

The Texas Commission on Environmental Quality (agency, commission or TCEQ) adopts the repeal of §§335.401 - 335.403 and 335.405 - 335.412. Simultaneously, the commission adopts new §§335.401 - 335.403, 335.405, 335.407, 335.409, 335.411, 335.413, 335.415, 335.417, and 335.419

The commission adopts the repealed sections and new §335.415 and §335.419 *without changes* as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1239) and will not be republished. The commission adopts new §§335.401 - 335.403, 335.405, 335.407, 335.409, 335.411, 335.413, and 335.417 *with changes* to the proposed text.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

In order to make substantial reorganization and amendments to the previous rules, the commission adopts new rules for household hazardous waste (HHW) concurrently with the repeal of the previous rules for HHW. The adopted rules revise and reorganize the rules for the commission's HHW program. The commission encourages the collection of HHW for reuse, for recycling, or for its eventual disposal or processing by a method appropriate for hazardous waste.

HHW is household generated waste that would be classified as hazardous waste except for an exclusion in federal rules. Wastes from households are specifically excluded from classification as hazardous waste by the United States Environmental Protection Agency (EPA) under 40 Code of Federal Regulations (CFR) §261.4(b)(1), which specifies that these wastes are solid waste. The wastes from households that would be hazardous waste except for the exclusion are termed "hazardous household waste" or "household hazardous waste" (the terms have the same meaning and are often abbreviated using the acronym "HHW"). The exemption is based on the EPA's determination that Congress did not intend to impose the

hazardous waste program requirements on wastes generated by household consumers. Although HHW is exempted from regulation as hazardous waste, HHW may present the same properties, characteristics, and safety concerns as hazardous waste. Because the collection of HHW involves aggregating relatively large volumes of hazardous materials in a relatively small area, proper practices and proper disposal or processing are needed for the collections to occur safely and to avoid any adverse impacts. The legislature requires by statute that the commission provide rules covering standards for HHW collections and training of staff working at collections. These rules provide the standards for HHW collections and cover the requirements for training staff to conduct the collections safely.

As solid waste, these materials can usually be disposed in the normal municipal solid waste stream and sent to a landfill (if accepted by the landfill). However, because there are better disposal and processing options available, some entities choose to collect HHW from the public and manage it by having it reused for its intended purpose or having it recycled, processed, or disposed as hazardous waste. Typical HHW includes some solvents, pesticides, paints, cleaning products, fuels, automotive fluids, batteries, and other consumer products from households that would be hazardous waste when disposed except for the federal exclusion for household wastes. Because these household wastes are exempt from hazardous waste regulation, they can be disposed of as municipal solid waste unless there are other laws or regulations limiting such disposal (such as for lead acid batteries). However, these wastes may include chemicals or constituents that can pose a risk to human health and the environment if not managed appropriately. Communities and other entities throughout the state have organized voluntary efforts to collect HHW to reduce the volume of these products disposed in municipal waste landfills and to reduce the likelihood that they will be disposed improperly. These collection programs bring in HHW materials that can be reused for their intended purpose or that are recycled, processed, or disposed of as hazardous waste.

These rules establish the requirements for the collection of HHW and other wastes through such programs.

The original rules for HHW collections were adopted in 1988 as joint rules between the Texas Water Commission (TWC) and the Texas Department of Health (TDH). At that time the TWC had jurisdiction over hazardous waste, and the TDH had jurisdiction over municipal solid waste. After jurisdiction for all solid waste was transferred to the commission, the rules were revised in 2001 primarily changing references from the two former agencies to the commission. Because the name of the commission subsequently changed, the name is updated as needed throughout the rules. Because of the extent of the reorganization and revisions to the previous HHW rules, the commission repeals the previous requirements and adopts new rules in replacement. This rulemaking adopts the new, revised, and continued provisions for HHW collection activities.

Various approaches are used to collect HHW. Some entities organize one-time or recurrent events where residents may bring their HHW for collection and proper reuse, disposal, or processing. Others have special vehicles that can pick up the wastes from individual households. Other entities have permanent collection facilities open for various days and hours year-round where individuals can bring their HHW for reuse or shipment for proper processing or disposal. Some entities offer as much HHW for reuse as possible, while others focus entirely on aggregating the wastes for disposal or processing. In the 20 years since the rules were first promulgated, new approaches and methods for these collections have developed, which were not covered in the previous rules.

To identify issues that should be addressed in the rule revisions, the commission requested open input from any interested parties on the previous rules prior to drafting revisions. The only stakeholders who provided input were entities involved with HHW collection programs, but there was not consensus in the input that was provided. Some stakeholders requested significant changes to the rules, but other stakeholders indicated that only minor changes should be made. Some issues from stakeholders and other issues identified by the commission in administering the program are addressed in the revisions to the rules.

One development in HHW collection programs is the use of mobile collection units to hold collection events in areas convenient to the public rather than at a fixed facility. A mobile collection unit is a vehicle, trailer, or both that can be moved to different locations and that is designed to facilitate the acceptance, classification, storage, and transport of HHW. The previous rules did not contemplate or address the use of such mobile units, and some stakeholders indicated that various provisions should be added. The adoption specifies the requirements that are applicable to mobile collection units, with changes from the proposal based on public comment.

A second development that some stakeholders indicated should be addressed in the rule revisions is satellite collection areas, which are small fixed facilities that are located in places convenient to the public. While there are no collection programs in Texas using satellite collection areas currently, some stakeholders indicated that they would like provisions to be added for such sites, as either manned or unmanned drop-off stations for HHW. The adopted amendments allow for manned stations as permanent collection centers, but unmanned stations present significant risks and are not allowed under the previous or the adopted rules. Without staff on site to ensure that incompatible wastes are properly separated and

stored and to ensure that open or leaking containers are properly secured, unmanned drop-off stations present significant risks to the public and the environment. Because manned stations are the same as permanent collection centers, the adopted rules allow these facilities to be subject to the same requirements as any other permanent collection center. Based on public comment, the rules are changed at adoption to allow consolidation of wastes among operators.

The commission's rules address only the collection of wastes from households. Some stakeholders asked that HHW programs be allowed to accept hazardous waste from conditionally exempt small quantity generators (CESQGs). CESQG waste is hazardous waste generated in small volumes that is exempt from the disposal and processing requirements for hazardous wastes so long as the waste generator meets certain conditions to maintain the exemption. Like HHW, hazardous waste from CESQGs can be placed in the normal municipal solid waste stream for disposal in a landfill (if accepted by the landfill), although it may include small amounts of acutely hazardous waste, which may be more hazardous than materials generally present in consumer products. Currently, HHW collection programs must prohibit the acceptance of any hazardous wastes or any Class 1 wastes from industry. Allowing HHW operations to collect hazardous waste would not be appropriate for HHW programs that operate under the limited oversight by the commission. The commission is not changing this prohibition because this rule change would require expanding the scope of HHW activities to include commercial, industrial, and hazardous waste activities and the amending other parts of Chapter 335 that are not covered in this rulemaking. To meet other requirements in this chapter for accepting CESQG wastes, HHW facilities would need to be permitted by the commission.

In addition to updating and reorganizing the rules for the HHW program, the commission adopts certain other changes as well. Based on stakeholder input, the changes shorten the deadline for notifying the agency of collection activities to 45 days, rather than 90 days, in advance of starting a collection. This decreased notice time should provide sufficient time for the agency to review notifications and should allow HHW collection planners greater flexibility. The commission is eliminating the requirement that a detailed operational plan be submitted to the agency in advance of HHW collection activities. Rather, the commission requires that HHW operators prepare and implement a detailed operational plan, and make the plan available for agency review upon request. There is certain information previously required for operational plans that the agency will need to continue to review. The commission incorporates this information into the new notification requirements. The time in advance that HHW programs need to determine this information is not changed because the new deadline for notifications is the same as the previous deadline for operational plans (45 days).

Another adopted change is to provide more emphasis and specificity to the training requirements for people involved in HHW collections. By statute, the HHW rules must cover training requirements, but there has been some confusion in the regulated community on what training is actually needed. The commission is amending the rules to make the requirements clearer for the content of the training and the connection of certain training to specific job functions. Based on public comment, changes to the rules are made at adoption for the training requirements, as discussed below.

SECTION BY SECTION DISCUSSION

The title of Subchapter N is changed from "Household Materials Which Could be Classified as Hazardous Waste" to "Household Hazardous Wastes." In the two sections of the Texas Health and Safety Code that

require that the commission provide rules for HHW collections, these two phrases are used as the title of the sections. Because "Household Hazardous Waste" is the term most often used in Texas for this waste, the use of this term throughout the rules provides clarity and consistency.

Where appropriate throughout the rules, the amendments add the term "reuse" to the types of activities covered by the provisions because this activity is included in the rules. "Reuse" refers to the use of a product received in an HHW collection for its intended purpose, rather than recycling or disposing the material. "Recycling" in the rules refers to the use of a waste as the raw material for a new product or to the burning of a waste as a fuel for energy recovery.

Because of the distinction between the definitions of "disposal" and "processing" in Chapter 335, the term "processing" is added where appropriate throughout the rules to the parts in the previous rules that relate to disposal. The term "disposal" in the rules refers to the placement or discharge of wastes to land or water (such as in a landfill or injection well). The term "processing" in the rules refers to the proper treatment or destruction of the material to eliminate its hazardous properties or reduce its volume (such as incineration or burning for energy recovery). Where needed grammatically in the rules, the verbs "dispose" and "process" are used in place of "disposal" and "processing" respectively, for the same reasons. The addition of "processing" in the rules is for clarity rather than to expand the rules. The previous rules included processing in the requirements for disposal.

Where appropriate throughout the rules, the amendments change "and/or" to other grammatical constructions. Where appropriate throughout the rules when needed to clarify that any combination of listed items, actions, etc. are covered by a rule provision, the words "and" and "or" are also changed to

other grammatical constructions. The use of the alternative constructions is meant to clarify the full coverage of a provision that might otherwise not be clear to the regulated community, without resorting to usage of "and/or" per the standards of the *Texas Legislative Council Drafting Manual*.

Where appropriate throughout the rules, the words "shall" and "must" are changed to be consistent with the standards of the *Texas Legislative Council Drafting Manual*. The word "shall" is used to indicate an obligation or requirement for a specific person. The word "must" is used to denote a condition precedent, such that the person or thing specified does not meet the applicable designation or requirement unless the condition is met. Where needed, this issue is discussed further for the specific instances in the discussion below.

Permits for hazardous waste facilities specify the types of materials that the facilities can receive and handle. The permits are protective of human health and the environment, so additional requirements in these rules are not needed. When used in the previous rules, the phrasing "authorized by the commission" is changed in the adopted rules to "authorized" in order to avoid any confusion that the rules do not allow HHW to be shipped to other states; facilities in other states still need to be authorized, but their authorization is not from the commission. Because the receiving facilities must also agree to accept the HHW prior to shipment, the phrasing "that have agreed to accept the wastes" is also added in the same places in the rules to clarify that the hazardous waste facilities must agree in advance to accept the HHW.

The original HHW rules were promulgated prior to the development of universal waste rules by the EPA and the commission, and no reference to these rules were added during the revisions made in 2001.

Because a limited variety of HHW is allowed to be shipped as universal wastes, the commission adds

throughout the rules, where it is specified that HHW must be shipped using a uniform hazardous waste manifest, a new provision that HHW can be shipped as universal waste if allowed under the Universal Waste Rule in Chapter 335, Subchapter H, Division 5.

§335.401. Purpose and Applicability.

The commission adopts new §335.401 to establish the purpose and applicability of Subchapter N of Chapter 335. Texas Health and Safety Code, §361.029 and §361.429 require the commission to provide rules and to set standards for HHW collection programs, including the training of personnel. This subchapter establishes the requirements for those who collect; aggregate; offer for reuse, recycle, transport, process; or dispose of HHW. New §335.401(a) includes "aggregate," "offer for reuse," and "transport" to the list of activities covered by this subchapter, because these activities have been and will continue to be regulated by the subchapter, and clarifies that any combination of the activities is covered.

In new §335.401(b), the commission adopts that the requirements of Subchapter N apply to persons who collect, aggregate, or store HHW for offering for reuse, recycling, processing, or disposal; provide a point of generation pick-up service; operate a mobile collection unit; operate a collection event; operate a permanent collection center; transport aggregated HHW; own or operate a hazardous waste processing, storage, or disposal facility receiving HHW from the public or households; or engage in any combination of these activities. The revisions change the former provisions in previous §335.405 in the following ways: 1) by specifying that any combination of activities is covered; 2) by adding "store" after "collect" and "aggregate," adding "offering for reuse" before "recycling, or disposal," and inserting "processing" between "recycling" and "disposal"; 3) by adding "operate a mobile collection unit"; and 4) by changing the previous "transport any hazardous waste required by this subchapter to be manifested" to "transport

any aggregated household hazardous waste." In each case, both the previous and adopted rules regulate these activities, so the changes are made for clarity. The change in regards to transportation is made because HHW transported by point of generation pick-up services and by mobile collection units or transported as universal waste (if allowed) does not need to be manifested, but its transport is still regulated under these rules.

The adoption also specifies that only hazardous waste processing, storage, or disposal facilities that receive HHW directly from the public are covered by this subchapter. The commission removes the previous provisions for hazardous waste facilities that receive HHW from collection programs because hazardous waste permits provide adequate oversight for the handling of HHW. Processing, storage, or disposal facilities that receive HHW directly from households are only required to report to the commission the amounts received from households (rather than collection programs).

In new §335.401(c), the commission adopts several exclusions for certain types of operations. The requirements of Subchapter N do not apply to collection programs that collect any combination of batteries, used oil, and paint, as long as no other HHW is collected. These types of collections are often called battery, oil, paint, and antifreeze collections. Because these materials generally do not present substantial hazards in collections, there is no need for additional regulation of these activities by themselves. The collections often take materials that do not normally have characteristics of hazardous waste, such as antifreeze and tires, which do not significantly increase the hazards associated with collecting the materials. Based on public comment, the term "antifreeze" is added at adoption to the list of materials that can be accepted under the exclusion; although antifreeze is generally not HHW, the

addition clarifies that this waste stream can be accepted even if it does have a characteristic of hazardous waste. The new exclusion expands the previous exclusion for collections of used oil or lead acid batteries.

The commission adopts a new exclusion that the requirements of Subchapter N do not apply to collection programs that receive *de minimis* amounts of HHW (i.e., collection of less than 100 pounds of HHW per year). Because the amounts involved are about the same as might be expected from a household, the collection does not present any more risk than normal household disposal of HHW.

The commission adopts a new exclusion that the requirements of Subchapter N do not apply to retail businesses that take wastes from customers that are similar in nature to the products sold by the business. Some retailers, such as those selling lead acid batteries, are required by law to accept back from customers used products. Other retailers, such as many that sell motor oil, offer such services to their customers. Because these programs accept limited varieties of waste from many sources (households, businesses, government, etc.) which could conflict with the prohibition in these rules from accepting hazardous waste along with HHW, these programs should not be subject to these rules. The limited variety of wastes avoids much of the potential risk from general HHW collections, and the risks from used products are generally similar to those for new items in stock so there is little risk from retailers handling such wastes.

The commission adopts a new exclusion that the requirements of Subchapter N do not apply to collections primarily intended to receive wastes from agricultural operations that also take incidental amounts of HHW, if there is no fee charged for taking wastes and if registered transporters are used to take the collected wastes to hazardous waste processing, storage, or disposal facilities. The commission is

not adding a provision for pesticides shipped as universal wastes because this addition would make this exclusion too broad. The collections are generally held in or near rural areas for farmers and others involved with agriculture. In many cases, household wastes from farms are brought with the wastes from agricultural operations, and their acceptance does not present any increased risk for the collection activities.

The commission adopts a new exclusion that the requirements of Subchapter N do not apply to the collection of used electronics for reuse. When electronic items are received for later evaluation of whether they are still useful and are handled in a manner that does not break them, these materials are not HHW. The exclusion is adopted because of some misunderstanding of this issue in the regulated community.

In new §335.401(d), the commission provides that the executive director may waive the requirements of this subchapter when necessary during emergencies or disasters. This provision anticipates occasions, such as flood and hurricane recovery efforts, when immediate action is required to safely collect HHW for appropriate processing or disposal. During emergency responses, there is not time available for submitting notifications and developing operational plans weeks in advance of collecting HHW. The disruption of trash collection services that often occurs in such circumstances may inhibit citizens' abilities to dispose of HHW appropriately and may increase risks of improper storage or disposal. This change provides for suspending any parts of the rules by the executive director in any extraordinary circumstance where this action is needed to protect human health and the environment.

§335.402. Definitions.

The commission adopts new §335.402 to establish definitions of terms used in Subchapter N. For clarity, language is added to the introductory paragraph of the section to note that the definitions in 30 TAC Chapter 3 and §335.1 apply to Subchapter N. The previous definition of "aggregate" is expanded to include the different types of HHW programs defined in the rules and to include reuse as an option for disposition of collected HHW.

The previous definition of "collection center" is divided into new definitions of "collection event" and "permanent collection center" based primarily on whether HHW is stored for 48 hours or longer to allow distinctions between these types of programs in the rules because of the greater risks associated with longer term storage. As used in Chapter 335, the term "storage" includes, for one-day collection events, the time between the start of filling a shipping container and its being transported. Although this period is generally much less than 24 hours for one-day collections, the period of "less than 24 hours" was proposed in the definition of "collection event" to allow flexibility to conduct very large or very long one-day collection events by ensuring sufficient time to package collected wastes for transport. Based on public comment, the commission is changing the definitions at adoption to allow a 48-hour period for a collection event to complete its work, as discussed below in the Response to Comment section.

The previous definitions of "collector," "hazardous waste processing, storage, and disposal facility," and "household" are retained in the new rule. The previous definitions of "division" and "recurring collection program" are not included in the new rule because these terms are not used in the revised rules. The previous definition of "hazardous household waste" is changed to "household hazardous waste," to reflect

common usage, and is based on the exemption provided in 40 CFR §261.4(b)(1). The term can be used interchangeably with the term "hazardous household waste," as noted in the definition.

The revisions add a definition for "inclement weather" to clarify that collections need to be prepared for severe weather, high winds, and temperature extremes, rather than just minor rain events. A new definition of "mobile collection unit" is adopted to allow this type of collection program under the rules.

A new definition for "operator" is adopted because the definition of this term in §335.1 is limited to operators of hazardous waste facilities; however, because the term is also used in the revised rules for operators of hazardous waste processing, storage, or disposal facilities, the definition also incorporates the definition from §335.1 when the context clearly refers to operators of hazardous waste processing, storage, or disposal facilities. The commission adopts a new definition for "personnel" because the definition of this term in §335.1 is limited to hazardous waste and industrial solid waste facilities, which do not include HHW operations; similar to the definition in §335.1, the definition includes all operator staff, contractor staff, and volunteers at an HHW facility whose duties could have a direct impact on compliance with this subchapter. A new definition of "point of generation pick-up service" ensures clarity of the use of the term in the rules; the definition covers all collections done by an operator where HHW is received directly from residents at households or is left out for collection at households (as opposed to being brought to a central location by individuals).

§335.403. General Requirements for Household Hazardous Waste Collections.

The commission adopts new §335.403 to establish the general requirements for HHW collections. In new §335.403(a), the commission mandates that, except for an owner or operator of a hazardous waste

processing, storage, or disposal facility, no person can engage in activities regulated by this subchapter without first submitting a notification to the executive director.

