

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§335.1, 335.2, 335.9, 335.10, 335.12, 335.13, 335.15, 335.18, 335.19, 335.24, 335.26, 335.27, 335.31, 335.41, 335.46, 335.91, 335.94, 335.112, 335.152, 335.221, 335.241, 335.251, 335.261, 335.272, 335.431, 335.471, 335.474, 335.477, 335.503, 335.504, 335.510, 335.511, 335.513, 335.521, 335.590, 335.602, 335.702, and 335.703. The commission also proposes to repeal §§335.6, 335.11, 335.14, 335.61 - 335.63, 335.65 - 335.71, and 335.73 - 335.79. The commission further proposes new §§335.6, 335.11, 335.14, 335.51 - 335.61, 335.751, 335.753, 335.755, 335.757, 335.759, 335.761, 335.763, 335.765, 335.767, 335.769, and 335.771.

### **Background and Summary of the Factual Basis for the Proposed Rules**

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

Texas received authorization of its hazardous waste "base program" under RCRA on December 26, 1984 and has continuously participated in the EPA's authorization

program. To maintain the RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by the EPA. Because the federal regulations undergo regular revision, the commission must adopt new regulations regularly to meet the changing federal regulations.

The commission proposes in this rulemaking parts of the RCRA Rule Clusters XXIV - XXVIII that implement revisions to the federal hazardous waste program which were made by EPA between November 30, 2018 and December 9, 2019. Both mandatory and optional federal rule changes in these clusters are proposed to be adopted. Although not necessary to maintain authorization, the EPA also recommends that the optional federal rule changes be incorporated into the state rules. Maintaining equivalency with federal regulations would enable Texas to continue operating all delegated aspects of the federal hazardous waste program in lieu of the EPA.

#### *Hazardous Waste Generator Improvements Rule*

In the November 28, 2016 issue of the *Federal Register* (81 FR 85732), the EPA amended existing regulations applicable to generators of hazardous waste. The EPA's objectives for the revisions included: 1) reorganizing the hazardous waste generator regulations to make them more user-friendly and to improve their usability; 2) addressing gaps in the existing regulations; 3) providing greater flexibility for management of hazardous waste in a cost-effective and protective manner; and 4) making technical corrections to address errors and removing obsolete references.

The commission proposes adoption of the federal Hazardous Waste Generator Improvements Rule by repealing and replacing the standards applicable to generators of hazardous waste in Subchapter C (Standards Applicable to Generators of Hazardous Waste) and by amending sections of Subchapter R (Waste Classification). Because the generator standards are referenced throughout the chapter, the commission proposes multiple conforming amendments.

#### *Export and Import Confidentiality Rule*

In the December 26, 2017 issue of the *Federal Register* (82 FR 60894), the EPA further revised existing regulations regarding the export and import of hazardous wastes from and into the United States. Specifically, the EPA applied a confidentiality determination such that no person can assert confidential business information claims for documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes. The import and export confidentiality determination regulations were promulgated under the Hazardous and Solid Waste Amendments and are administered by the EPA.

#### *Electronic Manifest Fee Rule*

In the January 3, 2018 issue of the *Federal Register* (83 FR 420), the EPA established the methodology for determining and revising the user fees applicable to the electronic and paper manifests submitted to the national electronic manifest (e-Manifest) system developed under the Hazardous Waste Electronic Manifest Establishment Act (e-Manifest Act). Certain users of the hazardous waste manifest are required to pay a

prescribed fee to the EPA for each electronic and paper manifest they use and submit to the national system. Regulations promulgated under the e-Manifest Act took effect in all states on the effective date of the federal rule.

The commission adopted the federal Hazardous Waste Electronic Manifest Rule promulgated in the *Federal Register* February 7, 2014 (79 FR 7518) on June 10, 2016 (41 TexReg 4259). The EPA issued a Special Consolidated Checklist for the two e-manifest rulemakings which contains additional guidance and revisions for federal revisions adopted in the 2014 Electronic Manifest Rule. The commission proposes conforming revisions to adopt the consolidated revisions associated with both federal e-manifest rulemakings.

#### *Definition of Solid Waste Rule*

In the May 30, 2018 issue of the *Federal Register* (83 FR 24664), the EPA revised existing hazardous secondary material recycling regulations associated with the definition of solid waste to comply with the United States Court of Appeals for the District of Columbia (D.C. Circuit) vacatur. The D.C. Circuit vacated portions of the 2015 Definition of Solid Waste Rule, promulgated in the *Federal Register* on January 13, 2015 (80 FR 1694), and reinstated portions of the 2008 Definition of Solid Waste Rule, promulgated in the *Federal Register* on October 30, 2008 (73 FR 64668).

Specifically, the 2018 final rule: 1) vacated parts of the 2015 verified recycler exclusion and reinstated the 2008 transfer-based exclusion; 2) upheld the 2015 containment and emergency preparedness provisions for the reinstated transfer-based exclusion; and 3)

vacated the fourth factor of the 2015 definition of legitimate recycling and reinstated the 2008 version of the fourth factor. The commission did not adopt the 2008 Definition of Solid Waste Rule. The commission adopted the 2015 Definition of Solid Waste Rule as published in the *Texas Register* on January 2, 2015 (40 TexReg 77).

### *Pharmaceutical Waste Rule*

In the February 22, 2019 issue of the *Federal Register*, the EPA created a new 40 Code of Federal Regulations (CFR) Part 266, Subpart P for the management of hazardous waste pharmaceuticals by healthcare facilities and reverse distributors in lieu of the generator regulations in 40 CFR Part 262. New 40 CFR Part 266, Subpart P standards include: 1) prohibiting the disposal of hazardous waste pharmaceuticals into sewer systems; 2) eliminating the dual regulation of the RCRA hazardous waste pharmaceuticals that are also Drug Enforcement Administration controlled substances by finalizing a conditional exemption; 3) maintaining the household hazardous waste exemption for pharmaceuticals collected during pharmaceutical take-back programs and events; 4) codifying the EPA's prior policy on the regulatory status of nonprescription pharmaceuticals going through reverse logistics; 5) finalizing an amendment to the P075 acute hazardous waste listing of nicotine and salts to exclude certain United States Food and Drug Administration approved over-the-counter nicotine replacement therapies; and 6) establishing in the preamble a policy on the regulatory status of unsold retail items that are not pharmaceuticals and are managed via reverse logistics.

### *Aerosol Can Waste Rule*

As part of this rulemaking, the commission proposes to implement the EPA's final regulations promulgated in the *Federal Register* on December 9, 2019 (84 FR 67202), which added hazardous waste aerosol cans to the universal waste program under the RCRA. The commission received a petition for rulemaking from Westlake Chemical Corporation on February 3, 2020, requesting that the commission amend its rules to incorporate the EPA's universal waste provisions for aerosol cans. On March 25, 2020, the commission considered the petition for rulemaking and ordered the executive director to initiate rulemaking (TCEQ Docket No. 2020-0220-PET). The commission now proposes this rulemaking to add hazardous waste aerosol cans to the list of universal wastes so they can be managed as universal waste. The commission anticipates that these rules would benefit a wide variety of establishments generating and managing aerosol cans, including the retail sector, by providing a practical system for handling discarded aerosol cans.

