report requirement contained in 40 CFR §262.83(g). The proposed language is consistent with revised 40 CFR §262.41(b). The commission proposes to further amend §335.76(c) to delete §335.76(c)(1) - (3), as all transboundary movements of hazardous waste are made subject to the requirements of 40 CFR Part 262, Subpart H adopted by reference in proposed §335.76(a), and these paragraphs are no longer needed.

The commission proposes to delete §335.76(d) - (h), as all transboundary movements of hazardous waste are made subject to the requirements of 40 CFR Part 262, Subpart H adopted by reference in proposed §335.76(a), and these subsections are no longer needed.

§335.78, Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

The commission proposes to amend §335.78(c)(1) to adopt by reference the federal revisions published in the November 28, 2016, issue of the Federal Register (81 FR 85696) associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by adding a publication date to the Federal Register citation for 40 CFR §261.4(c) - (f). Specifically, 40 CFR §261.4(d) and (e) were revised.

The commission proposes §335.78(g)(3)(H). Proposed §335.78(g)(3)(H) adopts the language from 40 CFR §262.14(a)(5)(xi) (Conditions for exemption for a very small quantity generator), which as a condition for exemption requires that hazardous waste airbags generated by a conditionally exempt small quantity generator (less than 100 kg of hazardous wastes generated per calendar month) disposed of offsite, must be sent to an airbag waste collection facility or designated facility subject to the requirements of 40 CFR §261.4(j), which are contained within proposed new §335.281 (Airbag Waste).

§335.91, Scope

The commission proposes to amend §335.91(e) to adopt by reference the federal revisions published in the November 28, 2016, issue of the Federal Register (81 FR 85696) associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by revising the language in §335.91(e) to be consistent with the language in revised 40 CFR §263.10(d) (Scope), which clarifies that transporters of hazardous waste for export or import are subject to 40 CFR Part 262, Subpart H.

§335.112, Standards

The commission proposes to amend §335.112(a)(1) and (4) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citations for 40 CFR Part 268, Subparts B and E (General Facility Standards; and Manifest System, Recordkeeping and Reporting). Specifically, 40 CFR §265.12 (Required notices) and §265.71 were revised.
§335.152, Standards

The commission proposes to amend §335.152(a)(1) and (4) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citations for 40 CFR Part 264, Subparts B and E (General Facility Standards; and Manifest System, Recordkeeping and Reporting). Specifically, 40 CFR §264.12 and §264.71 were revised.

§335.251, Applicability and Requirements

The commission proposes to amend §335.251(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citation for 40 CFR Part 266, Subpart G (Spent Lead-Acid Batteries Being Reclaimed).

The commission proposes to delete existing §335.251(c) and proposes §335.251(c) - (g) to adopt revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule.

§335.261, Universal Waste Rule

The commission proposes to amend §335.261(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citation for 40 CFR Part 273 (Standards for Universal Waste Management). Specifically, 40 CFR §§273.20, 273.39(a) and (b), 273.40, 273.56, 273.62(a), and 273.70 (Exports; Tracking universal waste shipments; Exports; Exports; Tracking universal waste shipments; and Imports) were revised.

The commission proposes to amend §335.261(b) to make conformational changes associated with the adoption of revised 40 CFR Part 273. These include adding §§273.20, 273.39(a) and (b), 273.40, 273.56, 273.62(a), and 273.70 to the list of sections to which the changes within §335.261(b) do not apply. These sections are excluded from these changes because they are associated with the federal import and export of hazardous waste regulations. States are not allowed to replace federal or international references or terms with state references or terms. The commission further proposes to amend §335.261(b) to remove existing paragraphs (23), (24), (33), and (34), and renumber the remaining paragraphs, accordingly. These paragraphs contain references to 40 CFR §§262.53, 262.56, and 262.57, and 40 CFR Part 262, Subpart E, which were removed and reserved in the federal revisions; and replace federal citations for exports of hazardous waste with state citations, which is prohibited.

§335.262, Standards for Management of Paint and Paint-Related Wastes

The commission proposes to amend §335.262(b) to revise language to include non-pigmented paint wastes in universal waste regulations.

§335.281, Airbag Waste

The commission proposes new §335.281 to adopt the exemption promulgated in the November 30, 2018, issue of the Federal Register (83 FR 61552) associated with the Safe Management of Recalled Airbags rule. The commission proposes to accomplish the adoption of this rule by including the language of new 40 CFR §261.4(j) in proposed new §335.281.

§335.331, Failure to Make Payment or Report

The commission proposes to delete §335.331(c), which subject operators to a daily civil penalty for submitting late reports, and re-letter the remaining subsection accordingly.

§335.501, Purpose, Scope, and Applicability

The commission proposes to amend §335.501 to correct a citation to 30 TAC §330.3 (Definitions).

§335.504, Hazardous Waste Determination

The commission proposes to amend §335.504(1) to incorporate changes associated with the Vacatur of Comparable Fuels and Gasification, Coal Combustion Residual Co-Disposal, and Imports and Exports of Hazardous Waste Rules. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citations for 40 CFR Part 261, Subparts A and E (General; and Exclusions/Exemptions). Specifically, 40 CFR §§261.4, 261.6 (Requirements for recyclable materials), and 261.39 were revised.

§335.590, Operational and Design Standards

The commission proposes to amend §335.590(24)(A)(ii) to clarify the components of a composite liner by replacing the reference to a flexible membrane component with a reference to a geomembrane layer component. This correction makes the language consistent with municipal solid waste standards in §330.331(e)(1) (Design Criteria).

§335.602, Standards

The commission proposes to amend §335.602(a)(4) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by adding the Federal Register citation for 40 CFR Part 267, Subpart E (Recordkeeping, Reporting, and Notifying). Specifically, 40 CFR §267.71 (Use of the manifest system) was revised.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

This rulemaking addresses necessary changes that are required to be consistent with solid and hazardous waste requirements within RCRA and recent changes to state law due to HB 1953.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with state law, federal law, and regulations of the EPA.

Local Employment Impact Statement
The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments and new section would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

The agency is not aware of any adverse fiscal implications for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. Often small businesses are conditionally exempt from many of RCRA regulations because they are not known to generate significant volumes of hazardous waste.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create nor expand an existing regulation. However, the proposed rulemaking contains the proposed deletion of the existing requirements for affected materials to be managed as solid wastes and the solid waste regulation for pyrolysis and gasification activities, as well as the federal gasification and comparable fuels exclusions. This proposal may decrease the number of individuals subject to that provision’s applicability. During the first five years, the proposed rulemaking should not impact positively or negatively the state’s economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is not a major environmental rule because it is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state since the proposed rulemaking implements requirements already imposed on the regulated community under 42 United States Code (USC), §6926(g). Likewise, there will be no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state from those revisions outside 42 USC, §6926(g), because either the changes are not substantive, or the regulated community will benefit from the greater flexibility and reduced compliance burden.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law because the commission is proposing this rulemaking to implement revisions to the federal hazardous waste program. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program.

Second, although the rulemaking proposes some requirements that are more stringent than existing state laws, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program.

Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission is proposing rules that are required to maintain authorization of the state hazardous waste program.

And fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, this rulemaking is authorized by specific sections of the Texas Water Code and the Texas Health and Safety Code that are cited in the Statutory Authority section of this preamble.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to maintain state’s authorization to implement RCRA hazardous waste program by adopting state hazardous waste rules that are equivalent to the federal regulations and to implement the requirements of HB 1953. The proposed rulemaking substantially advances these stated purposes by proposing rules that: 1) are equivalent to the federal regulations, 2) incorporate the federal regulations, or 3) implement the requirements of HB 1953.
The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the portions of the proposed rulemaking that propose to adopt rules that meet the minimum standards of the federal hazardous waste program because Texas Government Code, §2007.003(b)(4), exempts an action reasonably taken, by a state agency, to fulfill an obligation mandated by federal law from the requirements of Texas Government Code, Chapter 2007. Under 42 USC, §6926(g), the state must adopt rules that meet the minimum standards of the federal hazardous waste program administered by EPA in order to maintain authorization to administer the program. Therefore, the portions of the proposed rulemaking adopting rules that meet the minimum standards of the federal hazardous waste program are exempt from the requirements of Texas Government Code, Chapter 2007 because the rules are required by federal law.

Finally, to the extent that portions of the proposed rulemaking are not exempt under Texas Government Code, §2007.003(b)(4), or it implements state law, promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in real property because the proposed rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the proposed rules do not constitute a takings under the Texas Government Code, Chapter 2007 because they would either implement requirements already imposed on the regulated community under 42 USC, §6926(g) or that are less stringent than existing rules.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §605.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goals applicable to the proposed rules include protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and to make agency and subdivision decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs. CMP policies applicable to the proposed rules include to construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the federal Solid Waste Disposal Act, 42 USC, §§6901 et seq. Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these proposed rules do not create or have a direct or significant adverse effect on any CNRAs, and because the proposed rules would update and enhance the commission's rules concerning hazardous waste facilities.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

The proposed amendments are not expected to have a significant impact on sites subject to the Federal Operating Permits Program under 30 TAC Chapter 122. Facilities which operate under a Federal Operating Permit (FOP) should evaluate the proposed changes to determine if an update to their FOP is necessary.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 6, 2020, at 10:00 a.m. in Building E, Room 2015, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78771-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://www6.tceq.texas.gov/rules/eComments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-085-335-WS. The comment period closes on February 11, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Jarieta Sepulveda, Industrial and Hazardous Waste Permits Section, (512) 239-4413.

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §§335.1, 335.2, 335.10 - 335.13, 335.24, 335.31

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), §961.017, which provides the
commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; THSC, §361.041, which requires that the commission consider the treatment of post-use polymers and recoverable feedstocks; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendments implement THSC, Chapter 361.

§335.1. Definitions.

In addition to the terms defined in Chapter 3 of this title (relating to Definitions), the following words and terms, when used in this chapter, have the following meanings.

1. Aboveground tank--A device meeting the definition of "Tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.


3. Active life--The period from the initial receipt of hazardous waste at the facility until the executive director receives certification of final closure.

4. Active portion--That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also "Closed portion" and "Inactive portion.")

5. Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with: (A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells; (B) the production of oil or gas or geothermal resources, including: (i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water; (ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources; (iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants; (iv) activities associated with any underground natural gas storage facility, provided the terms "Natural gas" and "Storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173; (v) activities associated with any underground hydrocarbon storage facility, provided the terms "Hydrocarbons" and "Underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.201; and (vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency in accordance with the Federal Solid Waste Disposal Act, as amended (42 United States Code, §§6901 et seq.).

6. Administrator--The administrator of the United States Environmental Protection Agency or his designee.

7. AES filing compliance date--The date that the United States Environmental Protection Agency (EPA) announces in the Federal Register, on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System platform.

8. Airbag waste--Any hazardous waste airbag modules or hazardous waste airbag inflators.

9. Airbag waste collection facility--Any facility that receives airbag waste from airbag handlers subject to regulation under §335.281 of this title (relating to Airbag Waste) and accumulates the waste for more than ten days.

10. Airbag waste handler--Any person, by site, who generates airbag waste that is subject to regulation under this chapter.

11. Ancillary equipment--Any device that is used to distribute, meter, or control the flow of solid waste or hazardous waste from its point of generation to a storage or processing tank(s), between solid waste or hazardous waste storage and processing tanks to a point of disposal on site, or to a point of shipment for disposal off site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

12. Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

13. Area of concern--Any area of a facility under the control or ownership of an owner or operator where a release to the environment of hazardous wastes or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration.

14. Authorized representative--The person responsible for the overall operation of a facility or an operation unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

15. Battery--As defined in §335.261 of this title (relating to Universal Waste Rule).

16. Boiler--An enclosed device using controlled flame combustion and having the following characteristics:
(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design:

(i) process heaters (units that transfer energy directly to a process stream); and

(ii) fluidized bed combustion units;

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance To Be Classified as a Boiler).

(17) [143] Captive facility--A facility that accepts wastes from only related (within the same corporation) off-site generators.

(18) [144] Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(19) [145] Captured receiver--A receiver that is located within the property boundaries of the generators from which it receives waste.

(20) [146] Carbon dioxide stream--Carbon dioxide that has been captured from an emission source (e.g., power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

(21) [147] Carbon regeneration unit--Any enclosed thermal treatment device used to regenerate spent activated carbon.

(22) [148] Cathode ray tube (CRT)--A vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means its glass has been removed from its housing, or casing whose vacuum has been released.

(23) [149] Cathode ray tube (CRT) collector--A person who receives used, intact CRTs for recycling, repair, resale, or donation.

(24) [150] Cathode ray tube (CRT) exporter--Any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

(25) [151] Cathode ray tube (CRT) glass manufacturer--An operation or part of an operation that uses a furnace to manufacture CRT glass.

(26) [152] Cathode ray tube (CRT) processing--Conducting all of the following activities:

(A) receiving broken or intact CRTs;

(B) intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(C) sorting or otherwise managing glass removed from CRT monitors.

(27) [153] Certification--A statement of professional opinion based upon knowledge and belief.

(28) [154] Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(29) [155] Class 2 wastes--Any individual solid waste or combination of industrial solid waste which cannot be described as hazardous, Class 1, or Class 2 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(30) [156] Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(31) [157] Closed portion--That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "Active portion" and "Inactive portion.")

(32) [158] Closure--The act of permanently taking a waste management unit or facility out of service.

(33) [159] Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(34) [160] Component--Either the tank or ancillary equipment of a tank system.

(35) [161] Confined aquifer--An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself, an aquifer containing confined groundwater.

(36) [162] Consignee--The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.)
(36) [432] Contained--Hazardous secondary materials held in a unit (including a "Land-based unit" as defined in this section) that meets the following criteria:

(A) the unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(B) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit;

(C) the unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions; and

(D) hazardous secondary materials in units that meet the requirements of 40 Code of Federal Regulations Parts 264 and 265 are presumptively contained.

(37) [444] Container--Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

(38) [455] Containment building--A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.112(a)(21) or §335.152(a)(19) of this title (relating to Standards).

(39) [466] Contaminant--Includes, but is not limited to, "Solid waste," "Hazardous waste," and "Hazardous waste constituent" as defined in this section; "Pollutant" as defined in Texas Water Code (TWC), §26.001, and Texas Health and Safety Code (THSC), §361.401; "Hazardous substance" as defined in THSC, §361.003; and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, TWC, §§26.261 - 26.267.

(40) [477] Contaminated medium/media--A portion or portions of the physical environment to include soil, sediment, surface water, groundwater or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

(41) [488] Contingency plan--A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(42) [499] Control--To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective of human health and the environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

(43) [445] Corrosion expert--A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(44) [441] Decontaminate--To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

(45) [455] Designated facility--A hazardous waste treatment, storage, or disposal facility which: has received a permit (or interim status) in accordance with the requirements of 40 Code of Federal Regulations (CFR) Parts 124 and 270; has received a permit (or interim status) from a state authorized in accordance with 40 CFR Part 271; or is regulated under 40 CFR §261.6(c)(2) or 40 CFR Part 266, Subpart F and has been designated on the manifest by the generator pursuant to 40 CFR §262.20. For hazardous wastes, if a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste. For Class 1 wastes, a designated facility is any treatment, storage, or disposal facility authorized to receive the Class 1 waste that has been designated on the manifest by the generator. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities).

(46) [445] Destination facility--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(47) [444] Dike--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(48) [455] Dioxins and furans (D/F)--Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(49) [446] Discharge or hazardous waste discharge--The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or pumping of waste into or on any land or water.

(50) [452] Disposal--The discharge, deposit, injection, dumping, spillage, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(51) [446] Disposal facility--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "Disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

(52) [449] Drip pad--An engineered structure consisting of a curved, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or dripage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(53) Electronic import-export reporting compliance date--The date that the United States Environmental Protection Agency (EPA) announces in the Federal Register, or on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to EPA using EPA’s waste Import Export Tracking System, or its successor system.
(54) [§50] Electronic manifest or e-Manifest--The electronic format of the hazardous waste manifest that is obtained from the United States Environmental Protection Agency's (EPA's) national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

(55) [§51] Electronic manifest system or e-Manifest system--The United States Environmental Protection Agency’s national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

(56) [§52] Elementary neutralization unit--A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations (CFR) §261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of nonhazardous [non-hazardous] industrial solid waste; and

(B) meets the definition of "Tank,” “Tank system,” "Container,” or "Transport vehicle,” as defined in this section; or "Vessel" as defined in 40 CFR §260.10.

(57) [§53] Essentially insoluble--Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or United States Environmental Protection Agency limits for drinking water as published in the Federal Register.

(58) [§54] Equivalent method--Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

(59) [§55] Existing portion--That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(60) [§56] Existing tank system or existing component--A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations—which cannot be canceled or modified without substantial loss—for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(61) [§57] Explosives or munitions emergency--A situation involving the suspected or detected presence of an unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. These situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(62) [§58] Explosives or munitions emergency response--All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency, subject to the following:

(A) an explosives or munitions emergency response includes in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed;

(B) any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency; and

(C) explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

(63) [§59] Explosives or munitions emergency response specialist--An individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including United States Department of Defense (DOD) emergency explosive ordnance disposal, technical escort unit, and DOD-certified civilian or contractor personnel; and, other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

(64) [§60] Extrusion--A process using pressure to force ground poultry carcasses through a decreasing-diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(65) [§61] Facility--Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste, or for the management of hazardous secondary materials prior to reclamataion. A facility may consist of several treatment, storage, or disposal units (e.g., one or more landfill, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) or §335.602(a)(5) of this title (relating to Standards), all contiguous property under the control of the owner or operator seeking a permit for the treatment, storage, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste);

(C) regardless of subparagraph (B) of this paragraph, a "Remediation waste management site," as defined in 40 Code of Federal Regulations §260.10, is not a facility that is subject to §335.167 of this title, but is subject to corrective action requirements if the site is located within such a facility.

(66) [§62] Final closure--The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).
[67] [63] Food-chain crops—Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

[68] [64] Freeboard—The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

[69] [65] Free liquids—Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(70) Gasification—A process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere and the mixture is converted into a valuable, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel.

(71) Gasification facility—A facility that receives, separates, stores, and converts post-use polymers and recoverable feedstocks using gasification.

[66] Gasification—For the purpose of complying with 40 Code of Federal Regulations §261.4(a)(12)(i), gasification is a process, conducted in an enclosed device or system, designed and operated to process petroleum feedstock, including oil-bearing hazardous secondary materials through a series of highly controlled steps utilizing thermal decomposition, limited oxidation, and gas cleaning to yield a synthesis gas composed primarily of hydrogen and carbon monoxide gas.

(72) [67] Generator—Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class 3 wastes only shall not be considered a generator.

(73) [68] Groundwater—Water below the land surface in a zone of saturation.