In new §335.403(b), the commission adopts provisions for the required notifications. Using a form provided by the commission, an operator must submit a notification to the executive director 45 days prior to starting HHW collection activities and must resubmit a notification for on-going collection operations whenever information in the previous notification changes. At adoption in response to comments, the commission is changing the proposed requirement that an original signed notification must be submitted in order to allow electronic versions or facsimile transmittals of notifications (i.e., signed notifications that are not original copies); this change will provide additional flexibility for HHW programs in the manner in which notifications are submitted. In response to public comments, the commission adds at adoption that inclement weather dates must be provided on notifications if applicable.

The commission specifies that separate notifications be submitted for each collection location to be used, but that multiple collections at a single location may be covered in a single notification if all information is the same other than the dates. Because multiple locations on a single notification could make it difficult to determine which information pertains to each site, the commission is limiting the multiple entries on a single notification to the part of the notification where the multiple entries have been provided most commonly in the past (i.e., multiple dates). The commission requires that a notification include: 1) the identification of the operator and contact person and contact information for each; 2) the dates and hours of operation, as well as inclement weather dates if appropriate; 3) both the address of the property and location of the collection site on the property for collection events, permanent collection centers, and collections using mobile collection units; 4) for point of generation collection units and mobile collection

units, the address of the collection event, permanent collection center, or registered hazardous waste transporter facility where the collected wastes will be delivered or a statement that the aggregated HHW will be transported to a processing, storage, or disposal facility (for cases where a registered hazardous waste transporter will take the HHW at the point of collection); 5) the name of the owner of the property to be used for holding collections, and an attached letter granting permission for use (signed by the landowner or his designated representative); 6) areas to be served by collection activities; 7) types by waste category of materials expected to be collected; 8) for permanent collection centers (including any sites where HHW is stored for 48 hours or longer) a properly completed TCEQ Core Data Form attached; and 9) the planned disposition of collected materials, including the name, address, and EPA identification number for each transporter to be used and each hazardous waste or recycling facility that is planned to receive the wastes collected. The commission is changing at adoption the wording of §335.403(b)(5) to cover delivery of HHW to a registered hazardous waste transporter's facility, in addition to a permanent collection center or collection event. For clarity, additional language is added at adoption to the end of the same paragraph to specify that the statement about HHW being transported to a hazardous waste processing, storage, or disposal facility pertains to cases where registered transporters take the HHW from the collection sites.

For consistency, at adoption the commission is removing from §335.403(b)(6) the phrase "if the owner is different from the operator" such that letters of permission to use a property must be submitted with every notification. The letters must be signed by the landowner or his designated representative. In response to comment, the commission is changing at adoption the period of 24 hours in §335.403(b)(9) (Item 9 previously mentioned) to 48 hours, as discussed further in the Response to Comments section.

The elements of previously required notifications are retained in the revised notifications. The hours of operation of HHW collections and facilities are added to the notification because this information is needed for the commission's oversight of these programs. The address of the collection site, the on-site location of the collection area, the geographic area covered by the collection, the types and approximate amounts of HHW expected, information related to the disposition of aggregated wastes (with the addition of the address for any transporter to be used), and documentation of financial assurance for non-governmental entities conducting HHW collections are moved from the operational plan to the new notification because the commission continues to need to receive this information although the operational plan will no longer be submitted routinely. The TCEQ Core Data Form is added to the information submitted by permanent collection centers (including sites where HHW is stored longer than 48 hours) so that these facilities can be entered into the commission's Central Registry. Documentation of consent of the landowner or their authorized representative to use property not owned by the operator is added to ensure that landowners are aware of and allow the waste collection activities, because cooperation with the landowner may be needed should contamination or other situations require emergency response, corrective action, or other arrangements. The previous requirements that notifications cover the conceptual organization for the collection efforts and details on public information and education efforts are deleted.

In new §335.403(c), the commission requires that owners or operators of private permanent collection centers provide financial assurance along with their notification of operations. The financial assurance mechanism will be required to be an original signed version of a mechanism that is acceptable to the executive director. Prior to filing a notification, operators of non-governmental permanent collection centers are required to provide sufficient information to the executive director to allow the agency to

determine an acceptable amount, format, and type of financial assurance. Operators, other than governmental entities, may not operate permanent collection centers without having financial assurance in place. At adoption, the commission is inserting "center" after "permanent collection" in the first sentence of this subsection; this word was inadvertently omitted in the proposed rule.

In §335.403(d), the commission retains the following operating parameters for HHW collections: 1) the requirement that an operational plan be developed prior to and followed during HHW collection activities; 2) the prohibition against HHW collections accepting hazardous waste or Class 1 industrial waste (the latter term is changed to "Class 1 waste" to be consistent with the definition in §335.1); 3) the requirement that wastes be processed or disposed of only at hazardous waste processing, storage, and disposal facilities that have agreed to accept the wastes; and 4) the requirement to have aggregated HHW from a permanent collection center or collection event transported only by a registered hazardous waste transporter (a provision is added for shipping HHW as universal waste if allowed under the universal waste rules) to a hazardous waste processing, storage, or disposal facility. In response to public comment, the commission is changing §335.403(d)(3) and (4)(A) at adoption to provide for consolidation of wastes among operators, as discussed further in the Response to Comment Section. A requirement was proposed that HHW collected by a mobile collection unit or point of generation pickup service must be delivered to a permanent collection center or collection event or must be transported by a registered hazardous waste transporter; at adoption, this provision at §335.403(d)(4)(B) is expanded to include delivery to a registered hazardous waste transporter's facility.

The commission removes the requirement that operational plans be submitted to the commission and, instead, specifies that HHW programs must follow their plans during collections and use the plans in

training individuals who work at the collections. The commission continues requiring the one-year records retention for HHW collections, but rewords the language for clarity. Because the amounts of wastes collected must be reported to the legislature annually, the commission adds annual reporting requirements for all waste collections covered by this subchapter; at adoption based on public comment, the commission is changing the proposed deadline of February 1st for the previous calendar year to April 1st. The rule requires the use of forms provided by the commission for the reports in order to ensure consistency in the reporting.

Hazardous waste processing, storage, or disposal facilities are subject to permitting requirements that are protective of human health and the environment. In order to accept HHW, their operating permit must allow this activity, although the permit does not need to specifically state that HHW can be accepted. Because the permit process provides sufficient oversight for these types of facilities on how HHW is handled on-site, the commission in new §335.403(e) specifies that hazardous waste processing, storage, or disposal facilities that accept HHW directly from the public are subject only to the reporting requirements of this section, as long as their operating permits allow HHW to be accepted. In order to clarify that the operating permit of the hazardous waste processing, storage, or disposal facility does not need to specifically state that HHW can be accepted, at adoption the commission is changing the phrase in the proposed rule "authorized in their operating permit" to "authorized by their operating permit." The hazardous waste facilities can accept HHW unless their operating permit prohibits this action.

§335.405. Operational Plans.

The commission adopts new §335.405 to establish detailed requirements for developing, revising, retaining, and following operational plans for HHW collections. The purpose of an operational plan is to

ensure both that a collection is properly planned and conducted and that personnel are properly trained on the plans and procedures for the specific collection. The commission retains the previous requirement that any person collecting HHW develop and maintain an operational plan, and the commission adds provisions both that the operational plan must be maintained in certain locations and that the operational plan must be provided to the executive director upon request.

The commission retains the requirements that operational plans contain certain information, but there are some changes on the specific information required. The expected types and amounts of HHW and other household wastes proposed for collection were previously required and are still needed for efficient planning of HHW collection operations; this information is still required in the operational plan, as well as covered in the notification. The commission adds a requirement in §335.405(a)(2) that an operational plan must describe the types and amounts of HHW that will be accepted by or transferred to a collection event or permanent collection center after collection by a mobile collection unit, a point of generation collection service, or another permanent collection center unless the collections are conducted by a single operator; this provision is intended to require coordination among different operators for the proper transfer of HHW between operators. In response to public comment, at adoption the commission adds wording to §335.405(a)(2) to allow for consolidation of wastes among operators. The requirement to cover the minimum number of personnel needed for conducting HHW activities and their functions is retained with clarification that this provision applies to operator's staff, contractors, volunteers, etc., but the previous requirement for information on their qualifications is changed to an explanation of how the training requirements that apply to their functions have been or will be met.

The commission retains the previous requirements that the operational plans include information on planned disposition of collected wastes, and requires the consideration of an expanded hierarchy of processing and disposal options ranked by their relative environmental benefit. The hierarchy is expanded to include the reuse of a product for its intended purpose as the most environmentally beneficial option because such use removes the need for processing or disposal and reduces the need for manufacturing new product; reuse is split from and placed above recycling in the new hierarchy because of the greater benefits. The hierarchy is expanded to include recycling for energy recovery as the third-level option because it is less beneficial than reuse for the intended purpose or recycling to make new products but more beneficial to the environment than the other processing and disposal options. The other previous processing and disposal options are retained but renumbered in the new hierarchy in the same order of decreasing benefits as in the previous hierarchy.

The requirements for operational plans continue to include detailed procedures to avoid accepting hazardous waste and Class 1 waste and the methods used to classify and control wastes received, but with new lists of certain issues to be covered in each of these discussions. The procedures to ensure that prohibited wastes are not received must include the screening procedures for collection participants, the questions that will be asked of the participants to screen wastes, and the quantities or types of wastes that would require further explanation prior to acceptance. Because many businesses use consumer products that are also used by households and because there may be a financial incentive for non-household businesses to try to deliver their waste to these collection events, a variety of methods is needed to ensure that hazardous waste or Class 1 waste is not received as HHW.

In order to allow for sufficient planning and training for HHW collections to be conducted safely and efficiently, the discussion of methods used to classify and control wastes must cover the following: 1) the waste streams that will be accepted and rejected; 2) the types of shipping containers and storage areas for each waste stream; 3) the methods used to categorize waste prior to packaging for shipment and processing or disposal; 4) the methods used to handle and identify unknown wastes; 5) bulking procedures, if any would be used; 6) procedures for handling containers that are leaking, unsealed, or contaminated externally when received; and 7) procedures for wastes with special handling and processing or disposal needs, if any would be accepted. A non-exclusive list of certain common wastes with special handling and processing or disposal needs is included in the rule for the convenience of the regulated community.

The commission retains coverage in the operational plans of contingencies for inclement weather, but with clarification of types of weather to be covered. Historically, most operational plans have discussed personal rain gear or tents for rain protection and shade. However, "inclement" means "severe," so plans for more extreme weather are supposed to be covered under the rules. Because protection from rain, wind, extreme temperatures, and severe storms can be important to conducting collections safely, the rule lists all of these types of weather for inclusion in the discussion.

The commission adds a requirement that operational plans discuss in detail recordkeeping for wastes received and sent for proper processing or disposal. The previous and adopted rules have requirements for recordkeeping under provisions for temporary storage, so this part of a new operational plan must discuss how the requirements will be met.

The new rule for operational plans drops the requirement for an area map because those involved in the collection should be familiar with the area. The commission retains the previous requirement for a site map to be attached to an operational plan, and requires the depiction of improvements, boundaries, traffic flow, unloading points, emergency vehicles location, and classification and storage areas. These are the salient features that are most useful for the site maps. The maps are useful in depicting how a collection site will be arranged and run for planning and conducting collections and for training staff. The term for the map in the rules is changed from "planimetric map" to "site map" for clarity and because the commission recognizes that having topographic features on the maps could be beneficial in some respects, such as planning for spill responses and evacuations.

The commission retains the requirement for an attachment to the operational plan covering evidence of competency including experience and qualifications of key personnel, but requires that copies of training records be included. Because certain training is required for specific job functions and specific knowledge is needed to conduct collections safely, it is important that a mechanism be in place to allow efficient evaluation of whether all the training requirements are covered for a collection. Having the training documented in the operational plan will allow collection programs to monitor this issue easily. In response to public comment, the commission is changing at adoption the word "certificates" in §335.405(a)(9)(B) to "records" to allow records other than certificates to be used to document training.

The commission replaces the previous provisions for a detailed discussion of safety, spill and fire response, and related topics with a required attachment of a health and safety plan, including a non-exclusive list of specific elements. The requirements in the previous rules related to safety are reflected in the new health and safety plan with additional detail provided for clarity concerning the required detailed

discussion on safety, fire control, and spill response. The inclusion of these provisions into a single health and safety plan will allow easy reference during planning, training, and emergencies. The new health and safety plan attachment is required to include at least the following information: 1) the location and contents of first aid kits at sites and in collection vehicles; 2) the location and types of telephones or radios for summoning emergency assistance and specific instructions for their usage; 3) detailed procedures for avoiding and responding to spills of liquid and solid materials, including specific information further discussed; 4) preparation and response procedures for fires, including specific information further discussed; and 5) the timing and content of training to be provided to persons before their participating in the collection of wastes.

The commission requires that the detailed discussion of procedures for avoiding and responding to spills of liquid and solid materials must include at least the following information: 1) who will respond to different sizes and types of spills (including on-site staff, emergency responders, contractors, etc.); 2) detailed methods to be used for avoiding, controlling, and cleaning up spills; 3) decontamination procedures for people and equipment; 4) processing or disposal of contaminated materials and other wastes from the spill response; 5) the types of engineering controls and personal protective equipment available on site and procedures for proper selection and use during spill responses; 6) types and location of equipment and materials available on site; 7) the duties of specific personnel or job functions; 8) evacuation procedures (including at least the collection site and, if appropriate, the surrounding area); and 9) procedures for reporting spills to local, state, and federal authorities. In response to public comment, the commission added flexibility for showing the duties of specific personnel by adding the phrase "or job functions" to §335.405(a)(9)(C)(iii)(VII) so that staff can be used in different capacities as needed. However, because some duties require certain training, the commission notes that programs that choose to

list the duties by job function must consider the training requirements when assigning staff, contractors, volunteers, or others to certain job functions.

The discussion of preparation and response procedures for fires must include at least the following information: 1) the location and types of fire extinguishers and other fire suppression equipment available on site and on collection vehicles; 2) when on-site fire equipment would be used and when the fire department would be summoned; 3) evacuation procedures (including at least the collection site and, if appropriate, the surrounding area); 4) the identity and storage location of any materials to be collected that might need special fire-fighting methods (such as flammable liquids and metals, explosives, compressed gases and aerosol cans, water reactive materials, etc.); and 5) the availability of a local fire department and whether they can handle the maximum fire potential from the anticipated collection on their own or through established mutual aid response arrangements.

The health and safety plan must cover the timing and content of training or briefings on safety for staff and volunteers before they participate in collecting wastes. The content of this training must be specific to the duties to be performed.

In new §335.405(b), the commission specifies that the operational plan must be available at the collection event or permanent collection center covered by the plan and at the offices of the entity operating the collection program. The operational plan is to be used for training staff, planning, and conducting collections. The operational plan is to be maintained for as long as collection events are planned and for at least one year after a collection event, after a permanent facility closes, or after other types of HHW activities cease.

In new §335.405(c), the commission requires that the operational plan be provided to the executive director upon request in lieu of the previous requirement that all operational plans be submitted to the commission before collections.

§335.407. Training Requirements.

The commission adopts new §335.407 to cover training requirements for persons involved with HHW collections and reuse operations. The section covers the general types and the timing of training.

The commission specifies in new §335.407(a) that the operator is responsible for ensuring that training appropriate to their duties is provided to all individuals involved in any waste collection, that the training is specific to the HHW operations being conducted, and that training is provided to all individuals involved with the collection, aggregation, storage, and transport of HHW and with offering materials for reuse. The training is specified as any appropriate combination of training courses as well as the operational plan for program-specific training.

New §335.407(b) requires operators to ensure that the appropriate level of training is provided before individuals collect, aggregate, store, or transport HHW for reuse, recycling, processing, or disposal.

Operators are required to ensure that all training requirements are met for individuals performing specific job duties. Operators are required to ensure that volunteers are appropriately trained on the site rules and safety issues before assisting with a collection.

In new §335.407(c), the commission specifies that the training must cover any applicable training requirements in federal and state laws and regulations, including federal Occupational Safety and Health Administration (OSHA) requirements related to handling hazardous materials, responding to spills, and other activities, the Texas Hazard Communication Act, United States Department of Transportation (DOT) requirements for preparing and packaging wastes for transportation, and EPA rules for training of personnel at hazardous waste facilities. New §335.407(d) requires that operators ensure that individuals are trained under this chapter as if HHW were hazardous waste, such as using Hazardous Waste Operations and Emergency Response (HAZWOPER) courses although they apply to hazardous waste rather than HHW. At adoption, the phrase "after it is unloaded from vehicles delivering it from households and before it is segregated for transport or storage" is added to §335.407(d) to specify that the training requirement only applies to those that handle the waste after it is unloaded at a collection.

§335.409. Operation of Collection Events and Permanent Collection Centers.

The commission specifies in new §335.409 the operational requirements for permanent collection centers and collection events. Most previous requirements are retained, in some cases with changes or rewording, but reordered to reflect the order in which actions generally occur.

New §335.409(a) retains the previous requirement for operators to site, organize, and operate collections in a manner that protects the environment and safeguards human health, welfare, and physical property.

The previous requirement is retained that operators select locations suitable for the types and quantities of wastes to be collected. Because of the public health and environmental risks associated with incompatible chemicals in close proximity and with public exposure or environmental impacts if wastes are packaged in an uncontrolled area, the previous requirement that wastes be sorted upon receipt and placed into a

controlled waste packaging area whenever possible is changed. The new rules make these requirements mandatory for all collection events and permanent collection centers by removing the wording "whenever possible" - under the revised rules, only sites that allow safe handling and processing of wastes upon receipt can be selected. The previous requirement is retained that operators provide a controlled access area for sorting, packaging, and handling wastes accepted. The commission expands the previous requirement that operators provide parking by also providing that the queuing of vehicles waiting to unload must be done so as to not interfere with safe entry or exit of vehicles and to prevent traffic congestion. The previous requirement that operators prepare for inclement weather is retained with a specification that the preparation include provisions for sheltering personnel at or near the site during storms. The previous requirement is retained that operators must designate areas for eating, drinking, and smoking and must prohibit these activities in collection work areas. The commission changes the previous requirement that incompatible and unidentified wastes be segregated prior to packaging for transport or storage to also require segregation after packaging.

In new §335.409(b), the commission adopts provisions for personnel and training. The previous requirement that personnel at HHW facilities be familiar with the operational plan is changed to require that the operator ensure that personnel are trained to use and follow the operational plan.

The previous provision is changed that required at least one person involved in handling and packaging waste be trained and knowledgeable of waste incompatibility and qualified to package waste for transport. The revised provision requires that the operator ensure that all persons involved in these activities and those overseeing and supervising the activities on site be trained and knowledgeable of HHW incompatibility and qualified to package hazardous waste for transport. In order to ensure that waste is

properly packaged and to avoid reactions of incompatible wastes, the persons with direct control over these activities while in progress need to have the requisite knowledge. Although the pertinent DOT regulations (at 49 CFR Part 171) apply to hazardous waste and not HHW, familiarity with packaging and transportation of hazardous wastes is appropriate because HHW has the same properties as hazardous waste requiring its safe transport.