### *Foundry Sands Exclusion*

In addition to federal rule changes proposed for adoption, the commission proposes to formalize the commission's regulation of spent foundry sands from the iron and steel casting industry. The proposed rulemaking would implement state-initiated revisions to clarify that spent foundry sands that are an intended output or result from the iron and steel casting process are not classified as an industrial solid waste when introduced into the stream of commerce and managed as an item of commercial value, including use constituting disposal. The executive director issued a regulatory

determination letter dated June 22, 1995, which established that spent foundry sands reused as a substitute material would be considered a co-product and would not be regulated as industrial solid waste. Regulatory revisions implemented since the 1995 letter was issued have resulted in confusion regarding the status of the material.

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

### **Section by Section Discussion**

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

#### *Subchapter A: Industrial Solid Waste and Municipal Hazardous Waste in General*

##### *§335.1, Definitions*

The commission proposes §335.1(6) to add the definition of "Acute hazardous waste" and adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This amendment would add the definition of "Acute hazardous waste" consistent with the new definition of "Acute hazardous waste" in 40 CFR §260.10. The commission proposes to renumber the subsequent paragraphs accordingly to account for the added definition.

The commission proposes §335.1(8) to add the definition of "Aerosol can" to adopt federal revisions associated with the Aerosol Can Waste Rule promulgated in the *Federal Register* on December 9, 2019 (84 FR 67202). This amendment would add the definition of "Aerosol Can" consistent with the new definition of "Aerosol can" in 40 CFR §260.10. The commission proposes to renumber the subsequent paragraphs accordingly to account for the added definition.

The commission proposes §335.1(29) to add the definition of "Central accumulation area" to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This amendment would add the definition of "Central accumulation area" consistent with the new definition of "Central accumulation area" in 40 CFR §260.10. The commission proposes to renumber the subsequent paragraphs accordingly to account for the added definition.

The commission proposes §335.1(38) to add a definition of "Conditionally exempt small quantity generator" (CESQG) and a person who generates no more than 100 kilograms of hazardous waste in a calendar month to mean a "very small quantity generator" (VSQG) as defined in this section. The commission proposes this definition to clarify that the new term for the lowest tier hazardous waste generator category, VSQG, is applicable when the former term or the description of the lowest tier hazardous waste generator category, CESQG, is used in publications, authorizations or

rules that are not included in this rulemaking. The EPA changed the name of the lowest tier hazardous waste generator category from "conditionally exempt small quantity generator" to "very small quantity generator" in the Hazardous Waste Generator Improvements Rule. The commission proposes to renumber the subsequent paragraphs accordingly to account for the added definition.

The commission proposes to amend renumbered §335.1(49) for the definition of "Designated facility" to delete the reference to §335.12 and clarify that 40 CFR §264.72 is adopted by reference under §335.152, and 40 CFR §265.72 is adopted by reference under §335.112. These federal sections were previously adopted under §335.12 and are now proposed for adoption under §335.112 and §335.152 as described in the Section by Section Discussions for those sections.

The commission proposes to amend renumbered §335.1(70) for the definition of "Final closure" to replace the reference to §335.69 with a reference to Chapter 335, Subchapter C due to the adoption of regulations associated with the Hazardous Waste Generator Improvements Rule. Current §335.69 is proposed for repeal and would be replaced by the adoption of 40 CFR Part 262 provisions in Chapter 335, Subchapter C as described in the Section by Section Discussions for that subchapter.

The commission proposes §335.1(105) to add the definition of "Large quantity generator" to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR

85732). This amendment would add the definition of "Large quantity generator" consistent with the new definition of "Large quantity generator" in 40 CFR §260.10. The commission proposes to renumber the subsequent paragraphs accordingly to account for the added definition.

The commission proposes to amend renumbered §335.1(111) to revise the definition of "Manifest" to remove the reference to "the instructions in §335.10", and to clarify that manifest users are subject to the applicable requirements of this chapter. The manifest requirements in 40 CFR Part 262, Subpart B that are currently adopted under §335.10 are proposed to be adopted by reference in §335.54 as described in the Section by Section Discussion for those sections.

The commission proposes to amend renumbered §335.1(119) to revise the definition of "No free liquids" by clarifying that the test methods in 40 CFR §261.4(a)(26) and (b)(18) are incorporated by reference under §335.31.

The commission proposes §335.1(120) to add the definition of "Non-acute hazardous waste" to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This amendment would add the definition of "Non-acute hazardous waste" consistent with the new definition of "Non-acute hazardous waste" in 40 CFR §260.10. The commission proposes to renumber the subsequent paragraphs accordingly to account for the added definition.

The commission proposes to amend renumbered §335.1(159) to revise the definition of "Small quantity generator" to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This amendment would revise the definition of "Small quantity generator" to be consistent with the revised definition of "Small quantity generator" in 40 CFR §260.10. The revisions would add the monthly quantities of acute hazardous waste generation that are allowed for small quantity generators.

The commission proposes to amend renumbered §335.1(160)(A)(iv) to revise the definition of "Solid waste" by removing references to numbered paragraphs of 40 CFR §261.4(a), removing references to the CFR dated citations for 40 CFR §§261.4 and 261.39 - 261.41, and adding language clarifying that these CFR sections are adopted by reference under §335.504 as described in the Section by Section Discussion for that section.

The commission proposes to amend Figure: 30 TAC §335.1(154)(D)(iv) to rename the figure "Figure: 30 TAC §335.1(160)(D)(iv) (Table 1)" consistent with the renumbering of the paragraphs in §335.1, and to revise the citations for Table 1 in renumbered §335.1(160)(D) and (D)(i) - (iv) accordingly. Table 1 is further proposed to be amended by revising the language in Footnote 2 of Table 1 to be consistent with the third column heading in 40 CFR §261.2(c)(4), Table 1.

The commission proposes §335.1(160)(N) to add a conditional exclusion from the definition of "Solid waste" for foundry sands that are an intended output or result from the iron and steel casting processes when such material is introduced into the stream of commerce, managed as an item of commercial value, including controlled use in a manner constituting disposal, and not managed as discarded material. This amendment would formalize existing state guidance.

The commission proposes to amend renumbered §335.1(178)(E) to revise the definition of "Treatability study" to remove the references to §335.69 and §335.78. The exemptions in 40 CFR §261.4(e) and (f) are adopted by reference under §335.504, and §335.69 and §335.78 contained statements clarifying these exemptions in writing. These sections are proposed to be repealed as described in the Section by Section Discussion for those sections. The exemption from permit requirements for treatability studies in §335.2(g) would not be impacted by this rulemaking and the reference to §335.2 would be retained.

The commission proposes to amend renumbered §335.1(186) to revise the definition of "Universal waste" to replace the cross-reference to §335.261(b)(16)(F) with §335.261(b)(19)(F) to reflect the renumbering of the paragraphs in §335.261(b). The revision to §335.261(b) is proposed to conform with the adoption of federal revisions associated with the Aerosol Can Waste Rule as described in the Section by Section Discussion for that section.

The commission proposes to amend renumbered §335.1(191) to revise the definition of "Used oil" by replacing the reference to "conditionally exempt small quantity generator" with "very small quantity generator" to conform with federal revisions associated with the adoption of the Hazardous Waste Generator Improvements Rule.

The commission proposes to amend renumbered §335.1(192)(C) to revise the definition of "User of the electronic manifest system" by replacing the reference to §335.10 with references to 40 CFR §264.71(a)(2)(v) or §265.71(a)(2)(v). These federal sections are proposed to be adopted by reference under §335.112 and §335.152 as described in the Section by Section Discussion for those sections. This revision would make the definition for "User of the electronic manifest system" consistent with the federal definition for "User of the electronic manifest system" in 40 CFR §260.10.