(74) [69] Hazardous industrial waste—Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the Resource Conservation and Recovery Act of 1976, §3001 (42 United States Code, §6921). The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 261. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

(75) [70] Hazardous secondary material—A secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as "Hazardous waste" as defined in this section.

(76) [71] Hazardous secondary material generator—Any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this paragraph, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of 40 Code of Federal Regulations §261.4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.


(78) [73] Hazardous waste—Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 et seq.

(79) [74] Hazardous waste constituent—A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations (CFR) Part 261, Subpart D or a constituent listed in Table I of 40 CFR §261.24.

(80) [75] Hazardous waste management facility—All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly- or privately-owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(81) [76] Hazardous waste management unit--A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(82) [77] In operation—Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

(83) [78] Inactive portion--That portion of a facility which is not operated after November 19, 1980. (See also "Active portion" and "Closed portion.")

(84) [79] Incinerator--

(A) Any enclosed device that:

(i) [(A)] uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(ii) [(B)] meets the definition of "Infrared incinerator" or "Plasma arc incinerator."

(B) Does not include a "Gasification facility" or "Pyrolysis facility," managing "Recoverable feedstock," as defined in this section.

(85) [80] Incompatible waste--A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases.

(86) [81] Individual generation site—The contiguous site at or on which one or more solid waste or hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of solid waste or hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.
(87) [§82] Industrial furnace--Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;
(B) lime kilns;
(C) aggregate kilns;
(D) phosphate kilns;
(E) coke ovens;
(F) blast furnaces;
(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);
(H) titanium dioxide chloride process oxidation reactors;
(I) methane reforming furnaces;
(J) pulping liquor recovery furnaces;
(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;
(L) halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for "Hazardous waste" burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and
(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

(88) [§83] Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include "Hazardous waste" as defined in this section.

(89) [§84] Infrared incinerator--Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(90) [§85] Inground tank--A device meeting the definition of "Tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(91) [§86] Injection well--A well into which fluids are injected. (See also "Underground injection.")

(92) [§87] Inner liner--A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(93) [§88] Installation inspector--A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(94) [§89] Intermediate facility--Any facility that stores hazardous secondary materials for more than ten days, other than a hazardous secondary material generator or reclaimer of such material.

(95) [§90] International shipment--The transportation of hazardous waste into or out of the jurisdiction of the United States.

(96) [§91] Lamp--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(97) [§92] Land-based unit--When used to describe recycling of hazardous secondary materials, an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

(98) [§93] Land treatment facility--A facility or part of a facility at which solid waste or hazardous waste is placed onto or incorporated into the soil surface and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

(99) [§94] Landfill--A disposal facility or part of a facility where solid waste or hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(100) [§95] Landfill cell--A discrete volume of a solid waste or hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(101) [§96] Leachate--Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(102) [§97] Leak-detection system--A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste into the secondary containment structure.

(103) [§98] Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(104) [§99] Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste or hazardous waste, hazardous waste constituents, or leachate.

(105) [§100] Management or hazardous waste management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of solid waste or hazardous waste.

(106) [§101] Manifest--The waste shipping document, United States Environmental Protection Agency (EPA) Form 8700-22 (including, if necessary, EPA Form 8700-22A), or the electronic manifest, originated and signed by the generator orofferor in accordance with the instructions in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste [and Primary Exporters of Hazardous Waste]) and the applicable requirements of 40 Code of Federal Regulations Parts 262 - 265.

(107) [§102] Manifest tracking number--The alphanumeric identification number (i.e., a unique three-letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the manifest by a registered source.
Military munitions--All ammunition products and components produced or used by or for the Department of Defense (DOD) or the United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term "military munitions":

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smoke, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

Miscellaneous unit--A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, staging pile, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research, Development, and Demonstration Permits).

Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

Municipal hazardous waste--A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

New tank system or new tank component--A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations (CFR) §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR §260.195(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986. (See also "Existing tank system.")

No free liquids--As used in 40 Code of Federal Regulations §261.4(a)(26) and (b)(18), means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846), which is incorporated by reference, and that there is no free liquid in the container holding the wipes.

Off-site--Property which cannot be characterized as on-site.

Onground tank--A device meeting the definition of "Tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

On-Site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

Open burning--The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also "Incinerator" and "Thermal processing.")

Operator--The person responsible for the overall operation of a facility.

Owner--The person who owns a facility or part of a facility.

Partial closure--The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

PCBs or polychlorinated biphenyl compounds--Compounds subject to 40 Code of Federal Regulations Part 761.

Permit--A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste or industrial solid waste treatment, storage, or disposal facility in accordance with specified limitations.

Personnel or facility personnel--All persons who work at, or oversee the operations of, a solid waste or hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

Pesticide--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.
(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "Petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code (USC), §§6921, et seq.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances—i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;
(ii) motor fuels—a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes, but is not limited to, stationary engines and engines used in transportation vehicles and marine vessels);
(iii) aviation gasolines—i.e., Grade 80, Grade 100, and Grade 100-LL;
(v) distillate fuel oils—i.e., Number 1-D, Number 1, Number 2-D, and Number 2;
(vi) residual fuel oils—i.e., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;
(vii) gas-turbine fuel oils—i.e., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;
(viii) illuminating oils—i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;
(ix) lubricants—i.e., automotive and industrial lubricants;
(x) building materials—i.e., liquid asphalt and dust-laying oils;
(xii) insulating and waterproofing materials—i.e., transformer oils and cable oils; and
(xii) used oils—See definition for "Used oil" in this section.

(B) For the purposes of this chapter, a "Petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 USC, §§6921, et seq.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;
(ii) animal, microbial, and vegetable fats;
(iii) food grade oils;
(iv) hardened asphalt and solid asphaltic materials—i.e., roofing shingles, roofing felt, hot mix (and cold mix); and
(v) cosmetics.

(127) [4223] Pile—Any noncontainerized accumulation of solid, nonflowing solid waste or hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

(128) [4233] Plasma arc incinerator—Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(129) [4243] Post-closure order—An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from Resource Conservation and Recovery Act and solid waste management units.

(130) Post-use polymers—Plastic polymers that derive from industrial sources or activities that would be classified as a nonhazardous industrial solid waste if not converted into a valuable raw, intermediate, or final product. Post-use polymers include used polymers that contain incidental contaminants or impurities such as paper labels or metal rings but do not include used polymers mixed with solid waste, medical waste, hazardous waste, electronic waste, tires, or construction or demolition debris.

(131) [4253] Poultry—Chickens or ducks being raised or kept on any premises in the state for profit.

(132) [4263] Poultry carcass—The carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for human consumption.

(133) [4273] Poultry facility—A facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(134) [4293] Processing—The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of "Processing" does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 et seq., as amended.

(135) [4303] Publicly-owned treatment works (POTW)—Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid na-
ture which is owned by a state or municipality (as defined by the Clean Water Act, §502(4)). The definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(136) Pyrolysis—A manufacturing process through which post-use polymers are heated in an oxygen-deficient atmosphere until melted and thermally decomposed and then cooled, condensed, and converted into a valuable raw, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel.

(137) Pyrolysis facility—A manufacturing facility that receives, separates, stores, and converts post-use polymers using pyrolysis.

(138) \([133]\) Qualified groundwater scientist—A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(139) Recognized trader—A person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

(140) Recoverable feedstock—One or more of the following materials, derived from nonhazardous industrial solid waste, other than coal refuse, that has been processed so that it may be used as feedstock in a "Gasification facility" or "Pyrolysis facility" as defined in this section:

(A) post-use polymers; and

(B) material, including municipal solid waste containing post-use polymers and other post-industrial waste containing post-use polymers, that has been processed into a fuel or feedstock for which the commission or the United States Environmental Protection Agency has made a non-waste determination under 40 Code of Federal Regulations §241.3(c), as amended through February 8, 2016 (81 FR 6742).

(142) \([134]\) Remanufacturing—Processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

(143) \([135]\) Remediation—The act of eliminating or reducing the concentration of contaminants in contaminated media.

(144) \([136]\) Remediation waste—All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under §335.166(5) of this title (relating to Corrective Action Program) or §335.167(c) of this title.

(145) \([137]\) Remove—To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility, or area to another location for treatment, storage, or disposal.

(146) \([138]\) Replacement unit—A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or United States Environmental Protection Agency or state approved corrective action.

(147) \([139]\) Representative sample—A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(148) \([140]\) Run-off—Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(149) \([141]\) Run-on—Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(150) \([142]\) Saturated zone or zone of saturation—That part of the earth's crust in which all voids are filled with water.

(151) \([143]\) Shipment—Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

(152) \([144]\) Sludge dryer—Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 British thermal units per pound of sludge treated on a wet-weight basis.

(153) \([145]\) Small quantity generator—A generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

(154) \([146]\) Solid waste—

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industry, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued in accordance with Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters}
while they are being collected, stored, or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation of Waste Disposal), prior to sale or other conveyance of the property;

(iii) waste materials which result from "Activities associated with the exploration, development, or production of oil or gas or geothermal resources," as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas in accordance with the Texas Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas, or natural gas liquids processing plants, pressure maintenance plants, or represurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency (EPA) in accordance with the federal Solid Waste Disposal Act, 42 United States Code, §§6901 et seq., as amended; [as]

(iv) a material excluded by 40 Code of Federal Regulations (CFR) §261.40 (§§261.4(a)(1) - (24), (26), and (27), 261.39, and 261.40), as amended through January 13, 2015 (80 FR 1694), §261.4(a)(1) - (15), (17) - (24), (26), and (27), as amended through April 8, 2015 (80 FR 18777), or §261.39, as amended through November 28, 2016 (81 FR 85696), subject to the changes in this clause, by variance, or by non-waste determination granted under §335.18 of this title (relating to Non-Waste Determinations and Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations), and §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations). For the purposes of the exclusions under 40 CFR §261.39 [as amended through June 26, 2014 (79 FR 36220)] and §261.40, 40 CFR §261.41 is adopted by reference as amended through July 28, 2006 (71 FR 42928); or [for the purposes of the exclusion under 40 CFR §261.4(a)(16), 40 CFR §261.38 is adopted by reference as amended through July 10, 2000 (65 FR 42292), and is revised as follows, with "subparagraph (A)(iv) under the definition of 'Solid waste' in 30 TAC §335.1 meaning subparagraph (A)(iv) under the definition of 'Solid waste' in §335.1 of this title (relating to Definitions)."

[¶] in the certification statement under 40 CFR §261.38(a)(4)(i)(A), the reference to "240 CFR §261.38" is changed to "240 CFR §261.38, as revised in paragraph A(4)(iv) of the definition of 'Solid waste' in 30 TAC §335.1 meaning subparagraph A(4)(iv) under the definition of 'Solid waste' in 335.1 of this title (relating to Definitions)."

[¶] in 40 CFR §261.38, the references to "§260.10 of this chapter" are changed to "§335.1 of this title (relating to Definitions)."

[¶] in 40 CFR §261.38(c)(2), the references to "parts 264 or 265 of this chapter" is changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) or Chapter 335, Subchapter E of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities)."

[¶] in 40 CFR §261.38(c)(5), the references to "parts 264 and 265, or §262.34 of this chapter" are changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Chapter 335, Subchapter E of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or §335.69 of this title (relating to Accumulation Time)."

[¶] in 40 CFR §261.38(c)(7), the references to "appropriate regulatory authority" and "regulatory authority" are changed to "executive director."

[¶] in 40 CFR §261.38(c)(8), the reference to "§261.6(c) of this chapter" is changed to "§335.24(e) and (f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)."

[¶] in 40 CFR §261.38(c)(9), the reference to "§261.11 of this chapter" is changed to "§335.62 of this title (relating to Hazardous Waste Determination and Waste Classification)."

[¶] in 40 CFR §261.38(c)(10), the reference to "implementing authority" is changed to "executive director."

(v) recoverable feedstocks that are processed through pyrolysis or gasification at a pyrolysis facility or gasification facility, where the primary function of the facility is to convert recoverable feedstocks into materials that have a resale value greater than the cost of processing the recoverable feedstock for subsequent beneficial use and where solid waste generated from converting recoverable feedstock is disposed of at an authorized solid waste management facility.

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph;

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph; or

(iv) a military munition identified as a solid waste in 40 CFR §266.202.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated;

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

(iv) shamm recycling as explained in subparagraph (J) of this paragraph.
D) Except for materials described in subparagraph (H) of this paragraph, materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 in Figure: 30 TAC §335.1(154)(D)(iv) [§335.1(154)(D)(iv)] indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of "Solid waste" provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 in Figure: 30 TAC §335.1(154)(D)(iv) [§335.1(154)(D)(iv)] are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 CFR §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 in Figure: 30 TAC §335.1(154)(D)(iv) [§335.1(154)(D)(iv)] are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 CFR §261.33, not listed in §261.33, but that exhibit one or more of the hazardous waste characteristics, or will be considered nonhazardous if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (unless they meet the requirements of 40 CFR §261.4(a)(17), (23), (24), or (27)). Materials without an asterisk in Column 3 of Table 1 in Figure: 30 TAC §335.1(154)(D)(iv) [§335.1(154)(D)(iv)] are not solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 in Figure: 30 TAC §335.1(154)(D)(iv) [§335.1(154)(D)(iv)] are solid wastes when accumulated speculatively.

Figure: 30 TAC §335.1(154)(D)(iv) [Figure: 30 TAC §335.1(154)(D)(iv)]

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 CFR §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products;

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(17) apply rather than this provision; or

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) Except for materials described in subparagraph (H) of this paragraph, the following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the EPA, as described in 40 CFR §261.2(d)(1) and (2).

(H) With the exception of contaminated soils which are being relocated for use under §350.36 of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) and other contaminated media, materials that will otherwise be identified as nonhazardous solid wastes if disposed of are not considered solid wastes when recycled by being applied to the land or used as ingredients in products that are applied to the land, provided these materials can be shown to meet all of the following criteria:

(i) a legitimate market exists for the recycling material as well as its products;

(ii) the recycling material is managed and protected from loss as will be raw materials or ingredients or products;

(iii) the quality of the product is not degraded by substitution of raw material/product with the recycling material;

(iv) the use of the recycling material is an ordinary use and it meets or exceeds the specifications of the product it is replacing without treatment or reclamation, or if the recycling material is not replacing a product, the recycling material is a legitimate ingredient in a production process and meets or exceeds raw material specifications without treatment or reclamation;

(v) the recycling material is not burned for energy recovery, used to produce a fuel, or contained in a fuel;
(vi) the recycling material can be used as a product itself or to produce products as it is generated without treatment or reclamation;

(vii) the recycling material must not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products which are applied to the land and the material, as generated:

(I) is a Class 3 waste under Subchapter R of this chapter (relating to Waste Classification), except for arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and total dissolved solids; and

(II) for the metals listed in subclause (I) of this clause:

(a) is a Class 2 or Class 3 waste under Subchapter R of this chapter;

(b) does not exceed a concentration limit under §312.43(b)(3), Table 3 of this title (relating to Metal Limits); and

(viii) with the exception of the requirements under §335.17(a)(8) of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(I) at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on an annual basis; and

(II) if the recycling material is placed in protective storage, such as a silo or other protective enclosure, at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on a biennial basis.

(I) Respondents in actions to enforce the industrial solid waste regulations and facility operators who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(J) A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in §335.27 of this title (relating to Legitimate Recycling of Hazardous Secondary Materials).

(K) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 CFR §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(L) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §§335.17 - 335.19 of this title, §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(M) Steel slag may not be considered as solid waste if the steel slag is an intended output or result of the use of an electric are furnace to make steel, introduced into the stream of commerce, and managed as an item of commercial value, including through a controlled use in a manner constituting disposal, and not as discarded material.

(155) [142] Solvent-contaminated wipe--A wipe that, after use or after cleaning up a spill, either:

(A) contains one or more of the F001 through F005 solvents listed in 40 Code of Federal Regulations (CFR) §261.31 or the corresponding P- or U-listed solvents found in 40 CFR §261.33;

(B) exhibits a hazardous characteristic found in 40 CFR Part 261, Subpart C, when that characteristic results from a solvent listed in 40 CFR Part 261; and/or

(C) exhibits only the hazardous waste characteristic of ignitability found in 40 CFR §261.21 due to the presence of one or more solvents that are not listed in 40 CFR Part 261. Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at 40 CFR §261.4(a)(26) and (b)(18).

(156) [143] Sorbent--A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

(157) [144] Spill--The accidental spilling, leaking, pumping, emitting, emptying, or dumping of solid waste or hazardous wastes or materials which, when spilled, become solid waste or hazardous wastes into or on any land or water.

(158) [145] Staging pile--An accumulation of solid, nonflowing “Remediation waste,” as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the executive director according to the requirements of 40 Code of Federal Regulations §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

(159) [146] Standard permit--A Resource Conservation and Recovery Act permit authorizing management of hazardous waste issued under Chapter 305, Subchapter R of this title (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units) and Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit). The standard permit may have two parts, a uniform portion issued in all cases and a supplemental portion issued at the executive director’s discretion.

(160) [147] Storage--The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.

(161) [148] Sump--Any pit or reservoir that meets the definition of “Tank” in this section and those trenches connected to that serve to collect solid waste or hazardous waste for transport to solid waste or hazardous waste treatment, storage, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, “sump” means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(162) [149] Surface impoundment or impoundment--A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective ac-
tion management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

   (163) (155) Tank--A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

   (164) (156) Tank system--A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

   (165) (157) TEQ--Toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

   (166) (158) Thermal processing--The processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "Incinerator" and "Open burning.")

   (167) (159) Thermostat--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

   (168) (160) Totally enclosed treatment facility--A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

   (169) (161) Transfer facility--Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste or hazardous secondary materials are held during the normal course of transportation.

   (162) (162) Transit country--Any foreign country, other than a receiving country, through which a hazardous waste is transported.}

   (170) (163) Transport vehicle--A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

   (171) (164) Transporter--Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

   (172) (165) Treatability study--A study in which a hazardous or industrial solid waste is subjected to a treatment process to determine:

   (A) whether the waste is amenable to the treatment process;
   (B) what pretreatment (if any) is required;
   (C) the optimal process conditions needed to achieve the desired treatment;
   (D) the efficiency of a treatment process for a specific waste or wastes; or
   (E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of 40 Code of Federal Regulations §261.4(e) and (f) (§§335.2, 335.69, and 335.78 of this title (relating to Permit Required; Accumulation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous or industrial solid waste.

   (173) (166) Treatment--To apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

   (174) (167) Treatment zone--A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

   (175) (168) Underground injection--The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "Injection well.")

   (176) (169) Underground tank--A device meeting the definition of "Tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

   (177) (170) Unfit-for-use tank system--A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing solid waste or hazardous waste without posing a threat of release of solid waste or hazardous waste to the environment.