The commission retains, as a responsibility of the operator, the requirement that at least one person who is trained to classify hazardous waste be utilized to accept or supervise the acceptance of waste at each HHW collection event or permanent collection center. The commission expands the previous requirement that personnel be instructed in accident prevention, responses to fires, explosions, and spills, and the use of protective devices to minimize exposure to HHW to include any other materials accepted during the collection activities that also present exposure risks and proper fire extinguisher training, and to make it the responsibility of the operator to ensure this requirement is met. There are types of household wastes that do not have the characteristics of hazardous waste (and are therefore not HHW) but that can present significant exposure risks. The previous requirement that labeling and packaging of HHW waste be supervised by a person familiar with DOT hazardous materials shipping and hazardous waste manifest requirements is retained as a responsibility of the operator.

The commission expands, as a responsibility of the operator, the previous requirement that at least one person be on site who is trained to perform general first aid and who is knowledgeable concerning safety measures used for chemical exposures. The new requirement expands the knowledge requirement to any hazardous material presented for collection (rather than only HHW) and specifies that the first aid training must be consistent with courses provided under the auspices of a recognized national safety organization

and documented with a current certificate. First aid practices improve over time and retraining reinforces knowledge, so it is important that the first responders keep their training current. Because national safety organizations that certify first aid training ensure that the training is complete, thorough, and up-to-date, these courses will provide the necessary skills for general first aid responders. The new provision specifies that a person trained on these issues must be on site whenever wastes are being handled.

The previous provision is retained, as a responsibility of the operator, that an on-site supervisor must be available and responsible for initiating an emergency response plan, for accepting any unidentified wastes, and for ensuring proper handling and processing or disposal. The commission retains, as a new responsibility of the operator, the provision that the on-site supervisor must have the authority to remove from the site and prohibit the re-entry of any person who may threaten site security or personal safety.

The previous requirement that an HHW operation must be manned by an adequate number of staff with the necessary skills and expertise to accept, sort, package, transport, and manifest the waste and to provide on-site supervision and public relations is made a responsibility of the operator and is modified by dropping package, transport, and manifest and by adding label and store. The commission makes this change to allow flexibility in operations because in some cases wastes are not prepared for shipment at the time of collection but are stored until a registered transporter comes to prepare and ship them from the facility, often at times when collections are not occurring. The commission adopts a new provision that operators ensure that an adequate number of operator or contractor staff with the necessary skills and expertise to package, transport and manifest hazardous materials be present and involved when wastes are prepared for transportation.

The commission adds a requirement that an operator must ensure that personnel who handle HHW after unloading have received chemical identification, consolidation, and segregation training and HAZWOPER training appropriate to their duties. At adoption, the commission removes the proposed requirements in §335.409(b)(10) for annual refresher training, for HAZWOPER training for supervisors of staff handling HHW, and for documentation of other training and adds the requirement for chemical identification, segregation, and consolidation training.

In new §335.409(c), the commission modifies the previous requirements for having equipment and materials present at collection events and permanent collection centers. The previous requirement that materials and equipment to provide protection, safety, and first aid for staff, to contain and clean up spills, and to properly handle, classify, and label the waste is specified as a responsibility of the operator because operators must ensure that collections are conducted properly and safely. Additionally, because wastes are not always packaged during collections, as discussed previously, the requirement that materials to package waste must be present is changed to materials for storing wastes. Because materials other than HHW may be collected and spilled and to provide clarity for whom is responsible, the previous provision that disposable cleanup materials and protective clothing used during a spill cleanup be handled as HHW is changed to a responsibility of the operator to ensure that these materials are handled as the type of material that was spilled.

The previous requirement that nondisposable equipment and materials that are used and contaminated in a spill response be decontaminated before removal from the site is changed to a responsibility of the operator to ensure that items are properly decontaminated before removal from the site, regardless of the cause of the contamination. The changes here specify who is responsible for the action and also extend

the requirement to any nondisposable equipment or material that becomes contaminated, regardless of how this occurs. The risk of spread of contamination is not limited to spills, and equipment or materials that become contaminated during normal use or in other ways need to be decontaminated as well.

The commission specifies that providing equipment at collection events and permanent collection centers is the responsibility of the operator. The previous list of equipment is retained with some changes.

Because this section addresses collection events and permanent collection centers, the requirement for a first aid kit for a point of generation pick-up service vehicle is moved to new §335.411(a)(4)(A). The previous requirement for a means of communication for emergencies specifies a telephone or citizen's band radio; this requirement is changed to a telephone or any type of radio because some collections have radios used by police or fire departments on site rather than citizen's band radios. The previous requirement that an eyewash, shower station, or hosing device be available is changed to an eyewash and shower station or a hosing device; an eyewash is not designed to wash contamination from other parts of a body and a shower station is not effective for washing the eyes, but a hosing device could be used for either purpose. The previous requirement for a fire extinguisher is amended to require at least two fire extinguishers that are appropriate to the types of wastes accepted. Because a chemical fire could limit access to a single fire extinguisher, having two on-site provides an additional margin of safety. The previous requirement for sufficient absorbent or containment to handle a spill of 10% of the anticipated volume of liquid waste is retained, and the applicability of this provision to point of generation pick-up service vehicles is moved to §335.411(a)(4)(D) with changes as discussed later for that section.

In §335.409(d) the commission retains with changes the previous provisions for wastes accepted and excluded. The recommendation that only household wastes be collected is retained intact. The prohibition

on accepting hazardous waste and Class 1 waste is retained with a correction to the term "Class 1 waste" (i.e., dropping "industrial") to be consistent with §335.1(18). The previous provision that unidentified waste be identified by a chemist or trained individual is made a responsibility for the operator to ensure that this action occurs prior to transportation of the waste, and language is added to specify that any physical assessment must be done by qualified individuals.

The commission removes the previous requirement that announcements and promotional material must state that compressed gas or explosives cannot be brought to a collection event or permanent collection center but that these materials should be taken if brought and appropriate authorities immediately contacted. Instead, the commission specifies that the announcement and promotional material state which types of waste will be accepted and which will not. The operator is required to provide information to potential participants before a collection event or the opening of a permanent collection center and at least annually thereafter for the period that the permanent collection center is open. The commission specifies that the information must include all relevant information on the following: 1) the types and quantities of wastes that will be accepted and that will not be accepted; 2) the instructions for the public to safely package and transport their wastes to the collection; 3) the days and hours of operation and the location of the site; and 4) who can bring wastes to the collection, as well as any other information that may be useful to the public. Because some collection programs have made special arrangements to handle compressed gases or explosives, these materials are not required to be excluded in promotional materials.

The previous requirement concerning decisions on accepting certain wastes is made a responsibility of the operator to ensure that these decisions are based on the capabilities of the personnel collecting, sorting, and packaging the waste. The previous requirements are retained that the operational plan include a

generic list of proposed wastes to be accepted and that this list be developed with the intent of minimizing the need to analyze unknown wastes, but the phrase "unidentifiable wastes" is changed to "unidentified wastes" because any material can be identified if analyzed properly.

The previous provision is retained that empty HHW and pesticide containers can be disposed as nonhazardous waste if rendered unusable. The previous requirement that there be a container at the collection for nonhazardous wastes is deleted because some collection programs do not accept nonhazardous wastes. Any collection program that accepts wastes other than HHW is still required to comply with the laws and regulations pertinent to the other types of wastes that are collected, including storage and disposal.

In new §335.409(e), the commission retains the requirements for temporary storage with some changes. The previous requirements are modified to provide that the operator is responsible for storage being operated safely and for a facility being secured to control access by the public.

The commission retains the following provisions for storage of HHW: 1) HHW can be stored for ten days if more than 3,000 kilograms are aggregated; 2) storage at an authorized hazardous waste processing, storage, or disposal facility is not limited by Subchapter N; 3) the executive director may extend the ten-day period if a written request is received; and 4) HHW can be stored for 180 days if 3,000 kilograms or less are aggregated. The previous provisions are changed in the following ways: 1) to specify that extensions are requested of and provided by the executive director; 2) to add that the written requests for extension must include the reason that waste must be stored longer than ten days, the earliest date that a waste in storage was received, and the expected date that the wastes will be transported to a recycling

facility or a hazardous waste processing, storage, or disposal facility; and 3) to specify that the 180-day storage period only applies to permanent collection centers rather than recurring collection programs.

The commission changes the previous labeling requirements for HHW in storage. The previous provisions appeared to be based on labeling requirements for consumer products rather than for hazardous materials in transportation from the DOT. Although simpler than labeling requirements for consumer products, the hazardous materials in transportation provisions provide sufficient information for safe storage of HHW and do not require additional labeling for HHW stored in shipping containers that are properly labeled for transport. The labels on consumer products also provide sufficient information for safe storage. Therefore, the commission will require that operators ensure the following for HHW stored in the individual containers received by the public (as opposed to materials in proper shipping containers with required labeling): 1) intact, legible, and correct labels are maintained on the individual containers with such labels (i.e., labels could not be removed, defaced, or changed); 2) if labels are missing, defaced, or incorrect on containers stored individually, as a minimum, information required by the hazardous materials in transportation regulations is marked on each container; and 3) the date received from the public is marked on any container stored individually. Further, if HHW is properly prepared for transportation and stored in properly labeled shipping containers, the commission specifies that the marking of individual containers received from the public is not required. The commission retains the one-year recordkeeping provision for HHW that is collected, but makes the retention the responsibility of the operator.

§335.411. Operation of Point of Generation Pick-up Service and Mobile Collection Units. The commission adopts new §335.411 to specify operational requirements for point of generation pick-up

services and mobile collection units. These types of collections receive HHW from the public and then usually transport the HHW to a receiving facility. Point of generation pick-up services go to households and take the wastes via direct contact with the residents or take wastes that have been left at curbside or in another prearranged location. Mobile collection units set up in a convenient location and then function similar to a collection event or permanent collection center with the public delivering the wastes to the site.

The commission provides in §335.411(a) the requirements for point of generation pick-up services. Because leaving HHW unattended outdoors for pickup presents potential hazards from spills, rain runoff, and contact by animals and children, the commission retains the requirements that operators utilizing point of generation pick-up services develop and implement a collection program that minimizes human and animal exposure to collected waste and is protective of human health and the environment and that, when the collector will not directly contact the generator of the HHW, operators are required to provide instructions to the public for properly packaging, labeling, and securing the waste. The commission changes the previous requirement to specify for clarity that the procedures provided to the public are to be specific to the wastes left out for pickup. The commission removes the specification that the requirements for these programs also apply to collectors. Because operators are in charge of the programs, collectors affiliated with the programs are under the operators' control. The commission does not intend that these provisions should apply to citizens delivering HHW from friends, relatives, neighbors, or others, so the previous application of the provisions to collectors is not needed.

To ensure that the public has sufficient information to participate safely and effectively, the commission requires operators of point of generation pick-up services to disseminate prior to collection activities

information to potential participants detailing the following: 1) instructions for properly packaging, labeling, and securing the waste if it will not be personally transferred by the generator to the collector; 2) eligibility criteria for participating in the program; 3) the types and quantities of wastes that will be accepted and will not be accepted; and 4) methods to be used for arranging pickup. The new rule includes a requirement that operators of point of generation pick-up services organize and operate collections so as to safeguard health, welfare, and physical property and to protect the environment.

To ensure safety in operations, the commission requires that operators ensure that at least one vehicle is equipped with a first aid kit, an appropriate fire extinguisher, a method of communicating with emergency first responders and information needed for its use (such as instructions, emergency telephone numbers, radio frequencies for specific types of emergencies, etc.), and enough spill absorbent to clean up a spill of 10% of the maximum quantity of liquid waste the vehicle is designed to hold. The rule also requires that vehicles used for point of generation pick-up service be staffed by at least one person experienced in and trained in hazardous waste handling, fire extinguisher use, first aid, waste classification, waste incompatibility, spill prevention, and clean-up safety.

Operators of point of generation pick-up services that will accept unknown wastes are required to ensure that unknown wastes are properly identified and either to have available on the collection vehicle all testing equipment needed to identify wastes prior to placement on the vehicle and a person present who is qualified to use the equipment, or to have a way of separately isolating on the vehicle each container of unknown waste until delivery to a permanent collection center or collection event where the wastes will be identified prior to being aggregated with other wastes, as long as this is consistent with DOT regulations for hazardous materials in transportation. Because the federal rules apply to shipments larger

than 1,000 kilograms and do not allow the shipment of unknown materials because of potential incompatibility issues, the second option is not available in all cases.

Because the operation of mobile collection units is similar to either a permanent collection center or a collection event depending on how long wastes are stored at the site where the collection is held, the commission requires operators utilizing mobile collection units to comply with the requirements in §335.409, as discussed previously, for the sites where collections are held. Because mobile collection units can be used to collect, store, and haul HHW, the rule also requires that these operators develop and implement a collection program that minimizes the potential for human exposure to or environmental harm from collected waste during collection, storage, and transport. At adoption, the commission changes the requirement in §335.411(b)(2) that operators using mobile collection units staff each collection with at least one person experienced in and trained in hazardous waste handling, fire extinguisher use, first aid, waste classification, waste incompatibility, spill prevention, and clean-up safety to require only one person with these qualifications in the collection program. Based on public comment, the commission changes at adoption the proposed requirement in §335.411(b)(3) that each mobile collection unit be equipped with certain safety equipment to requiring this equipment only on one mobile collection unit involved with a collection. Based on public comment, the commission changes at adoption the proposed requirement in §335.411(b)(3)(E) such that sufficient absorbent and containment is available for a spill of 10% of the liquid wastes on the largest mobile collection unit at the collection. With the changes, each collection using mobile collection units must have the following safety equipment: 1) a first aid kit, 2) an appropriate fire extinguisher, 3) an eye wash and emergency shower or a hosing device, 4) a means of summoning emergency assistance, and 5) enough spill absorbent and containment to handle a spill of 10% of the liquid waste on the largest mobile collection unit present.

Operators of mobile collection units that will accept unknown wastes are required to ensure that unknown wastes are properly identified and either to have available on the mobile collection unit all testing equipment needed to identify wastes prior to placement on the vehicle and a person present who is qualified to use the equipment, or to have a way of separately isolating on the unit each container of unknown waste until delivery to a permanent collection center or collection event where the wastes will be identified prior to being aggregated with other wastes, as long as this is consistent with DOT regulations for hazardous materials in transportation. Because the federal rules apply to shipments larger than 1,000 kilograms and do not allow the shipment of unknown materials because of potential incompatibility issues, the second option is not available in all cases. The commission intends that operators must register as a transporter to use a mobile collection unit to transport HHW to a hazardous waste processing, storage, or disposal facility, except for HHW that is properly shipped as universal waste.

The commission requires operators utilizing point of generation pick-up services and mobile collection units to comply with personnel and training requirements found in new §335.409(b), with proposed waste acceptance and exclusion parameters found in new §335.409(d), and with temporary storage requirements found in new §335.409(e). The requirements for training staff, accepting and excluding wastes, and temporary storage are all equally pertinent to mobile collection units and point of generation pick-up services as to collection events and permanent collection centers. At adoption, a change is made in §335.411(c)(4) to allow delivery to permanent collection centers, collection events, or registered hazardous waste transporter facilities.

In order to provide flexibility on how the programs operate, the commission is changing at adoption based on public comment the requirement that HHW collected by a point of generation pick-up service or mobile collection unit be delivered to a permanent collection center or collection event to be aggregated with other HHW or be transported to a hazardous waste processing, storage, and disposal facility by a transporter compliant with the requirements of §335.415. The 24-hour period in the proposed rules is being expanded to 72 hours. The previous provision allowing collection vehicles to take waste directly to hazardous waste processing, storage, or disposal facility is deleted to avoid the risks of long-distance transport of the more hazardous types of HHW by unregistered transporters. If operators wish to transport HHW that cannot be classified as universal waste directly to processing, storage, or disposal facilities, they have the option to register as transporters.

§335.413. General Shipping, Manifesting, Recordkeeping, and Reporting Requirements.

The commission adopts new §335.413 to specify shipping, manifesting, recordkeeping, and reporting requirements for persons who collect, receive, or aggregate HHW. The new section does not apply to materials offered for reuse and to wastes that are not HHW. The commission retains the requirement that persons who collect, receive, or aggregate HHW must use only registered hazardous waste transporters to ship HHW from permanent collection centers and collection events to hazardous waste processing, storage, or disposal facilities. An exception is made for HHW that can be shipped as universal waste by non-registered transporters if allowed by the universal waste rules and for cases where aggregated HHW is shipped to another permanent collection center for the purpose of consolidating aggregated HHW. The rule specifies that the transportation requirements apply to HHW shipped only from collection events and permanent collection centers because there are provisions for point of generation pick-up services and mobile collection units to transport HHW to a collection event or permanent collection center without

being registered transporters, as discussed previously. In response to public comment, the commission adds at adoption language to §335.413(a)(1) and (2) to provide for consolidation of wastes among operators.

The commission retains the requirement that collectors and operators ship HHW from a collection center or a collection event under a uniform hazardous waste manifest only to a permitted hazardous waste processing, storage, or disposal facility that has agreed in advance to accept the waste. An exception is made for HHW that can be shipped as universal waste if allowed by the universal waste rules and for cases where aggregated HHW is shipped to another permanent collection center for the purpose of consolidating aggregated HHW. The rule specifies this part as applying to HHW from collection events and permanent collection centers because there are provisions for point of generation pick-up services and mobile collection units to transport HHW to collection events and permanent collection centers without using manifests, as discussed previously. As discussed previously, point of generation pick-up service vehicles and mobile collection units are prohibited from transporting HHW to hazardous waste processing, storage, or disposal facilities unless they are registered as transporters.

The commission clarifies the requirement that persons who collect, receive, or aggregate HHW ensure that the HHW is packaged and labeled in compliance with §335.10 and DOT requirements by adding language that the other regulations are to be applied as if the HHW was hazardous waste. The commission requires persons to retain for one year all hazardous waste manifests and bills of lading (for universal waste shipments) for HHW shipments and to make them available to the executive director upon request.

The commission requires operators to submit an annual report on all wastes collected and materials offered for reuse. The commission proposed a deadline of February 1st for the previous calendar year, but based on public comment, the deadline is changed at adoption to April 1st. At adoption, the commission adds a provision requiring reporting of wastes transferred to another operator. The report must be done on a form provided by the commission. The commission requires collectors and operators to ensure that all wastes are processed or disposed of in compliance with federal, state, and local laws and regulations. This provision also states that any materials that are sent for processing or disposal after being offered for reuse need to be processed or disposed of as HHW if they would be hazardous waste except for the federal exclusion for household waste.

§335.415. General Requirements for Transporters.

The commission specifies in new §335.415 provisions for persons who transport HHW that is required to be accompanied by a universal hazardous waste manifest. The rule retains the provision that HHW that is required to be accompanied by a universal hazardous waste manifest can be transported only by registered hazardous waste transporters. The previous provisions requiring transporters to comply with §§335.4(1) - (3), 335.11, and 335.14 are modified to state that transporters must apply those requirements to HHW as if it was hazardous waste. Because the cited sections do not contain provisions for HHW, the previous language could be interpreted as not pertaining to HHW.

The commission rewords for clarity the previous requirements for transporters who conduct HHW collections. The amended requirements state that transporters operating an HHW collection program must comply with the applicable requirements for operators. The provision that transporters must keep HHW separate from hazardous waste or Class 1 waste is retained but reworded for clarity and brevity.

§335.417. General Requirements for Processing, Storage, or Disposal Facilities.