The commission proposes §335.1(193) to add the definition of "Very small quantity generator" to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732) which renamed the lowest tier hazardous waste generator category "conditionally exempt small quantity generator" as "very small quantity generator." This amendment would add the definition of "Very small quantity generator" consistent with the new definition of "Very small quantity generator" in 40 CFR §260.10. The commission proposes to renumber the subsequent paragraphs accordingly to account for the added definition.

*§335.2, Permit Required*

The commission proposes to amend §335.2(e) to replace "is a conditionally exempt small quantity generator as described in §335.78" with "meets the conditions for exemption for a very small quantity generator in 40 CFR §262.14" to conform with federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The conditions for exemption for a VSQG in 40 CFR §262.14 are proposed to be adopted in §335.53(c) as described in the Section by Section Discussion for that section.

The commission proposes to amend §335.2(f) and (g) to clarify that 40 CFR §261.4(c) - (f) are adopted under §335.504, and to remove the dated citation for 40 CFR §261.4(e) and (f) in §335.2(g). Revisions to implement 40 CFR §261.4 are described in the Section by Section Discussion for §335.504.

The commission proposes new §335.2(p) to adopt federal revisions associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes to implement these revisions by adding language consistent with 40 CFR §270.1(c)(2)(x).

*§335.6, Notification and Registration Requirements*

The commission proposes to repeal the existing §335.6. The section is proposed to be replaced under proposed §335.6.

The commission proposes new §335.6(a) to add catch line "Notification of unpermitted industrial solid waste activities"; clarify that the section applies to recycling activities; remove the current reference to §335.2(e); replace the prior phrase "in writing or using the electronic interface notification software provided by the executive director" with "using a method approved by the executive director"; and reorganize parts of the prior language into new paragraphs (1) and (2) to provide additional clarification of the notification requirements. The language is being reorganized to clarify the requirements once for the section and to reduce repetitive requirements. Proposed §335.6(a) would not include the remainder of current §335.6(a). The 90-day advance notice requirement for persons required to notify under §335.6(a) is proposed to be organized under new §335.6(a)(1). The notification requirements for large quantity generators are proposed to be revised and reorganized to §335.6(c) to reduce repetitive requirements as described in the Section by Section Discussion for that subsection.

The commission proposes new §335.6(b) to add catch line "Duty to notify of changed and new information"; add the statement "promptly notify the executive director using a method approved by the executive director of:"; and reorganize parts of the prior language into new paragraphs (1) - (4) to provide additional clarification of renotification requirements. The proposal does not include the remainder of §335.6(b). The notification requirements for large quantity generators are proposed to be revised and reorganized in proposed new §335.6(c) to reduce repetitive requirements as described in the Section by Section Discussion for that subsection.

The commission proposes new §335.6(c) to add catch line "Generator registration"; reorganize the language into paragraphs, subparagraphs, and clauses; and replace the quantity limits referenced in current §335.78 with the volumes of hazardous and Class 1 industrial waste generated by a very small quantity generator.

The commission proposes new §335.6(d) to add catch line "Transporter registration"; replace the reference to forms furnished by the executive director with a method approved by the executive director; list the maximum waste quantities allowed to be transported without registration; and not include prior paragraphs (1) and (2) because the prior language would be included within the proposed new subsection.

The commission proposes new §335.6(e) to add catch line "Transfer facility registration" and clarify that notification must be made using a method approved by the executive director.

The commission proposes new §335.6(f) to add catch line "Waste analysis" and add a statement that clarifies that the chemical analysis of a solid waste must be performed in accordance with Chapter 335, Subchapter R.

The commission proposes new §335.6(g) to add catch line "Notification prior to facility expansion."

The commission proposes new §335.6(h) to add catch line "Notification of recycling activities"; add recyclable materials and nonhazardous recyclable materials to the subject materials; clarify that notification must be made using a method approved by the executive director; and reorganize parts of the prior language into new paragraphs (1) and (2) to provide additional clarification of recycling notification requirements. The proposal does not include the remainder of prior §335.6(h), including an obsolete reference to persons engaged in recycling prior to the effective date of §335.6.

The commission proposes new §335.6(i) to add catch line "Notification of operating under the small quantity burner exemption."

The commission proposes new §335.6(j) to add catch line "Notification of used oil activities" and replace the prior reference to CESQG hazardous used oil with used oil generated by a VSQG to conform with the new definition of VSQG as described in the Section by Section Discussion for the definition of VSQG in §335.1.

The commission does not propose the prior §335.6(k) because the prior provision is repetitive of §335.24 and would be retained in that section.

The commission proposes new §335.6(k) to include catch line "Notification exemption for the disposal of animal carcasses" and include the provisions of the prior §335.6(l).

The commission proposes new §335.6(l) to establish the notification requirement for

healthcare facilities operating under proposed Chapter 335, new Subchapter W.

The commission proposes new §335.6(m) to establish the registration requirements for reverse distributors operating under proposed Chapter 335, new Subchapter W.

*§335.9, Recordkeeping and Annual Reporting Procedures Applicable to Generators*

The commission proposes to amend §335.9(a) to add a statement that clarifies the applicability of additional recordkeeping and reporting requirements in this section.

The commission proposes to amend §335.9(a)(1)(A) - (G) by adding clarifying language including to reference the applicability of Chapter 335, Subchapter R; replacing the reference to the lowest hazardous waste generator category, "conditionally exempt small quantity generators", and describing the applicability of the requirement to report the amount of waste held in on-site storage at the end of the year with a description of the quantities of waste generated per month; and replacing the reference to hazardous waste accumulation areas at or near any point of generation under §335.69(d) with a reference to the satellite accumulation area regulations proposed for adoption under §335.53. Additional information is described in the Section by Section Discussion for §335.53 and §335.69.

The commission proposes to amend §335.9(a)(2) to clarify the procedures for submitting an Annual Waste Summary and to delete requirements proposed to be reorganized and adopted in subsequent paragraphs and subparagraphs.

The commission proposes to amend §335.9(a)(2)(A) and (B) to add clarifying language, including a statement regarding the applicability of an extension request. This requirement is proposed to be reorganized from §335.9(a)(2).

The commission proposes §335.9(a)(2)(C) to identify the information required to be included in an Annual Waste Summary. This requirement is proposed to be reorganized from §335.9(a)(2).

The commission proposes §335.9(a)(2)(D) to identify the requirement for large quantity generators to submit the Annual Waste Summary electronically. This requirement is proposed to be reorganized from §335.9(a)(2).

The commission proposes to amend §335.9(a)(3) and (4) to clarify applicability of the Annual Waste Summary by adding language; replacing hazardous waste volumes that identify the lowest hazardous waste generator category with the new term for this category, VSQG; requiring that a VSQG meet the conditions for exemption for a VSQG; and replacing the references to §335.78 which is proposed for repeal with a reference to proposed new §335.53. Additional information is described in the Section by Section Discussion for proposed §335.53 and §335.78.

The commission proposes to amend §335.9(b) to replace the reference to the biennial reporting requirements under §335.71 with proposed new §335.56. Additional

information is described in the Section by Section Discussion for proposed §335.56 and §335.71.

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

The commission proposes to amend §335.10 to clarify the applicability of the use of the uniform hazardous waste manifest for the transportation of hazardous waste and for the transportation of industrial Class 1 waste; to add references to sections of this chapter where manifesting requirements are proposed to be adopted; and to conform to proposed adoption of the re-named lowest tier hazardous waste generator classification.