   (178) (171) United States Environmental Protection Agency (EPA) acknowledgment of consent--The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

   (179) (172) United States Environmental Protection Agency (EPA) hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations (CFR) Part 261, Subpart D and to each characteristic identified in 40 CFR Part 261, Subpart C.

   (179) (173) United States Environmental Protection Agency (EPA) identification number--The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

   (180) (174) Universal waste--Any of the hazardous wastes defined as universal waste under §335.261(b)(16)(F) of this title (relating to Universal Waste Rule) that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

   (181) (175) Universal waste handler--Has the definition adopted as "Large quantity handler of universal waste" and "Small quantity handler of universal waste" under §335.261 of this title (relating to Universal Waste Rule).


   (183) (177) Unsaturated zone or zone of aeration--The zone between the land surface and the water table.

   (184) (178) Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.
(185) [479a] Used oil--Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characterized by hazardous from used oil may be stored, or in ground water, which may be defined as hazardous oil. Rule 30 of the United States Environmental Protection Agency (EPA) makes small quantity generator nonhazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil Standards) and 40 Code of Federal Regulations Part 279 (Standards for Management of Used Oil).

(186) [480a] User of the electronic manifest system--A hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(A) is required to use a manifest to comply with:

(i) any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal;

(ii) any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(B) elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the United States Environmental Protection Agency electronic manifest system; or

(C) elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste [and Primary Exporters of Hazardous Waste]). These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(187) [481a] Wastewater treatment unit--A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §§466 et seq., §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous or industrial solid waste, or generates and accumulates a wastewater treatment sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

(C) meets the definition of "Tank" or "Tank system" as defined in this section.

(188) [482a] Water (bulk shipment)--The bulk transportation of municipal hazardous waste or Class 1 industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(189) [483a] Well--Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(190) [484a] Wipe--A woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

(191) [485a] Zone of engineering control--An area under the control of the owner/operator that, upon detection of a solid waste or hazardous waste release, can be readily cleaned up prior to the release of solid waste or hazardous waste or household waste constituents to groundwater or surface water.
ulations by the EPA under RCRA, which first require them to comply with the standards in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the EPA by March 24, 1987, as required by 40 Code of Federal Regulations (CFR) §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title. For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(1) a continuous physical, on-site construction program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) No permit shall be required for:

(1) the processing or disposal of nonhazardous industrial solid waste, if the waste is processed or disposed on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; the property is within 50 miles of the plant or operation; and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person);

(2) the storage of nonhazardous industrial solid waste, if the waste is stored on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person);

(3) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in an elementary neutralization unit;

(4) the collection, storage, or processing of nonhazardous industrial solid waste, if the waste is collected, stored, or processed as part of a treatability study;

(5) the storage of nonhazardous industrial solid waste, if the waste is stored in a transfer facility in containers for a period of ten days or less, unless the executive director determines that a permit should be required in order to protect human health and the environment;

(6) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a publicly owned treatment works with discharges subject to regulation under the Clean Waste Act, §402, as amended through October 4, 1996, if the owner or operator has a National Pollutant Discharge Elimination System permit and complies with the conditions of the permit;

(7) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater unit and is discharged in accordance with a Texas Pollutant Discharge Elimination System authorization issued under Texas Water Code, Chapter 26;

(8) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater treatment unit that discharges to a publicly owned treatment works and the units are located at a noncommercial solid waste management facility;

(9) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a wastewater treatment unit that discharges to a publicly owned treatment works liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at municipal solid waste facilities or commercial industrial solid waste landfill facilities.

(e) No permit shall be required for the on-site storage of hazardous waste by a person who is a conditionally exempt small quantity generator as described in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(f) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous waste by a person described in §335.41(b) - (d) of this title (relating to Purpose, Scope, and Applicability) or for the storage of hazardous waste under the provisions of 40 CFR §261.4(c) and (d).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste that is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements in 40 CFR §261.4(c) and (f), as amended [and adopted in the CFR] through November 28, 2016 (81 FR 83696) [April 4, 2006, as published in the Federal Register (71 FR 16862)], which are adopted by reference.

(h) A person may obtain authorization from the executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill that has qualified for interim status in accordance with 40 CFR Part 270, Subpart G, and that has complied with the standards in Subchapter E of this chapter, by complying with the notification and information requirements in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or grant the request for authorization subject to conditions, which may include, without limitation, public notice and technical requirements. A request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of 40 CFR §265.301(a). In accordance with §335.6 of this title, such person shall not engage in the requested activities if denied by the executive director or unless 90 days' notice has been provided and the executive director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

(1) nonhazardous industrial solid waste, the storage, processing, or disposal of which is expressly prohibited under an existing
permit or site development plan applicable to the facility or a portion of the facility;

(2) polychlorinated biphenyl compounds wastes subject to regulation by 40 CFR Part 761;

(3) explosives and shock-sensitive materials;

(4) pyrophorics;

(5) infectious materials;

(6) liquid organic peroxides;

(7) radioactive or nuclear waste materials, receipt of which will require a license from the DSHS or the commission or any other successor agency; and

(8) friable asbestos waste unless authorization is obtained in compliance with the procedures established under §330.171(c)(3)(B) - (E) of this title (relating to Disposal of Special Wastes). Authorization obtained under this subsection shall be effective during the pendency of the interim status and shall cease upon the termination of interim status, final administrative disposition of the subject permit application, failure of the facility to operate the facility in compliance with the standards set forth in Subchapter E of this chapter, or as otherwise provided by law.

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR §265.115 after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under 40 CFR §270.1(c)(5) and (6), or obtain an order in lieu of a post-closure permit, as provided in subsection (m) of this section. If a post-closure permit is required, the permit must address applicable provisions of 40 CFR Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) provisions concerning groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(j) Upon receipt of the federal Hazardous and Solid Waste Act (HSWA) authorization for the commission's Hazardous Waste Program, the commission shall be authorized to enforce the provisions that the EPA imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

(k) Any person who intends to conduct an activity under subsection (d) of this section shall comply with the notification requirements of §335.6 of this title.

(l) No permit shall be required for the management of universal wastes by universal waste handlers or universal waste transporters, in accordance with the definitions and requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(m) At the discretion of the commission, an owner or operator may obtain a post-closure order in lieu of a post-closure permit for interim status units, a corrective action management unit unless authorized by a permit, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units. The post-closure order must address the facility-wide corrective action requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and groundwater monitoring requirements of §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response).

(n) Except as provided in subsection (d)(9) of this section, owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works are required to obtain a permit under this subchapter. By June 1, 2006, owners or operators of existing commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works must have a permit issued under this subchapter or obtain a general permit issued under Chapter 205 of this title (relating to General Permits for Waste Discharges) to continue operating. A general permit issued under Chapter 205 of this title will authorize operations until a final decision is made on the application for an individual permit or 15 months, whichever is earlier. The general permit shall authorize operations for a maximum period of 15 months except that authorization may be extended on an individual basis in one-year increments at the discretion of the executive director. Should an application for a general permit issued under Chapter 205 of this title be submitted, the applicant shall also submit to the commission, by June 1, 2006, the appropriate information to demonstrate compliance with financial assurance requirements for closure of industrial solid waste facilities in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities). Owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works operating under a general permit issued under Chapter 205 of this title shall submit an application for a permit issued under this subchapter prior to September 1, 2006.

(o) Treatment, storage, and disposal facilities that are otherwise subject to permitting under RCRA and that meet the criteria in paragraphs (1) or paragraph (2) of this subsection, may be eligible for a standard permit under Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit) if they satisfy one of the two following criteria:

(1) facility generates hazardous waste and then non-thermally treats and/or stores hazardous waste on-site; or

(2) facility receives hazardous waste generated off-site by a generator under the same ownership as the receiving facility.

§335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste [and Primary Exporters of Hazardous Waste].

(a) Except as provided in paragraph (2) of this subsection, no person who generates, transports, processes, stores, or disposes of hazardous waste shall cause, suffer, allow, or permit the shipment of hazardous waste unless he complies with the requirements of paragraph (1) of this subsection, and the manifest requirements in 40 Code of Federal Regulations (CFR) §§262.20 - 262.25, 262.27, and 262.42, [262.54, 262.55, and 262.60 and the Appendix to 40 CFR Part 262,] as these sections are amended through February 7, 2014 (79 FR 7518), and 40 CFR Part 262, Subpart H, and the Appendix to 40 CFR Part 262, as amended through November 28, 2016 (81 FR 85696).

(1) In addition, generators and[,] owners or operators of treatment, storage, or disposal facilities[,] and primary exporters[,] shall include a Texas waste code for each hazardous waste itemized on the manifest.

(2) No manifest is required for a hazardous waste generated by a generator that generates less than the quantity limits of hazardous waste specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small
Quantity Generators) or a municipal generator that generates less than the quantity limit of hazardous waste specified in §335.78 of this title.

(b) No manifest and no marking in accordance with §335.67(b) of this title (relating to Marking) is required for hazardous waste transported on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. However, in the event of a hazardous waste discharge on a public or private right-of-way, the generator or transporter must comply with the requirements of §335.93 of this title (relating to Hazardous Waste Discharges).

(c) Except as provided in subsections (d) and (e) of this section, persons who generate, transport, process, store, or dispose of Class I waste shall not cause, suffer, allow, or permit the shipment of Class I waste unless the person complies with the manifest requirements listed in subsection (a) of this section, except for 40 CFR §263.51 and §262.55 of the following changes:

1) when Class I waste is itemized on the manifest, use the Texas Commission on Environmental Quality solid waste registration (SWR) number or the United States Environmental Protection Agency (EPA) identification number to identify the generator, transporter, and receiver; and use the Texas waste code in place of the EPA waste code; and

2) when both hazardous and Class I waste are itemized on the same manifest, use EPA identification numbers to identify the generator, transporter, and receiver; and use the Texas waste code for each waste itemized on the manifest.

(d) No manifest is required for the shipment of Class I waste where the generator is an industrial generator that generates less than the quantity limits of Class I waste specified in §335.78 of this title or is a municipal generator that generates less than the quantity limit of Class I waste specified in §335.78 of this title.

(e) No manifest is required for the shipment of Class I waste to property owned or otherwise effectively controlled by the owner or operator of an industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, provided that the property is within 50 miles of the plant or operation and the waste is not commingled with waste from any other source.

§335.11. Shipping Requirements for Transporters of Hazardous Waste or Class I Waste.

(a) Except as provided by §335.10(a)(2) §§335.10(a)(2), (d), and (e) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste [and Primary Exporters of Hazardous Waste]), persons who transport hazardous waste must comply with the manifest requirements in 40 Code of Federal Regulations (CFR) §§263.21, 263.22, and 263.25 §§263.20 - 263.22, and §263.25, and the Appendix to 40 CFR Part 262, as these sections are amended through February 7, 2014 (79 FR 7518), and 40 CFR §263.20 and the Appendix to 40 CFR Part 262, as these are amended through November 28, 2016 (81 FR 85696), as well as the following:

1) the person must comply with §335.10 of this title; and

2) in the case of hazardous waste exports, the person must ensure that the shipment conforms to the requirements set forth in the regulations contained in 40 CFR §263.20.

(b) Except as provided by §335.10(d) and (e) of this title, a person who transports Class I waste must comply with the requirements of subsection (a) of this section, except those requirements in 40 CFR §263.20(a)(2).

§335.12. Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities.

(a) Except as provided by §335.10(a)(2) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste [and Primary Exporters of Hazardous Waste]), persons who generate, process, store, or dispose of hazardous waste must comply with 40 Code of Federal Regulations (CFR) §§264.72 or 265.72, depending on the status of the person, as these sections are amended through February 7, 2014 (79 FR 7518), and 40 CFR §§264.71 or 265.71, depending on the status of the person, as these sections are amended through November 28, 2016 (81 FR 85696) §§265.71 and 265.72, or 40 CFR §§264.71 and 264.72, depending on the status of the person, and with the Appendix to 40 CFR Part 262, as these sections are amended through November 28, 2016 (81 FR 85696) [February 7, 2014 (79 FR 7518)]. The references in §335.112(b)(1) and (10) and §335.152(c)(1) and (10) of this title (relating to Standards) do not apply to this provision.

(b) Except as provided by §335.10(d) and (e) of this title, persons who generate, transport, process, store, or dispose of Class I waste must comply with 40 CFR §§264.71 and 264.76 §§264.21, 264.22, and 264.26, and the Appendix to 40 CFR Part 262, as these sections are amended through February 7, 2014 (79 FR 7518), and 264.71 and the Appendix to 40 CFR Part 262, as these sections are amended through November 28, 2016 (81 FR 85696), and a manifest or copy of e-Manifest must accompany the shipment which designates that facility to receive the waste.

§335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste [and Primary Exporters of Hazardous Waste].

(a) The requirements of this section do not apply to generators who generate hazardous waste or Class I waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(b) [(a)] Unregistered generators who ship hazardous waste or Class I waste shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.

[(b)] Unregistered generators or out-of-state primary exporters who export hazardous waste from or through Texas to a foreign country, shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.

[(c)] Registered generators or out-of-state primary exporters who import hazardous waste from a foreign country through Texas to another state shall prepare a complete and correct Foreign Waste Shipment Summary (F1) from the manifests.

[(e)] [(d)] The Waste Shipment Summary (S1) and the Foreign Waste Shipment Summary (F1) shall be prepared in a form provided or approved by the executive director and submitted to the executive director on or before the 25th of each month for shipments originating during the previous month. The unregistered generator or in-state/ out-of-state primary exporter must keep a copy of each summary for a period of at least three years from the due date of the summary. These generators are required to prepare and submit a Waste Shipment Summary (S1) and/or Foreign Waste Shipment Summary (F1) only for those months in which shipments are actually made. [Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection.]
(e) The following figure is a graphic representation illustrating generator, waste type, shipment type, and report method.

[Figure: 30 TAC §335.13(e)]

(d) [65] A registered generator is defined as an in-state generator who has complied with §335.6 of this title (relating to Notification Requirements), and is assigned a solid waste registration number.

(e) [66] An unregistered generator is defined as an in-state generator who is not a conditionally exempt small quantity generator, as defined in §335.78 of this title [(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)], that ships hazardous waste and/or Class 1 waste using a temporary solid waste registration number and a temporary Texas waste code number assigned by the executive director.

(h) A primary exporter/importer is defined as:

[(1) an in-state generator who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste to a foreign country; or]

[(2) an out-of-state generator/importer of record who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste through Texas to a foreign country.]

(f) [66] The registered/unregistered generator [or primary exporter] shall retain a copy of each manifest required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste [and Primary Exporters of Hazardous Waste]) for at least [a minimum of] three years from the date of shipment by the registered/unregistered generator [or primary exporter].

(g) [66] A registered/unregistered generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste or Class 1 waste.

(h) [66] A registered/unregistered generator [or primary exporter of hazardous waste subject to §335.76(e) of this title (relating to Additional Requirements Applicable to International Shipments)] must submit an exception report to the executive director if he has not received a copy of the manifest with the handwritten signatures of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. The exception report must be retained by the registered/unregistered generator [or primary exporter] for at least three years from the date the waste was accepted by the initial transporter and must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste or Class 1 waste and the results of those efforts.

(i) [66] The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

[(m) The requirements of subsections (j) and (k) of this section do not apply to generators who generate hazardous waste or Class 1 waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78 of this title.]

[(n) Primary exporters of hazardous waste as defined in 40 Code of Federal Regulations (CFR) §262.51 must submit an annual report in accordance with the requirements set out in the regulations contained in 40 Code of Federal Regulations (CFR) §262.56, as amended and adopted through March 18, 2010 (75 FR 12989).]

[(j) [66] Any person who exports or imports [Primary exporters of hazardous waste as defined in 40 CFR §262.51, or importers of hazardous waste, to or from countries listed in 40 CFR §262.58(a)(1) for recovery,] must comply with 40 CFR §262.12 and 40 CFR Part 262, Subpart H, as adopted by reference under §335.76(e) of this title (relating to Additional Requirements Applicable to International Shipments) [Subparts A and H].


(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (d) - (f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as recyclable materials. Nonhazardous industrial wastes that are recycled will be known as nonhazardous recyclable materials. Nonhazardous recyclable materials are subject to the requirements of subsections (h) - (l) of this section.

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 17 of this title (relating to Tax Relief for Property Used for Environmental Protection); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); and Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings).

(1) recyclable materials used in a manner constituting disposal;

(2) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) or Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities);

(3) recyclable materials from which precious metals are reclaimed;

(4) spent lead-acid batteries that are being reclaimed.

(c) The following recyclable materials are not subject to regulation under Subchapters B - I or O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities;...
Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 17 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; or Chapter 305 of this title, except as provided in subsections (g) and (h) of this section:

(1) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials must comply with the requirements of 40 Code of Federal Regulations (CFR) Part 262, Subpart H, as amended though November 28, 2016 (81 FR 85696). Transports transporting a shipment for export may not accept a shipment if they know the shipment does not conform to the United States Environmental Protection Agency (EPA) acknowledgment of consent accompanying the shipment, and must ensure that it is delivered to the facility designated by the person initiating the shipment:

[(L) industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, which are in effect as of November 8, 1986:]

[(A)] a person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in the regulations contained in 40 CFR §§262.53, 262.55, 262.56(a)(1) - (4) and (6) and (b), and 262.57, as amended through January 8, 2010 (75 FR 12336), export such materials only upon such consent of the receiving country and in conformance with the United States Environmental Protection Agency (EPA) acknowledgment of consent as defined in the regulations contained in 40 CFR Part 262, Subpart E, as amended through January 8, 2010 (75 FR 12336), and provide a copy of the EPA acknowledgment of consent to the shipment to the transporter transporting the shipment for export;]

[(H) transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment;]

(2) scrap metal that is not already excluded under 40 CFR §261.4(a)(13);

(3) fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility such as wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 40 CFR §261.4(a)(12), as amended through April 8, 2015 (80 FR 18777)); and

(4) the following hazardous waste fuels:

(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR §279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR §279.11;

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR §279.11.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter and Subchapter D of this chapter, and the notification requirements of §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a) - (c) of this section.

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 17 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; and the notification requirements under §335.6 of this title, except as provided in subsections (a) - (c) of this section. The recycling process itself is exempt from regulation.

(f) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a) - (c) of this section:

(1) notification requirements under §335.6 of this title; and

(2) Section 335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities).

(g) Recyclable materials (excluding those listed in subsections (b)(4), and (c)(1) - (5) of this section) remain subject to the requirements of §§335.4, 335.6, and 335.9 - 335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste [and Primary Exporters of Hazardous Waste]; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste; Recordkeeping and Reporting Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities, respectively), as applicable. Recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of subsection (h) of this section.