The commission specifies in new §335.417 the requirements for hazardous waste processing, storage, or disposal facilities. The rule requires that hazardous waste facilities receiving HHW comply with their permit. Based on public comment, the phrase "with a permit authorizing the receipt of household hazardous waste" is deleted at adoption from §335.417(a) and (b). Although permits for hazardous waste processing, storage, or disposal facilities authorize those facilities to take HHW, this fact is generally not specifically stated in the permit. Because this issue appeared confusing to the regulated community, the phrase is deleted at adoption. The phrase is not needed because the definition for these facilities at §335.402(4) specifies that these facilities must be properly permitted.

The previous requirements with which hazardous waste processing, storage, or disposal facilities must comply in order to receive HHW directly from the public are deleted. As discussed previously, the permitting process for these facilities provides sufficient oversight of their handling HHW. The commission adds a new requirement that hazardous waste processing, storage, or disposal facilities receiving HHW directly from the public must report to the executive director on the quantities received using the same process as any other HHW program. This change provides more complete information for the commission's required reports on wastes collected.

§335.419. Reuse of Collected Material.

The commission specifies in new §335.419 that collected materials that may be reused do not have to be managed as HHW unless they are sent for processing or disposal. The section retains the previous criteria for which materials are reusable. The entities to whom reusable materials can be given are expanded to

any individual or group by replacing the previous wording "a governmental entity, institution, or other responsible party" with the word "person" which is defined in Chapter 3 as any individual or legal entity.

The commission adds language to specify that storage of materials to be offered for reuse is not subject to the requirements of this chapter. The commission intends that this clarification increase the amount of materials that HHW programs make available for reuse because this option for dealing with received materials is by far the most environmentally and economically beneficial way to handle the materials. Additionally, language is added to clarify that, if any material in usable condition not accepted by another party is sent for processing or disposal by the HHW program, it must be processed or disposed as HHW under the provisions of this subchapter if it is HHW. This provision is consistent with the federal exclusion for wastes from households from classification as hazardous waste (at 40 CFR §261.4(b)(1)).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means 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 adopted rulemaking to Chapter 335 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, because there are no significant requirements added to HHW collection activities. HHW collection activities authorized in

Subchapter N are voluntary. While some entities may be required by a storm water permit to provide HHW collection activities to meet public outreach requirements for ensuring that toxic materials are not put into storm sewers, these rules do not require participation in HHW activities. The rulemaking action reorganizes and rewords previous requirements for HHW collection activities, streamlines the application requirements, and addresses new methods and techniques for HHW collection. The adopted rules make appropriate formatting changes, clarifications, and updates to the rules to reflect requirements of the Secretary of State for rule publication.

Furthermore, the adopted rulemaking action 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 major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

Federal rules in 40 CFR §261.4(b) specifically exclude HHW from the definition of hazardous waste. Thus, HHW and the commission's requirements for the management of HHW are not subject to federal standards for the management of hazardous waste.

The Texas Health and Safety Code, §361.029, specifically authorizes the commission to develop rules for the collection of HHW. The commission adopts these rules consistent with this statutory authority and does not exceed an express requirement of state law.

The adopted rules do not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government because there is not an applicable delegation agreement or contract with the federal government related to these activities. Because HHW is excluded from the definition and regulatory requirements for hazardous waste, the revisions to the HHW program do not exceed a requirement of the state's authorized hazardous waste program.

The commission does not adopt these rules solely under the general powers of the agency. Rather, the commission adopts these rules under Texas Health and Safety Code, §361.029 and §361.429, which authorize the commission to develop rules for the collection of HHW.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. As discussed in the Response to Comment section, comments were received that indicated that HHW programs are not voluntary for some entities.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking action and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because these rules implement requirements for the safe and effective management of HHW. The rulemaking is reasonably

taken in response to a real and substantial threat to public health and safety, is designed to significantly advance the health and safety purpose, and does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, the rulemaking is exempt under Texas Government Code, §2007.003(b)(13).

Nevertheless, the commission further evaluated these adopted rules and performed a preliminary assessment of whether these rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of these rules is to implement changes to the requirements for the collection of HHW. The rules substantially advance this purpose by reorganizing and rewording previous requirements, streamlining the application requirements, and addressing new methods and techniques for HHW collection.

Promulgation and enforcement of these adopted rules is neither a statutory nor a constitutional taking of private real property. The rules do not affect a landowner's rights in private real property because this rulemaking action does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The rules implement a voluntary program for HHW collection. The rules do not substantially change the previous technical requirements that were in place under the previous rules. Therefore, the commission's adopted rules do not affect real property in a manner that is different than may have been affected under the previous requirements.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the

Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking does not substantially change the previous technical requirements for HHW activities and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

PUBLIC COMMENT

The proposal was published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1239). The commission held a public hearing on March 11, 2008. The comment period closed on March 17, 2008.

The commission received written comments from the Brazos Valley Solid Waste Management Agency (BVSWMA); Philips Service Company (PSC); the City of Grand Prairie (Grand Prairie); Veolia ES Technical Solutions, L.L.C. (Veolia); Upper Trinity Regional Water District (UTRWD); the City of Austin (Austin); the City of San Marcos (San Marcos); Harris County; the City of Fort Worth (Fort Worth); Houston-Galveston Area Council (H-GAC); Fort Bend County Engineering (Fort Bend); Dallas County; and the City of Houston (Houston). The commission received oral comments from Dallas County, Fort Worth, and PSC.

RESPONSE TO COMMENT

Need for Rules and Provisions

Fort Worth commented that the rule revisions are not needed if the previous rules are properly read and enforced.

The commission respectfully disagrees with this comment and did not make any changes to the rules in response to the comment. There have been developments in laws, rules, and HHW programs, such as the universal waste rules and mobile collection units, which should be reflected in the HHW rules. Confusion of previous rule requirements by some HHW programs shows a need for greater clarity in the rules. For these reasons, the commission has provided revisions to these rules.

Harris County and H-GAC commented that neither these nor the previous rules required approval of the operational plan or notification for an HHW program and that this fact should be continued in the new rules to allow flexibility. Fort Bend commented that the previous rules did not require approval of notifications or operational plans by the commission and proposed that this practice remain in the new rules.

The commission appreciates these comments and support for this part of the rules.

CESQG Wastes

BVSWMA requested that the rules be changed to allow HHW programs to accept hazardous waste from CESQGs. BVSWMA stated that the relative geographic isolation of the Brazos Valley does not allow for low-cost and convenient disposal options for small quantity generators, possibly resulting in their disposing of hazardous waste in the municipal solid waste stream. Fort Bend commented that CESQGs

should be allowed to take their hazardous waste to an HHW permanent collection center for disposal on a day when HHW is not being accepted. Fort Bend commented that the CESQG waste would not be commingled with HHW, that storage time would be minimal (30 days or the same day as shipped were both mentioned), and that without such a low-cost disposal provision, wastes from CESQGs would sit in a small business, a storage shed, or other unknown locations with no way to know how these materials are disposed or when. Houston commented that the HHW rules should allow collection of materials from small businesses and suggested allowing small businesses to bring wastes to HHW facilities for a discounted fee and keeping the hazardous waste separate from HHW.

The commission respectfully disagrees with this comment. The requirements of Subchapter N are limited to activities involving wastes generated by household consumers and are based on a well known universe of materials that may be used by households. These rules are self-implementing; once a notification is submitted to the commission, the operator is required to comply with the rules. Unlike a commercial, industrial, or hazardous waste processing, storage, or disposal facility, no permit or approval is required. CESQG waste is hazardous waste. The commission is not expanding the HHW program to include hazardous waste generated by CESQGs. The commission recognizes that CESQGs are allowed to dispose (if accepted by the landfill) their limited amounts of hazardous waste in the normal municipal solid waste stream in much the same way that HHW can be disposed by households. Allowing HHW operations to collect hazardous waste would not be appropriate for HHW programs that operate under the limited oversight by the commission. If HHW programs find there is a significant need for collection of hazardous or industrial waste in their area, they have the option of seeking authorization from the commission as hazardous or industrial waste facilities or of working with other facilities in their area to provide alternative

disposal options for CESQG wastes consistent with the hazardous and industrial waste regulations in Chapter 335. The HHW rules would not preclude arrangements an operator might make with CESQGs to provide disposal options for their wastes as authorized under the industrial and hazardous waste regulations in the rest of Chapter 335.

Austin commented that the prohibition on accepting hazardous waste from CESQGs should be removed and note that the EPA has for some time encouraged HHW programs to take hazardous waste from CESQGs. Austin stated that they have been taking hazardous wastes from CESQGs for a number of years and that the commission provided grant funds previously for this purpose.

The commission has not made any change to the rule based on this comment. The commission recognizes that the EPA encourages HHW programs to accept hazardous waste generated by CESQGs when this action is consistent with state regulations for these programs. However, the commission's HHW rules have prohibited taking any hazardous waste or any Class 1 waste from industries since promulgation in 1988. Allowing HHW operations to collect hazardous waste would not be appropriate for HHW programs that operate under the limited oversight by the commission.

Other Wastes

San Marcos, H-GAC, and Fort Bend commented that antifreeze was not included in the exempted materials in §335.401(c)(1), although it is often collected along with the materials listed. San Marcos, Houston, H-GAC, and Fort Bend requested that antifreeze be added to the exemption. Harris County commented that antifreeze was left out of the exclusion and stated that antifreeze poses low environmental risk.

The commission agrees with these comments in part and at adoption is adding "antifreeze" to the listed wastes in §335.401(c)(1). Because new or used antifreeze does not have any characteristic of hazardous waste unless it is mixed with another material that exhibits a characteristic of hazardous waste, antifreeze itself is not HHW, and its collection is not covered by the rules, other than for the provisions that apply to non-hazardous liquid wastes. However, because the excluded collections may take antifreeze that is HHW because of contamination, antifreeze is added to the exclusion at adoption to clarify that accepting it does not make the exempted collections subject to the rules. The addition of antifreeze does not imply that other non-HHW materials (such as used oil filters, tires, etc.) are prohibited from the exempted collections.

Houston commented that antifreeze and e-waste should be clarified as not being HHW and not subject to the HHW rules.

The commission agrees in part with this comment but did not make any change to the rule based on this comment. Regarding the issue of antifreeze, by itself antifreeze is generally not HHW as discussed above, but it is still subject to certain parts of the HHW rules if it is accepted in collection programs. Regarding the issue of electronic waste generated by households, some electronic wastes may be HHW depending on the item. The HHW rules do not apply to organizations that only collect used electronic equipment from the public for reuse as provided in §335.401(c)(5). Please note that the commission is developing rules in a separate package that directly addresses the topic of consumer computer recycling.

Fort Bend commented that there should be an exemption in the rule to allow acceptance of small quantities (such as 25 gallons) of abandoned wastes by a permanent collection center.

The commission did not make any change to the rules in response to this comment. The HHW rules only apply to wastes generated by households. The origin and generator of abandoned waste may be unknown, in which case it cannot be assumed to be HHW; therefore, the commission is not expanding the definition of HHW to include small quantities of abandoned Class 1 (industrial) waste or small quantities of hazardous waste.

Timing of Submissions and Reports

Dallas County and Fort Bend commented that the deadline for filing annual reports on the amount of HHW collected should be moved from February 1st to March 1st each year. Grand Prairie commented that annual reports should be due on April 1st rather than February 1st. Harris County commented that the commission had not provided a rationale for the February 1st date in the proposal preamble and that the date should be moved to March 1st. H-GAC commented that the language in §335.413(b)(1) should be changed to "...report annually to the executive director no later than 20 days following the end of the fiscal quarter for which the report is applicable. . ."

The commission agrees with the comments in part and is changing at adoption the reporting deadline to April 1st for the previous calendar year. The extended deadline is the latest date requested in the comments and should provide sufficient time for HHW programs to compile data and submit the reports. Although one commenter requested an earlier deadline than proposed, the

adopted rule would allow submission any time prior to the deadline to allow HHW programs the greatest flexibility for keeping up with reporting requirements.

Dallas County commented that the shortened deadline for notifications increases flexibility in arranging collections. Dallas County and Fort Bend requested that a provision be added that notifications can be submitted via fax or e-mail. Veolia commented that HHW programs should not be required in §335.403(b) to provide an original and signed notification but that a scanned or electronic copy should also be acceptable. Harris County and H-GAC commented that only an original signed notification can be submitted and that provision means that a notification would have to be mailed. Harris County and H-GAC commented that submitting notifications by fax or electronically should be allowed because this would provide necessary flexibility without having to incur additional costs for using overnight services.

The commission agrees with these comments in part and has made a change to this section indicating that a scanned electronic copy or a facsimile of a signed authorization submitted by facsimile or electronic means satisfies this requirement.

BVSWMA stated that the 90-day deadline for submitting notifications in the previous rules should be retained instead of being shortened to 45 days in order to provide sufficient notice to the commission.

The commission did not make any changes to the rules in response to the comment. Forty-five days provides sufficient notice of HHW collection activities and the decreased advance notice period provides HHW programs flexibility. The 45-day deadline is the minimum amount of advance notice required and provides more flexibility than the previous 90-day deadline for the planning of HHW

activities. HHW programs are encouraged to plan collection efforts well in advance, and the commission will accept notifications submitted prior to the 45-day deadline.

BVSWMA suggested that the 45-day operational plans be removed from the rules and any needed changes sent to the commission when necessary. BVSWMA stated that operational plans should be kept on file by the commission.

The commission did not make any changes to the rules in response to the comment. The purpose of operational plans is to facilitate HHW programs in effectively planning and conducting collections and providing adequate staff training. In most cases, the commission does not need to receive copies of the plans, but retains the option of requiring submission as needed. The commission will continue to assist HHW programs upon request with the development of operational plans.

Fort Bend commented that §335.403(b) is vague because it uses terms that are undefined and different interpretations are mixed. Fort Bend suggested moving some of the language in the subsection. Fort Bend commented that TCEQ staff has previously stated that revisions can be made to notifications that have been submitted without restarting the clock and requested that language to formalize this point be added to the subsection. Harris County and H-GAC commented that the phrasing "conducting activities covered by this subchapter" is vague and should be replaced with "collecting, aggregating, and storing household hazardous waste" and also proposed language that would allow amendments to any information in notifications without restarting the 45-day time period.

The commission did not make any changes to the rule in response to these comments. Revisions to submitted notifications are appropriate subject matter for the guidance document for HHW programs. The information listed in the rule must be submitted. Therefore, the type of revision needed for a notification would determine if the deadline for the notification restarts or not. The commission intends for staff to develop forms and guidance to assist HHW programs in getting all required information in the notification timely submitted.

General Content of Submissions and Reports

Harris County, H-GAC, and Fort Bend commented that §335.403(b)(3) should have language added that notifications can include alternate dates for inclement weather.

The commission agrees with this comment and is adding language for this purpose to §335.403(b)(3) at adoption.

Harris County and H-GAC commented that §335.403(b) states that the notification needs to contain specific information and to avoid ambiguity, the subsection also needs to clearly state what information will be in the form that is provided by the commission, as well as that the form needs only to require information that is clearly specified in subsection (b).

The commission respectfully disagrees with these comments and did not make any changes to the rule in response to the comments. The additional wording suggested is not necessary in the rule. The commission does not see a need to specify all information in the rule that is of less consequence to oversight of HHW programs (such as administrative information) that may be on the notification

form. If the commission needs to amend the requirements for the submitted notification, it will be done through future rulemaking.

Veolia commented that they support a regulation that identifies with specificity what required records should be provided for HHW collections. Veolia recommended that the records include: 1) a copy of the operational plan; 2) copies of all shipping papers for wastes shipped off-site; 3) a copy of the health and safety plan for the event; 4) a copy of the sign-in sheet for staff being trained on the health and safety plan; and 5) copies of any incident reports for incidents during the HHW event. Veolia commented that this list should be considered sufficient and that the rules should make clear that no other information needs to be submitted.

The commission respectfully disagrees with this comment and did not make any changes to the rules in response to it. Entities conducting HHW collections are required to keep a copy of their operational plan in an appropriate location. Because some permanent collection centers store HHW for up to 180 days, shipping papers are not sufficient records of the wastes stored on site; however, manifests can be used as storage records when appropriate. The health and safety plan is a required part of the operational plan. Records of training must be part of the operational plan, but there are more types of training required than the safety briefing. HHW programs are given flexibility in how they document the various parts of training. There are other records that are required to be submitted to the commission, including the notification and annual report.

Permission from Property Owners to Use Sites

Dallas County commented that the requirement for written authorizations from site owners should be separate from the notification because of potential delays in receiving this written authorization. Dallas County commented that letters from landowners might not be received before the deadline for submitting notifications and should be part of the operational plan rather than the notification.

The commission modified the rules based on this comment. Written authorization from the owner or authorized representative of a property to be used for an HHW collection is a critical part of the planning of an event. Because a denial of use of the property for HHW activities would require an alternate location and a new notification, the written permission from the landowner or authorized representative must be secured during the early stages of event planning prior to notifying the commission.

Harris County commented that the requirement should be deleted for including with notifications written authorizations from site owners to use sites for HHW collections. Harris County commented that they do not see any environmental or regulatory benefit to this requirement, that it is an onerous burden for notification purposes, that the limit of the commission's oversight is from a public health and environment standpoint, and that whether an operator has use of the property for the stated purpose is a contractual issue between and operator and owner.

The commission respectfully disagrees with this comment. However, changes were made to expand the authorization to the property owner or their authorized representative.

Veolia commented that signed permission to use a property can be difficult to obtain and that requiring a signed letter of permission be submitted with a notification is unreasonable and unnecessary. Veolia commented that government entities that own the site to be used for their own collections should not need to provide letters of permission. Veolia commented that the letters of permission should be signed by a person in authority rather than the property owner because the property would be owned by a government. Fort Bend commented that an event-specific standardized release form signed by someone in authority at the collection site should be acceptable in lieu of an authorization letter from the landowner.

The commission agrees with this comment and made changes to the rules in response to the comment.

Required Training

Several comments were received on who should be required to have HAZWOPER training at HHW collections. Fort Worth stated the firefighters working at events may have extensive training but not necessarily HAZWOPER and that HAZWOPER training is not always needed, such as for the unloading of latex paint where on-site training should be sufficient. Fort Worth commented that the provisions in §335.409(b)(10) would require HAZWOPER training for persons at HHW collections who only handle wastes without hazardous characteristics (non-HHW). Dallas County commented that HAZWOPER should not be required for everyone involved with an HHW collection but that training should be appropriate for the specific duties being performed. Dallas County stated that HAZWOPER is specific to emergency response and that the full 40-hour course would only be appropriate for first responders. UTRWD commented that the requirement should be changed in §335.409(b)(10) that personnel who handle HHW or supervise those activities be trained through a HAZWOPER course and annual refresher

training. UTRWD gave two suggested alternate requirements: 1) that at least one person at a collection have chemical identification, segregation, and consolidation training and a HAZWOPER or equivalent certificate; or 2) that only trained professionals with HAZWOPER or equivalent certification conduct chemical identification and segregation and that all other personnel have job specific training appropriate to their duties. UTRWD commented that having to provide HAZWOPER training to all staff working on their mobile collection units may be cost-prohibitive for smaller towns. For §335.407(a), Fort Bend commented that the commission should confirm that the training requirements are applicable to those personnel who handle waste and not those taking surveys or other duties that do not involve contact with wastes.