The commission proposes to amend §335.10(a) to clarify the applicability of and reference the proposed adoption by reference of manifesting requirements in this chapter by deleting the adoption by references of 40 CFR §§262.20 - 262.25, 262.27, and 262.42, which are proposed to be adopted by reference under proposed new §335.54; deleting an adoption by reference of 40 CFR Part 262, Subpart H, which is proposed to be adopted by reference under proposed new §335.58; deleting an adoption by reference of the Appendix to 40 CFR Part 262 because it was removed from the federal regulations; and by requiring persons to comply with §§335.12, 335.13, 335.54, and 335.58.

The commission proposes to amend §335.10(a)(2) to remove the reference to §335.78,

which is proposed for repeal; clarify that manifesting is not required when the conditions for an applicable exemption from manifesting have been met; and add §335.10(a)(2)(A) and (B) to further clarify manifesting exemptions applicable to transporters of hazardous waste.

The commission proposes to amend §335.10(b) to conform with the reorganization of the exception from manifesting requirements for the transportation of hazardous waste on a contiguous right of way and the reporting of discharges during such transportation by replacing the reference to the hazardous waste marking requirements under §335.67(b) with proposed new §335.55. Additional information is described in the Section by Section Discussion for §335.55 and §335.67.

The commission proposes to amend §335.10(c) to replace the reference to the adoption by reference of the manifest requirements in subsection (a), which are proposed to be deleted, with a reference to proposed new adoption by reference of manifesting requirements under §335.54. Additional information is described in the Section by Section Discussion for §335.54.

The commission proposes to amend §335.10(c)(1) and (2) to clarify the use of the TCEQ solid waste registration number or the United States Environmental Protection Agency identification number and to use the precise term of art, designated facility, in lieu of the term receiver.

The commission proposes §335.10(c)(3) - (7) to clarify the manifesting requirements for the transportation of Class 1 waste by adding language to the use of EPA ID number and Solid Waste Registration Number requirements; and by iterating changes to the federal manifesting rules applicable to the transportation of Class 1 waste.

The commission proposes to amend §335.10(d) to clarify the applicability of the exception from manifesting by replacing the reference to §335.78, which is proposed for repeal, with the quantity limit for Class 1 waste.

The commission proposes to amend §335.10(e) to clarify the applicability of specific exceptions from manifesting and reporting by organizing the language into proposed §335.10(e)(1) and (2), and by adding proposed paragraph (3) describing that the Annual Waste Summary is applicable to facilities that receive Class 1 industrial waste from off-site.

*§335.11, Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste*

The commission proposes to repeal §335.11. The section is proposed to be replaced under proposed new §335.11.

The commission proposes new §335.11(a) to incorporate by reference the manifest requirements of 40 CFR Part 263, Subpart B, including the revisions associated with the Electronic Manifest Fee Rule promulgated in the *Federal Register* on January 3, 2018 (83 FR 420). The commission does not propose adoption of the Appendix to 40 CFR

Part 262 because EPA has repealed the Appendix.

The commission proposes new §335.11(b)(1) - (6) to clarify and establish applicability of the manifesting requirements for hazardous waste by indicating that the manifesting requirements proposed to be adopted under §335.11(a), and the requirements in §§335.4, 335.6, 335.10, and 335.14 and Chapter 335, Subchapter D are applicable to persons who transport hazardous waste.

The commission proposes new §335.11(c) to clarify the manifesting requirements for Class 1 waste by indicating that the manifesting requirements proposed to be adopted under §335.11(a) and the requirements proposed to be listed under new §335.11(b)(1) - (6) are applicable to persons who transport Class 1 waste and by proposing §335.11(c)(1) - (8) to list the changes to the federal manifesting rules that are required for persons transporting Class 1 waste.

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

The commission proposes to amend §335.12(a) to clarify that 40 CFR Part 264, Subpart E is adopted in §335.152 and 40 CFR Part 265, Subpart E is adopted in §335.112. The commission proposes to delete the remainder of §335.12(a) including the dated citations for 40 CFR §264.71 and §265.71, which are now proposed for adoption in §335.112 and §335.152, and the appendix to 40 CFR Part 262. This Appendix was removed from federal regulations in the Electronic Manifest Fee Rule.

The commission proposes to amend §335.12(b) to clarify that 40 CFR Part 264, Subpart E is adopted in §335.152, and by adding §335.12(b)(1) - (4) to clarify the use of federal manifesting requirements for Class 1 waste. The commission proposes to delete the remainder of §335.12(b) including the dated citations for 40 CFR §§264.71, 264.72, 264.76 and the Appendix to 40 CFR Part 262.

The commission proposes §335.12(c) to adopt by reference 40 CFR §260.4, a new federal requirement adopted in the Electronic Manifest Fee Rule promulgated in the *Federal Register* on January 3, 2018 (83 FR 420) which implements manifest requirements applicable to designated facilities for interstate waste shipments.

The commission proposes §335.12(d) to adopt by reference 40 CFR §260.5, a new federal requirement adopted in the Electronic Manifest Fee Rule promulgated in the *Federal Register* on January 3, 2018 (83 FR 420) which clarifies the applicability of the electronic manifest system and fees for state-only regulated wastes.

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

The commission proposes to amend §335.13(a) to implement changes from the Hazardous Waste Generator Improvements Rule by replacing the reference to §335.78, which is proposed for repeal, with a description of the quantities of hazardous waste that determine applicability.

The commission proposes to amend §335.13(b) and (c) to implement plain language clarifications.

The commission proposes to amend §335.13(d) to clarify that the term registered generator means a generator with an active solid waste registration.

The commission proposes to amend §335.13(e) to organize the language into proposed §335.13(e)(1) - (3); replace the reference to §335.78, which is proposed for repeal, with the quantities of waste generated; and to clarify that the term unregistered generator also means an in-state generator that does not have an active solid waste registration.

The commission proposes to amend §335.13(f) to implement the Hazardous Waste Generator Improvements Rule and the Electronic Manifest Fee Rule by removing language adopting manifesting records retention requirements in writing, which is duplicative of requirements proposed for adoption in §335.56, and proposing language requiring generators to comply with the manifest and recordkeeping requirements under §335.10.

The commission additionally proposes to delete §335.13(g) - (i) adopting manifesting requirements in writing which are proposed for adoption under §335.15.

The commission additionally proposes to delete §335.13(j) which requires generators

to comply with §335.12, which would still be applicable to generators without this reference and requires generators to comply with the hazardous waste import and export requirements under §335.76, which is proposed for repeal. The hazardous waste import and export requirements are proposed to be adopted under new §335.52(c).

*§335.14, Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste*

The commission proposes to repeal §335.14. The section is proposed to be replaced under proposed new §335.14.

The commission proposes new §335.14 to clarify the manifest and recordkeeping requirements applicable to transporters of hazardous and Class 1 wastes. The commission does not propose the prior §335.14(a) - (e) because the language in these subsections would be duplicative of requirements proposed for adoption in §335.11.

*§335.15, Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities*

The commission proposes to amend §335.15 to clarify the applicability of the section in implied subsection (a) and add catch lines to each of the paragraphs.

The commission proposes to amend §335.15(1) to clarify the manifest requirements applicable to owners and operators of treatment, storage, or disposal facilities and

delete the reference to "primary exporter" since the term "primary exporter" was removed from 30 TAC Chapter 335, June 5, 2020 (45 TexReg 3773).

The commission proposes to amend §335.15(2) by reorganizing and replacing the language with proposed subparagraphs (A) - (D) for clarification.