(h) Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of §335.4 of this title. In addition, industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (c)(2) of this section remain subject to the requirements of §335.6 of this title. Industrial solid wastes that are nonhazardous recyclable materials and
recyclable materials listed in subsections (b)(4) and (c)(2) of this section may also be subject to the requirements of §§335.10 - 335.15 of this title, as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;
(2) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;
(3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;
(4) the potential for the objectionable constituent to degrade into nonharmful constituents;
(5) the degree to which the objectionable constituent bioaccumulates in ecosystems;
(6) the plausible types of improper management to which the waste could be subjected;
(7) the nature and severity of potential damage to the public health and environment;
(8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment; and
(9) other relevant factors.

(i) Except as provided in Texas Health and Safety Code, §361.090, facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

(1) whether managing nonhazardous recyclable materials will create an additional risk of release of the hazardous recyclable materials into the environment;
(2) whether hazardous and nonhazardous wastes that are incompatible are stored and/or processed in the same or connected units;
(3) whether the management of recyclable materials and nonhazardous recyclable materials is segregated within the facility;
(4) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;
(5) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;
(6) the persistence of any objectionable constituent or any objectionable degradation product in the waste;
(7) the potential for the objectionable constituent to degrade into harmful constituents;
(8) the degree to which the objectionable constituent bioaccumulates in ecosystems;
(9) the plausible types of improper management to which the waste could be subjected;
(10) the nature and severity of potential damage to the public health and environment;
(11) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment; and
(12) other relevant factors.

(j) Closure cost estimates.

(1) Except as otherwise approved by the executive director, an owner or operator of a recycling facility that stores combustible nonhazardous materials outdoors, or that poses a significant risk to public health and safety as determined by the executive director, shall provide a written cost estimate, in current dollars, showing the cost of hiring a third party to close the facility by disposition of all processed and unprocessed materials in accordance with all applicable regulations. The closure cost estimate for financial assurance must be submitted with any new notification in accordance with §335.6 within 60 days of the effective date of this rule for existing facilities or as otherwise requested by the executive director.

(2) The estimate must:

(A) equal the costs of closure of the facility, including disposition of the maximum inventories of all processed and unprocessed combustible materials stored outdoors on site during the life of the facility, in accordance with all applicable regulations;

(B) be based on the costs of hiring a third party that is not affiliated (as defined in §328.2 of this title (relating to Definitions)) with the owner or operator; and

(C) be based on a per cubic yard and/or short ton measure for collection and disposition costs.

(k) Financial assurance. An owner or operator of a recycling facility that stores nonhazardous combustible recyclable materials outdoors, or that poses a significant risk to public health and safety as determined by the executive director, shall establish and maintain financial assurance for closure of the facility in accordance with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities).

(l) Closure requirements.

(1) Closure must include collecting processed and unprocessed materials, and transporting the materials to an authorized facility for disposition unless otherwise approved or directed in writing by the executive director.

(2) Closure of the facility must be completed within 180 days following the most recent acceptance of processed or unprocessed materials unless otherwise approved or directed in writing by the executive director.

(m) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Subchapters A - I or O of this chapter, but is regulated under Chapter 324 of this title (relating to Used Oil Standards). Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(n) Owners or operators of facilities subject to hazardous waste permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 40 CFR Part 264 or Part 265, Subparts AA and BB, as adopted by
reference under §335.152(a)(17) and (18) and §335.112(a)(19) and (20) of this title (relating to Standards).

(o) Hazardous waste that is exported or imported for purpose of recovery is subject to the requirements of 40 CFR Part 262, Subpart H, as amended through November 28, 2016 (81 FR 85696).

[trd-201904975]

[trd-201904975]

[trd-201904975]

[trd-201904975]

[trd-201904975]

(p) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid waste," §335.6 of this title, §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), and Subchapter H of this chapter.

§335.31. Incorporation of References.

When used in this chapter (Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Wastes)), the references contained in 40 Code of Federal Regulations (CFR) §260.11 are incorporated by reference as amended through November 28, 2016 (81 FR 85696) [September 8, 2005 (70 FR 53420)].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904975

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 239-6812

SUBCHAPTER C. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

30 TAC §§335.63, 335.69, 335.71, 335.76, 335.78

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission’s authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed amendments implement THSC, Chapter 361.

§335.43. Permit Required.

(a) Except as provided in §335.2 of this title (relating to Permit Required), no person shall store, process, or dispose of hazardous waste without first having obtained a permit from the Texas Commission on Environmental Quality (commission) [Texas Natural Resource Conservation Commission].

(b) Upon receipt of federal Hazardous and Solid Waste Act (HSWA) authorization for the commission’s [Texas Natural Resource Conservation Commission’s] Hazardous Waste Program, the commission shall be authorized to enforce the HSWA provisions that the United States Environmental Protection Agency [EPA] imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904975

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 239-6812

SUBCHAPTER B. HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS

30 TAC §335.43

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission’s authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed amendments implement THSC, Chapter 361.

§335.63. EPA Identification Numbers.

(a) A generator must not store, process, dispose of, transport, or offer for transportation, hazardous waste without having received an Environmental Protection Agency (EPA) identification number.
(b) A generator must not offer hazardous waste to transporters or to storage, processing or disposal facilities that have not received an EPA identification number.

(c) A recognized trader must not arrange for import or export of hazardous waste without having received an EPA identification number from the EPA Administrator.

§335.69. Accumulation Time.

(a) Generators that comply with the requirements of paragraph (1) of this subsection are exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to Standards), except 40 Code of Federal Regulations (CFR) §265.111 and §265.114. Except as provided in subsections (f) - (h) and (n) of this section, a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that:

(1) the waste is placed:

(A) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, BB, and CC, as adopted by reference under §335.112(a) of this title; and/or

(B) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, and CC, except 40 CFR §265.197(c) and §265.200, as adopted by reference under §335.112(a) of this title; and/or

(C) on drip pads and the generator complies with §335.112(a)(18) of this title and maintains the following records at the facility: a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(D) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(i) a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90-day limit, and documentation that the procedures are complied with; or

(ii) documentation that the unit is emptied at least once every 90 days;

(2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and

(3) while being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) the generator complies with the following:

(A) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D and with 40 CFR §265.16, as adopted by reference in §335.112(a) of this title;

(B) all applicable requirements under 40 CFR Part 268, as adopted by reference under §335.431 of this title (relating to Purpose, Scope, and Applicability); and

(C) Section 335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(b) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kilogram of acute hazardous waste listed in 40 CFR §261.33(e) in a calendar month, which accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR Parts 264, 265, and 267 and the permit requirements of 40 CFR Part 270 unless he has been granted an extension to the 90-day period. Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(c) Persons exempted under this provision, who generate hazardous waste, are still subject to the requirements in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General) applicable to generators of Class 1 waste.

(d) A generator, other than a conditionally exempt small quantity generator regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 CFR §261.31 or §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (a) or (f) of this section provided he:

(1) complies with 40 CFR §§265.171, 265.172, and 265.173(a), as adopted by reference under §335.112(a) of this title; and

(2) marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(e) A generator who accumulates either hazardous waste or acutely hazardous waste listed in 40 CFR §261.31 or §261.33(e) in excess of the amounts listed in subsection (d) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection (a) of this section or other applicable provisions of this chapter. During the three-day period, the generator must continue to comply with subsection (d) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) the quantity of waste accumulated on-site never exceeds 6,000 kilograms;

(2) the generator complies with the requirements of 40 CFR Part 265, Subpart I, as adopted by reference under §335.112(a) of this title, except 40 CFR §265.176 and §265.178;

(3) the generator complies with the requirements of 40 CFR §265.201, as adopted by reference under §335.112(a) of this title;

(4) the generator complies with the requirements of:

(A) subsection (a)(2) and (3) of this section;

(B) 40 CFR Part 265, Subpart C, as adopted by reference under §335.112(a) of this title;

PROPOSED RULES January 10, 2020 45 TexReg 307
(C) all applicable requirements under 40 CFR Part 267, as adopted by reference under §335.601 and §335.602 of this title (relating to Purpose, Scope, and Applicability; and Standards); and

(D) all applicable requirements under 40 CFR Part 268, as adopted by reference under §335.431 of this title; and

(5) the generator complies with the following requirements.

(A) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subparagraph (D) of this paragraph. This employee is the emergency coordinator.

(B) The generator must post the following information next to telephones that may be used to summon emergency assistance:

(i) the name and telephone number of the emergency coordinator;

(ii) location of fire extinguishers and spill control material, and, if present, fire alarm; and

(iii) the telephone number of the fire department, unless the facility has a direct alarm.

(C) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(D) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows.

(i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher.

(ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil.

(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using its 24-hour toll free number (800) 424-8802) and the commission according to the procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The reports must include the following information:

(I) the name, address, and United States Environmental Protection Agency (EPA) identification number of the generator;

(II) date, time, and type of incident (e.g., spill or fire);

(III) quantity and type of hazardous waste involved in the incident;

(IV) extent of injuries, if any; and

(V) estimated quantity and disposition of recovered materials, if any.

(g) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site processing, storage, or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status, provided that he complies with the requirements of subsection (f) of this section.

(h) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste), and Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and the permit requirements of Chapter 305 of this title (relating to Consolidated Permits), unless he has been granted an extension to the 180-day (or 270-day, if applicable) period. Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(i) A generator who generates or collects hazardous waste for the purpose of treatability studies is not subject to this section.

(j) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:

(1) the generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering the F006 waste or otherwise released to the environment prior to its recycling;

(2) the F006 waste is legitimately recycled through metals recovery;

(3) no more than 20,000 kilograms of F006 waste is accumulated on-site at any one time; and

(4) the F006 waste is managed in accordance with the following:

(A) the F006 waste is placed:

(i) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, and BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC; and/or

(ii) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC, except 40 CFR §265.197(c) and §265.200; and/or

(iii) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:
(I) a written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or

(II) documentation that the unit is emptied at least once every 180 days;

(B) the generator complies with 40 CFR §265.111 and §265.114, as adopted by reference under §335.112(a)(6) of this title;

(C) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(D) while being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and

(E) the generator complies with the following:

(i) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D, and 40 CFR §265.16, as adopted by reference under §335.431(c) of this title;

(ii) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title; and

(iii) Section 335.113 of this title.

(k) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the requirements of subsection (j)(1) - (4) of this section.

(l) A generator accumulating F006 waste in accordance with subsection (j) or (k) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter and Chapter 305 of this title applicable to such owners and operators, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the executive director if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the executive director on a case-by-case basis.

(m) A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §335.10 of this title (relating to Shipment and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste) [and Primary Exporters of Hazardous Waste]) may accumulate the returned waste on-site in accordance with subsections (a) and (b) of this section or subsections (f) - (h) of this section depending on the amount of hazardous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(n) A generator who sends a shipment of Class 1 waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §335.10 of this title may accumulate the returned waste on-site. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

§335.71. Biennial Reporting.

In addition to annual reporting which is required under §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), in every even-numbered year facilities subject to the United States Environmental Protection Agency biennial reporting requirements shall submit to the commission information as required by 40 Code of Federal Regulations §262.41, as amended through November 28, 2016 (81 FR 85696). Upon request, this supplemental information shall be prepared in a form provided or approved by the executive director and submitted within the specified timeframe. Activities covered in the report shall be for the previous odd-numbered report year. Facilities subject to the United States Environmental Protection Agency biennial reporting requirements include all large quantity generators of hazardous waste for any month during the previous odd-numbered report year.

§335.76. Additional Requirements Applicable to International Shipment.


(b) Imports of industrial solid waste shall comply with all applicable requirements of this chapter.

(c) Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR §262.83(g), as amended through November 28, 2016 (81 FR 85696), for hazardous waste exporters.

[4a] Anyone who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the United States or vessels subject to the jurisdiction of the United States shall comply with the requirements of this title and the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58 as amended through January 8, 2010 (75 FR 12336), a primary exporter of hazardous waste must comply with the special requirements of this section as they apply to primary exporters, and a transporter transporting hazardous waste for export must comply with applicable requirements of §§335.11 of this title (relating to Shipping Requirements for Exporters of Hazardous Waste or Class 1 Waste) and §§335.14 of this title (relating to Recordkeeping Requirements Applicable to Exporters of Hazardous Waste or Class 1 Waste). [and Subchapter D of this chapter (relating to Standards Applicable to Exporters of Hazardous Waste)]. 40 CFR §262.58 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, processing, storage, and disposal of hazardous waste for shipments between the United States and those countries.

(b) Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subchapter, the special requirements of this section, and §335.11 of this title and §335-14 of this title and Subchapter D of this chapter. Exports of hazardous waste are prohibited unless:

(1) notification in accordance with the regulations contained in 40 CFR §262.53, as amended and adopted through April 12, 1996 (61 FR 16290) has been provided;

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

(3) a copy of the United States Environmental Protection Agency (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 shipments));

(4) the hazardous waste shipment conforms to the terms of the receiving country’s written consent as reflected in the EPA acknowledgment of consent; and

(5) the primary exporter complies with the manifest requirements of §335-10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste) except that:

(A) 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; and

(B) the primary exporter may obtain the manifest from any source that is registered with the EPA as a supplier of manifests.

(c) A primary exporter must submit an exception report to the executive director if:

(1) 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 45 days from the date it was accepted by the initial transporter;

(2) within 90 days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the foreign consignee that the hazardous waste was received; or

(3) the waste was returned to the United States.

(d) When importing hazardous waste into the state from a foreign country, a person must prepare a manifest in accordance with the requirements of §335.10 of this title and 40 CFR §262.60.

(e) Any person exporting hazardous waste shall file an annual report with the executive director as required in §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

(f) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of the regulations contained in 40 CFR §262.58 (International Agreements), as amended and adopted through January 8, 2010 (75 FR 1236).

(g) Except to the extent that they are clearly inconsistent with Texas Health and Safety Code, Chapter 361, or the rules of the commission, primary exporters must comply with the regulations contained in 40 CFR §262.57, which are in effect as of November 8, 1986.

(h) Transborder shipments of hazardous waste for recovery within countries belonging to the Organization for Economic Cooperation and Development are subject to 40 CFR Part 262, Subpart H, which is adopted by reference as amended and adopted in the CFR through January 8, 2010 (75 FR 1236).

§335.78. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in subsections (e) - (g) and (j) of this section, a conditionally exempt small quantity generator’s hazardous wastes are not subject to regulation under Subchapters C - H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 305 of this title (relating to Consolidated Permits); or the notification requirements of the Resource Conservation and Recovery Act, §3010, provided the generator complies with the requirements of subsections (f), (g), and (j) of this section.

(c) When making the quantity determinations of Subchapters A - C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste), the generator must include all hazardous waste it generates, except hazardous waste that:

(1) is exempt from regulation under 40 Code of Federal Regulations (CFR) §261.4(c) - (f), as amended through November 28, 2016 (81 FR 85696), §335.24(c) of this title (relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials), §335.41(f)(1) of this title (relating to Purpose, Scope and Applicability), or 40 CFR §261.8;

(2) is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or
totally enclosed treatment facilities as defined in §335.1 of this title (relating to Definitions);

(3) is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under §335.24(f) of this title;

(4) is used oil managed under the requirements of §335.24(j) of this title and Chapter 324 of this title (relating to Used Oil);

(5) are spent lead-acid batteries managed under the requirements of §335.251 of this title (relating to Applicability and Requirements);

(6) is universal waste managed under §335.41(j) of this title and Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule); or

(7) is an unused commercial chemical product (listed in 40 CFR Part 261, Subpart D or exhibiting one or more characteristics in 40 CFR Part 261, Subpart C) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity consistent with 40 CFR §262.213. For purposes of this provision, the phrase "eligible academic entity" shall have the meaning as defined in 40 CFR §262.200.

(d) In determining the quantity of hazardous waste generated, a generator need not include:

(1) hazardous waste when it is removed from on-site storage provided that the waste was counted at the time it was generated;

(2) hazardous waste which is generated or collected for the purpose of treatability studies;

(3) hazardous waste produced by on-site processing (including reclamation) of its hazardous waste, so long as the hazardous waste that is processed was counted once; or

(4) spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth in paragraphs (1) or (2) of this subsection, all quantities of that acute hazardous waste are subject to full regulation under Subchapters C - H and O of this chapter; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; Chapter 305 of this title; and the notification requirements of the Resource Conservation and Recovery Act, §3010:

(1) a total of one kilogram of acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e); or

(2) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 CFR §§261.31, 261.32, or 261.33(e).

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e)(1) or (2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The generator must comply with the requirements in §335.62 of this title (relating to Hazardous Waste Determination and Waste Classification).

(2) The generator may accumulate acute hazardous waste on-site. If the generator accumulates at any time acute hazardous wastes in quantities greater than those set forth in subsection (e)(1) or (2) of this section, all of those accumulated wastes are subject to regulation under Subchapters C - H and O of this chapter; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; Chapter 305 of this title; and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit.

(3) A conditionally exempt small quantity generator may either process or dispose of its acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the United States Environmental Protection Agency (EPA) under 40 CFR Part 270;

(B) in interim status under 40 CFR Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

(D) permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258;

(E) permitted, licensed, or registered by a state to manage non-municipal nonhazardous [non-hazardous] waste and, if managed in a non-municipal nonhazardous [non-hazardous] waste disposal unit after January 1, 1998, is subject to the requirements of 40 CFR §§257.5 - 257.30;

(F) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation;

(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter.

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The conditionally exempt small quantity generator must comply with §335.62 of this title.

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If such generator accumulates at any time more than a total of 1000 kilograms of its hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of this subchapter applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month as well as the requirements of Subchapters D - H and O of this chapter; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of
this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; Chapter 305 of this title; and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1,000 kilograms;

(3) A conditionally exempt small quantity generator may either process or dispose of its hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the EPA under 40 CFR Part 270;
(B) in interim status under 40 CFR Parts 270 and 265;
(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;
(D) permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258 or equivalent or more stringent rules under Chapter 330 of this title (relating to Municipal Solid Waste);
(E) permitted, licensed, or registered by a state to manage non-municipal or industrial nonhazardous waste and, if managed in a non-municipal or industrial nonhazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5 - 257.30 or equivalent or more stringent counterpart rules that may be adopted by the commission relating to additional requirements for industrial nonhazardous waste disposal units that may receive hazardous waste from conditionally exempt small quantity generators;
(F) a facility which:
   (i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
   (ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; [as]

(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter; or it

(H) for airbag waste, an airbag waste collection facility or a designated facility subject to the requirements of 40 CFR §261.4(i).

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in 40 CFR Part 261, Subpart C.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation under this chapter.

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Chapter 324 of this title (relating to Used Oil Standards) and 40 CFR Part 279. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.
TRD-201904976
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 239-6812

---

SUBCHAPTER D. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

30 TAC §335.91

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendment implements THSC, Chapter 361. §335.91. Scope.

(a) This subchapter establishes standards for transporters transporting hazardous waste to off-site storage, processing, or disposal facilities. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General).