The commission agrees with these comments in part. Because of concerns about costs for training volunteers who unload vehicles delivering household wastes at some events, the commission is changing §335.409(b)(10) at adoption so that the applicability of HAZWOPER training applies at collection events (including those using mobile collection units) and permanent collection centers only after HHW has been unloaded from vehicles delivering it from households; the commission intends that those who segregate and classify HHW after receipt to have HAZWOPER training, including those who perform these tasks on point of generation pick-up vehicles. For those workers who remove containers from vehicles from households, training on the operational plan is appropriate. The eight-hour awareness level HAZWOPER is appropriate for individuals whose duties entail recognizing when a chemical hazard exists or a spill is occurring. The 24-hour operations level HAZWOPER training is appropriate for individuals who take defensive actions during a spill response or who process HHW received in uncontaminated and non-leaking containers. For those staff who handle contaminated or leaking containers or who clean up spills,

the 40-hour technician level training is appropriate. It is important to note that other training is also required depending on job duties, so HAZWOPER is not sufficient by itself for all workers at HHW collections. Individuals involved with collections who unload vehicles delivering wastes from households or who do not handle HHW are not required to have HAZWOPER training, but would require any other training, if any, that is appropriate for their duties.

Several comments were received on allowing alternate training instead of HAZWOPER training. Dallas County commented that HAZWOPER is no longer the best option for HHW collections and suggested that the requirement for training be changed to "HAZWOPER or equivalent training." Fort Worth commented on the proposed training requirements in §335.409(b)(10) and stated that the statement in the rules that persons handling HHW or supervising these activities must have a HAZWOPER certificate is not correct. Fort Worth stated that other training would be much more beneficial. Fort Worth suggested the following language as replacement: "At a minimum at least one person will have chemical identification, segregation, and consolidation training and HAZWOPER or equivalent during an event; all other personnel will have appropriate training pursuant to their duties." San Marcos commented that having a specific requirement for HAZWOPER training may preclude development of training more appropriate and suitable for HHW managers, that HAZWOPER is minimally applicable to HHW operations, and that efforts are underway to develop a course specific to HHW operations. San Marcos commented that the requirement at §335.409(b)(10) for HAZWOPER training may have a dampening effect on development of the HHW course. Harris County and H-GAC suggested alternate rule language requiring a 24-hour course (HAZWOPER or comparable) for persons who handle HHW and awareness-level training (i.e., an eight-hour course) for staff handling non-hazardous materials.

The commission did not make any changes to the rules based on these comments. The commission is not aware of other training that is equivalent and has made no provision for other types of training to substitute for HAZWOPER. If equivalent courses exist or are developed, the commission will consider them on a case-by-case basis and may provide for a broader range of courses through additional rulemaking if appropriate. All persons who handle hazardous waste are required to have HAZWOPER training (including general and site-specific training) under the OSHA HAZWOPER standard (private employers) or the EPA Worker Protection Rule (governmental employers). Although HHW is exempted from being hazardous waste, it presents the same hazards to those who handle it, so HAZWOPER training is appropriate for the individuals who handle HHW after it is unloaded from vehicles delivering the wastes from households. Although firefighters are often trained in emergency response to spills of hazardous chemicals, they generally are not trained on how to handle hazardous waste or HHW during normal collection operations. The federal OSHA and EPA requirements for HAZWOPER training include site-specific training in addition to the general training; therefore the HAZWOPER training must be specific to the individual HHW operation. The commission notes that any course for HHW operations could be developed consistent with HAZWOPER requirements. It is important to note that current OSHA and EPA regulations do not specify who can provide the training, so that this training can be provided by anyone with expertise in the issues. Therefore, the requirements for HAZWOPER training are appropriate to staff and volunteers at HHW collections whose job duties are related to handling HHW after unloading and to recognizing chemical hazards, and providing the appropriate level of HAZWOPER training should not be overly burdensome for any HHW program. HAZWOPER training can and should be tailored to HHW programs and their specific

operations. This allows the flexibility for HHW programs to develop appropriate and suitable HAZWOPER training.

Fort Bend commented that advice is needed on the training required by the state and federal laws and regulations listed in §335.407 because they do not have copies of the sections cited. Houston commented that guidance be provided on specific training requirements based on job functions at HHW collections.

The commission agrees with these comments. The commission intends to develop a guidance document to address training issues.

Harris County and H-GAC commented that §335.407(d) requires that individuals who handle HHW are trained as if the waste were hazardous waste, but that HHW is exempt from being hazardous waste. Harris County and H-GAC commented that while HHW programs are voluntarily providing excellent training to those participating in events, the proposed provision adds an onerous requirement that goes beyond legal requirements. Harris County and H-GAC commented that the proposal preamble did not provide a justification for the requirement but only gives the example of using a HAZWOPER course, which is expensive and resource intensive as a 40-hour course. Fort Bend commented that §335.407(d) states training must be done "as if the waste were hazardous waste" although HHW is exempt from being hazardous waste and asked why they need to pay for training from which they are exempt.

The commission agrees with these comments in part. The language in §335.407(d) was added to the proposal specifically because HHW presents the same hazards as hazardous waste to those who handle it although HHW is exempted from the requirements of hazardous waste. Because of the

concerns expressed by the regulated community, the commission is changing the training requirements at adoption so that HAZWOPER training only applies to personnel who handle HHW after unloading from vehicles delivering wastes from households. The training that is required for hazardous waste workers is the same as what is needed for persons processing, storing, and transporting HHW, but would not apply to HHW operations without this provision in these rules. The provision does not require training above that needed for hazardous waste workers, and the option for providing the training in-house applies to HHW operations. Therefore, the HAZWOPER training can be provided at the site rather than in a classroom and can be presented by any person with sufficient knowledge of the issues (i.e., expensive classroom courses are not required). Additionally, there are multiple levels of HAZWOPER training, with only the highest level requiring 40 hours of training; HHW programs must train those handling HHW after unloading from vehicles delivering wastes from households to the level of HAZWOPER that is appropriate for their individual duties.

Harris County and H-GAC commented that HAZWOPER training required by 29 CFR §1910.120 was not intended for HHW operations. Harris County and H-GAC applauded the commission for recognizing the need for training in the HHW industry, but commented that HAZWOPER training is in no way reflective of the job duties performed at an HHW collection. Harris County and H-GAC noted that staff who take HAZWOPER courses still require HHW-specific training. Harris County and H-GAC proposed that the HAZWOPER training be given in-house and not require an outside training provider. Harris County and H-GAC stated that the commission's guidance document should reflect the topics required for a comparable course.

The commission agrees with these comments in part. In response to comments, the commission is restricting to applicability of HAZWOPER training only to personnel at collection events who handle HHW after it is unloaded from vehicles delivering wastes from households. The part of the standard that is applicable to most HHW programs is the regulation pertaining to operation of hazardous waste processing, storage, or disposal facilities (i.e., 29 CFR §1910.120(p)). In cases where HHW program staff are required to perform emergency responses to spills, the emergency response provisions in 29 CFR §1910.120(r) also apply. The commission respectfully disagrees that the provisions of 29 CFR §1910.120(p) are not directly pertinent to operations involving aggregated HHW. Because HHW would be classified as hazardous waste if it were not for the exemption for waste generated by households, the training requirements for hazardous waste are appropriate and comparable. The commission agrees that the training can be provided by any person with sufficient knowledge in the subject area, so that in-house training is adequate as long as the trainer is sufficiently knowledgeable. It is important to note that the HAZWOPER standard specifies that site-specific training must be provided, and the commission intends that this be done for HHW programs as well. The commission respectfully disagrees that 24-hour training is all that is needed for HHW workers who handle HHW – the level of training depends on the exact job duties of the individual (i.e., 24-hour training is appropriate for HHW workers who directly handle the containers of aggregated HHW but who do not respond to significant spills; eight-hour training is appropriate for HHW workers who need to recognize potential chemical hazards, like leaks from containers of aggregated HHW, but who would not respond to the hazards; 40-hour training is needed for those who would cleanup significant spills; and no HAZWOPER training is needed for HHW workers who do things like direct traffic or handle HHW prior to aggregation). Because there is so much variation in how HHW programs divide these duties, the general references are

more appropriate in these rules than specific requirements. Training issues will be covered in detail in the guidance document contemplated for HHW programs.

Veolia commented that they support specifying the minimum levels of training to work in HHW programs but that certificates of training should not be required because not all training courses provide certificates and because certificates may not list all topics covered. Veolia specified initial HAZWOPER courses and forklift training from OSHA as not requiring certificates. Veolia stated that some types of training need to occur on the job rather than in training courses. Veolia recommended that the rules allow documenting training through any type of documentation. UTRWD commented that the requirement should be changed that topics covered in training must be documented on a certificate.

The commission agrees with these comments in part. In response to these and other public comments, the commission is changing at adoption the word "certificates" in §335.405(a)(9)(B) to "records" to allow records other than certificates to be used to document training. The proposed rules did not specify what constitutes a certificate for training, and the term was intended to mean documentation that training was completed. In most cases, training certificates are provided by training providers for specific courses, but the commission agrees that certificates can include other records of training. The commission agrees that much of the HAZWOPER and other training must occur in and be specific to the collection program, such that a certificate from a classroom HAZWOPER course is not sufficient to document all required training for workers who may handle HHW after it is unloaded from vehicles delivering waste from households. Therefore, all required training must be documented through a record.

Veolia and Fort Bend commented that the citation for the HAZWOPER regulations is incorrect in §335.409(b)(10).

The commission agrees with this comment, and the citation is removed at adoption in the revised rule.

Harris County commented that the fiscal note sections of the proposal preamble were incorrect in stating that the rule revisions would not cause a fiscal impact because of the requirements for providing HAZWOPER training to workers who handle HHW, which equates to \$400 to \$800 per person.

The commission did not make any changes to the rules in response to this comment. The requirement for this type of training was in the previous rule, where §335.407(c)(3) stated "Personnel involved with handling waste must be instructed in accident prevention, the proper response to fires, explosions, and spills, and in the use of protective devices (such as respiratory gear and gloves) to minimize exposure to {HHW}." These provisions are part of the content of most HAZWOPER training. The commission acknowledges that there is a cost for HAZWOPER courses provided by training organizations, but there is no requirement that the training be done in this manner. The OSHA HAZWOPER Standard (as well as the EPA Worker Protection Rules) does not require certified instructors or other requirements that would preclude providing this training "in-house" within an HHW program as long as there is a person with sufficient knowledge to provide the training. The specific language from the federal standard, 29 CFR §1910.120(p)(7)(iii), for the training of persons who handle hazardous waste in processing, storage, or disposal facility reads: "Trainers who teach initial training shall have satisfactorily completed a training course for

teaching the subjects they are expected to teach or they shall have the academic credentials and instruction experience necessary to demonstrate a good command of the subject matter of the courses and competent instructional skills." Therefore, there are costs for the training if a HHW program chooses to use an outside training provider, but in-house training is also allowed. It is also important to note that training on the specific job site and duties is also required by the OSHA HAZWOPER Standard, such that a classroom HAZWOPER course by itself is not sufficient training for workers who handle HHW after it is unloaded from vehicles delivering wastes from households (i.e., site-specific training must also be provided).

Harris County and H-GAC commented that the commission is exceeding its statutory authority in specifying training requirements that are not necessary or beyond the requirements contemplated by Texas Health and Safety Code, §361.029(b) and that the fiscal implications of additional training are not taken into account at all. Harris County and H-GAC commented that several of the regulations listed in §335.407(c) are not within the commission's jurisdiction and that the commission's staff is not trained to regulate or enforce violations of these regulations. Harris County and H-GAC commented that the Texas Hazard Communication Act even excludes hazardous waste from coverage and should be deleted.

The commission has not made any changes to the rule in response to these comments. Texas Health and Safety Code, §361.029 requires the commission to establish the necessary training for persons involved in the collection and disposal of HHW. The statute does not specify any particular or minimum training requirements. The training requirements at §335.407(c)(3) in the previous rules are similar to the OSHA regulations referenced in new §335.407(c). The commission replaced the former requirements with the reference to OSHA regulations because the OSHA requirements state

more clearly what is needed for training for HHW collections. Although the commission will not be enforcing OSHA regulations, reference to the industry standards for training provide HHW programs a source for additional requirements pertaining to their operations. The Texas Hazard Communication Act is applicable to reuse programs where HHW staff handles chemical products rather than wastes. If reuse materials are handled or used within the HHW program, chemical right-to-know training is needed for the persons involved. In §335.407(c)(1) and (4), the previous rules required that training equivalent to the DOT training for preparing and packaging wastes for transportation be provided. For clarity, the revised rules reference the federal standard, but the required training is still the same. The reference to the EPA training requirements at 40 CFR §265.16 is also made for clarity and pertains to the training requirements at §335.407(c)(2) in the previous rules. The commission does intend to develop guidance to assist HHW programs meet and address applicable training requirements.

Manifesting, Packaging, and Transportation of Wastes

Harris County, Fort Bend, and H-GAC commented that it would be time consuming and costly to train existing personnel or to hire chemists trained on the requirements of the Resource Conservation and Recovery Act (RCRA) to be on-site to apply RCRA waste codes to manifests, that aggregated HHW is packed DOT compliant and compatibility compliant, and that there is no safety benefit if waste codes were applied. Harris County and H-GAC commented that HHW is federally exempted from waste codes and to enforce waste codes would be a burden to taxpayers and a deterrent for some government entities to start an HHW collection program.

The commission agrees with the comment. Although the federal exemption for household wastes excludes HHW from being hazardous waste, the commission has required, since the time that the HHW rules were first promulgated, that aggregated HHW be manifested. The commission considers that this requirement similar to the state-only manifesting for Class 1 Industrial Waste and that its use is protective of human health and the environment. Manifests are used to communicate the hazards associated with the wastes to the receiving hazardous waste processing, storage, and disposal facilities and to track waste from cradle to grave. The commission allows HHW programs flexibility on the specific coding as long as all the relevant information on the hazards associated with the specific HHW being shipped is communicated to the receiving facility on the manifest. The safety benefit of this requirement is that the receiving facilities receive information regarding the hazards associated with the wastes and the disposal restrictions that apply to specific materials so that wastes are disposed of safely and properly.

Harris County, Fort Bend, and H-GAC commented that HHW should not be subject to RCRA waste codes. Harris County, Fort Bend, and H-GAC commented that the reason behind the waste codes for hazardous waste was to ensure that correct treatment technologies are performed by processing, storage, and disposal facilities. Harris County, Fort Bend, and H-GAC commented that requiring the use of waste codes could prevent entities from conducting HHW collections.

The commission did not make any changes to the rules in response to these comments. Disposing of HHW as if it is hazardous waste accomplishes the two-fold goal of HHW collection programs, to divert HHW from the municipal solid waste stream and to properly dispose of the waste. HHW programs aggregating HHW must provide the needed information on the manifest (either by their

own staff or through contractors). However, the commission will allow flexibility to HHW programs on how this information is provided on the manifest. Various options that may be used to complete the manifest will be considered for inclusion in a guidance document.

Receipt by Permitted Facilities

PSC stated that the proposed wording "with a permit authorizing the receipt of household hazardous waste" in §335.417 creates a problem. PSC stated that neither of their permits for hazardous waste processing, storage, or disposal facilities, nor any other permits to the best of their knowledge authorize the receipt of HHW. PSC requested that the phrases be removed from the rules or that permit modifications to add HHW to permits be in the form of Class 1 permit modifications. Dallas County commented that no distinction between HHW and hazardous waste is made in some permits for facilities outside Texas, so that the phrase "authorized to receive household hazardous waste" should be changed to allow any permitted disposal facility to receive the HHW. Veolia commented that the wording implies that the permit would need to explicitly state that the hazardous waste processing, storage, or disposal facility can receive HHW but that no permits do so. Harris County and H-GAC commented that hazardous waste permits usually do not specify whether the facility can accept HHW and suggested changing related language throughout the rules. Fort Bend commented that this language should be changed throughout the rules for similar reasons.

The commission agrees with these comments, and the phrase "authorized to receive household hazardous waste" is being removed from §335.417. Although permitted processing, storage, or disposal facilities are authorized to receive HHW, this is not specifically stated in most permits.

Because this issue appears to be confusing to the regulated community, the language is being deleted at adoption.

Storage Time at Collection Events

Veolia commented that the definition of "collection event" should be changed such that the 24-hour period for storing HHW on site should be extended to 72 hours. Veolia commented that some HHW collection events last for more than one day and that large one-day events may take longer than 24 hours to package the HHW received. Veolia stated that for some one-day events, transporters are not able to coordinate the pickup of materials on the same day as the collection. Veolia requested clarification on when the storage period would start. Harris County and H-GAC commented that the 24-hour period should be increased to 48 hours because in some cases larger than anticipated participation in HHW collections can cause the wastes to be picked up until the next day. Fort Bend commented that the definition should be changed to specify a 48-hour period.

The commission agrees with these comments in part and is changing at adoption the definitions of "collection event" and "permanent collection center" to use a 48-hour period (rather than the proposed 24-hour period) to distinguish between these types of operations. Although the commission expects that it will be extremely rare for a collection event to be so large as to require more than 24 hours to hold the event and prepare the wastes for transport, there may be some cases where a longer period would be needed. The commission is allowing 48 hours rather than 72 hours because it is not expected that a collection event would need more than 48 hours to complete its operation if it is properly planned and operated. The commission notes that security of the site is

required during the full time that the collection event is underway, such that wastes cannot be left unattended or unsecured during the entire period.

San Marcos commented that it is not clear in the definition of "collection event" in §335.402(2) when the 24-hour storage period begins. San Marcos suggested that the rule be changed to specify that the 24-hour period begins at the end of the collection event.

The commission did not make any changes to the rules in response to this comment. Throughout Chapter 335, the term "storage," as defined in §335.1(137), means "the holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere." As previously noted, the period is being changed to 48 hours. Under this definition, storage at a collection event starts when a shipping container of waste first begins to be filled, such that the 48-hour period ends 48 hours after the first waste is placed in a shipping container at the collection.

Satellite Collection Centers

UTRWD commented that the proposed rules did not include a definition for satellite collection centers. UTRWD suggested a definition that would allow shipping HHW from a satellite collection center to a permanent collection center. UTRWD suggested a change to §335.403(b)(5) to allow transferring HHW from satellite collection centers to collection events or permanent collection centers.

The commission agrees with these comments in part. As discussed previously in the preamble, satellite collection centers have the same requirements as any permanent collection center and do

not need a separate definition. The commission is changing the rules at adoption to allow consolidation of HHW. Under the revised rules, HHW can be transferred between programs in any manner for consolidation.

Fort Worth commented that they want to have HHW collections at municipal solid waste drop-off stations and that to allow this action, a specific definition for a satellite collection facilities should be added to the rules. Fort Worth suggested that these sites be limited to storing for no more than ten days. Fort Worth indicated that they want to be able to haul collected wastes from the satellite collection centers to their permanent collection center using mobile collection units because it would be more cost-effective to consolidate the wastes for transportation at one facility.

The commission respectfully disagrees with this comment and did not make any changes to the rules based on the comment. The rules do not create a definition of a satellite collection center. If not staffed, facilities for drop off and collection of HHW potentially pose too great a risk that the waste will not be properly managed, handled, and secured. As discussed previously in the preamble, manned satellite collection centers would be the same as any other permanent collection center. The length of storage at HHW facilities is based on the volume of wastes stored. Because smaller facilities are less likely to exceed the 3,000 kilogram threshold, it is not appropriate to apply the shorter period unless that threshold is exceeded.