The commission proposes to amend §335.15(3) by reorganizing and replacing the language with proposed subparagraphs (A) and (B) for clarification. Existing subparagraphs (A) - (G) would be replaced by clauses (i) - (vii) in proposed subparagraphs (A) and (B).

The commission proposes to amend §335.15(6) to replace "conditionally exempt small quantity generator" with the term "very small quantity generator", and to clarify the monthly waste receipt summary requirements applicable to VSQGs.

The commission proposes to amend §335.15(7) to clarify that 40 CFR §264.75 and §265.75 are adopted under §335.112 and §335.152, the location these federal sections are proposed to be adopted, and to update the method by which the biennial report is submitted.

The commission proposes §335.15(8) to clarify the reporting requirements applicable to facilities that receive Class 1 industrial waste from off-site.

*§335.18, Non-Waste Determinations and Variances from Classification as a Solid Waste*

The commission proposes to delete §335.18(a)(6) to conform to the removal of 40 CFR §260.30(f) associated with the Definition of Solid Waste Rule promulgated in the *Federal Register* on May 30, 2018 (83 FR 24664). This amendment would remove the reference to verified-reclamation facilities to comply with the vacatur ordered by the United States Court of Appeals for the District of Columbia on July 7, 2017 as modified on March 6, 2018 which voided the verified-reclamation exclusion.

*§335.19, Standards and Criteria for Variances from Classification as a Solid Waste*

The commission proposes to delete §335.19(d) to conform to the removal of 40 CFR §260.31(d) associated with the Definition of Solid Waste Rule promulgated in the *Federal Register* on May 30, 2018 (83 FR 24664). This amendment would remove the reference to verified-reclamation facilities to comply with the vacatur ordered by the United States Court of Appeals for the District of Columbia on July 7, 2017 as modified on March 6, 2018 which voided the verified-reclamation exclusion. The subsequent subsection would be relettered.

*§335.24, Requirements for Recyclable Materials and Nonhazardous Recyclable Materials*

The commission proposes to amend §335.24(b) to clarify the applicability of Subchapter A to recycling activities.

The commission proposes to amend §335.24(c)(1) to remove the dated citation for 40 CFR Part 262, Subpart H and to clarify that the subpart would be adopted by reference

under §335.58.

The commission proposes to amend §335.24(c)(2) to clarify that 40 CFR §261.4(a)(13) is adopted by reference under §335.504.

The commission proposes to amend §335.24(c)(3) to remove the dated citation for 40 CFR §261.4(a)(12) and to clarify that the federal requirements is adopted by reference under §335.504.

The commission proposes to amend §335.24(d) to clarify the applicability of Chapter 335, Subchapters A and R to generators and transporters for recycling activities.

The commission proposes §335.24(f)(3) and (4) to require owners or operators of recycling facilities that do not store recyclable materials before recycling to comply with the monthly waste summary report requirements in §335.15 and clarify that such owners and operators are subject to the biennial reporting requirements of 40 CFR §264.75 or §265.75. These amendments would conform with 40 CFR §261.6(c)(2)(iv) added to federal regulations in the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). Owners or operators of recycling facilities that do not store recyclable materials before recycling are subject to the biennial reporting requirements of 40 CFR §264.75 or §265.75, and the monthly waste summary report requirements in §335.15 would fulfill the federal biennial reporting requirements.

The commission proposes to amend §335.24(o) to remove the dated citation for 40 CFR Part 262, Subpart H and to clarify that the subpart would be adopted by reference under §335.58.

The commission proposes to amend §335.24(p) to add references to §335.26, §335.27, and Chapter 335, Subchapter V to clarify that hazardous secondary materials requirements relate to solid waste recycling.

*§335.26, Notification Requirements for Hazardous Secondary Materials*

The commission proposes to amend §335.26 to adopt by reference revisions associated with the Definition of Solid Waste Rule published in the May 30, 2018 issue of the *Federal Register* (83 FR 24664) by updating the federal citation for to 40 CFR §260.42. This revision is a consequence of the vacatur ordered by the United States Court of Appeals for the District of Columbia on July 7, 2017 as modified on March 6, 2018 which voided the verified-reclamation exclusion.

*§335.27, Legitimate Recycling of Hazardous Secondary Materials*

The commission proposes to amend §335.27 to adopt by reference revisions associated with the Definition of Solid Waste Rule published in the May 30, 2018, issue of the *Federal Register* (83 FR 24664) by updating the federal citation for 40 CFR §260.43. This revision is a consequence of the vacatur ordered by the United States Court of Appeals for the District of Columbia on July 7, 2017 as modified on March 6,

2018.

*§335.31, Incorporation of References*

The commission proposes to amend §335.31 to adopt by reference federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732) by updating the federal citation for 40 CFR §260.11. Specifically, the language in 40 CFR §260.11(d)(1) was modified in the Hazardous Waste Generator Improvements Rule.

*Subchapter B: Hazardous Waste Management General Provisions*

*§335.41, Purpose, Scope and Applicability*

The commission proposes to amend §335.41(d)(4) to replace the reference to §335.77 with 40 CFR §262.70 proposed under new §335.57 as described in the Section by Section Discussion for that section.

The commission proposes §335.41(d)(9) to establish that Chapter 335, Subchapters E and F are not applicable to the owner or operator of an authorized municipal or industrial waste facility when the only hazardous waste managed at the facility is generated by a VSQG and excluded from regulation. This amendment would adopt revisions in 40 CFR §264.1(g)(1) and §265.1(c)(5) associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732).

The commission proposes §335.41(d)(10) to establish that Chapter 335, Subchapters E and F are not applicable to a generator accumulating waste on-site in compliance with a condition for exemption proposed to be adopted under §335.53. This amendment would adopt certain revisions in 40 CFR §264.1(g)(3) and §265.1(c)(7) associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732).

The commission proposes §335.41(d)(11) to establish that Chapter 335, Subchapters E and F are not applicable to reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals in compliance with proposed new Subchapter W. This amendment would adopt revisions in 40 CFR §264.1(g)(13) and §265.1(c)(16) associated with the Pharmaceutical Waste Rule and promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816).

The commission proposes to amend §335.41(e)(1) by replacing the reference to §335.78 with the new term for the lowest hazardous waste generator category, "very small quantity generator", and language making the exception from applicability of Chapter 335, Subchapter E dependent upon the VSQG meeting the conditions for exemption in 40 CFR §262.14 which is proposed to be adopted under §335.53. The definition of VSQG is proposed to be adopted under §335.1 as described in the Section by Section Discussion for that definition. This proposed amendment would implement the adoption of the Hazardous Waste Generator Improvements Rule as further described in the Section by Section Discussion for §335.53.

The commission proposes to amend §335.41(e)(2) to add an exception from applicability of Chapter 335, Subchapter E for generators accumulating hazardous waste on-site in compliance with conditions for exemption for eligible academic entities and episodic generation. This amendment would adopt revisions in 40 CFR §265.1(c)(7) associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The existing provision in §335.41(e)(2) is proposed to be deleted because it is duplicative of language proposed in §335.41(d)(10).

The commission proposes §335.41(f)(2)(D) to establish applicability of the proposed adoption of requirements for residues of hazardous waste pharmaceuticals under the requirements for residues of hazardous waste in containers. This amendment would adopt revisions in 40 CFR §261.7(c) associated with the Pharmaceutical Waste Rule and promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816).

#### *§335.46, Sharing of Information*

The commission proposes §335.46(b) to adopt by reference 40 CFR §260.2(c) as amended in the federal Electronic Manifest Rule which was promulgated in the *Federal Register* on February 7, 2014 (79 FR 7518).

