

The commission adopts an amendment to §335.13, concerning Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste. Section 335.13 is adopted with changes to the proposed text as published in the February 18, 1997, issue of the *Texas Register* (22 TexReg 1787).

EXPLANATION OF ADOPTED RULE

The adopted changes will streamline the reporting process for Texas registered generators by deleting duplicative reporting. The adopted rule change will delete from §335.13 the requirement for registered generators shipping waste out-of-state to report that information via the Waste Shipment Summary. The data will continue to be captured on the Annual Waste Summary. These changes will increase efficiency for processing waste management summary data. These changes will also ensure the submission of more complete and accurate waste management summary data by generators.

The adopted amendment to §335.13 includes an administrative revision to the rule language correcting class 1 waste to Class 1 waste.

The adopted amendment to §335.13(a) clarifies that unregistered generators who ship hazardous or Class 1 waste shall prepare a Waste Shipment Summary (S1) from the manifests.

The adopted amendment to §335.13(b) clarifies that primary exporters who export hazardous waste from or through Texas to a foreign country shall prepare a Waste Shipment Summary (S1) from the manifests.

The adopted amendment to §335.13(c) clarifies that primary exporters who import hazardous or Class 1 waste into or through Texas shall prepare a Foreign Waste Shipment Summary (F1) from the manifests.

The adopted amendment to §335.13(d) reorganizes the information from the original subsection (b) and adds the requirement and due date for the Foreign Waste Shipment Summary (F1).

The adopted amendment to §335.13(e) is a reference table illustrating the report method based on the generator type, waste type, and shipment type.

The adopted amendments to §335.13(f) - (g) add definitions for “registered generator” and “unregistered generator.”

The adopted new §335.13(h) adds a definition for “primary exporter/importer” to clarify reporting requirements.

The adopted new §335.13(i) - (k) now contains the information from the original subsections (a), (c), and (d) and further defines generator as registered/unregistered generator according to the definition.

This amendment also adds a cross-reference to 30 TAC §335.76(c), concerning Additional Requirements Applicable to International Shipments.

The adopted new §335.13(l) now contains the information from the original subsection (e).

The adopted new §335.13(m) now contains the information from the original subsection (f) and changes the internal reference of subsections (c) and (d) to subsections (j) and (k). This amendment also corrects a grammatical error and updates the cross-reference to 30 TAC §335.78, concerning Conditionally Exempt Small Quantity Generators.

The adopted new §335.13(n) now contains the information from the original subsection (g) and cross-references 40 Code of Federal Regulations, §262.51, defining primary exporters, with regard to annual reporting.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific adoption of the rule amendment is to streamline reporting procedures for Texas registered generators. The rule amendment will substantially advance this specific purpose by deleting the requirement for the Texas registered generators shipping waste out-of-state to report that information via the Waste Shipment Summary, since the data would continue to be captured on the Annual Waste Summary. Adoption and enforcement of this rule amendment will not affect private real property which is the subject of the rule because the change is only streamlining certain reporting requirements.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP, as defined in 31 TAC §505.30(b) relating to Agency Consistency Determination.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed March 21, 1997.

The following commenters submitted written comments in general support or with suggested changes: Amoco Corporation, Brazos Electric Power Cooperative, Inc., Elf Atochem North America, Inc., an environmental consultant, Lockheed Martin, Mobil Oil Corporation, and Texas Instruments.

Amoco Corporation, Elf Atochem North America, Inc., Lockheed Martin, Mobil Oil Corporation, and Texas Instruments were all in general support of this rule amendment.

Concerning §335.13(e), Brazos Electric commented that grammatical changes for clarification are needed for this subsection because the current sentence appears to be incomplete. Brazos Electric also suggested to use either the term "Table" or "Figure," but not both for consistency. The commenter thought it would be helpful for the commission to indicate reporting frequency for all report forms in this subsection.

The commission partially agrees with this comment. Clarification has been made to the rule language to grammatically correct the reference to Figure 1: 30 TAC §335.13(e) and language has been added to this section. The commission has chosen to use the term “Figure” for consistency in this rulemaking. However, the commission disagrees with indicating the report frequency within this section, because report frequency is captured in §335.9(a)(2) for the Annual Waste Summary and the report frequency for the Waste Shipment Summary and Foreign Waste Shipment Summary are captured in §335.13(d). The commission has made no change in regards to this portion of the comment.

Concerning §335.13(f)(2), Brazos Electric commented that the use of “twin” is confusing and should be deleted. The commenter also suggested that the commission delete the word “maquiladora,” because the term would only be applicable to those foreign countries where Spanish is the national language. Brazos Electric commented that if these rules applied to only wastes imported from Mexico, then “maquiladora” would be appropriate and in which case “foreign country” should be changed to “Mexico.” The commenter suggested a definition for “maquiladora.”

The commission disagrees with this comment, because maquiladora and twin plant are both valid terms for a United States-owned plant located in Mexico or another foreign country that manufactures, processes, assembles, or uses in some other way raw materials or components that are imported into a foreign country for use in its process by its United States parent company. Therefore, the use of “foreign country” is an appropriate term. The commission has made no change in response to this comment.

With regard to §335.13(g), Brazos Electric suggested the word “that” should be substituted for the word “but” for grammatical reasons.

The commission agrees with this comment, and the grammatical change was made to this section.

With regard to §335.13(k), Brazos Electric commented that primary exporters are required to prepare exception reports, but at no point are the conditions that trigger this requirement presented. The commenter suggested that the commission incorporate part of the second sentence into the first so that the issue is addressed.

The commission agrees with this comment, and has changed the rule language for clarification of primary exporters’ requirements to prepare exception reports.