Dallas County commented that HHW programs need the flexibility to use mobile collection units to transfer HHW between permanent facilities. Dallas County indicated that this issue is particularly important for programs that set up satellite collection centers because it is cost-prohibitive to ship HHW

from several small facilities instead of one central location. Dallas County noted that a major factor in the cost is the requirement to ship partially filled containers of HHW at the same cost as a full container. Dallas County suggested that load limits might be an appropriate mechanism to govern this activity. Fort Worth commented that the requirement to ship HHW from permanent collection centers to hazardous waste processing, storage, or disposal facilities will greatly increase costs for programs operating satellite collection centers. Fort Worth strongly requested that the commission allow wastes from satellite collection centers to be shipped to other permanent collection centers for consolidation with other HHW to reduce disposal costs. Harris County, H-GAC, and Fort Bend commented that a new §335.403(d)(4)(D) should be added to allow HHW programs to transport any aggregated HHW to another permanent collection center in order to minimize costs. Dallas County suggested a similar change for §335.403(d)(4)(A).

The commission agrees with these comments in part. The commission is changing the rules at adoption to allow consolidation of HHW. Under the revised rules, HHW can be transferred between programs in any manner for consolidation.

Mobile Collection Units

San Marcos commented that the definition of "mobile collection unit" in §335.402(8) appears to prohibit the units from transporting wastes for aggregation, which would require that a hazardous waste transporter haul the wastes collected by the mobile collection unit. This fact negates the cost saving gained by using mobile collection units.

The commission did not make any changes to the rule in response to this comment. The definition of "mobile collection unit" in §335.402(8) reads "A vehicle (such as a truck or trailer) that is used to aggregate household waste materials delivered by the public prior to transporting the material to a permanent collection center, collection event, or registered hazardous waste transporter facility." The definition clearly allows mobile collection units to transport the wastes that they collect to a permanent collection center or collection event for aggregation with other HHW or to a hazardous waste transporter to haul the HHW for processing or disposal. The rules allow mobile collection units to deliver HHW to an appropriate facility.

Dallas County stated that the rules for mobile collection units should be clarified to specify that a mobile collection unit is a vehicle or group of vehicles to serve a collection site. Dallas County stated that their mobile collection units are a truck and trailer combination.

The definition of "mobile collection unit" provides examples of what would generally constitute a mobile collection unit with the phrase "(such as a truck or trailer)", but this does not prohibit truck and trailer combinations from being a single mobile collection unit. The commission agrees that a truck pulling a trailer used for the collection of HHW is a single mobile collection unit unless the truck (separately from the trailer) is used for a second collection of HHW when the trailer is used for the first collection.

Harris County commented that, because they transfer wastes collected with their mobile collection units to the City of Houston's permanent collection center and because timing of the collection events does not coincide well with the operating hours of the receiving collection center, the requirement to deliver wastes

on a mobile collection unit within 24 hours of receipt is overly burdensome. H-GAC commented that mobile collection unit events may be conducted by one operator and the waste may be taken to another operator's permanent facility for aggregation, and suggested changing the 24-hour period for delivery to 72 hours. Harris County noted that the mobile collection unit is kept at a locked facility between the collection and delivery. Harris County commented that having to deliver the aggregated HHW within 24 hours would require both Harris County and the City of Houston paying staff for this work on weekends. Harris County commented that it would also be costly to have their disposal contractor pick up the wastes within 24 hours of the collection. Harris County commented that because hazardous waste transporters are allowed ten-day storage under §335.94(a), increasing the period to 72 hours is not unreasonable. Fort Bend commented that the period of delivery of aggregated HHW should be 72 hours based on the manner in which Harris County operates their mobile collection unit. Dallas County commented that the 24-hour period in which to deliver HHW collected with a mobile collection unit is too short. Dallas County stated that for large collection events, it can take substantial time to prepare the wastes for shipment and that a permanent collection center may not be open by the time delivery is made. Dallas County stated that the limited time may require the paying of overtime to staff who are preparing for wastes for shipment and for the staff of the receiving facility. Dallas County recommended a 72-hour deadline be substituted. Grand Prairie commented that mobile collectors with adequate facilities for securing and storing HHW should be allowed to store collected HHW for up to five days without being considered a permanent collection center. Grand Prairie indicated that the need for storing HHW in a mobile collection unit might be caused by weather or road conditions or the operating hours of the receiving permanent collection center. Grand Prairie stated that the days of their collection events do not always allow delivery of HHW to the Fort Worth permanent collection center within 24 hours.

The commission agrees with these comments. At adoption the period for delivery of collected HHW by mobile collection units and point of generation pickup vehicles is being increased from 24 hours to 72 hours.

UTRWD commented that the definition of "collection event" in §335.402(2) should be changed to allow 72 hours for transportation of collected HHW off the site and that changing from the current ten-day period to a 24-hour period for delivering collected HHW to a permanent collection center would be overly burdensome.

The commission agrees with these comments in part. At adoption the period for delivery of collected HHW by mobile collection units and point of generation pickup vehicles is being increased from 24 hours to 72 hours. However, the ten-day period in the previous rules for storage of waste applied to permanent collection centers with more than 3,000 kilograms of HHW, not to mobile collection units. It is not appropriate to use mobile collection units for storage of HHW beyond 72 hours because these units do not provide the security of a permanent collection center.

Grand Prairie commented that mobile collection programs that contract with a permanent collection center should not be required to evaluate processing and disposal options, which are made by the permanent collection center.

The commission did not make any changes to the rules based on this comment. The responsibility for proper disposal of aggregated HHW rests with the program conducting the collection. In cases where a contractual arrangement exists between the entity conducting the collection and another

entity, the responsibility to ensure compliance with the HHW requirements, proper disposal, and the choice of the disposal facility used remains with the entity submitting the notification to the agency and conducting the collection. Therefore, collection programs must evaluate processing and disposal options in order to fulfill these obligations.

Required Safety Equipment

Grand Prairie commented that the requirement is excessive that mobile collection units have enough absorbent and containment to contain a spill of 10% of the liquid wastes collected. Grand Prairie stated that mobile collectors should be required to only provide a spill kit and one 40-pound bag of absorbent per vehicle. San Marcos commented that requiring 10% spill control would increase costs by greatly increasing the amount of spill control materials that programs must keep on hand. San Marcos commented that the requirement for containment and absorbent should be changed for all types of HHW collections to enough for a spill or 10% of all liquid wastes or the largest container of liquid waste present. Harris County and H-GAC commented that in §335.411(b)(3), because some HHW collections using mobile collection units have more than one unit present, the rule should be changed to only require one set of the emergency response items listed in the paragraph. Harris County and H-GAC commented that spill materials such as oil dry and vermiculite are expensive and that for large spills a qualified company would be called to respond. Harris County and H-GAC commented that the drums used to hold wastes qualify as containment. Harris County, Fort Bend, and H-GAC commented that it would be costly for government entities to spend money for spill materials they may not need.

The commission agrees with these comments. At adoption, the rules are changed to require only one set of emergency equipment at a collection regardless of the number of mobile collection units

involved. At adoption, the rules are changed to require only enough absorbent and containment to respond to a spill of 10% of liquid wastes from the largest mobile collection unit.

Dallas County stated that their mobile collection units are a truck and trailer combination and that only one set of required equipment, other than fire extinguishers, should be required at a collection event using mobile collection units. Dallas County further stated that fire extinguishers should be in each vehicle and trailer used for HHW.

The commission agrees with this comment. At adoption the rules are changed to require only one set of safety equipment for a single collection

Harris County, Fort Bend, and H-GAC commented that the requirement in §335.409(c)(5) for sufficient adsorbent and containment to control a spill of 10% of all liquid wastes anticipated to be collected be changed to enough containment and absorbent to handle 10% of all uncontained liquid wastes at a collection center or event. Harris County, Fort Bend, and H-GAC commented that the requirement in §335.411(b)(3)(E) for enough absorbent and containment to control a spill of 10% of all liquid wastes on a mobile collection unit should be changed to enough to control a spill of 10% of all uncontained liquid wastes at an event.

The commission respectfully disagrees with these comments and has not made any changes to the rules in response to the comments. All liquid wastes received at HHW collections are in containers, such that the addition of the word "uncontained" to the rule would negate the requirement to have materials present to respond to liquid spills. The purpose of the materials is to respond to spills in

the event that a container fails. The commission agrees that, in some cases, a drum holding HHW can count toward the amount of materials required, but not in all cases. In cases where containers of liquid wastes received from households are lab-packed into drums with an absorbent to pad the inner containers and absorb any spills, the wastes in the drum would not need to be considered as part of the total liquid wastes because the drum and absorbent would be enough to contain all the liquids in the drum should any or all of the primary containers break inside the drum or even if the outer drum also fails. However, in cases where liquid wastes are received in containers that are not lab-packed but are either poured into bulk drums (i.e., bulked) or are shipped as received, the container cannot count toward the spill control materials because it would release the contents if it fails; the content of these containers must be counted as part of the total liquid wastes. The drum and absorbent for lab-packed wastes that are already filled cannot be counted toward the spill response materials for other liquid wastes because that drum and absorbent are no longer readily available to respond to a spill. The required amount of spill control materials is set at a level sufficient to control a spill of 10% of liquid wastes present rather than the total amount of liquid wastes because the commission is ensuring that there is sufficient material present to take initial defensive actions against spills (i.e., preventing flow into storm drains, bodies of waters, etc., and stopping uncontrolled spread of the wastes) immediately during emergency spill responses. These requirements are included as a precautionary step to reduce the risk of harm to human health and the environment in the event of an accident.

HHW Versus Hazardous Waste

PSC commented that the proposed new language in §335.415 that HHW be treated "as if it was hazardous waste" would contravene the DOT requirements at 49 CFR Parts 171-180. PSC stated that HHW should

not be identified as hazardous waste on a manifest through the use of waste codes, but rather as "HHW Exempt." Dallas County commented that they are concerned about the language requiring HHW to be handled "as if it was hazardous waste" and that the federal exemption for household waste allows HHW programs to keep down costs and exercise options that would not be financially feasible if they were required to use hazardous waste vendors for all collection, aggregation, and transportation services. Dallas County commented that the federal exclusion for household wastes was passed on to HHW programs and licensed transporters to allow them to handle HHW as an exempt waste. Dallas County commented that the language that HHW be handled as if it was hazardous waste might be interpreted as meaning that the federal exclusion for household wastes is being eliminated. Harris County commented that the provisions that include "as if it was hazardous waste" mean that the rules exceed a federal standard and exceed an express requirement of state law, which is contrary to the statements made in the Draft Regulatory Impact Analysis in the proposal preamble. Harris County commented that the phrase "as if it was hazardous waste" should be stricken from the rules.

The commission does not regulate HHW as hazardous waste; HHW is specifically excluded from hazardous waste. Although HHW is exempted from regulation as hazardous waste, HHW may present the same properties, characteristics, and safety concerns as hazardous waste. Under Texas Health and Safety Code, §361.029, the commission is required to adopt rules for the collection and disposal of HHW, and the commission intends that the collection and disposal of HHW be done in a manner that is safe and protective of the environment. The addition of the phrases "as if it was hazardous waste" to 30 TAC §335.415(a)(3) - (5) pertains to the applicability of the other cited sections rather than eliminating the federal exemption for household waste or certain entries to be used on manifests. Because §§335.4, 335.11, and 335.14 apply to hazardous waste and HHW is not

classified as hazardous waste, the previous rule language was subject to an interpretation that the general prohibitions in these rule sections are not applicable to HHW, that properly completed manifests were not needed for shipping HHW, and that the recordkeeping requirements for transporters did not apply to HHW. The new phrase, "as if it was hazardous waste," was added to clarify that these sections are applicable to HHW that is aggregated in collection programs. The specific entries to be used in manifests are not covered in the cited sections and are not impacted by the phrasing, as long as the manifest meet their intended purpose of informing the ultimate disposal facility of the hazards associated with the specific wastes. Additionally, the phrase "as if it was hazardous waste" does not mean that the commission is changing the definition of HHW or classifying HHW as hazardous waste. Inclusion of the phrase "as if it was hazardous waste" in no way requires that hazardous waste vendors be utilized for collection and aggregation activities.

Regulatory Guidance

San Marcos commented that a guidance document should be created to aid in the interpretation and practical application of the rules to HHW programs and activities. Harris County commented that guidance on the rules is needed, suggested that several parts of the rules should be guidance rather than rules, and suggested provisions to require guidance in the rules, including public comment and meetings on the draft guidance and any future changes. H-GAC and Fort Bend commented that the rules should clearly state that the commission will develop a guidance document with input from stakeholders and that the rules should require the commission to receive comments from stakeholders and update the guidance document annually. Fort Bend applauded the efforts by the commission to provide a guidance document on the rules and commented that the commission's interpretation of how detailed operational plans should be has varied not only within their operational plans but among the different HHW programs. Fort Bend

commented that the intent of the words "nature, type, and quantity" in §335.405(a)(1) should be to advise the types and amounts of waste that HHW programs anticipate receiving and that the guidance document should define what information the commission is requesting.

The commission agrees that guidance documents are beneficial and intends to develop guidance on HHW activities, but a rule requiring the issuance of guidance is not necessary. The commission welcomes input from all interested parties on the usability of its guidance documents and other outreach materials, and the commission is retaining its flexibility for the procedure for producing the guidance. The commission will also work with the Pollution Prevention Advisory Committee and the members of the quarterly HHW Managers meeting on the development of the guidance document to ensure that views outside the commission are considered in its development. The commission will consider the specific issues to be included in the guidance.

Fort Bend commented that in §335.405(a)(2) the intent of the words "sources" and "amounts" should be the entities from which an operator will accept wastes and the types of wastes that will be accepted. Fort Bend commented that these terms should be defined in the guidance documented as to what information the commission is requesting.

The commission did not make any change to the rule based on this comment. The cited paragraph reads: "The operational plan must describe the source(s), amounts and types of wastes that would be accepted . . . , and if the collectors involved in the programs are not under a single operator, must describe the source(s), amounts, and types of wastes that will be transferred by a point of generation pick-up service or mobile collection unit to a collection event or permanent collection

center." The meaning of "source(s)" is "from where the wastes are coming." In the first instance, this information could be provided by listing specific entities, but more likely would be done by specifying that the wastes will come from households in a specific geographic area (such as a specific municipality of county. In the second instance, this information would likely be done by specifying point of generation or mobile collection unit collections within a certain geographic area because programs may select the receiving facility based on proximity to the location of the collection. The meaning of "amounts" in both instances is separate from the types of wastes and refers to the quantity of each type of waste anticipated to be received or transferred. The commission will consider this issue in the guidance.

Other Issues

Fort Worth commented that the cost of running events must be kept as low as possible for communities to participate.

The commission agrees that the costs of HHW programs should be kept as low as possible, as long as adequate protection for workers and the community are provided in the operation of the programs. Where possible, flexibility has been incorporated into the rules to allow programs options in how they operate, with provisions that all programs meet minimum safety and training requirements.

Veolia commented that the word "person" in §335.402(9) should be changed to "entity" because a company, governmental entity, or non-profit group, rather than an individual, are generally responsible for HHW collections.

The commission did not make any change to the rule in response to this comment. Commission rule in 30 TAC §3.2(25) "person" is defined as "an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, trust, or any other legal entity." Because the definitions in §3.2 apply to all the commission's rules, the meaning of "person" in these rules covers all legal entities.

Harris County, H-GAC, and Fort Bend commented that a typographic error in §335.402(9) needs to be corrected by changing "if" to "of" in the last sentence.

The commission did not make any changes to the rule in response to these comments. The commission reviewed the proposed language for the definition of "operator," which is a single sentence. The use of "if" in the definition is correct and intended. The commission did find a typographic error in §335.403(c) and is adding the word "center" after the phrase "permanent collection" in this subsection, as discussed previously.

Houston and Harris County commented that some HHW programs are not voluntary but are mandatory by way of permit provisions included in municipal separate storm sewer system (MS4) permits, National Pollutant Discharge Elimination System permits, and Texas Pollutant Discharge Elimination System permits. Harris County commented that the fiscal note of the proposal preamble incorrectly states that HHW programs are voluntary.

The commission respectfully disagrees with these comments and did not make any change to the rules in response to the comments. The commission does encourage the collection of HHW, but no one is required to engage in these activities under these rules. While permit provisions requiring implementation of programs "to collect household hazardous waste materials for recycle, reuse, or proper disposal" are included in individual MS4 permits, MS4 permits do not require HHW programs. An HHW collection program is a voluntary election made by the permittee to comply with MS4 requirements in federal rules at 40 CFR §122.26(d)(2)(iv)(B)(6), requiring education, public information, and other appropriate activities to facilitate proper management and disposal of used oil and toxic materials to prevent illicit discharges of materials in a storm sewer. This election is but one possible best management practice that may be included in storm water management programs. Permittees may revise their existing storm water management programs.

Harris County, H-GAC, and Fort Bend commented that the fiscal note in the proposal preamble incorrectly indicated that there would be a three-year record retention schedule for records pertaining to HHW programs.

The commission agrees with this comment. Because that part of the proposal preamble is not included in the adoption preamble, the commission is noting here that the intent is for a one-year record retention schedule under these rules.

Harris County and H-GAC commented that the proposal preamble incorrectly stated that the requirement was being retained for an attachment in the operational plan covering evidence of competency including experience and qualifications of key personnel with new provisions requiring copies of training

certificates. Harris County and H-GAC commented that the proposed rule language actually greatly expands the previous requirements by requiring copies of certificates for contractor staff and other staff and individuals. Harris County and H-GAC commented that having to print copies of certificates for numerous persons would be costly and set a bad environmental practice. Harris County and H-GAC commented that different levels of training are needed and not all training would result in certificates. Fort Bend, Harris County and H-GAC commented that the term "key personnel" should not be defined but left to the discretion of operators. Fort Bend commented that Attachment B of the operational plan should have the training certificates of the key personnel, but not of all individuals at an event who are required to be trained because more than 100 persons may work at large collection events and requiring hard copies would set a bad environmental practice. Fort Bend commented that all training records are kept on file by employers and that copies may be obtained as necessary by the commission.

The commission agrees with these comments in part, but respectfully disagrees with other parts. In §335.405(a)(9)(B), the word "certificates" is being changed to "records" at adoption to allow for training that does not include the provision of a certificate. "Key personnel" applies to all individuals in a HHW program who have duties that require specific training under the rules (other than the safety briefing at the beginning of collections). Records must reflect the required training of all those participating in the operation. One purpose of keeping a current operational plan on-site is to provide a complete copy of the training records for quick reference by the HHW program in order to facilitate keeping the training up to date. Language in the previous rules requiring bound or stapled hard copies of operational plans was intentionally deleted, so that there is no requirement that the plans be in any specific media or format or that the entire operational plan be in a single unit. The rules allow the plans to be maintained in any combination of media.

Training records may be maintained in separate files and still considered part of the operational plan as long as they are stored at the required location(s) for operational plans.

Harris County and H-GAC commented that the term "specific personnel" in §335.405(a)(9)(C)(iii)(VII) be changed to "health and safety key personnel" because reference to "specific" is vague.