The commission proposes §335.46(c) to adopt by reference 40 CFR §260.2(d) as adopted in the federal Export and Import Confidentiality Rule which was promulgated

in the *Federal Register* on December 26, 2017 (82 FR 60894).

*Subchapter C: Standards Applicable to Generators of Hazardous Waste*

*§335.51, Definitions*

The commission proposes new §335.51(1) to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732) by adopting the definition of "Condition for exemption" consistent with the new definition of "Condition for exemption" in 40 CFR §262.1. If the conditions for exemption are not met, then the generator would be subject to the permitting or interim facility regulations in Chapter 335, Subchapters E and F.

The commission proposes new §335.51(2) to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732) by adopting the definition of "Independent requirement" consistent with the new definition of "Independent requirement" in 40 CFR §262.1. All hazardous waste generators must comply with the independent requirements of 40 CFR Part 262, as adopted by reference under this subchapter.

*§335.52, Purpose, Scope, and Applicability*

The commission proposes new §335.52(a) to establish the purpose scope and applicability of Chapter 335, Subchapter C; conform with revisions to 40 CFR §262.10

associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732) and the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816); and to require persons who import hazardous waste into the state to comply with the generator regulations in Chapter 335, Subchapter A because this requirement under §335.61 is proposed for repeal.

The commission proposes new §335.52(a)(1) to identify the independent requirements applicable to hazardous waste generators based on generator category and correspond with 40 CFR §262.10(a)(1).

The commission proposes new §335.52(a)(2) to identify the conditions for exemption for VSQGs, small quantity generators, and large quantity generators and correspond with 40 CFR §262.10(a)(2).

The commission proposes new §335.52(b) to identify the requirement for hazardous waste generators to conduct a generator category determination and correspond with 40 CFR §262.10(b).

The commission proposes new §335.52(c) to identify the provisions applicable to hazardous waste exporters or importers and correspond with 40 CFR §262.10(d).

The commission proposes new §335.52(d) to establish the applicability of this chapter

to hazardous waste importers and correspond with 40 CFR §262.10(e).

The commission proposes new §335.52(e) to identify the provisions applicable to farmers that generate hazardous waste pesticides and correspond with 40 CFR §262.10(f).

The commission proposes new §335.52(f) to identify the consequences applicable to hazardous waste generators that violate an independent requirement or fail to comply with a condition for exemption and correspond with 40 CFR §262.10(g).

The commission proposes new §335.52(g) to identify the applicability of this subchapter to owners or operators of treatment, storage, or disposal facilities shipping hazardous wastes and correspond with 40 CFR §262.10(h).

The commission proposes new §335.52(h) to identify the exemption from this subchapter for a person responding to an explosives or munitions emergency and correspond with 40 CFR §262.10(i).

The commission proposes new §335.52(i) to identify exclusions applicable to laboratories owned by eligible academic entities and correspond with 40 CFR §262.10(l).

The commission proposes new §335.52(j) to identify the exemption for reverse

distributors from this subchapter and correspond with 40 CFR §262.10(m).

The commission proposes new §335.52(k) to identify the exemption from this subchapter for healthcare facilities that are not VSQGs, and to clarify the provisions of this subchapter applicable to healthcare facilities that are VSQGs and correspond with 40 CFR §262.10(n).

*§335.53, General Standards Applicable to Generators of Hazardous Waste*

The commission proposes new §335.53 to adopt by reference the federal regulations in 40 CFR §§262.11 - 262.18 as described further in this preamble.

The commission proposes new §335.53(a) to adopt by reference new 40 CFR §262.11(e) - (g) associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The state requirement to conduct a hazardous waste determination in current §335.62 is proposed for repeal and would be replaced by this section. The remainder of revised 40 CFR §262.11 is proposed for adoption in §335.504, as described in the Section by Section Discussion for that section.

The commission proposes new §335.53(b) to adopt by reference new 40 CFR §262.13 associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732), and the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The

exclusion for hazardous wastes from the generator category determination in current §335.78(c) and (d) is proposed for repeal and would be replaced by this section.

The commission proposes new §335.53(c) to adopt by reference new 40 CFR §262.14 associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732), and the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The state provisions for conditionally exempt small quantity generators (the term was replaced in the Hazardous Waste Generator Improvements Rule with "very small quantity generator") in current §335.78 are proposed for repeal and would be replaced by this section.

The commission proposes new §335.53(d) to adopt by reference new 40 CFR §262.15 associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The state provisions for satellite accumulation in current §335.69(d) and (e) are proposed for repeal and would be replaced by this section.

The commission proposes new §335.53(e) to adopt by reference new 40 CFR §262.16 associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The state provisions for small quantity generators in current §335.69(f) - (h) are proposed for repeal and would be replaced by this section.

The commission proposes new §335.53(f) to adopt by reference new 40 CFR §262.17 associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The state provisions for large quantity generators in current §335.69(a) - (b) and (j) - (l) are proposed for repeal and would be replaced by this section.

The commission proposes new §335.53(g) to adopt by reference new 40 CFR §262.18 associated with the Hazardous Waste Generator Improvements Rule and promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The state provision for the EPA identification number requirement in current §335.63 is proposed for repeal and would be replaced by this section.

#### *§335.54, Hazardous Waste Manifest*

The commission proposes new §335.54 to adopt by reference federal regulations in 40 CFR Part 262, Subpart B and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732), and the Electronic Manifest Fee Rule promulgated in the *Federal Register* on January 3, 2018 (83 FR 420). This section would establish manifest requirements for generators. This section would replace the adoption of sections in 40 CFR Part 262, Subpart B currently in §335.10 so the federal provisions would be adopted only once in Chapter 335.

*§335.55, Pre-transport Requirements Applicable to Small and Large Quantity*

*Generators*

The commission proposes new §335.55 to adopt by reference federal regulations in 40 CFR Part 262, Subpart C, and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This section would establish the pre-transport requirements for small and large quantity generators of hazardous waste and would replace current §§335.65 - 335.68 which are proposed for repeal.

*§335.56, Recordkeeping and Reporting Applicable to Small and Large Quantity*

*Generators*

The commission proposes new §335.56 to adopt by reference federal regulations in 40 CFR Part 262, Subpart D and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This section would establish the recordkeeping and reporting requirements for small and large quantity generators of hazardous waste. This federal language was previously adopted in current §§335.13(g) - (i), 335.70, 335.71, 335.73, and 335.74 which are proposed for repeal.

*§335.57, Farmers*

The commission proposes new §335.57 to adopt by reference federal regulations in 40 CFR Part 262, Subpart G and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November

28, 2016 (81 FR 85732). This section would establish the requirements for farmers disposing of hazardous waste pesticides and would replace current §335.77 which is proposed for repeal.

*§335.58, Transboundary Movements of Hazardous Waste for Recovery or Disposal*

The commission proposes new §335.58 to adopt by reference federal regulations in 40 CFR Part 262, Subpart H and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732), and the Export and Import Confidentiality Rule promulgated in the *Federal Register* on December 26, 2017 (82 FR 60894), and amended in the *Federal Register* on August 6, 2018 (83 FR 38262). This section would establish the requirements for transboundary movements of hazardous waste and would reorganize the adoption by reference in current §335.76 which is proposed for repeal.

*§335.59, Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities*

The commission proposes new §335.59 to adopt by reference federal regulations in 40 CFR Part 262, Subpart K and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This section would establish the alternative requirements for laboratories owned by eligible academic entities and would replace current §335.79 which is proposed for repeal.