(b) This subchapter does not apply to on-site transportation of hazardous waste by generators or by owners or operators of storage, processing or disposal facilities.

(c) A transporter of hazardous waste must also comply with any standards applicable to generators of hazardous waste if he:

(1) transports hazardous waste into the state from a foreign country; or

(2) mixes hazardous waste of different Department of Transportation shipping descriptions by placing them into a single container.

(d) Transporters who store hazardous waste are owners or operators of storage facilities and, as such, are also subject to the permit requirements and storage standards contained in this chapter.

(e) A transporter of hazardous waste that is being imported from or exported to any other country for purposes of recovery or disposal is subject to all relevant requirements of 40 Code of Federal Regulations (CFR), Part 262, Subpart H, including, but not limited to, 40
CFR §262.83(d) and §262.84(d) for movement documents, as amended through November 28, 2016 (81 FR 85696).

(6) A transporter of hazardous waste subject to the federal manifesting requirements of 40 Code of Federal Regulations (CFR) Part 262, or subject to state hazardous waste manifesting requirements of §335.11 of this title (relating to Shipment Requirements for Transporters of Hazardous Waste or Class I Waste), or subject to the universal waste management standards of 40 CFR Part 272, or subject to Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule), that is being imported from or exported to any of the countries listed in 40 CFR §262.85(a)(1) for purposes of recovery is subject to this subchapter and the other relevant requirements of 40 CFR Part 262, Subpart H, including, but not limited to, 40 CFR §262.84 for tracking documents.

(f) The regulations in this chapter do not apply to transportation during an explosives or munitions emergency response conducted in accordance with §335.41(d)(2) of this title (relating to Purpose, Scope and Applicability).

(g) 40 CFR §266.203, as adopted by reference under Subchapter H, Division 6 of this chapter (relating to Military Munitions), identifies how the requirements of this subchapter apply to military munitions classified as solid waste under 40 CFR §262.202.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904977

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: February 9, 2020

For further information, please call: (512) 239-6812

SUBCHAPTER E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §335.112

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendment implements THSC, Chapter 361, §335.112. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified in this section) are adopted by reference as amended [and adopted in the CFR] through June 1, 1990 (55 FR 22685) and as further amended as indicated in each paragraph of this subsection:

1. Subpart B - General Facility Standards (as amended through November 28, 2016 (81 FR 85696)) [January 8, 2010 (75 FR 42366)];

2. Subpart C - Preparedness and Prevention;

3. Subpart D - Contingency Plan and Emergency Procedures (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §265.56(d);

4. Subpart E - Manifest System, Recordkeeping and Reporting (as amended through November 28, 2016 (81 FR 85696)) [February 7, 2014 (79 FR 75184)], except 40 CFR §§265.71, 265.72, and 265.75 - 265.77;

5. Subpart F - Groundwater Monitoring (as amended through April 4, 2006 (71 FR 16862)), except 40 CFR §265.90 and §265.94;

6. Subpart G - Closure and Post-Closure (as amended through July 14, 2006 (71 FR 40254)); except 40 CFR §265.112(d)(3) and (4) and §265.118(e) and (i);

7. Subpart H - Financial Requirements (as amended through September 16, 1992 (57 FR 42832)), except 40 CFR §§265.140, 265.141, 265.142(a)(2), (b) and (c), 265.143(a) - (g), 265.144(b) and (c), 265.145(a) - (g), 264.146, 265.147(a) - (d), and (f) - (k), and 265.148 - 265.150;

8. Subpart I - Use and Management of Containers (as amended through July 14, 2006 (71 FR 40254));


10. Subpart K - Surface Impoundments (as amended through July 14, 2006 (71 FR 40254));

11. Subpart L - Waste Piles (as amended through July 14, 2006 (71 FR 40254)), except 40 CFR §265.253;

12. Subpart M - Land Treatment (as amended through July 14, 2006 (71 FR 40254)) except, 40 CFR §§265.272, 265.279, and 265.280;

13. Subpart N - Landfills (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §§265.301(f) - (i), 265.314, and 265.315;

14. Subpart O - Incinerators (as amended through October 12, 2005 (70 FR 59402));

15. Subpart P - Thermal Treatment (as amended through July 17, 1991 (56 FR 32692));

16. Subpart Q - Chemical, Physical, and Biological Treatment (as amended through July 14, 2006 (71 FR 40254));

17. Subpart R - Underground Injection;
18. Subpart W - Drip Pads (as amended through July 14, 2006 (71 FR 40254));
19. Subpart AA - Air Emission Standards for Process Vents (as amended through July 14, 2006 (71 FR 40254));
20. Subpart BB - Air Emission Standards for Equipment Leaks (as amended through April 4, 2006 (71 FR 16862));
21. Subpart CC - Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through July 14, 2006 (71 FR 40254));
22. Subpart DD - Containment Buildings (as amended through July 14, 2006 (71 FR 40254));
23. Subpart EE - Hazardous Waste Munitions and Explosives Storage (as amended through February 12, 1997 (62 FR 6622)); and
24. the following appendices contained in 40 CFR Part 265:
   (A) Appendix I - Recordkeeping Instructions (as amended through March 24, 1994 (59 FR 13891));
   (B) Appendix III - EPA Interim Primary Drinking Water Standards;
   (C) Appendix IV - Tests for Significance;
   (D) Appendix V - Examples of Potentially Incompatible Waste; and
   (E) Appendix VI - Compounds With Henry's Law Constant Less Than 0.1 Y/X.
(b) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.
   (1) The term "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B.
   (2) The term "treatment" is changed to "processing."
   (3) Reference to Resource Conservation and Recovery Act, §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (Corrective Action Relating to Hazardous Waste).
4. Reference to:
   (A) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);
   (B) 40 CFR §264.90 is changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);
   (C) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);
   (D) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));
   (E) 40 CFR §265.1 is changed to §335.111 of this title (relating to Purpose, Scope, and Applicability);
   (F) 40 CFR §265.90 is changed to §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements);
   (G) 40 CFR §265.94 is changed to §335.117 of this title (relating to Recordkeeping and Reporting);
   (H) 40 CFR §265.314 is changed to §335.125 of this title (relating to Special Requirements for Bulk and Containerized Waste);
   (I) 40 CFR §270.1 is changed to §335.2 of this title (relating to Permit Required);
   (J) 40 CFR §270.28 is changed to §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order);
   (K) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendments);
   (L) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee); and
   (M) Qualified professional engineer is changed to Texas licensed professional engineer.
5. 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 20, 305, and 335 of this title (relating to Action on Applications and Other Authorizations, Consolidated Permits, and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.
6. Reference to 40 CFR Part 265, Subpart D (Contingency Plan and Emergency Procedures) is changed to §335.112(a)(3) of this title (relating to Standards) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).
7. Reference to 40 CFR §§265.71, 265.72, 265.76, and 265.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), §335.12(a) of this title, §335.135 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), and §335.115 of this title (relating to Additional Reports), respectively.
8. Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title.
9. Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 and §335.117 of this title, in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.
10. Reference to the EPA is changed to the Texas Commission on Environmental Quality.
(c) A copy of 40 CFR Part 265 is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904978
§361.078, mission Class HAZARDOUS STORAGE, For The
30 SUBCHAPTER OWNERS AND OPERATORS OF STORAGE, OR DISPOSAL FACILITIES
TAC §335.152
Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission’s authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendment implements THSC, Chapter 361. §335.152. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended [and adopted in the CFR] through June 1, 1990 (55 FR 22685) and as further amended and adopted as indicated in each paragraph of this subsection:

(1) Subpart B—General Facility Standards (as amended through November 28, 2016 (81 FR 85696)) [January 8, 2010 (75 FR 4286)]; in addition, the facilities which are subject to 40 CFR Part 264, Subpart X, are subject to regulation under 40 CFR §264.15(b)(4) and §264.18(b)(1)(ii);

(2) Subpart C—Preparedness and Prevention;

(3) Subpart D—Contingency Plan and Emergency Procedures (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §264.56(d);

(4) Subpart E—Manifest System, Recordkeeping and Reporting (as amended through November 28, 2016 (81 FR 85696)) [February 2, 2014 (79 FR 25184)], except 40 CFR §§264.71, 264.72, 264.76, and 264.77; facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.73(b)(6);

(5) Subpart G—Closure and Post-Closure (as amended through July 14, 2006 (71 FR 40254)); facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1)(i) and (ii), and 264.118(b)(1) and (2)(i) and (ii);

(6) Subpart H—Financial Requirements (as amended through April 4, 2006 (71 FR 16862)); except 40 CFR §§264.140, 264.141, 264.142(a)(2), (b) and (c), 264.143(a) - (h), 264.144(b) and (c), 264.145(a) - (h), 264.146, 264.147(a) - (d), and (f) - (k), and 264.148 - 264.151; and subject to the following limitations: facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.142(a) and 264.144(a), and §37.6031(c) of this title (relating to Financial Assurance Requirements for Liability);

(7) Subpart I—Use and Management of Containers (as amended through July 14, 2006 (71 FR 40254));

(8) Subpart J—Tank Systems (as amended through July 14, 2006 (71 FR 40254));

(9) Subpart K—Surface Impoundments (as amended through July 14, 2006 (71 FR 40254)), except 40 CFR §264.221 and §264.228:

(A) reference to 40 CFR §264.221 is changed to §335.168 of this title (relating to Design and Operating Requirements (Surface Impoundments));

(B) reference to 40 CFR §264.228 is changed to §335.169 of this title (relating to Closure and Post-Closure Care (Surface Impoundments));

(10) Subpart L—Waste Piles (as amended through July 14, 2006 (71 FR 40254)), except 40 CFR §264.251;

(11) Subpart M—Land Treatment (as amended through July 14, 2006 (71 FR 40254)), except 40 CFR §264.273 and §264.280;

(12) Subpart N—Landfills (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §§264.301, 264.310, 264.314, and 264.315;

(13) Subpart O—Incinerators (as amended through April 8, 2008 (73 FR 18970));

(14) Subpart S—Special Provisions for Cleanup (as amended through March 18, 2010 (75 FR 12989));

(15) Subpart W—Drip Pads (as amended through July 14, 2006 (71 FR 40254));

(16) Subpart X—Miscellaneous Units (as amended through July 14, 2006 (71 FR 40254));

(17) Subpart AA—Air Emission Standards for Process Vents (as amended through July 14, 2006 (71 FR 40254));

(18) Subpart BB—Air Emission Standards for Equipment Leaks (as amended through July 14, 2006 (71 FR 40254));

(19) Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through July 14, 2006 (71 FR 40254));

(20) Subpart DD—Containment Buildings (as amended through July 14, 2006 (71 FR 40254));

(21) Subpart EE—Hazardous Waste Munitions and Explosives Storage (as amended through August 1, 2005 (70 FR 44150)); and

(22) the following appendices contained in 40 CFR Part 264:

(A) Appendix I—Recordkeeping Instructions (as amended through March 24, 1994 (59 FR 13891));

(B) Appendix IV—Cochron’s Approximation to the Behrens-Fisher Students’ T-Test;
(b) The provisions of 40 CFR §264.18(b) are applicable to owners and operators of hazardous waste management facilities, for which a permit is being sought, which are not subject to the requirements of §§335.201 - 335.206 of this title (relating to Purpose, Scope, and Applicability; Definitions; Site Selection to Protect Groundwater or Surface Water; Unsuitable Site Characteristics; Prohibition of Permit Issuance; and Petitions for Rulemaking). A copy of 40 CFR §264.18(b) is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(c) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.

1. The term "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B.

2. The term "treatment" is changed to "processing."

3. Reference to Resource Conservation and Recovery Act, §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (Corrective Action Relating to Hazardous Waste).

4. Reference to:

(A) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);

(B) 40 CFR §264.1 is changed to §335.151 of this title (relating to Purpose, Scope, and Applicability);

(C) 40 CFR §264.280 is changed to §335.172 of this title (relating to Closure and Post-Closure Care (Land Treatment Units));

(D) 40 CFR §264.90 is changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(E) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(F) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

(G) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendments); and

(H) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

5. 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

6. Reference to 40 CFR Part 264, Subpart D is changed to §335.152(a)(3) of this title (relating to Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

7. Reference to 40 CFR §§264.71, 264.72, 264.76, and 264.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), §335.12(a) of this title, §335.153 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), and §335.155 of this title (relating to Additional Reports), respectively.

8. Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title.

9. Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements) and §335.117 of this title (relating to Recordkeeping and Reporting), in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.

10. Reference to the EPA is changed to the Texas Commission on Environmental Quality.

11. Reference to qualified professional engineer is changed to Texas licensed professional engineer.

(d) A copy of 40 CFR Part 264 is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904979
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 239-6812

SUBCHAPTER H. STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

DIVISION 4. SPENT LEAD-ACID BATTERIES BEING RECLAIMED

30 TAC §335.251

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103,
which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendment implements THSC, Chapter 361.

§335.251. Applicability and Requirements.

(a) The regulations of this section adopt by reference 40 Code of Federal Regulations (CFR) Part 266, Subpart G as amended through November 28, 2016 (81 FR 85696) [January 8, 2010 (75 FR 1236)]. This section applies to persons who reclaim (including regeneration) spent lead-acid batteries that are recyclable materials (spent batteries). Persons who generate, transport, or collect spent batteries, who generate spent batteries, who store spent batteries that are to be regenerated, or who store spent batteries but do not reclaim them (other than spent batteries that are to be regenerated), [who transport spent batteries in the United States to export them for reclamation in a foreign country or who export spent batteries for reclamation in a foreign country] are not subject to regulation under this chapter, except that §335.24(h) of this title (relating to Requirements for Recyclable Materials and Non-hazardous Recyclable Materials) applies; and are not subject to regulation under Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); or Chapter 305 of this title (relating to Consolidated Permits). Such persons, however, remain subject to the requirements of the Texas Water Code, Chapter 26.

(b) Owners or operators of facilities that store spent lead-acid batteries before reclaiming them (other than spent batteries that are to be regenerated) are subject to the following requirements:

(1) all applicable provisions in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General), Subchapter B of this chapter (relating to Hazardous Waste Management General [Management-General] Provisions), Subchapter E of this chapter (relating to Interim Standards of Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards of Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), and Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standard Permit), except for the requirements in §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities) and 40 CFR §265.13; and

(2) all applicable provisions in Chapters 1, 3, 10, 20, 37, 39, 40, 50, 55, 70, 80, and 305 of this title [Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; and Chapter 305 of this title].

(c) Persons who export spent batteries for reclamation in a foreign country where they will be reclaimed through regeneration or any other means are not subject to the requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste), except for §335.63 of this title (relating to EPA Identification Numbers); Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), except for §335.91(e) of this title (relating to Scope); Subchapter E of this chapter (relating to Interim Standards of Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities); Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities); or Subchapter O of this chapter (relating to Land Disposal Restrictions), or Chapter 1, 3, 10, 20, 37, 39, 40, 50, 55, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504 of this title (relating to Hazardous Waste Determination).

(d) Persons who transport spent batteries in the United States to export them for reclamation in a foreign country where they will be reclaimed through regeneration or any other means are not subject to the requirements of Subchapter C of this chapter; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter; or Subchapter O of this chapter, or Chapter 1, 3, 10, 20, 37, 39, 40, 50, 55, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §335.91(e) of this title.

(e) Persons who import spent batteries from a foreign country and store these spent batteries, but are not the reclaimers, and where the spent battery will be reclaimed other than through regeneration, are not subject to the requirements of Subchapter C of this chapter, except for §335.63 of this title; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter, or Chapter 1, 3, 10, 37, 39, 40, 50, 55, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504 of this title, and applicable provisions of Subchapter O of this chapter.

(f) Persons who import spent batteries from a foreign country and store these spent batteries before reclaiming them, and where the spent battery will be reclaimed other than through regeneration, are not subject to the requirements of Subchapter C of this chapter, except for §335.63 of this title; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter, or Chapter 1, 3, 10, 37, 39, 40, 50, 55, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504 of this title, and applicable provisions of Subchapter O of this chapter.

(g) Persons who import spent batteries from a foreign country and do not store these spent before reclaiming them, and where they will be reclaimed other than through regeneration, are not subject to the requirements of Subchapter C of this chapter, except for §335.63 of this title; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter, or Chapter 1, 3, 10, 37, 39, 40, 50, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504 of this title, and applicable provisions of Subchapter O of this chapter.

(e) In addition to the regulations in this section, persons who transport spent batteries in the United States to export them for reclamation in a foreign country or who export spent batteries for reclamation in a foreign country are subject to the requirements of §335.13 and

PROPOSED RULES  January 10, 2020  45 TexReg 317
§335.76(h) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; and Additional Requirements Applicable to International Shipments, respectively).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904980
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 239-6812

DIVISION 5. UNIVERSAL WASTE RULE
30 TAC §335.261, §335.262

Statutory Authority
The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendments implement THSC, Chapter 361.


(a) This section establishes requirements for managing universal wastes as defined in this section, and provides an alternative set of management standards in lieu of regulation, except as provided in this section, under all otherwise applicable chapters under 30 Texas Administrative Code. Except as provided in subsection (b) of this section, 40 Code of Federal Regulations (CFR) Part 273 is adopted by reference as amended [and adopted in the Federal Register] through November 28, 2016 (81 FR 85696) [July 14, 2006 (71 FR 40254)].

(b) 40 CFR Part 273, except 40 CFR §§273.1, 273.20, 273.39(a) and (b), 273.40, 273.56, 273.62(a), and 273.70, [§273.4] is adopted subject to the following changes:

(1) The term "regional administrator" is changed to "executive director" or "commission" consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5.

(2) The terms "U.S. Environmental Protection Agency" and "EPA" are changed to "the Texas Commission on Environmental Quality," "the agency," or "the commission" consistent with the organization of the commission as set out in Texas Water Code, Chapter 5. This paragraph does not apply to 40 CFR §§273.32(a)(3) or §§273.52 or to references to the following: "EPA Acknowledgment of Consent" or "EPA Identification Number."

(3) The term "treatment" is changed to "processing."

(4) The term "universal waste" is changed to "universal waste as defined under §335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(5) The term "this part" is changed to "Chapter 335, Subchapter H, Division 5 of this title (relating to Universal Waste Rule)."

(6) In 40 CFR §273.2(a) and (b), references to "40 CFR Part 266, Subpart G," are changed to "§335.251 of this title (relating to Applicability and Requirements)."

(7) In 40 CFR §273.2(b)(2), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(8) In 40 CFR §273.3(b)(1), the reference to "40 CFR §262.70" is changed to "§335.77 of this title (relating to Farmers)." Also, the phrase "(40 CFR §262.70 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with 40 CFR §261.7(b)(3))" is deleted.