The commission did not make any change to the rule based on this comment. Section 335.405(a)(9)(C)(iii) covers the detailed procedures in an operational plan for avoiding and responding to spills, and §335.405(a)(9)(C)(iii)(VII) requires that the procedures specify the duties of specific personnel in avoiding and responding to spills. This information is needed in the operational plan for all those involved because the HHW program must determine what specific training and equipment are needed (including proper fit for personal protective equipment), so knowing in advance who will be involved in specific actions is very important in planning collections.

Fort Bend commented that in §335.405(a)(9)(C)(iii)(VII) that the phrase "the duties of specific personnel" be changed to "the duties of specific job functions."

The commission agrees with this comment in part. Instead of replacing "personnel" with "job functions," the commission is adding at adoption "or job functions" after "personnel." The original phrasing provides the most flexibility for HHW programs, but understandably, programs might be concerned if personnel substitutions had to be made during events such that the operational plan would not reflect the actual operation. Because the context of this requirement is the Health and

Safety Plan attachment of the operational plan, which is used to plan spill responses wherein specific personal protective equipment (PPE) that fits a specific person must be planned for and available, and specific training is required to perform some job functions, linking this provision to job functions would limit the flexibility of who could be assigned to some job functions. The original wording allows individuals who have the proper training and PPE to perform spill response duties regardless of what job they are filling for the collection itself, and allows programs to specify a group of individuals as being responsible for specific spill control and response functions. By adding "or job functions" to the provisions, the rule allows HHW programs the flexibility to select either approach. When selecting the latter approach, HHW programs must consider the training of personnel and the availability of proper PPE at the collection in assigning staff to job functions.

Harris County and H-GAC commented that in §335.409(b)(6) the proposed rules specify duties to an on-site supervisor that in actual practice may be performed by different people. Harris County and H-GAC suggested that the phrase "a person of authority" would be better in this regard. Harris County and H-GAC commented that §335.409(b)(7) assigns a different task to the on-site supervisor that is often actually performed by police officers and constables. Fort Bend commented that "a person of authority" should be used in addition to or in replacement of "on-site supervisor" in §335.409(b)(6) and (7).

The commission agrees with these comments in part, but has not made any change to the rule in response to the comments. Because the term "on-site supervisor" is not defined, each HHW program must determine who will fulfill this role at a collection event or permanent collection center. The rules do not preclude the on-site supervisor from delegating the tasks to others, but specify that the responsibility remains with the on-site supervisor to ensure that the tasks are done.

The rule requires a person to be present with overall control over the site. The recommended term, "person of authority" is also undefined and would not provide any additional clarity.

Fort Bend commented that a definition of "multiple collection events" should be added to the rules.

The commission did not make any changes to the rules in response to this comment. The plain meaning of "multiple collection events" is adequate in this instance.

**SUBCHAPTER N: HOUSEHOLD MATERIALS WHICH COULD BE CLASSIFIED AS
HAZARDOUS WASTES**

§§335.401 - 335.403 and 335.405 - 335.412

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state. The repeals are also adopted under Texas Health and Safety Code, Chapter 361, concerning Solid Waste Disposal Act.

The repeals implement Texas Water Code, §5.103, 5.105 and Texas Health and Safety Code, Chapter 361.

§335.401. Purpose.

§335.402. Definitions.

§335.403. Authority.

§335.405. Applicability.

§335.406. General Requirements for Collectors and Operators.

§335.407. Operation of Collection Centers.

§335.408. Household Pick-up.

§335.409. General Shipping, Manifesting, Recordkeeping, and Reporting Requirements.

§335.410. Reuse of Collected Material.

§335.412. General Requirements for Processing, Storage, or Disposal Facilities.

SUBCHAPTER N: HOUSEHOLD HAZARDOUS WASTES

§§335.401 - 335.403, 335.405, 335.407, 335.409, 335.411, 335.413, 335.415, 335.417, and 335.419

STATUTORY AUTHORITY

The new rules are adopted under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state; under Texas Health and Safety Code, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the Texas Health and Safety Code; under Texas Health and Safety Code, §361.029, which requires the commission to provide rules for persons to engage in activities that involve the collection and disposal of HHW; and under Texas Health and Safety Code, §361.429, which requires the commission to establish standards for HHW collection programs.

The new rules implement Texas Water Code, §5.103 and §5.105 and Texas Health and Safety Code, §§361.017, 361.024, 361.029, and 361.429.

§335.401. Purpose and Applicability.

(a) The purpose of this subchapter is to provide requirements for persons who are involved in any combination of collecting, aggregating, offering for reuse, recycling, transporting, or disposing of household hazardous wastes and other types of household waste materials that may, due to their quantity and characteristics, pose a potential endangerment to human health or the environment if improperly handled.

(b) The requirements of this subchapter apply to persons who engage in any combination of the following activities:

(1) collect, aggregate, or store household hazardous waste for offering for reuse, recycling, processing, or disposal;

(2) provide a point of generation pick-up service;

(3) operate a mobile collection unit;

(4) operate a collection event;

(5) operate a permanent collection center;

(6) transport any aggregated household hazardous waste; and

(7) own or manage a hazardous waste processing, storage or disposal facility that receives household hazardous waste directly from the public or households.

(c) The requirements of this subchapter do not apply to:

(1) persons who receive from households for the purpose of reuse, recycling or reclamation any combination of used oil, batteries, antifreeze, and paint, provided such persons do not collect other household hazardous waste or other household wastes under the requirements of this subchapter;

(2) persons who collect less than 100 pounds of household hazardous waste per year;

(3) retailers who accept from the public only waste items that are of the same type(s) as products sold by the retailer;

(4) collection events organized primarily for the purpose of collecting for processing or disposal pesticides and other wastes from agricultural operations and incidental amounts of household hazardous wastes, if no fees are charged for the collection and if registered transporters are used to haul the collected wastes to hazardous waste processing, storage, or disposal facilities; or

(5) organizations that collect used electronic equipment from the public for reuse, provided such individuals do not make a determination during the collection of whether the electronics are wastes, do not handle the electronics in a manner that renders them useless, and do not collect household hazardous waste or other household wastes covered under the requirements of this subchapter.

(d) Any provisions of this subchapter may be waived by the executive director for emergencies, disasters, or in other circumstances where flexibility from the requirements is necessary to protect public health and the environment.

§335.402. Definitions.

In addition to the definitions in §3.2 of this title (relating to Definitions) and §335.1 of this title (relating to Definitions), the following words and terms, when used in this subchapter, have the following meanings:

(1) **Aggregate** - The act of bringing together household hazardous waste that, after being separated from other household waste, is collected from two or more households and accumulated at a collection event, permanent collection center, point of generation pick-up service, mobile collection unit, or transporter's facility for the purpose of reusing, recycling, or disposing the material.

(2) **Collection event**- A one-time or recurrent designation of a site and areas within that site for use by an operator to collect or aggregate household hazardous waste delivered to the site by individuals, households, or collectors and to store the waste for less than 48 hours.

(3) **Collector** - Any person who accepts from two or more households any waste materials that have been separated from other household waste and offered to the collector because the generator either knows or considers the materials to be household hazardous waste. This term includes persons involved with household hazardous waste collection programs, but does not include persons delivering wastes that have not been aggregated to a collection program with which they are not affiliated.

(4) **Hazardous waste processing, storage, or disposal facility** - A hazardous waste processing, storage, or disposal facility that has received an United States Environmental Protection Agency (EPA) permit (or a facility with interim status) in accordance with the requirements of 40 Code of Federal Regulations (CFR) Parts 270 and 124, or that has received a permit from a state authorized in accordance with 40 CFR Part 271.

(5) **Household** - Single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreational areas.

(6) **Household hazardous waste** - Any solid waste generated in a household by a consumer which, except for the exclusion provided in 40 Code of Federal Regulations (CFR) §261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261. The term has the same meaning as "hazardous household waste."

(7) **Inclement weather** - Weather that could present a hazard in the operation of a collection event, permanent collection center, mobile collection unit, or point of generation pick-up service, including temperature extremes, high winds, rain, and severe weather.

(8) **Mobile collection unit** – A vehicle (such as a truck or trailer) that is used to aggregate household waste materials delivered by the public prior to transporting the material to a permanent collection center, collection event, or registered hazardous waste transporter facility.

(9) **Operator** – A person responsible for the collection, aggregation, and storage of household hazardous waste and household materials at a collection event or permanent collection center, in a point of generation pick-up service or mobile collection unit, or in any combination of collection programs; or, if the context clearly refers to an operator of a hazardous waste processing, storage, or disposal facility, the term has the same meaning as defined in §335.1 of this title.

(10) **Permanent collection center** - A designated site and facilities used to collect and aggregate household hazardous wastes on an ongoing basis and to store the wastes for 48 hours or longer.

(11) **Personnel** - All individuals who perform tasks at or oversee the operations of a collection event, permanent collection center, mobile collection unit, or point of generation pick-up service, and whose actions or failure to act may result in noncompliance with the requirements of this subchapter.

(12) **Point of generation pick-up service** – A service to collect household hazardous waste at generating households, either through direct contact with the generators or by collection of household hazardous waste left at curbside or in another location at the household.

§335. 403. General Requirements for Household Hazardous Waste Collections.

(a) Except as provided in subsection (e) of this section, no person may collect or aggregate household hazardous waste that has been segregated from other solid waste, provide point of generation pick-up service, operate a mobile collection unit, operate a collection event, or operate a permanent

collection center without having first submitted a current notification to the executive director, in accordance with subsection (b) of this section.

(b) On a form provided by the commission, an operator shall submit a signed notification to the executive director at least 45 days prior to conducting activities covered by this subchapter. For on-going collection programs, such as multiple collection events at a single location, point of generation pick-up services, and permanent collection centers, the notification must be resubmitted whenever the information provided in the notification changes. For multiple collection events and mobile collection units, each location where a collection will be held must be covered in a separate notification, but multiple collections at one location can be covered by a single notification if the same information other than dates applies to each collection. The notification must include the following information:

(1) name and address of the operator;

(2) name, address, and telephone number of an individual to be the contact person for the operator;

(3) date(s) and times of the planned collection(s) or days and hours of operation of a permanent collection center, point of generation pick-up service, or mobile collection unit(s), including inclement weather dates if applicable;

(4) for a collection event, permanent collection center or mobile collection unit, the address of the collection site and the part of the site that will be used for collections;

(5) for a point of generation pick-up service or mobile collection unit, the address of the collection event, permanent collection center, or registered hazardous waste transporter's facility where collected wastes will be delivered, or a statement that the aggregated household hazardous waste will be transported to a hazardous waste processing, storage, or disposal facility by a registered hazardous waste transporter from the collection site;

(6) the name of the person who owns the property where a permanent collection center is located, where a collection event will be held, or where a mobile collection unit will be used; a signed letter that clearly gives permission for the use of the property for the stated purpose must be attached to the notification;

(7) areas that are planned to be covered by the collection effort, i.e., city, county, precinct, neighborhood, district, region, etc.;

(8) the types by waste category of each type of household materials that will be collected;

(9) permanent collection centers (including sites where household hazardous waste will be stored for 48 hours or longer) must include a properly completed TCEQ Core Data Form (Form TCEQ-10400) with the notification; and

(10) the planned disposition of wastes that are received in the collection efforts, including the name(s), address(es), and United States Environmental Protection Agency (EPA) identification

number(s) of the transporter(s) to be used and the name, address, and EPA identification number of each recycling and hazardous waste facilities that is planned to receive the wastes collected.

(c) Along with the notification described in subsection (b) of this section, owners or operators of a permanent collection center shall submit an originally signed financial assurance mechanism acceptable to the executive director to provide for proper closure of the site(s). Prior to the notification, owners or operators must provide sufficient information to the executive director to allow the agency to determine an acceptable amount, format and type of financial assurance. Local governments as well as state and federal entities whose debts and liabilities are the debts and liabilities of a state or the United States are not subject to this subsection. Except for those operated by a local government or state or federal entity, a permanent collection center may not operate without obtaining and maintaining financial assurance acceptable to the executive director.

(d) In addition to the other requirements of this subchapter, an operator of a collection event, permanent collection center, point of generation pick-up service, mobile collection unit, or any combination of these:

(1) shall develop and follow a complete operational plan as required in §335.405(a) of this title (relating to Operational Plans) and;

(2) may not collect hazardous waste or Class 1 waste, as defined by this chapter, unless authorized under a permit or authorization issued under this chapter or Chapter 330 of this title (relating to Municipal Solid Waste);

(3) shall ship, for proper processing or disposal, aggregated household hazardous waste only to a hazardous waste processing, storage, or disposal facility that is authorized to receive household hazardous waste and that has agreed to accept the waste, except in cases where aggregated household hazardous waste is shipped to a permanent collection center for the purpose of consolidating aggregated household hazardous waste;

(4) shall have collected household hazardous waste transported in one of the following manners:

(A) any aggregated household hazardous waste from a collection event or permanent collection center must be transported only by a registered hazardous waste transporter under a uniform hazardous waste manifest to a hazardous waste processing, storage, or disposal facility authorized to receive household hazardous waste that has agreed to accept the wastes or as universal waste if allowed under Subchapter H, Division 5 of this chapter (relating the Universal Waste Rule), except in cases where aggregated household hazardous waste is shipped to a permanent collection center for the purpose of consolidating aggregated household hazardous waste;

(B) the operator may transport any household hazardous waste on a point of generation pick-up service or mobile collection unit to a permanent collection center, collection event, or registered hazardous waste transporter's facility; or

(C) the operator may have any household hazardous waste collected by a point of generation pick-up service or mobile collection unit transported by a registered hazardous waste transporter under a uniform hazardous waste manifest to a hazardous waste processing, storage, or disposal facility authorized to receive household hazardous waste that has agreed to accept the wastes or as universal waste if allowed under Subchapter H, Division 5 of this chapter;

(5) shall maintain records related to household hazardous waste collected and processed or disposed for one year after processing or disposal of the wastes; and

(6) shall report annually to the executive director the amounts of household hazardous waste and household materials collected. The operator shall submit the report by April 1st of each year for the previous calendar year, using a form provided by the commission.

(e) Owners or operators of hazardous waste processing, storage, or disposal facilities who accept or intend to accept household hazardous waste directly from households are not subject to the requirements of this subchapter other than the reporting requirements in subsection (d)(6) of this section, provided that the acceptance of household hazardous waste is authorized by their operating permit.

§335.405. Operational Plans.

(a) A person conducting activities under this subchapter shall develop a complete operational plan prior to the collection of household materials and shall revise the plan as needed for ongoing and future

operations. The operational plan must accurately depict the specific plan for how all wastes and materials will be handled during and after collection efforts. The operational plan:

(1) must identify the nature, type, and quantity of household hazardous waste and other materials proposed for collection and reuse, recycling, processing or disposal;

(2) must describe the source(s), amounts and types of wastes that would be accepted at a collection event, permanent collection center, point of generation pick-up service, mobile collection unit, or any combination of these, and if the collectors involved in the programs are not under a single operator, must describe the source(s), amounts, and types of wastes that will be transferred by a point of generation pick-up service or mobile collection unit to a collection event or permanent collection center or that will be transferred to a different permanent collection center for consolidation with other household hazardous waste;

(3) must establish the minimum number of operator staff, contractors, volunteers, and other individuals needed to conduct collection operations at each collection event, permanent collection center, mobile collection unit, and point of generation pick-up service covered by the operational plan; the specific functions of each type of staff; and how the training requirements that apply to their functions have been or will be met;

(4) must describe the planned disposition of all waste collected, including the name and United States Environmental Protection Agency (EPA) identification number of the transporter (or transporters) that will haul the aggregated household hazardous waste, and the name, address, and EPA

identification number of the hazardous waste processing, storage, or disposal facility (or facilities) to be used for the processing, storage, disposal, recycling for energy recovery, or recycling of the aggregated household hazardous waste. If materials received in usable condition will be offered to persons for reuse, the operational plan must describe in detail the manner in which this will be done. The operator, in developing the plan for the disposition of waste to be received, shall determine the feasibility of managing collected household hazardous waste in the following order of preference:

- (A) reuse for the product's intended purpose;
- (B) recycling;
- (C) recycling for energy recovery;
- (D) treatment to destroy hazardous characteristics;
- (E) treatment to reduce hazardous characteristics;
- (F) underground injection; and
- (G) land disposal;

(5) must include a detailed description of procedures to ensure that hazardous waste or Class 1 wastes, as defined in this chapter, are not accepted as household hazardous waste, including but

not limited to screening procedures for persons bringing wastes to collections or participating in point of generation pick-up services, survey questions that will be asked of participants, and the amounts or types of wastes that will require further explanation from generators prior to acceptance;

(6) must include methods used to classify and control wastes received, including but not limited to the following:

(A) the waste streams that will be accepted and the types that will be rejected;

(B) the types of shipping containers and the storage areas to be used for each waste stream that will be accepted;

(C) the methods used to categorize wastes prior to packaging for shipment and processing or disposal;

(D) the methods used to handle and identify unknown wastes;

(E) bulking procedures if used;

(F) procedures for handling containers that are unsealed, leaking, or contaminated on their external surface when received; and

(G) procedures for any other wastes with special handling and processing or disposal needs, if any would be accepted, including but not limited to the following:

- (i) radioactive materials;
- (ii) medical wastes (such as used syringes);
- (iii) asbestos;
- (iv) polychlorinated biphenyls (PCBs);
- (v) explosives;
- (vi) compressed gas cylinders; and
- (vii) tanks for compressed fuels;

(7) must include a detailed discussion of provisions for inclement weather, including severe weather, rain, wind, and extreme temperatures;

(8) must include a detailed discussion of recordkeeping for the wastes received and shipped for processing or disposal; and

(9) must include the following attachments:

(A) Attachment 1 is a site map constructed to show the features of the collection event site, the permanent collection center, or the site used with a mobile collection unit. The map need not be drawn to scale but must fairly represent the improvements and boundaries of the collection area. The map must be annotated to show flow of traffic, unloading points, location of emergency equipment and vehicles, and waste handling and storage areas.

(B) Attachment 2 is evidence of competency to operate, including experience and qualifications of key personnel and copies of records for all required training in this subchapter for all operator, contractor, or other staff or individuals who will work at any collection event, at any permanent collection center, on any mobile collection unit, in the point of generation pick-up service, or any combination of these covered by the plan.

(C) Attachment 3 is a Health and Safety Plan, including but not limited to the following information:

(i) the location and contents of the first aid kits available on site, in each mobile collection unit, and on each point of generation pick-up service vehicle;

(ii) the location and type of telephones or radios available at the site, on each mobile collection unit, and on each point of generation pick-up service vehicle for summoning emergency assistance and any specific instructions related to usage of this equipment;

(iii) detailed procedures for avoiding and responding to spills of liquid materials and solid materials, including at least the following:

(I) identifying who will respond to different sizes and types of spills (including on-site staff, emergency responders, contractors, etc.);

(II) detailed methods to be used for spill avoidance, control, and cleanup;

(III) decontamination procedures for people and equipment;

(IV) processing or disposal of contaminated materials and other wastes;

(V) types of engineering controls and personal protective equipment available on site and procedures for proper selection and use during spill responses;

(VI) the types and locations of equipment and materials available on site;

(VII) the duties of specific personnel or job functions;

(VIII) evacuation procedures (including at least the collection site and if appropriate the surrounding area); and

(IX) procedures for reporting of spills to local, state, and federal authorities;

(iv) preparation and response procedures for fires, including at least the following:

(I) the location and types of fire extinguishers and other types of fire suppression and prevention equipment available at the site, on each mobile collection unit, and on each point of generation pick up collection vehicle;

(II) when on-site fire extinguishers and equipment would be used and when the fire department would be summoned;

(III) evacuation procedures (including the site at least and the surrounding areas if appropriate);

(IV) the identity and storage location of any materials to be collected that may require special methods for fire fighting (such as flammable liquids, flammable metals, explosives, compressed gases, aerosol cans, water reactive materials, etc.); and

(V) the availability of a local fire department and whether they can handle the largest fire possible from the planned collection either with available resources or through mutual aid arrangements;

(v) the timing and content of training or briefings on safety to be provided to staff and volunteers prior to their involvement in the waste collection.