*§335.60, Alternative Standards for Episodic Generation*

The commission proposes new §335.60 to adopt by reference new federal regulations in 40 CFR Part 262, Subpart L and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This section would establish requirements for alternative standards for episodic generation of hazardous waste applicable to VSQGs and small quantity generators.

*§335.61, Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators*

The commission proposes new §335.61 to adopt by reference new federal regulations in 40 CFR Part 262, Subpart M and to adopt federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This new federal subpart was established to repeat the requirements in 40 CFR Part 265, Subparts C and D applicable to large quantity generators of hazardous waste in 40 CFR Part 262. 40 CFR Part 265, Subparts C and D remain adopted by reference in §335.112.

*Repealed Subchapter C: Standards Applicable to Generators of Hazardous Waste*

*§335.61, Purpose, Scope and Applicability*

The commission proposes to repeal current §335.61. This section would be replaced by proposed new §335.52 as described in the Section by Section Discussion for that

section.

*§335.62, Hazardous Waste Determination and Waste Classification*

The commission proposes to repeal §335.62. This section would be replaced by proposed new §335.53 as described in the Section by Section Discussion for that section.

*§335.63, EPA Identification Numbers*

The commission proposes to repeal §335.63. This section would be replaced by proposed new §335.53 as described in the Section by Section Discussion for that section.

*§335.65, Packaging*

The commission proposes to repeal §335.65. This section would be replaced by proposed new §335.55 as described in the Section by Section Discussion for that section.

*§335.66, Labeling*

The commission proposes to repeal §335.66. This section would be replaced by proposed new §335.55 as described in the Section by Section Discussion for that section.

*§335.67, Marking*

The commission proposes to repeal §335.67. This section would be replaced by proposed new §335.55 as described in the Section by Section Discussion for that section.

*§335.68, Placarding*

The commission proposes to repeal §335.68. This section would be replaced by proposed new §335.55 as described in the Section by Section Discussion for that section.

*§335.69, Accumulation Time*

The commission proposes to repeal §335.69. This section would be replaced by proposed new §335.53 as described in the Section by Section Discussion for that section.

*§335.70, Recordkeeping*

The commission proposes to repeal §335.70. This section would be replaced by proposed new §335.56 as described in the Section by Section Discussion for that section.

*§335.71, Biennial Reporting*

The commission proposes to repeal §335.71. This section would be replaced by proposed new §335.56 as described in the Section by Section Discussion for that section.

*§335.73, Additional Reporting*

The commission proposes to repeal §335.73. This section would be replaced by proposed new §335.56 as described in the Section by Section Discussion for that section.

*§335.74, Special Requirements for Generators of Between 100 and 1,000 Kilograms per Month*

The commission proposes to repeal §335.74. This section would be replaced by proposed new §335.56 as described in the Section by Section Discussion for that section.

*§335.75, Notification Requirements for Interstate Shipments*

The commission proposes to repeal §335.75. This section is duplicative of requirements in §335.13 as described in the Section by Section Discussion for that section.

*§335.76, Additional Requirements Applicable to International Shipments*

The commission proposes to repeal §335.76. This section would be replaced by proposed new §335.58 as described in the Section by Section Discussion for that section.

*§335.77, Farmers*

The commission proposes to repeal §335.77. This section would be replaced by proposed new §335.57 as described in the Section by Section Discussion for that section.

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

The commission proposes to repeal §335.78. This section would be replaced by proposed new §335.52 and §335.53 as described in the Section by Section Discussions for those sections.

*§335.79, Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities*

The commission proposes to repeal §335.79. This section would be replaced by proposed new §335.59 as described in the Section by Section Discussion for that section.

*Subchapter D, Standards Applicable to Transporters of Hazardous Waste*

*§335.91, Scope*

The commission proposes to amend §335.91(a) to implement plain language clarifications.

The commission proposes to amend §335.91(c) to clarify additional sections and

subchapters applicable to hazardous waste transporters.

The commission proposes to amend §335.91(e) to remove the dated citation for 40 CFR Part 262, Subpart H and to clarify that 40 CFR Part 262, Subpart H, 40 CFR §262.83(d), and 40 CFR §262.84(d) would be adopted by reference under proposed new §335.58.

*§335.94, Transfer Facility Requirements*

The commission proposes to amend §335.94(a) to add the term "independent requirements", and replace the reference to §335.65, which is proposed for repeal, with 40 CFR §262.30 as adopted under §335.55.

The commission proposes §335.94(c) to adopt the language added to 40 CFR §263.12(b) in the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732).

*Subchapter E: Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities*

*§335.112, Standards*

The commission proposes to amend §335.112 to adopt by reference revisions associated with the adoption of the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The commission proposes to accomplish the adoption of these revisions by updating the

federal citations for 40 CFR Part 265, Subparts B, E, I, J, AA, BB, and DD in §335.112(a)(1), (4), (8), (9), (19), (20), and (22) respectively.

The commission proposes to amend §335.112(a)(4) to adopt revisions associated with the Electronic Manifest Fee Rule by updating the federal citation for 40 CFR Part 265 Subpart E, and revising the list of CFR sections excepted from the adoption of 40 CFR Part 265, Subpart E.

The commission proposes to amend §335.112(a)(7) to correct a typographical error by replacing the incorrect citation 40 CFR §264.146 with 40 CFR §265.146.

The commission proposes to amend §335.112(a)(21) to adopt revisions associated with the Electronic Manifest Fee Rule by updating the federal citation for 40 CFR Part 265, Subpart CC.

The commission proposes §335.112(a)(24) to adopt revisions associated with the Electronic Manifest Fee Rule by adopting by reference 40 CFR Part 265, Subpart FF and renumbering the subsequent paragraphs.

The commission proposes to amend §335.112(b) to adopt revisions associated with the Electronic Manifest Fee Rule by adding exception language clarifying that the changes listed in subsection (b) do not apply to the use of the manifest system requirements under 40 CFR §265.71 or the fees for the electronic hazardous waste manifest

program requirements under 40 CFR Part 265, Subpart FF.

The commission additionally proposes to amend §335.112(b)(7) to adopt revisions associated with the Electronic Manifest Fee Rule by removing 40 CFR §265.71 and §265.72 from the list of CFR sections that when referenced in regulations adopted by reference under this section must be substituted with references to sections in Chapter 335.

The commission proposes to delete §335.112(c) because the necessity and practice of maintaining and making available to the public on demand an up-to-date physical copy of the CFR has been superseded by the CFR being maintained accessible and available to the public on the internet.

*Subchapter F: Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities*

*§335.152, Standards*

The commission proposes to amend §335.152 to adopt by reference the changes associated with the adoption of the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The commission proposes to accomplish the adoption of these revisions by updating the federal citations for 40 CFR Part 264, Subparts B, E, I, J, AA, BB, and DD in §335.152(a)(1), (4), (7), (8), (17), (18), and (20) respectively.

The commission proposes to amend §335.152(a)(4) to adopt revisions associated with the Electronic Manifest Fee Rule by updating the federal citation for 40 CFR Part 264, Subpart E, and revising the list of CFR sections excepted from the adoption of 40 CFR Part 264, Subpart E.

The commission proposes to amend §335.152(a)(4) and (19) and add §335.152(a)(22) to adopt by reference revisions associated with the Electronic Manifest Fee rule promulgated in the *Federal Register* on January 3, 2018 (83 FR 420). The commission proposes to accomplish the adoption of these revisions by updating the federal citation for 40 CFR Part 264, Subpart CC; adding new 40 CFR Part 264, Subpart FF as §335.152(a)(22); and renumbering the subsequent paragraph.