(9) In 40 CFR §273.3(b)(2), the reference to "40 CFR parts 260 through 272" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(10) In 40 CFR §273.3(b)(3), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(11) In 40 CFR §273.3(d)(1) and (ii), references to "40 CFR §261.2" are changed to "§335.1 of this title (relating to Definitions)."

(12) In 40 CFR §273.4(a), the reference to "§273.9" as it relates to the definition of "mercury-containing equipment" is amended to include the commission definition of "thermostats" as contained in §335.261(b)(16)(E) of this title (relating to Universal Waste Rule) and in 40 CFR §273.4(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(13) In 40 CFR §273.5(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(14) In 40 CFR §273.8(a)(1), the reference to "40 CFR §261.4(b)(1)" is changed to "§335.1 of this title (relating to Definitions)" and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(15) In 40 CFR §273.8(a)(2), the reference to "40 CFR §261.5" is changed to "§335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)" and to "§335.402(5) of this title (relating to Definitions)" and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(16) In 40 CFR §273.9, the following definitions are changed to the meanings described in this paragraph.

(A) Destination facility--A facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in 40 CFR §273.13(a) and (c) and 40 CFR §273.33(a) and (c), as adopted by reference in this section. A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste.
(B) Generator--Any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261 or whose act first causes a hazardous waste to become subject to regulation.

(C) Large quantity handler of universal waste--A universal waste handler (as defined in this section) who accumulates at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total universal waste is accumulated.

(D) Small quantity handler of universal waste--A universal waste handler (as defined in this section) who does not accumulate at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively.

(E) Thermostat--A temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR §273.13(c)(2) or §273.33(c)(2) as adopted by reference in this section.

(F) Universal waste--Any of the following hazardous wastes that are subject to the universal waste requirements of this section:

(i) batteries, as described in 40 CFR §273.2;

(ii) pesticides, as described in 40 CFR §273.3;

(iii) mercury-containing equipment, including thermostats, as described in 40 CFR §273.4;

(iv) paint and paint-related waste, as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); and

(v) lamps, as described in 40 CFR §273.5.

(17) In 40 CFR §273.10, the reference to "40 CFR §273.9" is changed to "§335.261(b)(16)(D) of this title (relating to Universal Waste Rule)."

(18) 40 CFR §273.11(b) is changed to read as follows: "Prohibited from diluting or treating universal waste, except when responding to releases as provided in 40 CFR §273.17; managing specific wastes as provided in 40 CFR §273.13; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."

(19) In 40 CFR §273.13(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(20) In 40 CFR §273.13(c)(2)(iii) and (iv), references to "40 CFR §262.34" are changed to "§335.69 of this title (relating to Accumulation Time)."

(21) In 40 CFR §273.13(d)(1), the phrase "adequate to prevent breakage" is changed to "adequate to prevent breakage, except as specified in §335.261(e) of this title (relating to Universal Waste Rule)."

(22) In 40 CFR §273.17(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(23) In 40 CFR §273.20(a), the reference to "§§262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste) and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

(24) In 40 CFR §273.20(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."

(25) In 40 CFR §273.30, the reference to "§273.9" is changed to "§335.261(b)(16)(C) of this title (relating to Universal Waste Rule)."

(26) In 40 CFR §273.31(b) is changed to read as follows: "Prohibited from diluting or treating universal waste, except when responding to releases as provided in 40 CFR §§273.37; managing specific wastes as provided in 40 CFR §273.33; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."

(27) In 40 CFR §273.33(c)(4)(i), the reference, "40 CFR part 261, subpart C," is changed to "Chapter 335, Subchapter R of this title (relating to Waste Classification)."

(28) In 40 CFR §273.33(c)(3)(ii), the reference, "40 CFR parts 260 through 272," is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(29) In 40 CFR §273.33(d)(1), the phrase "adequate to prevent breakage" is changed to "adequate to prevent breakage, except as specified in §335.261(e) of this title (relating to Universal Waste Rule)."

(30) In 40 CFR §273.37(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(31) In 40 CFR §273.40(a), the reference to "40 CFR Part 262, Subpart E §§262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste) and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

(32) In 40 CFR §273.40(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."

(33) In 40 CFR §273.52(a), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(34) In 40 CFR §273.52(b), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."
In 40 CFR §273.54(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

In 40 CFR §273.60(a), the reference to "§273.9" is changed to "§335.261(b)(16)(A) of this title (relating to Universal Waste Rule)" and the reference to "parts 264, 265, 266, 268, 270, and 124 of this chapter" is changed to "30 Texas Administrative Code (relating to Environmental Quality)."

In 40 CFR §273.60(b), the reference to "40 CFR §261.6(c)(2)" is changed to "§335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)."

In 40 CFR §273.80(a), the reference to "40 CFR §260.20 and §260.23" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules)" and §335.261(c) of this title (relating to Universal Waste Rule)."

In 40 CFR §273.80(b), the reference to "40 CFR §260.20(b)" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules)."

In 40 CFR §273.81(a), the reference to "40 CFR §260.10" is changed to "§335.1 of this title (relating to Definitions)" and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

c. Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste rule may file a petition for rulemaking under this section, §20.15 of this title, and 40 CFR Part 273, Subpart G as adopted by reference in this section.

1. To be successful, the petitioner must demonstrate to the satisfaction of the commission that regulation under the universal waste rule is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by §20.15 of this title. The petition should also address as many of the factors listed in 40 CFR §273.81 as are appropriate for the waste or category of waste addressed in the petition.

2. The commission will grant or deny a petition using the factors listed in 40 CFR §273.81. The decision will be based on the commission’s determinations that regulation under the universal waste rule is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

3. The commission may request additional information needed to evaluate the merits of the petition.

4. Any waste not qualifying for management under this section must be managed in accordance with applicable state regulations.

5. Crushing lamps is permissible only in a crushing system for which the following control conditions are met:

a. an exposure limit of no more than 0.05 milligrams of mercury per cubic meter is demonstrated through sampling and analysis using Occupational Safety and Health Administration (OSHA) Method ID-140 or National Institute for Occupational Safety and Health Method Number 6009, based on an eight-hour time-weighted average of samples taken at the breathing zone height near the crushing system operating at the maximum expected level of activity;

b. compliance with the notification requirements of §106.262 of this title (relating to Facilities (Emission and Distance Limitations) (Previously SE 118)) is demonstrated;

c. documentation of the demonstrations under paragraphs (1) and (2) of this subsection is provided in a written report to the executive director; and

d. the executive director approves the crushing system in writing.


a. This section establishes requirements for managing paint and paint-related waste as described in subsection (b) of this section, and provides an alternative set of management standards in lieu of regulation under other portions of this chapter not otherwise referenced under this section.

b. Paint and paint-related waste is used or unused paint or [and] paint-related material which is "hazardous waste" as defined under §335.1 of this title (relating to Definitions), as determined under §335.504 of this title (relating to Hazardous Waste Determination). Paint is a pigmented or unpigmented mixture of binder and [and which is any mixture of pigment and a] suitable liquid which forms a closely adherent coating when spread on a surface [or any material which results from painting activities].

c. Except as otherwise provided in this section, the following definitions and requirements apply to persons managing paint and paint-related wastes:


2. In addition to the requirements referenced under paragraph (1) of this subsection, small quantity handlers and large quantity handlers of universal waste must manage paint and paint-related waste in accordance with §335.4 of this title (relating to General Prohibitions). The paint and paint-related waste must be contained in one or more of the following:

A. a container that remains closed, except when necessary to add or remove waste;

B. a container that is structurally sound, compatible with the waste, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

C. a container that does not meet the requirements of subparagraphs (A) and (B) of this paragraph, provided that the unacceptable container is overpacked in a container that does meet the requirements of subparagraphs (A) and (B) of this paragraph; or

D. a tank that meets the requirements of 40 CFR Part 265, Subpart J, except for 40 CFR §§265.197(c), 265.200, and 265.201; or

E. a transport vehicle or vessel that is closed, structurally sound, compatible with the waste, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; and

F. a container, multiple container package unit, tank, transport vehicle or vessel that is labeled or marked clearly with the words "Universal Waste - Paint and Paint-Related Wastes;" and
(3) For paint and paint-related waste that is ignitable, reactive, or incompatible waste, the applicable requirements under 40 CFR §§265.17, 265.176, and 265.177.

(d) Hazardous waste determinations under subsection (b) of this section shall be documented at the time of the determination and maintained for at least three years.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904981
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 239-6812

DIVISION 7.  AIRBAG WASTE RULE

30 TAC §335.281
Statutory Authority
The new section is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The new section is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed new section implements THSC, Chapter 361.


(a) Airbag waste at the airbag waste handler site or during transport to an airbag waste collection facility or a designated facility is not subject to regulation under §335.2 of this title (relating to Permit Required), Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste), Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or Subchapter O of this chapter (relating to Land Disposal Restrictions); or Chapter 37 of this title (relating to Financial Assurance), Chapter 39 of this title (relating to Public Notice), Chapter 281 of this title (relating to Applications Processing), or Chapter 305 of this title (relating to Consolidated Permits), provided that:

(1) the airbag waste is accumulated in a quantity of no more than 250 airbag modules or airbag inflators for no longer than 180 days;

(2) the airbag waste is packaged in a container designed to address the risk posed by the airbag waste and labeled "Airbag Waste-Do Not Reuse";

(3) the airbag waste is sent directly to either:

(A) an airbag waste collection facility in the United States under the control of a vehicle manufacturer or their authorized representative, or under the control of an authorized party administering a remedy program in response to a recall under the National Highway Traffic Safety Administration; or

(B) a "Designated facility", as defined in §335.1 of this title (relating to Definitions), that is authorized to accept airbag waste;

(4) the transport of the airbag waste complies with all applicable United States Department of Transportation regulations in 49 Code of Federal Regulations Parts 171 - 180 during transit;

(5) the airbag waste handler maintains at the handler facility, for no less than three years, records of all off-site shipments of airbag waste and all confirmations of receipt from the receiving facility. For each shipment, these records must, at a minimum, contain the name of the transporter and date of the shipment; name and address of receiving facility; and the type and quantity of airbag waste (i.e., airbag modules or airbag inflators) in the shipment. Confirmations of receipt must include the name and address of the receiving facility; the type and quantity of the airbag waste (i.e., airbag modules or airbag inflators) received; and the date which it was received. Shipping records and confirmations of receipt must be made available for inspection and may be satisfied by routine business records (e.g., electronic or paper financial records, bills of lading, copies of United States Department of Transportation shipping papers, or electronic confirmations of receipt).

(b) Airbag waste received at an airbag waste collection facility or a designated facility is subject to all hazardous waste regulations, and the operator of the receiving facility is the generator of the airbag waste that must comply with the generator requirements of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General), and Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste).

(c) Reuse of defective airbag modules or defective airbag inflators subject to a recall under the National Highway Traffic Safety Administration in vehicles is prohibited and is considered sham recycling as defined under §335.27 of this title (relating to Legitimate Recycling of Hazardous Secondary Materials).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904982
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 239-6812

PROPOSED RULES   January 10, 2020   45 TexReg 321
SUBCHAPTER J. HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE SYSTEM

30 TAC §335.331
Statutory Authority
The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendments implement THSC, Chapter 361.

(a) Failure to make payment in accordance with this subchapter constitutes a violation subject to enforcement pursuant to the Health and Safety Code, §361.137 and §361.252.
(b) Generators and owners or operators of a facility failing to make payment of fees imposed under the Health and Safety Code, Chapter 361, when due, shall be assessed late payment penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).
(c) Operators of waste management facilities submitting late reports concerning the management of waste under the Health and Safety Code, §361.136, are subject to a civil penalty of $100 for each day the violation continues.
(d) Any interest or penalties collected by the commission shall be deposited in the appropriate fund.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.
TRD-201904983
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 239-6812

SUBCHAPTER R. WASTE CLASSIFICATION
30 TAC §335.501, §335.504

Statutory Authority
The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendments implement THSC, Chapter 361.

§335.501. Purpose, Scope, and Applicability.
Persons who generate industrial solid waste or municipal hazardous waste shall comply with the provisions of this subchapter. Wastes that are regulated under Chapter 334, Subchapter K[1] of this title (relating to Storage, Treatment, and Release Procedures for Petroleum-Substance Contaminated Soil) are not subject to the provisions of this subchapter. Persons who generate wastes in Texas shall classify their own waste according to the standards set forth in this subchapter and may do so without any prior approval or communication with the agency other than notification of waste generation activities pursuant to §335.6 of this title (relating to Notification Requirements) and submittal of required documentation pursuant to §335.513 of this title (relating to Documentation Required). A generator of industrial solid waste or special waste as defined by §330.3 (relating to Definitions) shall refer to Chapter 330 of this title (relating to Municipal Solid Waste) for regulations regarding the disposal of such waste prior to shipment to a municipal landfill. Used oil, as defined and regulated under Chapter 324 of this title (relating to Used Oil), is not subject to the provisions of this subchapter. This subchapter:

1. provides a procedure for implementation of Texas waste notification system; and
2. establishes standards for classification of industrial solid waste and municipal hazardous waste managed in Texas.

§335.504. Hazardous Waste Determination.
A person who generates a solid waste must determine if that waste is hazardous using the following method:

1. Determine if the material is excluded or exempted from being a solid waste or hazardous waste per §335.1 of this title (relating to Definitions) or identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart A or E, as amended through November 28, 2016 (81 FR 85596) [January 13, 2015 (80 FR 1604), or identified in 40 CFR Part 261, Subpart E, as amended through July 28, 2006 (71 FR 42928)].
2. If the material is a solid waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 CFR Part 261, Subpart D, as amended through April 13, 2012 (77 FR 22229).
3. If the material is a solid waste, determine whether the waste exhibits any characteristics of a hazardous waste as identified in 40 CFR Part 261, Subpart C, as amended through March 18, 2010 (75 FR 12989).
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904984
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 239-6812

SUBCHAPTER T. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF COMMERCIAL INDUSTRIAL NONHAZARDOUS WASTE LANDFILL FACILITIES

30 TAC §335.590

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission’s authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed amendment implements THSC, Chapter 361.

§335.590. Operational and Design Standards.

The following requirements, including those applicable to municipal solid waste facilities, apply to owners and operators of facilities subject to this subchapter:

(1) §330.121 of this title (relating to General);
(2) §330.123 of this title (relating to Pre-operation Notice);
(3) §330.125 of this title (relating to Recordkeeping Requirements), except that the requirements under §330.125(b)(3) of this title concerning recordkeeping for gas monitoring and remediation plans relating to explosive and other gases do not apply, except as determined necessary by the executive director;
(4) §330.127 of this title (relating to Site Operating Plan);
(5) §330.129 of this title (relating to Fire Protection);
(6) §330.131 of this title (relating to Access Control);
(7) §330.133(a) - (c) of this title (relating to Unloading of Waste);
(8) §330.137 of this title (relating to Site Sign);
(9) §330.139 of this title (relating to Control of Windblown Waste and Litter);
(10) §330.141 of this title (relating to Easements and Buffer Zones);
(11) §330.143(a) of this title (relating to Landfill Markers and Benchmark);
(12) §330.149 of this title (relating to Odor Management Plan);
(13) §330.153 of this title (relating to Site Access Roads);
(14) §330.155 of this title (relating to Salvaging and Scavenging);
(15) §330.157 of this title (relating to Endangered Species Protection);
(16) §330.159 of this title (relating to Landfill Gas Control) as determined necessary by the executive director;
(17) §330.161 of this title (relating to Oil, Gas, and Water Wells);
(18) §330.163 of this title (relating to Compaction);
(19) §330.165 of this title (relating to Landfill Cover);
(20) §330.167 of this title (relating to Ponded Water);
(21) §330.175 of this title (relating to Visual Screening of Deposited Waste);
(22) §330.207 of this title (relating to Contaminated Water Management);
(23) the owner or operator shall have and follow procedures for the suppression and control of dust; and
(24) the owner or operator shall ensure that each commercial industrial nonhazardous waste landfill unit meets the requirements of subparagraphs (A) - (F) of this paragraph.

(A) Design criteria.

(i) Landfill cells shall be designed and constructed in accordance with subclause (I) or (II) of this clause, and shall also be constructed in accordance with subclause (III) of this clause.

(II) a design that ensures that the concentration values for constituents listed in §330.419(a) of this title (relating to Constituents for Detection Monitoring) will not be exceeded in the uppermost aquifer at the point of compliance, as specified by the executive director under clause (iv) of this subparagraph; or

(III) unless the executive director approves an engineered design that the applicant has demonstrated will provide equal or greater protection to human health and the environment, a landfill cell must be constructed where the base of the containment structure, which includes the sides and bottom of the containment structure, is at least five feet above the uppermost saturated soil unit having a Unified Soil Classification of GW (well-graded gravel), GP (poorly-graded gravel), GM (silty gravel), GC (clayey gravel), SW (well-graded sand), SP (poorly-graded sand), or SM (silty sand), or a hydraulic conductivity greater than 1 x 10⁻⁶ cm/sec, unless such saturated soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.
(ii) For purposes of this section, "composite liner" means a system consisting of two components. The upper component shall consist of a minimum 30-mil (0.75 mm) geomembrane [flexible membrane] liner and the lower component shall consist of at least a three-foot layer of compacted soil with a hydraulic conductivity of no more than \(1 \times 10^{-7}\) cm/sec. Geomembrane [flexible membrane] liner components consisting of high density polyethylene shall be at least 60-mil thick. The geomembrane [flexible membrane] liner component must be installed in direct and uniform contact with the compacted soil component.

(iii) When approving a design that complies with clause (i)(I) of this subparagraph, the executive director may consider at least the following factors:

(I) the hydrogeologic characteristics of the facility and surrounding land;

(II) the climatic factors of the area; and

(III) the volume and physical and chemical characteristics of the leachate.

(iv) For purposes of this paragraph, the point of compliance is defined in §330.3 of this title (relating to Definitions). In determining the point of compliance, the executive director may consider at least the following factors:

(I) the hydrogeologic characteristics of the facility and surrounding land;

(II) the volume and physical and chemical characteristics of the leachate;

(III) the quantity, quality, and direction of flow of groundwater;

(IV) the proximity and withdrawal rate of the groundwater users;

(V) the availability of alternative drinking water supplies;

(VI) the existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater and whether groundwater is currently used or reasonably expected to be used for drinking water;

(VII) public health, safety, and welfare effects; and

(VIII) practicable capability of the owner or operator.

(B) Landfill cells shall have a leachate-collection system designed and constructed to maintain less than a 30-cm depth of leachate over the liner. The leachate-collection and leachate-removal system shall be:

(i) constructed of materials that are chemically resistant to the leachate expected to be generated;

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(iii) designed and operated to function through the scheduled closure and post-closure period of the landfill.

(C) Storm water run-on/run-off facilities such as berms and ditches shall be provided in accordance with §330.63 of this title (relating to Contents of Part III of the Application).