(b) The operational plan must be available at a collection event or permanent collection center and at the offices of the entity operating the collection program. The operator shall use the operational plan as a reference in training staff, planning, and conducting collections of household hazardous waste and other materials. The operator shall maintain the operational plan for as long as collection operations are planned and for at least one year after: a collection event occurs, a permanent collection center has closed, or other types activities conducted under this subchapter cease.

(c) The operator shall provide the operational plan to the executive director upon request.

§335.407. Training Requirements.

(a) The operator shall ensure that all individuals conducting activities under this subchapter have been trained in a manner that is appropriate to their duties, using any appropriate combination of training courses as well as the operational plan as a reference for program-specific training. The training must be specific to the operation of the collection event, permanent collection center, mobile collection unit, point of generation pick-up service, or any combination of these for which the individual will have duties. The

operator shall ensure that appropriate training is provided to all staff, contractors, and volunteers who participate in the collection, aggregation, storage, or transportation of household hazardous waste and in running operations to make useable materials available for reuse.

(b) The operator shall ensure that training is provided before individuals collect, aggregate, store, or transport household hazardous waste for reuse, recycling, processing, or disposal. The operator shall ensure that all training requirements under this subchapter are met for the individuals performing or responsible for specific duties. The operator shall ensure that volunteers are appropriately trained on the site rules and safety issues related to the operation prior to assisting with any collection.

(c) The training must cover any applicable training requirements in federal and state laws and regulations including:

(1) requirements of the federal Occupational Safety and Health Administration that are pertinent to duties in handling hazardous materials, responding to spills, and other activities;

(2) requirements of the Texas Hazard Communication Act, Texas Health and Safety Code, Chapter 502;

(3) requirements of the United States Department of Transportation for preparing and packaging wastes for transportation that are applicable to the specific work and operation, as specified in this subchapter; and

(4) requirements of EPA regulations at 40 Code of Federal Regulations §265.16.

(d) The operator shall ensure that individuals who handle household hazardous waste after it is unloaded from vehicles delivering it from households and before it is segregated for transport or storage are trained under the requirements of this chapter as if the waste were hazardous wastes.

§335.409. Operation of Collection Events and Permanent Collection Centers.

(a) Location and site setup. The operator shall locate, organize, and operate a collection event or permanent collection center in a manner that safeguards the public health and welfare, physical property, and the environment. At a minimum, for any collection event, permanent collection center, or site where mobile collections units are used, the operator shall:

(1) locate the collection based on the types and quantities of waste to be collected and suitability of the site for collecting the waste;

(2) organize the activities on site in a way that allows incoming wastes to be sorted upon arrival and placed in a controlled area for packaging;

(3) provide an area, not generally accessible to the public, for sorting, packaging, and handling waste that is accepted;

(4) provide parking for the public and for essential project vehicles and queuing for vehicles waiting to offload wastes so as not to interfere with the safe entry and exit of traffic or cause traffic congestion on roads near the site;

(5) prepare for inclement weather, including provisions for sheltering personnel at or near the site during storms;

(6) designate eating, drinking, and smoking areas for personnel working at the event, area, site, or center (the operator shall prohibit such activities in the collection work area); and

(7) keep incompatible wastes separated, including unidentified wastes, prior to and after packaging for further storage or transport;

(b) Personnel and training. The operator shall ensure that personnel who work at a collection event or the permanent collection center are trained to use and follow the operational plan in conducting collection, storage, processing and disposal, and reuse activities. In addition, the operator shall ensure that the following provisions are met:

(1) Personnel who sort and package waste for transport to a hazardous waste facility and who directly oversee and supervise these activities on site must be trained and knowledgeable concerning the incompatibility of various classes of waste and qualified to package waste for transport;

(2) At every collection event and permanent collection center, at least one person trained to classify hazardous waste and competent to perform tests to identify characteristics of hazardous waste (e.g., pH, flammability, etc.) must be utilized to accept or supervise the acceptance of waste;

(3) Personnel handling waste must be instructed in accident prevention; emergency response to fires, explosions, and spills; the proper use of fire extinguishers appropriate to the materials that will be accepted; and the use of protective devices (such as respiratory gear and gloves) to minimize exposure to the household hazardous waste and other materials that would be accepted in the collection;

(4) Packaging and labeling of waste must be supervised by an individual familiar with the United States Department of Transportation (DOT) hazardous materials packaging, placarding, labeling, shipping, and hazardous waste manifest requirements;

(5) At least one person must be on site at times when wastes are handled who is trained to perform general first aid and who is knowledgeable concerning safety measures to be taken in the event of accidental contact with household hazardous waste or other hazardous materials presented for collection; the first aid training must be consistent with courses provided under the auspices of a recognized national safety organization (such as American Red Cross, National Safety Council, etc.) and must be documented with a current certificate;

(6) An on-site supervisor must be available and responsible for initiating an emergency response plan that includes site evacuation procedures. The on-site supervisor also assumes responsibility for accepting any unidentified wastes and insuring proper handling and proper processing or disposal;

(7) The on-site supervisor must have the authority to remove from the site and prohibit re-entry of any person that the supervisor determines may threaten site security or personnel safety;

(8) A collection event or permanent collection center must be manned by an adequate number of individuals who possess the necessary skills and expertise needed to accept, sort, label, and store the waste and to provide on-site supervision and public relations;

(9) When household hazardous waste or other hazardous materials are prepared for transportation, an adequate number of operator or contractor staff must be present and involved who possess the necessary skills and expertise needed to package, store, and manifest the waste; and

(10) At a minimum, all personnel who handle household hazardous waste after it is unloaded from vehicles delivering it from households and before it is segregated for transport or storage will have chemical identification, segregation, and consolidation training and Hazardous Waste Operations and Emergency Response (HAZWOPER) training; all other personnel will have appropriate training pursuant to their duties.

(c) Equipment and materials. The operator shall provide equipment and materials at a collection event or permanent collection center to provide protection, safety and first aid for persons operating the collection, to contain and clean up spills, and to properly handle, classify, store, and label the waste. The operator shall ensure that disposable equipment and materials contaminated during a spill cleanup are handled appropriately for the type of material that was spilled. The operator shall ensure that any

contaminated non-disposable equipment and materials are properly decontaminated before removal from the site. At a minimum, the operator shall provide the following equipment and material at every site and vehicle used to collect wastes:

- (1) a first aid kit;
- (2) a telephone or radio for contacting first responders in the event of a spill, personal injury, etc.;
- (3) an eyewash and shower station, or a hosing device;
- (4) at least two fire extinguishers appropriate to the wastes accepted; and
- (5) sufficient spill containment and absorbent materials to contain a spill of 10% of the anticipated volume of collected liquid waste.

(d) Waste accepted and excluded. The collection program should accept only household wastes. The operator shall take necessary precautions to prohibit the receipt of waste that is defined as a hazardous waste or Class 1 wastes under this chapter. Other requirements related to acceptance or exclusion of wastes are as follows:

- (1) The operator shall ensure that a chemist or trained individual knowledgeable in chemical characteristics and incompatibilities identifies any unidentified waste accepted before packaging

the waste for transport. Wastes that cannot be identified by the generator or his representative when delivered or through physical assessment by qualified staff may not be packaged until the waste has been analyzed and the appropriate chemical class has been identified.

(2) Announcements and promotional material must state which types of wastes will be accepted and which types of waste will not be accepted at the collection event or permanent collection center. The operator shall provide information to potential participants prior to a collection event or the opening of a permanent collection center and at least annually during the period that a permanent collection center operates. The information provided must include all relevant instructions on the following issues, as well as any other appropriate information that may be useful to the public:

(A) the types and quantities of wastes that will be accepted and that will not be accepted;

(B) instructions for safely packaging and transporting wastes to the collection;

(C) the days and hours of operation and location of the collection site; and

(D) eligibility criteria for who can bring wastes.

(3) The operator shall ensure that waste acceptance decisions are based on the capabilities of the personnel collecting, sorting, and packaging the waste. A generic list of proposed wastes to be

accepted and those that will be prohibited must be included in the operational plan. The list must be developed with the intent of minimizing the need for chemical analysis of unidentified wastes.

(4) Empty hazardous material and pesticide containers from households may be disposed of as nonhazardous waste if they are rendered unusable before leaving the collection event or permanent collection center.

(e) Temporary storage. The operator shall ensure that storage areas at a collection event or permanent collection center are operated and maintained so as to provide safe handling and storage of waste awaiting final disposition. The operator shall secure a collection event or permanent collection center to control access by the public. When storing aggregated household hazardous waste:

(1) An operator may not store aggregated household hazardous waste longer than 10 days except under one of the conditions described in subparagraphs (A) – (C) of this paragraph.

(A) The storage facility is an authorized hazardous waste processing, storage, or disposal facility;

(B) The operator requests in writing and obtains a storage time extension from the executive director. The request for an extension must state the reason that waste needs to be stored longer than ten days, the earliest date that the hazardous household waste currently on site was received, and the expected date that the waste will be shipped to a recycling facility or a hazardous waste processing, storage, or disposal facility; or

(C) The operator is operating a permanent collection center, does not accumulate more than 3,000 kilograms of household hazardous waste, and does not store the waste longer than 180 days;

(2) If wastes are stored in original individual containers as received from the public rather than in a proper and correctly labeled shipping container that meets the DOT regulations for hazardous materials in transportation, the operator shall ensure

(A) that all complete, legible, and correct labels are maintained on individual containers received from the public;

(B) that, if the label on any container of waste received from the public is missing, defaced, or incorrect, information needed for safe storage, transportation, and processing or disposal is marked on that container; at a minimum, this required information must cover all information required by the DOT regulations for hazardous materials in transportation; and

(C) that the date of acceptance of each individual container from the generator is placed on that container.

(3) If wastes are properly prepared for transportation and stored in proper shipping containers that are labeled consistent with the DOT regulations for hazardous materials in transportation, the individual containers received from the public do not need to be marked.

(4) The operator shall maintain records of all stored, processed, or disposed household hazardous wastes for at least one year after shipment of the waste including all the information necessary to complete manifests for the wastes. (Copies of manifests may be used in lieu of a separate record.)

§335.411. Operation of Point of Generation Pick-up Service and Mobile Collection Units.

(a) Point of generation pick-up service. An operator offering point of generation pick-up service for household hazardous waste that has been segregated from other household waste shall:

(1) develop and implement a collection program that minimizes the potential for human and animal exposure to such waste (unless the pick-up procedures involve personal contact with the generator, the operator shall provide instructions to households on details of packaging, labeling, securing, and any other procedures to safeguard humans and animals and to protect the environment from the wastes left out for pick up);

(2) provide information to potential participants prior to collections. The information provided must include all relevant issues on the following topics, as well as any other appropriate information that may be useful to the public:

(A) the information required in paragraph (1) of this subsection;

(B) eligibility criteria for who can participate in the program;

(C) the types and quantities of wastes that will be and will not be accepted; and

(D) the method households are to use for arranging pickup of their wastes;

(3) organize and operate the collections so as to safeguard the public health and welfare, physical property, and the environment;

(4) have available in each vehicle used for the point of generation pick-up service the following equipment:

(A) a first aid kit;

(B) a fire extinguisher appropriate to the wastes accepted;

(C) a means of communication to summon emergency assistance and the information needed for its use; and

(D) sufficient absorbent to contain a spill of ten percent of the maximum quantity of liquid wastes that the vehicle is designed to hold;

(5) have a person in each collection vehicle who has experience and training in handling hazardous waste, the proper use of fire extinguishers, first aid, waste classification, waste incompatibility, spill prevention, and clean-up safety;

(6) if unknown wastes will be accepted, ensure that the wastes are properly identified and meet one of the following requirements:

(A) have available on the collection vehicle all necessary testing equipment and a person qualified to identify the wastes prior to placing the wastes on the collection vehicle; or

(B) have a method in place on the collection vehicle of isolating separately in a secure manner each container of unknown waste until delivery to a collection event or permanent collection center where the waste(s) will be characterized prior to aggregating with other wastes, if this method is consistent with the United States Department of Transportation (DOT) requirements for hazardous material in transportation.

(b) Mobile collection unit. In addition to the requirements of §335.409 of this title (relating to Operation of Collection Events and Permanent Collection Centers), an operator using one or more mobile collection units to collect household hazardous waste shall:

(1) develop and implement a collection program that minimizes the potential for human exposure to or environmental harm from such waste during collection, storage, and transport;

(2) have at least one person at each collection who has experience and training in handling hazardous waste, the proper use of fire extinguishers, first aid, waste classification, waste incompatibility, spill prevention, and clean-up safety;

(3) maintain on a mobile collection unit involved with a collection the following equipment:

(A) a first aid kit;

(B) a fire extinguisher appropriate to the wastes accepted;

(C) a eye wash and emergency shower or a hosing device;

(D) a means of communication to summon emergency assistance; and

(E) sufficient absorbent and containment to contain a spill of ten percent of all liquid wastes on the largest mobile collection unit at the collection;

(4) if unknown wastes will be accepted, ensure that the wastes are properly identified and meet one of the following requirements:

(A) have available on the mobile collection unit all necessary testing equipment and a person qualified to identify the wastes prior to placing the wastes on the unit; or

(B) have a method in place on the mobile collection unit of isolating separately in a secure manner each container of unknown waste until delivery to a collection event or permanent

collection center where the waste(s) will be characterized prior to aggregating with other wastes, if this method is consistent with the DOT requirements for hazardous material in transportation; and

(5) if the mobile collection unit is used to transport household hazardous waste to a hazardous waste processing, storage, or disposal facility, register the mobile collection unit as a transporter and manifest the aggregated household hazardous waste, or ship the household hazardous waste as universal waste if allowed under Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule);

(c) Point of generation pick-up service or mobile collection unit. The operator of a point of generation pick-up service or mobile collection unit shall also:

(1) comply with the personnel requirements in §335.409(b) of this title;

(2) comply with the waste acceptance and exclusion requirements in §335.409(d) of this title;

(3) comply with the temporary storage requirements in §335.409(e) of this title; and

(4) within 72 hours of receipt from the public, deliver collected household hazardous waste to a permanent collection center, collection event, or registered hazardous waste transporter facility to be aggregated with other household hazardous waste, or have the household hazardous waste transported by a transporter that meets the requirements in §335.415 of this title (relating to General

Requirements for Transporters) to a hazardous waste processing, storage, or disposal facility that is authorized to accept household hazardous waste that has agreed to accept the wastes or as universal waste if allowed under Subchapter H, Division 5 of this chapter.

§335.413. General Shipping, Manifesting, Recordkeeping, and Reporting Requirements.

(a) Except for those collected reusable materials handled in accordance with the requirements of §335.419 of this title (relating to Reuse of Collected Material) and wastes received at the center which are not household hazardous waste, persons who collect, receive, or aggregate household hazardous waste shall:

(1) utilize only hazardous waste transporters who have notified the executive director with respect to transportation of hazardous waste, who have notified the United States Environmental Protection Agency (EPA) of their involvement in transporting hazardous waste, and who have been issued an EPA identification number, for transporting or shipping household hazardous waste from a collection event or permanent collection center, except for household hazardous waste that is shipped as universal waste under the provisions of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule), and except in cases where aggregated household hazardous waste is shipped to another permanent collection center for the purpose of consolidating aggregated household hazardous waste;

(2) ship, using a uniform hazardous waste manifest or following the universal waste rules if appropriate to the type(s) of waste(s) being shipped, household hazardous waste from a collection event or permanent collection center only to receivers that are permitted as hazardous waste processing, storage,

or disposal facilities with authorization to receive household hazardous waste and that have agreed to accept the waste, except in cases where aggregated household hazardous waste is shipped to another permanent collection center for the purpose of consolidating aggregated household hazardous waste;

(3) package and label household hazardous waste so as to apply the applicable United States Department of Transportation requirements and the requirements contained 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) to the household hazardous waste as if it was hazardous waste; and

(4) retain for at least one year from the date of shipment copies of all manifests and bills of lading utilized for the shipment of household hazardous waste, and make the records available to the executive director upon request;

(b) For all wastes received and materials offered for reuse, an operator shall:

(1) report annually to the executive director by April 1st for the previous calendar year the amount of household hazardous waste and other wastes received, including materials offered for reuse and those transferred to another operator, using a form provided by the agency; and

(2) ensure that all wastes received are properly processed or disposed under all federal, state, and local requirements that are applicable to the specific waste; if materials offered for reuse are later shipped for processing or disposal without having been transferred to another person, the materials

must be processed or disposed as required for household hazardous waste if they have any characteristic of hazardous waste.

§335.415. General Requirements for Transporters.

(a) A person may not transport household hazardous waste required by this subchapter to be accompanied by a uniform hazardous waste manifest, unless such person:

(1) has notified the executive director with respect to hazardous waste transportation activities in accordance with the requirements contained in §335.6(d) of this title (relating to Notification Requirements);

(2) has notified the EPA as to his or her transporter status, and has been issued an United States Environmental Protection Agency (EPA) identification number;

(3) applies the requirements outlined in §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) to all manifested household waste as if it was hazardous waste;

(4) applies the requirements outlined in §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) to all manifested household waste as if it was hazardous waste; and

(5) applies the requirements of §335.4(1) - (3) of this title (relating to General Prohibitions) to all household hazardous waste accepted or handled as if it was hazardous waste.

(b) A transporter who is engaged in a point of generation pick-up service of household hazardous waste, who operates or intends to operate any household hazardous waste collection event, mobile collection unit, or a permanent collection center, or who otherwise handles or accepts household hazardous waste from households or the public, shall comply with all the applicable requirements of this subchapter set forth for operators and shall keep all household hazardous waste accumulated separate and apart from hazardous waste or Class 1 waste, as defined in this chapter, which is accumulated at a transporter's facilities.

§335.417. General Requirements for Processing, Storage, or Disposal Facilities.

(a) An owner or operator of a hazardous waste processing, storage, or disposal facility may receive in compliance with the permit household hazardous waste shipped under a uniform hazardous waste manifest or as universal waste.

(b) Owners or operators of hazardous waste processing, storage, or disposal facilities may receive household hazardous waste directly from households without meeting any of the other provisions of this subchapter provided that the quantities received are reported to the executive director as described in §335.403(d)(6) of this title (relating to General Requirements for Household Hazardous Waste Collections).

§335.419. Reuse of Collected Material.

Any material collected or accepted by a collector or operation in its original container with a legible label or that is otherwise readily identifiable and which has been determined by the collector or operator to be in a usable condition may be removed from the aggregated household hazardous waste and provided to a person for use. Storage of materials offered for reuse is not subject to the requirements of this subchapter. If any reusable material is shipped for processing or disposal without having been transferred to another person, the operator shall ensure that the material is processed or disposed as household hazardous waste under the requirements of this subchapter if it meets the definition of household hazardous waste in §335.402(6) of this title (relating to Definitions).