Concerning §335.13(e), Figure 1, an environmental consultant commented that the word “maquiladora” was omitted from the column “waste type” on the “out-of-state primary exporter/importer” row of the referenced Figure 1. The commenter wanted to know whether a maquiladora facility with an out-of-state parent company and an out-of-state United States Environmental Protection Agency (EPA) identification number as the importer of record, shipping waste through Texas to another state, is required to report that shipment via the Foreign Waste Shipment Summary.

The commission agrees with this comment, and has added the word “maquiladora” to the column “waste type” on the “out-of-state primary exporter/importer (other state EPA #)” row in Figure 1 for

clarification that maquiladora facilities who ship waste through Texas using an out-of-state EPA identification number are required to report that shipment via the Foreign Waste Shipment Summary.

With respect to §335.13(f)(1), an environmental consultant questioned whether a client who has a solid waste registration number and forgets to submit a recycling notification is still considered a registered generator with a valid solid waste registration number. The commenter expressed concerns regarding clarification of a registered generator.

The commission disagrees with this comment, because any generator who is assigned a registration number is a registered generator until that number is requested for deactivation by the generator or the commission. The commission has made no change in response to this comment.

Regarding §335.13(f)(2), an environmental consultant questioned how the commission defines a “twin plant.” The commenter also asked whether a sister company not located in Texas can still be considered a registered generator.

The commission agrees that the rule language should read “Texas sister company” instead of “sister company” for rule clarification. The commission has revised the rule accordingly. The commission considers that for a facility to be deemed a twin plant or a maquiladora plant, the sister company or parent company must be located in the United States.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the State of Texas, and to establish and approve all general policy of the commission; and under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code §361.024, which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste.

**SUBCHAPTER A : INDUSTRIAL SOLID WASTE AND MUNICIPAL
HAZARDOUS WASTE IN GENERAL**

§335.13

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

- (a) Unregistered generators who ship hazardous waste or Class 1 waste shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.

- (b) Unregistered generators or out-of-state primary exporters who export hazardous waste from or through Texas to a foreign country, shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.

- (c) Registered generators or out-of-state primary exporters who import hazardous or Class 1 waste from a foreign country through Texas to another state shall prepare a complete and correct Foreign Waste Shipment Summary (F1) from the manifests.

- (d) The Waste Shipment Summary (S1) and the Foreign Waste Shipment Summary (F1) shall be prepared in a form provided or approved by the executive director and submitted to the executive director on or before the 25th of each month for shipments originating during the previous month. The unregistered generator or in-state/out-of-state primary exporter must keep a copy of each summary for a

period of at least three years from the due date of the summary. These generators are required to prepare and submit a Waste Shipment Summary (S1) and/or Foreign Waste Shipment Summary (F1) only for those months in which shipments are actually made. Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection.

(e) The following figure is a graphic representation illustrating generator, waste type, shipment type, and report method. Figure 1: 30 TAC §335.13(e)

Generator Type	Waste Type	Shipment Type	Report Method
In-State Registered Generator	Texas Waste	Ship within Texas	Annual Waste Summary (G1)
		Ship out of Texas	Annual Waste Summary (G1)
In-State Unregistered Generator	Texas Waste	Ship within Texas	Waste Shipment Summary (S1)
		Ship out of Texas	Waste Shipment Summary (S1)
In-State Registered Primary Exporter/Importer (TX EPA#)	Maquiladora or Foreign Waste (Import)	Ship through Texas	Foreign Waste Shipment Summary (F1)
		Ship into Texas	Annual Waste Summary (G1)
In-State Unregistered Primary Exporter/Importer (TX EPA#)	Foreign Waste (Import)	Ship through Texas	Foreign Waste Shipment Summary (F1)
		Ship into Texas	No Report Required
Out-of-State Primary Exporter/Importer (Other State EPA #)	Maquiladora or Foreign Waste (Import)	Ship through Texas	Foreign Waste Shipment Summary (F1)
		Ship into Texas	No Report Required
	Other State's Haz. Waste Exported to Foreign Country	Ship through Texas	Waste Shipment Summary (S1)

(f) A registered generator is defined as:

(1) an in-state generator who has complied with §335.6 of this title (relating to Notification Requirements), and is assigned a solid waste registration number; or

(2) a Texas parent or a Texas sister company of a twin plant (maquiladora) who imports hazardous waste or Class 1 waste from a foreign country into or through Texas.

(g) An unregistered generator is defined as an in-state generator who is not a conditionally exempt small quantity generator, as defined in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), that ships hazardous waste and/or Class 1 waste using a temporary solid waste registration number and a temporary Texas waste code number assigned by the executive director.

(h) A primary exporter/importer is defined as:

(1) an in-state generator who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste to a foreign country; or

(2) an out-of-state generator/importer of record who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste through Texas to a foreign country.

(i) The registered/unregistered generator or primary exporter shall retain a copy of each manifest required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) for a minimum of three years from the date of shipment by the registered/unregistered generator or primary exporter.

(j) A registered/unregistered generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste or Class 1 waste.

(k) A registered/unregistered generator or primary exporter of hazardous waste subject to §335.76(c) of this title (relating to Additional Requirements Applicable to International Shipments) must submit an exception report to the executive director if he has not received a copy of the manifest with the handwritten signatures of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. The exception report must be retained by the registered/unregistered generator or primary exporter for at least three years from the date the waste was accepted by the initial transporter and must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste or Class 1 waste and the results of those efforts.

(l) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(m) The requirements of subsections (j) and (k) of this section do not apply to generators who generate hazardous waste or Class 1 waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78 of this title.

(n) Primary exporters of hazardous waste as defined in 40 Code of Federal Regulations (CFR), §262.51 must submit an annual report in accordance with the requirements set out in the regulations contained in 40 CFR, §262.56, which are in effect as of November 8, 1986.

This agency hereby certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 14, 1997.