(D) The site shall have a groundwater monitoring system installed that is capable of detecting the migration of pollutants from the landfill and is sampled semiannually for the parameters specified in Chapter 330, Subchapter J of this title (relating to Groundwater Monitoring and Corrective Action).

(E) The final cover placed over the commercial industrial nonhazardous waste landfill unit shall consist of a minimum of 18 inches of uncontaminated topsoil overlying four feet of compacted clay-rich soil material meeting the requirements of §330.457 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units That Receive Waste on or after October 9, 1993). The final cover over the aerial fill shall meet the requirements of §330.457 of this title and shall include a flexible membrane component.

(F) Nonhazardous waste may be placed above natural grade in commercial industrial nonhazardous waste landfill units provided the conditions in clauses (i) - (vi) of this subparagraph are met, except as provided in clause (vii) of this subparagraph:

(i) waste placed above grade shall be laterally contained by dikes that are constructed to:

(I) prevent washout, release, or exposure of waste;

(II) be physically stable against slope failure, with a minimum safety factor of 1.5;

(III) prevent washout from hydrostatic and hydrodynamic forces from storms and floods;

(IV) prevent storm water from reaching the waste;

(V) minimize release of leachate; and

(VI) minimize long-term maintenance;

(ii) the liner required in paragraph (22) of this section shall extend to the crest of the dike;

(iii) waste placed against the dike is placed no higher than that three feet below the crest of the dike;

(iv) the slope of the wastes placed in the commercial industrial nonhazardous waste landfill units does not exceed 3% to the center of the unit;

(v) no waste is placed higher than the lowest elevation of the dike crest; and

(vi) a dike certification report is submitted with Attachment 10 of Part III of the permit application.

The certification shall be in the following form:

Figure: 30 TAC §335.590(24)(F)(vi) (No change.)

(vii) a commercial industrial nonhazardous waste landfill is not subject to the requirements of clauses (ii) - (v) of this subparagraph provided that the owner or operator submits a demonstration that the standards of clause (i) of this subparagraph can be met without meeting the requirements of clauses (ii) - (v) of this subparagraph, the demonstration is approved in writing by the executive director, and the owner or operator enters the approval into the facility operating record.

(25) Hazardous waste from a conditionally exempt small quantity generator as defined in §335.78(a) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), may be accepted for disposal in any commercial industrial nonhazardous waste landfill facility provided the amount of hazardous waste accepted from each conditionally
exempt small quantity generator does not exceed 220 pounds (100 kilograms) a calendar month, and provided the landfill owner or operator is willing to accept the hazardous waste.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904985
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 239-6812

SUBCHAPTER U. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARD PERMIT

30 TAC §335.602
Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendment implements THSC, Chapter 361. §335.602. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 267 (including all appendices to CFR Part 267) are adopted by reference as amended [and adopted in the CFR] through September 8, 2005 (70 FR 53420) and as further amended and adopted as indicated in each paragraph of this subsection:

1. 40 CFR Part 267, Subpart B—General Facility Standards;
2. 40 CFR Part 267, Subpart C—Preparedness and Prevention;
3. 40 CFR Part 267, Subpart D—Contingency Plan and Emergency Procedures;
4. 40 CFR Part 267, Subpart E—Recordkeeping, Reporting, and Notifying (as amended through November 28, 2016 (81 FR 85696);
5. 40 CFR Part 267, Subpart F—Releases from Solid Waste Management Units;
6. 40 CFR Part 267, Subpart G—Closure;
7. 40 CFR Part 267, Subpart I—Use and Management of Containers;
8. 40 CFR Part 267, Subpart J—Tank Systems;
9. 40 CFR Part 267, Subpart DD—Containment buildings; and

(b) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.

1. The term "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B.
2. Reference to:
   A. 40 CFR Part 261 is changed to §335.504 of this title (relating to Hazardous Waste Determination);
   B. 40 CFR Part 262 is changed to Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste);[1]
   C. 40 CFR §264.1 is changed to §335.151 of this title (relating to Purpose, Scope, and Applicability);
   D. Reference to 40 CFR Part 264, Subpart D is changed to §335.152(a)(3) of this title (relating to Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);
   E. 40 CFR Part 264, Subpart S is changed to §335.152(a)(4) of this title;
   F. 40 CFR Part 265 is changed to Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities);
   G. 40 CFR Part 268 is changed to Subchapter O of this chapter (relating to Land Disposal Restrictions);
   H. 40 CFR Part 270, Subpart J is changed to Chapter 305, Subchapter R of this title (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units);
   I. 40 CFR §262.34 is changed to §335.69 of this title (relating to Accumulation Time);
   J. 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units); and
   K. Reference to "standards permit" is changed to "standard permit".

3. 40 CFR Parts 260-270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste, respectively), as applicable.

(c) An owner or operator of a unit that treats, stores, or disposes of hazardous waste in tanks, containers, and containment buildings authorized by a standard permit as specified in this section shall establish and maintain financial assurance in accordance with Chapter

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904986
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 239-6812

**TITLE 34. PUBLIC FINANCE**

**PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

**CHAPTER 3. TAX ADMINISTRATION**

**SUBCHAPTER B. NATURAL GAS**

34 TAC §3.30

The Comptroller of Public Accounts proposes new §3.30, concerning natural gas tax managed audits and determination of overpaid amounts. This section implements House Bill 2256, 86th Legislature, 2019.

In subsection (a), the comptroller defines the terms "managed audit" and "taxpayer." "Managed audit" is defined in the same manner as Tax Code, §201.3021(a) (Managed Audits). "Taxpayer" is any person required by Tax Code, Chapter 201 (Gas Production Tax) to file a producer's or first purchaser's report.

Subsection (b) implements Tax Code, §201.3021 as added by House Bill 2256. This subsection discusses the policies regarding managed audits for the natural gas tax and provides detailed procedures for managed audits.

Subsection (c) implements Tax Code, §201.207. This subsection discusses how taxpayers may use sampling of marketing cost transactions to establish that they have overpaid tax. In order to use sampling, the taxpayer must follow certain requirements, including use of a comptroller-approved sampling method, recording the method used, and making relevant records available for comptroller review. After establishing an overpayment, the taxpayer must amend all relevant reports and may then either use the overpayment as a credit on another natural gas tax return or request a refund. A taxpayer must amend all the relevant reports to allow the comptroller to track the application of refunds and credits to the taxpayer's account.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that for each year of the first five years the proposed new rule is in effect, the proposed new rule would benefit the public by conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed new rule would have no fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

This new section is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The new section implements Tax Code, §201.207 (Determination of Overpaid Amounts) and §201.3021 (Managed Audits).

§3.30. Natural Gas Tax Managed Audits and Determination of Overpaid Amounts.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Managed audit--A review and analysis of invoices, checks, accounting records, or other documents or information conducted by a taxpayer to determine a taxpayer's liability for tax under Tax Code, Chapter 201 (Gas Production Tax).

(2) Taxpayer--Any person required to file a report with the comptroller under Tax Code, §201.203 (Producer's Report) or §201.2035 (First Purchaser's Report).

(b) Managed audits. The comptroller may authorize taxpayers that meet certain requirements to perform managed audits.

(1) A taxpayer who wishes to participate in a managed audit must request authorization from the comptroller's office to conduct a managed audit under this section. Authorization will only be granted as part of a written agreement between the taxpayer and the comptroller's office. The agreement must:

(A) be signed by an authorized representative of the comptroller and the taxpayer; and

(B) specify the period to be audited and the procedure to be followed.

(2) In determining whether to authorize a managed audit, the comptroller may consider:

(A) the taxpayer's history of tax compliance, including:

(i) timely filing of reports;

(ii) timely payment of all taxes and fees due to the state;

(iii) prior audit history;

(iv) delinquency in other taxes;
(vi) correction of problems identified in prior audits; and
(vii) whether a penalty waiver had been denied on prior occasions and the reason for denial;

(B) whether the taxpayer has sufficient time and resources to conduct the audit;

(C) the sufficiency and availability of the taxpayer's tax records;

(D) the taxpayer's ability to pay any liability arising as a result of the audit; and

(E) any other factor the comptroller determines is relevant.

(3) The decision to authorize or not authorize a managed audit rests solely with the comptroller.

(4) A managed audit may be limited to one or more factors affecting a taxpayer's liability for tax under this chapter, including:

(A) gross value of gas produced;

(B) exempt interest;

(C) marketing costs of gas produced;

(D) gas used to power operations at a well or lease; or

(E) tax reimbursement paid by a purchaser to a producer.

(5) Before the audit is finalized, the comptroller may examine records that the comptroller determines are necessary to verify the results.

(6) Unless the audit or information reviewed by the comptroller under this subsection discloses fraud or willful evasion of the tax, the comptroller may not assess a penalty and may waive all or part of the interest that would otherwise accrue on any amount identified to be due in a managed audit. This does not apply to any amount collected by the taxpayer that was a tax or represented to be a tax but that was not remitted to this state.

(7) Except as provided by Tax Code, §111.104(f) (Refunds), a taxpayer is entitled to a refund of any tax overpayment disclosed by a managed audit under this section.

(8) This subsection applies to audits initiated on or after September 1, 2019.

(c) Determination of overpaid amounts by sampling marketing cost transactions.

(1) A taxpayer may sample marketing cost transactions provided that the sampling method is approved by the comptroller. The taxpayer must record the method and make available on request by the comptroller the records on which the computation is based.

(2) A taxpayer may obtain a reimbursement of an overpayment identified by sampling under this subsection by amending all relevant reports and:

(A) taking a credit on one or more reports filed under Tax Code, §201.203 or §201.2035; or

(B) filing a claim for refund with the comptroller within the statute of limitations specified by Tax Code, §111.107 (When a Refund or Credit is Permitted) and Chapter 111, Subchapter D (Limitations).

(3) This subsection applies to refund claims filed on or after September 1, 2019.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904946
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 475-2220

◆◆◆

CHAPTER 13. UNCLAIMED PROPERTY REPORTING AND COMPLIANCE

34 TAC §§13.4 - 13.8, 13.21

The Comptroller of Public Accounts proposes new §13.4 concerning report and delivery of certain personal tangible property, §13.5 concerning additional required information for reported mineral proceeds, §13.6 concerning minimum requirements for a claim, §13.7 concerning identification of claimed property; burden, and §13.8 concerning certain mineral proceeds; supporting documentation required. The comptroller also proposes amendments to §13.21 concerning property report format.

Section 13.4 provides that tangible personal property shall be reported in the manner prescribed by the Comptroller's Unclaimed Property Reporting Instructions. It also requires holders to provide a detailed description of the property to the comptroller and identify whether the property has been contaminated by biohazardous material. Finally, this section provides that the comptroller can determine that the property has insubstantial value and require a holder to destroy or otherwise dispose of the property before delivery to the comptroller.

Section 13.5 provides additional information reporting requirements for holders of mineral proceeds.

Section 13.6 describes the minimum requirements for a claim.

Section 13.7 describes that a person making a claim for unclaimed property has the burden of identifying the property in the possession of the comptroller that is being claimed.

Section 13.8 provides additional documentation requirements for claims involving mineral proceeds reported to the comptroller with an unknown or unidentified owner.

The amendment to §13.21 allows the comptroller to prescribe the electronic file format to be used to file a property report by publishing in the Comptroller's Unclaimed Property Reporting Instructions.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed new rules and amendment are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules’

PROPOSED RULES January 10, 2020 45 TexReg 327
applicability; and will not positively or adversely affect this state’s economy.

Mr. Currah also has determined that the proposed new rules and amended rule would have no fiscal impact on small businesses or rural communities. The proposed new rules and amendment would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rules and amended rule would benefit the public by clearly defining existing policy. There would be no significant anticipated economic cost to the public.

Comments on the proposal may be submitted to Bryant Clayton, Assistant Director, Unclaimed Property Division, Comptroller of Public Accounts, at bryant.clayton@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the Texas Register.

The new rules and amendment are proposed under Property Code, §74.701, which authorizes the comptroller to adopt rules necessary to carry out Property Code, Title 6, regarding unclaimed property.

The new rules and amendment implement Property Code, Chapter 74.

§13.4. Report and Delivery of Certain Tangible Personal Property.
(a) Tangible personal property shall be reported in the manner prescribed in the current Comptroller’s Unclaimed Property Reporting Instructions. For tangible personal property other than the contents of a safety deposit box, a holder shall, at the time of making a property report, separately provide to the comptroller an inventory of the property that:

(1) clearly describes the property being reported; and
(2) identifies whether the property is contaminated by biohazardous or other medical waste.

(b) The comptroller may require a holder to provide additional information about the property that is reportable under this section.

(c) A holder shall not deliver property reported under this section to the comptroller until the earlier of January 1 or the date the comptroller requests a holder deliver the property.

(d) The comptroller may determine that property reported under this section has insubstantial commercial value and may require that a holder dispose of any such property.

§13.5. Additional Required Information for Reported Mineral Proceeds.
In addition to the information required by Property Code, §74.101(c) and (e), a holder who is required to report and deliver unclaimed mineral proceeds to the comptroller under Property Code, Title 6, shall include in the property report for the proceeds the American Petroleum Institute (API) number for each lease, property, or well from which the mineral proceeds arise. The API number shall be clearly identified as such in the property description field of the property report.

A claim under Property Code, Chapter 74, Subchapter F, must identify:

(1) the name of each claimant;
(2) the mailing address for each claimant;
(3) the social security number or employer identification number of each claimant, or a statement that a claimant does not have such a number; and

(4) each specific property in the possession of the comptroller that is being claimed by reference to the unique property identification number assigned to each claimed property by the comptroller.

A person making a claim for property under Property Code, Title 6, has the burden to identify each specific property or properties in the possession of the comptroller to which the person is making a claim.

(a) For mineral proceeds reported to the comptroller as having an unknown or unidentified owner, a person making a claim for the mineral proceeds must, in addition to the requirements of §13.6 of this title (relating to Minimum Requirements for a Claim), include documentation demonstrating that the claimant either:

(1) was the owner of the underlying mineral interest or had an interest, whether possessory or non-possessory, in the mineral proceeds at the time the minerals were produced; or

(2) is the legal heir or successor in title of the person who was the owner of the underlying mineral interest, whether possessory or non-possessory, or who had an interest in the mineral proceeds at the time the minerals were produced.

(b) The comptroller may require a person claiming mineral proceeds under this section to provide a final judgment in an action to quiet title, as to all potential owners or claimants of the underlying mineral interest, issued by a court of competent jurisdiction in the county in which each mineral interest is located.

(c) For a claim made under this section, the comptroller may require additional documentation as may be appropriate under the circumstances, including information about heirship and transfer of property by probate proceedings, deed, or other method of conveyance.

§13.21 Property Report Format.
(a) Property report(s) filed by a holder pursuant to Property Code, Chapters 72-75 and 77, shall be submitted to the comptroller in the NAUPA standard electronic file format prescribed in the Comptroller's Unclaimed Property Reporting Instructions. A property report filed under this title must be filed electronically [NAUPA2 format] via one of the online submission methods specified in the Comptroller's Unclaimed Property Reporting Instructions.

(b) Information contained in property report(s) shall comply with the data entry standards for property type, securities delivery and country codes, owner name and property description fields, and abbreviations of owner title and common terms as specified in the Unclaimed Property Reporting Instructions.

(c) Incomplete reports and reports not meeting the format specifications described above will be rejected by the comptroller and returned to the holder for correction. The comptroller will keep a copy of any report that is returned for correction.

(d) Information shall be submitted in a format that is accessible by the comptroller's office. Reports that are encrypted, corrupted, or otherwise inaccessible will be rejected by the comptroller and returned to the holder for correction. The comptroller will keep a copy of any report that is returned for correction.

(e) When a report is rejected, the responsible holder shall submit a revised, complete, accessible and properly formatted report to the comptroller no later than 30 calendar days after notification of the rejection.

(f) If a complete, accessible, and properly formatted report is not resubmitted within 30 calendar days after notification of the rejec-
tion, the holder will be considered delinquent and subject to interest and civil penalties and criminal charges in Property Code, Chapter 74, Subchapter H, until a complete and properly formatted report is submitted to the comptroller.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2019.

TRD-201904944
Victoria North
Chief Counsel Fiscal and Agency Affairs Legal Services Division
Comptroller of Public Accounts

Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 475-2220

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS
CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §41.51

The Teacher Retirement System of Texas (TRS) proposes amendments to rule §41.51, concerning appeals relating to eligibility to enroll in the Texas School Employees Uniform Group Health Coverage Program ("TRS-ActiveCare").

BACKGROUND AND PURPOSE
TRS proposes amendments to TRS Rule §41.51, concerning appeals relating to eligibility to enroll in TRS-ActiveCare. House Bill 2629 requires that in adopting rules governing the appeal of a final administrative decision, TRS ensures that rules establishing deadlines for the filing of an appeal afford a member or retiree at least the same amount of time to file an appeal as TRS has to issue a decision. While TRS does not believe that the appeal process under TRS Rule §41.51 results in a final administrative decision by TRS, the proposed changes to this rule are in the spirit of House Bill 2629.

FISCAL NOTE
Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed amended rule.

PUBLIC COST/BENEFIT
For each year of the first five years the proposed amended rule will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of the adopting the amended rule will be to allow a greater amount of time for individuals to timely file an appeal concerning eligibility to enroll in TRS-ActiveCare. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed amended rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS
TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT
TRS has determined that there will be no effect on local employment because of the proposed amended rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT
TRS has determined that for the first five years the proposed amended rule is in effect, the proposed amendments will create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule’s applicability; and will not affect the state’s economy.

TAKINGS IMPACT ASSESSMENT
TRS has determined that there are no private real property interests affected by the proposed amended rule; therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS
TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rule because it does not impose a cost on regulated persons.

COMMENTS
Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the Texas Register.

STATUTORY AUTHORITY
The amendments are proposed under the authority of Texas Insurance Code §1579.051 and §1579.052 (a), (b) and (e) relating to the adoption of rules for TRS-ActiveCare.

CROSS-REFERENCE TO STATUTE
The proposed amended rule implements the Texas School Employees Uniform Group Health Coverage Act (Chapter 1579 of the Texas Insurance Code).

§41.51. Appeals Relating to Eligibility.

(a) A full-time or part-time employee ("Petitioner") whose application to enroll themselves and/or their dependents in TRS-ActiveCare is denied by either TRS, the administering firm, or a participating entity may appeal the denial to TRS.

(b) An appeal made pursuant to subsection (a) of this section shall be made in writing and must be received by TRS no later than 45 days after the date of denial. The appeal shall be directed to the
TRS-ActiveCare Grievance Administrator. TRS may, at its sole discretion, provide a copy of the appeal to the administering firm or the participating entity that denied enrollment.

(c) An appeal made pursuant to subsection (a) of this section shall state the basis for appeal and shall include all relevant documents and correspondence that were considered by TRS, the administering firm, or a participating entity when the enrollment was denied. The administering firm or participating entity is required, upon request by TRS, to participate in the process.

(d) The TRS Appeal Committee ("Committee") is responsible for the review and determination of appeals made pursuant to subsection (a) of this section. The Committee shall be appointed by the TRS Deputy Director or, if the position of the Deputy Director is vacant, the TRS Chief Financial Officer and shall serve at the discretion of the Deputy Director or, if the position of the Deputy Director is vacant, the Chief Financial Officer.

(e) In determining eligibility for enrollment, the Committee shall apply the TRS-ActiveCare plan design and rules in effect for the plan year in which the Petitioner is seeking enrollment. If TRS finds that extraordinary circumstances constituting "good cause" prevented the Petitioner from complying fully with a deadline established by TRS under the TRS-ActiveCare plan design or rules, the appeal may be granted. For purposes of this subsection, "good cause" means that a person's failure to act was not because of a lack of due diligence the exercise of which would have caused a reasonable person to take prompt and timely action. A failure to act based on ignorance of the law or facts reasonably discoverable through the exercise of due diligence does not constitute good cause. If a person was reasonably prevented from complying with a deadline as a result of an unexpected natural disaster or sudden catastrophic event, that event may constitute "good cause" even though the event occurs on or near a deadline and arguably Petitioner could have met the deadline if Petitioner had acted sooner. Misinformation concerning a deadline provided to Petitioner by either TRS, the health plan administrator of TRS-ActiveCare, or a participating entity, and relied upon by Petitioner, may be grounds for "good cause" if the act of providing misinformation to Petitioner is documented or substantiated and a reasonable person would have relied on the information provided to Petitioner and reasonably would not have known the information provided to Petitioner was inaccurate.

(f) The Committee shall notify the Petitioner, the administering firm, and the participating entity of its decision in writing.

(g) If the Committee determines that the enrollment should be allowed, it shall inform the Petitioner, the administering firm, and the participating entity of the manner and effective date of enrollment by the Petitioner.

(h) The Petitioner may appeal the written decision of the [TRS Appeal] Committee relating to eligibility to the executive director.

(1) A request for an appeal to the executive director must be submitted by the Petitioner in writing and must be received by TRS by the later of: [no later than]

(A) 30 days after the date [of] the initial written decision by the [TRS Appeal] Committee is mailed, or []

(B) a number of days after the decision of the Committee is mailed equal to the number of days it took the Committee to issue its decision.

(2) The number of days it took the Committee to issue its decision is calculated from the date TRS received the Petitioner's appeal made pursuant to subsection (a) of this section to the date TRS mailed the Committee's decision.

(3) The request for an appeal to the executive director shall be directed to the attention of the TRS-ActiveCare Grievance Administrator.

(4) Subject to subsection (i) of this section and pursuant to the delegation of authority through this section, the decision of the executive director is the final decision of TRS.

(i) The Committee shall review an appeal made pursuant to subsection (a) or (h) of this section for timeliness and may deny an appeal that is not timely received by TRS. An appeal made pursuant to subsection (a) or (h) of this section that is denied because TRS did not timely receive the appeal is a final decision by TRS.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2019.
TRD-201905017
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 542-6524

CHAPTER 43. CONTESTED CASES
34 TAC §§43.1, 43.3, 43.5, 43.6, 43.8 - 43.10, 43.12

The Teacher Retirement System of Texas (TRS) proposes amendments to 34 TAC §§43.1, relating to administrative review of individual requests, 43.3, relating to definitions, 43.5, relating to request for adjudicative hearing, 43.6, relating to filing of documents, 43.8, relating to extensions, 43.9, relating to docketing of appeal for adjudicative hearing and dismissal for failure to obtain setting, 43.10, relating to authority to grant relief, and 43.12, relating to forms of petitions and other pleadings.

BACKGROUND AND PURPOSE

Chapter 43 addresses procedures for appeals of administrative decisions and contested cases relating to the TRS pension plan. TRS proposes amendments to §43.1 and §43.9 to streamline and simplify the benefit administrative appeals process. Proposed amended §43.1 authorizes the Chief Benefit Officer to make the final administrative decision of TRS and clarifies the administrative appeal process for members applying for disability retirement. Proposed amended §43.9 authorizes the Chief Operations and Administration Officer to review petitions for adjudicative hearing for docketing. In addition, the proposed amended §43.5 implements House Bill 2629, enacted by the 86th Texas Legislature, which requires TRS to modify the deadline for members or retirees to appeal a final administrative decision of TRS by affording a members or retirees at least the same amount of time to file such an appeal as TRS had to issue the final administrative decision. Lastly, TRS makes non-substantive conforming and modernizing changes to the rule text in §§43.3, 43.6, 43.8, 43.10, and 43.12.

FISCAL NOTE
Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rules will be in effect, there will be no foreseeable fiscal implications
to state or local governments as a result of administering the proposed amended rules.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amended rules will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the amended rules will be to streamline and simplify the benefit administrative appeals process and to conform the administrative appeals process with new statutory requirements. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed amended rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rules. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amended rule will be in effect, the proposed amendments will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule’s applicability; and will not affect the state’s economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed amended rules, therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rules because they do not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the Texas Register.

STATUTORY AUTHORITY

The proposed amended rules are proposed under the authority of Government Code §825.102, which authorizes the Board to adopt rules for eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the Board; Government Code §825.115(b), which authorizes the Board to adopt rules relating to the authority of the Board to make a final decision in a contested case or delegate its authority; and under Government Code §825.521, which provides that in adopting rules relating to appeals, the board of trustees shall ensure that rules establishing deadlines for the filing of an appeal afford a member or retiree at least the same amount of time to file an appeal as the retirement system has to issue the retirement system’s decision.

CROSS-REFERENCE TO STATUTE

The proposed amended rules implement the following sections or chapters of the Government Code: §825.101, concerning the general administration of the retirement system; §825.115, concerning the applicability of certain laws; and §825.204, concerning the TRS Medical Board.

§43.1. Administrative Review of Individual Requests.

(a) Organization. TRS (The Teacher Retirement System of Texas (TRS)) is divided into administrative divisions, which are further divided into departments, for the efficient implementation of its duties. Any person who desires any action from TRS must consult with the proper department within TRS and comply with all proper requirements for completing forms and providing information to that department.

(b) Final administrative decision by chief benefit officer [deputy director]. In the event that a person is adversely affected by a determination, decision, or action of department personnel, the person may appeal the determination, decision, or action [make a request] to the appropriate manager within the department, and then to the chief benefit officer of TRS [of the division, and then to the deputy director]. The chief benefit officer [deputy director] shall mail a final written administrative decision, which shall include:

1. The chief benefit officer’s determination regarding the person’s appeal and reasons for denying the appeal, if applicable; and

2. A statement that if the person is adversely affected by the decision, the person may request an adjudicative hearing to appeal the decision [to the executive director] and the deadline for doing so.

(c) A person adversely affected by a decision of the chief benefit officer [deputy director] may request an adjudicative hearing to appeal the decision of the chief benefit officer [to the executive director of TRS] as provided in §43.5 of this chapter (relating to Request for Adjudicative Hearing). The deputy [executive] director shall determine whether the appeal should be docketed and set for a contested case hearing pursuant to §43.9 of this chapter (relating to Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting).

(d) Final administrative decision by Medical Board. In the event that the Medical Board does not certify disability of a member under Government Code, §824.303(b), or the Medical Board certifies that a disability retiree is no longer mentally or physically incapacitated for the performance of duty under Government Code, §824.307(a), the member or retiree may request reconsideration and submit additional information to the Medical Board. The Medical Board shall consider a request for reconsideration and additional information and make a determination on the disability of the member or retiree. If a request for reconsideration has been denied, a member or retiree may appeal the decision [an adverse final administrative decision of the Medical Board to the TRS Board of Trustees] by requesting an adjudicative hearing as provided in §43.5 of this chapter. [A final administrative decision of the Medical Board shall include a statement of whether the member or retiree may request additional reconsideration or may appeal the decision to the board, as well as the deadline for doing so.] The deputy [executive] director shall [is authorized to] determine whether the [an] appeal [of a Medical Board decision] should be docketed and set for a

PROPOSED RULES January 10, 2020 45 TexReg 331
contested case hearing pursuant to §43.9 of this chapter [and to make other procedural decisions relating to such an appeal].

(e) [§43.3.] Applicability. The procedures of this chapter apply only to administrative decisions, appeals, and adjudicative hearings relating to the TRS pension plan, unless rules relating to other programs specifically adopt by reference the provisions of this chapter.

§43.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Adjudicative hearing--An evidentiary hearing in a contested case, as provided by Government Code, §2001.054 and paragraph (5) of this section.

(2) Administrative law judge--An individual appointed to conduct the adjudicative hearing in a contested case. The deputy director [Executive Director] may refer an appeal to be heard by an administrative law judge employed by the State Office of Administrative Hearings or may employ, select, or contract for the services of another administrative law judge or hearing examiner to conduct a hearing.

(3) Board--The Board of Trustees of TRS [the Teacher Retirement System of Texas (TRS)].

(4) Chief Benefit Officer--the Chief Benefit Officer of TRS or person acting in that position.

(5) Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by TRS after an opportunity for adjudicative hearing on a matter over which TRS has jurisdiction and authority to grant relief and the relief sought does not conflict with the terms of the pension plan.

(6) Deputy Director--The Deputy Director of TRS or person acting in that position.

(7) Executive director--The executive director of TRS or person acting in that position; when the executive director determines that a need exists, the executive director at his or her discretion may designate a person to accomplish the duties assigned in this chapter to the executive director.

(8) Final administrative decision--An action, determination, or decision by the chief benefit officer [deputy director] or the Medical Board, as applicable, based on review of a person's request on an administrative basis (i.e., without an adjudicative hearing).

(9) Final decision of TRS--A decision that may not be appealed further within TRS, either because of exhaustion of all opportunities for appeal within TRS or because of a failure to appeal the decision further within TRS in the manner provided for in this chapter.

(10) Hearing--The trial-like portion of the contested case proceeding that is handled by an administrative law judge after the Executive Director of TRS docket an appeal.

(11) Medical board--The medical board appointed by the TRS board of trustees under Government Code, §825.204.

(12) Order--The whole or a part of the final disposition of an appeal, whether affirmative, negative, injunctive, or declaratory in form, of the executive director, deputy director, or the board in a contested case.

(13) Party--Each person named or admitted in a contested case.

(14) Person--Any natural person or other legal entity.

(15) Pleading--A written document that is submitted by a party, by TRS staff, or by a person seeking to participate in a case as a party and that requests procedural or substantive relief, makes claims or allegations, presents legal arguments, or otherwise addresses matters involved in a contested case.

(16) SOAH--The State Office of Administrative Hearings.

(17) State Office of Administrative Hearings--The state agency established by Chapter 2003, Government Code, which may serve as the forum for the conduct of an adjudicative hearing upon referral of an appeal by TRS.

(18) Third party respondent or petitioner--A person joined as an additional party to a proceeding; a party shall be designated as either a third party respondent or third party petitioner based on whether the person opposes the action requested in the petition or supports it or whether the person's interests are aligned with petitioner or respondent.

(19) TRS--The Teacher Retirement System of Texas.

(20) Trustee--One of the members of the board.

(21) With prejudice--Barring a subsequent contested case on the same claim, allegation, or cause of action.

§43.5. Request for Adjudicative Hearing.

(a) On a matter over which TRS has jurisdiction and authority to grant relief that does not conflict with the terms of the pension plan, a person [party] may appeal a final administrative decision by filing a petition for adjudicative hearing with the deputy [executive] director [no later than 45 days after the date the final administrative decision is mailed]. The petition shall conform to the requirements of §43.12 of this chapter (relating to Form of Petitions and Other Pleadings).

(b) A petition for adjudicative hearing must be filed by the later of:

(1) 45 days after the date the final administrative decision is mailed; or

(2) a number of days after the final administrative decision is mailed equal to the number of days it took TRS to issue the final administrative decision.

(c) The number of days it took TRS to issue the final administrative decision is calculated from the date TRS received the person's appeal of the department manager's decision to the date TRS mailed the final administrative decision.

§43.6. Filing of Documents.

All documents relating to any appeal of a final administrative decision [pending or to be instituted before the executive director or the board] shall be filed with the deputy [executive] director at TRS, 1000 Red River Street, Austin, Texas 78701-2698. A document may be filed with TRS by hand-delivery, courier-receipted delivery, facsimile transmission, or regular, certified, or registered mail. A document is deemed filed when mailed if it is received by TRS within a timely manner under Texas Rule of Civil Procedure 5 and the sender provides adequate proof of the mailing date. If the deputy [executive] director has docketed an appeal and referred it for an adjudicative hearing, documents
shall be filed with the administrative law judge and a copy provided to the TRS docket clerk during the time the matter is pending before the administrative law judge.

§43.8. Extensions.

Unless otherwise provided by statute, the time for filing pleadings or other documents may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with its filing. In the case of filings that initiate a proceeding or that are made before an appeal has been referred for an adjudicative hearing, the 


deputy [executive] 

director will determine whether good cause exists and whether an extension should be granted. In the case of filings made in a proceeding after TRS has referred the appeal for an adjudicative hearing, rules governing hearings before SOAH will control so long as the matter is before SOAH. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the conduct of the hearing while pending before the hearing official. For matters returned by an administrative law judge or hearing examiner to TRS, either through dismissal from the adjudicative hearing docket or through issuance of a proposal for decision, the executive director may determine whether good cause exists and whether an extension should be granted. The executive director is authorized to rule on motions for extensions on matters directed to the Board if no Board meeting is scheduled before the expiration of the applicable period of time.

§43.9. Docketing of Appeal for Adjudicative Hearing and Dismissal for Failure to Obtain Setting.

(a) On an appeal over which TRS has jurisdiction, authority to grant relief, in which the relief requested is consistent with the terms of the plan, and that otherwise complies with this chapter, the 

deputy [executive] 

director shall assign the petition a TRS docket number, provide all parties notice of the docket number, and refer the matter for an adjudicative hearing before the State Office of Administrative Hearings or otherwise as authorized by law.

(b) The 

deputy [executive] 

director may decline to docket an appeal over which TRS has no jurisdiction or no authority to grant relief, that seeks relief that is inconsistent with the terms of the pension plan, that is not timely filed, or that otherwise fails to comply with this chapter. The decision of the director is final.

(c) Prior to docketing an appeal, the 

deputy [executive] 

director [or his designee] may review the request [petition] filed with TRS to determine the sufficiency. If the petition does not materially comply with this chapter, the 

deputy [executive] 

director shall return the petition to the person who filed it, along with reasons for the return. The person shall be given a reasonable time (not to exceed 90 days) to file a corrected petition. If the petition is not corrected to substantially comply with this chapter within the time given, the 

deputy [executive] 

director may decline to docket the appeal.

(d) If a contested case is referred to the SOAH [State Office of Administrative Hearings (SOAH)] for adjudicative hearing, then during the period of time the case is before SOAH, the adjudicative hearing rules for SOAH (1 TAC Chapter 155) shall apply unless inconsistent with applicable statutes or constitutional provisions. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the conduct of the hearing while pending before the hearing official.

(e) A party that files an appeal and causes a matter to be docketed and referred to for adjudicative hearing shall have the responsibility of prosecuting the appeal within a reasonable time period. TRS may seek dismissal with prejudice of an appeal if a responsible party fails to obtain a setting for a hearing on the merits within two years of referral of the matter for an adjudicative hearing.

§43.10. Authority to Grant Relief.

At any time before an appeal is referred for adjudicative hearing, the 

deputy [executive] 

director or, in the matter of certification for disability retirement, the Medical Board may grant the relief sought by the petitioner and dismiss the appeal, provided that the interest of other individual parties are not adversely affected and the relief does not conflict with the terms of the pension plan. If a matter has been referred to SOAH, the SOAH administrative law judge may dismiss the case from the SOAH docket in accordance with SOAH rules. If a matter is referred for an adjudicative hearing to a hearing official not affiliated with SOAH, then the rules of this chapter shall apply to the dismissal of the case.

§43.12. Form of Petitions and Other Pleadings.

(a) Petitions, briefs, and other pleadings shall be typed or printed on paper not to exceed 8 1/2 inches by 11 inches with an inside margin of at least one inch width. Annexed exhibits shall be folded to the same size. Only one side of the paper shall be used. Copies may be used, provided they are clear and permanently legible.

(b) The pleadings shall state their object and shall contain a concise statement of the supporting facts. The petition appealing a final administrative decision and requesting an adjudicative hearing shall specify the action desired from TRS and shall be filed with TRS, directed to the attention of the 

deputy [executive] 

director.

(c) The original of any pleading filed with TRS shall be signed in permanent ink by the person filing it, or by his authorized representative. Pleadings shall contain the address, telephone number, and email address of the party filing the documents or the name, business address, telephone number, email address, and fax number of counsel.

(d) The original petition for an adjudicative hearing should also include the name, address, telephone number, and email address of petitioner and the name, address, telephone number, email address, and, if known, the tax number of any member whose interest or whose beneficiary's interest may be involved in the case. In lieu of the tax number, the petition may include other information sufficient to identify the member or beneficiary whose interest may be involved in the case. The petition should further identify all persons who may have a material interest in the outcome of the case, the basis for that interest, and such person's last known address, telephone number, and email address. If such information is not provided on the original petition, the executive director, board of trustees, or administrative law judge may require submission of such information before proceeding with the hearing.

(e) Pleadings should be styled: "Petition of (Name of Petitioner)." If a TRS, SOAH, or other adjudicative hearing docket number has been assigned, pleadings shall contain the docket number.

(f) All pleadings shall contain the following:

(1) the name of the party filing the pleading;
(2) a concise statement of the facts relied upon by the party;
(3) a request stating the type of relief, action, or order desired by the party;
(4) a certificate of service conforming to subsection (g) of this section; and
(5) any other matter required by statute.

(g) Written pleadings [other than the original petition] may be served by hand-delivery, courier-receipted delivery, fax [facsimile transmission], or regular, certified, or registered mail upon all other known parties of record, and a certification of such service should be submitted with the original copy of the pleading filed with TRS. If a party is represented by an attorney, service may be made upon a party by serving the attorney of record. The following form of certification will be sufficient: "I hereby certify that I have this ____ day of ______, 20__, served copies of the foregoing pleading upon all other parties to this proceeding, by (state the manner of service). Signature."

(h) A party may object to the form or sufficiency of a pleading by filing the objections in writing at least 15 days before the hearing date. If the objections are sustained, the administrative law judge shall allow a reasonable time for amendment.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2019.

TRD-201905015
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: February 9, 2020
For further information, please call: (512) 542-6560

45 TexReg 334   January 10, 2020   Texas Register