The commission proposes to amend §335.152(c) to clarify that the changes listed in subsection (c) do not apply to the state adoption of 40 CFR §264.71 or 40 CFR Part 264, Subpart FF, and to amend §335.152(c)(7) to remove 40 CFR §264.71 and §264.72 from the list of CFR references that are changed to references in Chapter 335.

The commission proposes to delete the last sentence of §335.152(b), and the entirety of §335.152(d), because the necessity and practice of maintaining and making available to the public on demand an up-to-date physical copy of the CFR has been superseded by the CFR being maintained accessible and available to the public on the internet.

*Subchapter H: Standards for the Management of Specific Wastes and Specific Types of*

*Facilities*

*Division 2: Hazardous Waste Burned for Energy Recovery*

*§335.221, Applicability and Standards*

The commission proposes to amend §335.221(a)(19) to remove and replace the reference to §335.78 with the phrase "generated by a very small quantity generator" in order to conform with federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The definition for VSQG is proposed in §335.1 as described in the Section by Section Discussion for that definition.

The commission proposes to amend §335.221(b) to remove and replace references to §335.78 and the term "conditionally exempt small quantity generator." In §335.221(b)(1), "conditionally exempt small quantity generator" would be replaced with the phrase "a generator that meets the conditions for exemption for a very small quantity generator during the calendar month in which the hazardous waste was generated." The language in current §335.221(b)(2) would be separated into revised paragraph (2) and proposed paragraph (3), and the subsequent paragraphs would be renumbered. Proposed §335.221(b)(3) would replace the references to CESQGs and §335.78 with VSQGs.

*Division 3: Recyclable Materials Utilized for Precious Metal Recovery*

*§335.241, Applicability and Requirements*

The commission proposes to amend §335.241(b)(3) to correct the titles of §335.10 and

§335.11 by deleting the terms "Industrial" and "Solid" and to add the sections applicable to recycling activities subject to this section, in accordance with the proposed relocation of adoption of several federal requirements to §335.54 and §335.112. These changes are described in the Section by Section Discussion for those sections.

The commission proposes to amend §335.241(b)(4) to incorporate federal revisions associated with the Imports and Exports of Hazardous Waste Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85696) by revising the language in §335.241(b)(4) to be consistent with the federal language in 40 CFR §266.70(b)(3). The Imports and Exports of Hazardous Waste Rule was adopted June 5, 2020 (45 TexReg 3773), however §335.241 was not opened and revised at that time. The commission proposes to further amend §335.241(b)(4) to remove the reference to §335.76, which is proposed for repeal, and clarify that proposed new §335.58 applies to exports and imports of precious metals for recovery.

*Division 4: Spent Lead-Acid Batteries Being Reclaimed*

*§335.251, Applicability and Requirements*

The commission proposes to amend §335.251(a) to adopt by reference the revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732) by updating the *Federal Register* citation for 40 CFR Part 266, Subpart G.

The commission proposes to amend §335.251(c) and (e) - (g) to replace references to §335.63 with proposed new §335.53 as described in the Section by Section Discussion for those sections.

*Division 5: Universal Waste Rule*

*§335.261, Universal Waste Rule*

The commission proposes revisions to the universal waste regulations, as described in the Section by Section Discussion for this section, to add aerosol cans to the list of hazardous waste recognized as universal waste.

The commission proposes to amend §335.261(a) to update the *Federal Register* citation for 40 CFR Part 273 to adopt by reference revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732), Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816), and the Aerosol Can Waste Rule promulgated in the *Federal Register* on December 9, 2019 (84 FR 67202).

The commission proposes to amend §335.261(b)(4) to replace the citation to §335.261(b)(16)(F) with §335.261(b)(19)(F) to conform with revisions associated with the Aerosol Can Waste Rule.

The commission proposes to amend §335.261(b)(8) to replace the reference to §335.77 with proposed new §335.57 as described in the Section by Section Discussion for those

sections.

The commission proposes to amend §335.261(b)(12) to replace the citation to §335.261(b)(16)(E) with §335.261(b)(19)(E) to conform with revisions associated with the Aerosol Can Waste Rule.

The commission proposes §335.261(b)(14) - (16) to conform with revisions associated with the Aerosol Can Waste Rule by adding references to Chapter 335 instead of reference to 40 CFR Part 261, adding a reference to §335.41(f) instead of 40 CFR §261.7 and renumbering the subsequent paragraphs.

The commission proposes to amend renumbered §335.261(b)(17) to replace the citation to §335.261(b)(16)(F) with §335.261(b)(19)(F) to conform with revisions associated with the Aerosol Can Waste Rule.

The commission proposes to further amend renumbered §335.261(b)(17) to add that 40 CFR §261.4(b)(1) is changed to both §335.1 and §335.402(5). The reference to §335.402(5) was mistakenly listed in renumbered §335.261(b)(18).

The commission proposes to amend renumbered §335.261(b)(18) to replace the reference to 40 CFR §261.5 with 40 CFR §262.14 to conform with revised 40 CFR §273.8 associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732).

Additionally, the commission proposes to amend renumbered §335.261(b)(18) by replacing the reference to §335.78 with proposed new §335.53 as described in the Section by Section Discussion for those sections, and by replacing the citation to §335.261(b)(16)(F) with §335.261(b)(19)(F) to conform with revisions associated with the Aerosol Can Waste Rule and the renumbering of paragraphs in this subsection.

The commission proposes to further amend renumbered §335.261(b)(18) to remove the reference to §335.402(5).

The commission proposes §335.261(b)(19)(F)(vi) to implement revisions associated with the Aerosol Can Waste Rule promulgated in the *Federal Register* on December 9, 2019 (84 FR 67202). This revision would add aerosol cans to the list of hazardous wastes recognized as a universal waste regulated under this division.

The commission proposes to amend renumbered §335.261(b)(20) to replace the citation to §335.261(b)(16)(D) with §335.261(b)(19)(D) to conform with revisions associated with the Aerosol Can Waste Rule and the renumbering of paragraphs in this subsection.

The commission proposes to amend renumbered §335.261(b)(23) to implement revisions associated with the Aerosol Can Waste Rule by replacing the reference to "40 CFR §262.34" with "40 CFR parts 260 through 272" to correspond with revised 40 CFR §273.13, and by replacing the reference to §335.69 with Chapter 335.

The commission proposes §335.261(b)(25) and (26) to conform with revisions associated with the Aerosol Can Waste Rule by adding references to §335.53 instead of the references to 40 CFR §§262.11 and 262.14 - 262.17, adding a reference to Chapter 335 instead of the reference to 40 CFR Parts 260 - 272, and renumbering the subsequent paragraphs.

The commission proposes to amend renumbered §335.261(b)(28) to replace the citation to §335.261(b)(16)(C) with §335.261(b)(19)(C) to conform with revisions associated with the Aerosol Can Waste Rule and renumbering the subsequent paragraphs.

The commission proposes to amend renumbered §335.261(b)(31) to implement revisions associated with the Aerosol Can Waste Rule by replacing the reference to "40 CFR §262.34" with "40 CFR parts 260 through 272" to correspond with revised 40 CFR §273.33, and by replacing the reference to §335.69 with Chapter 335.

The commission proposes §335.261(b)(35) and (36) to conform with revisions associated with the Aerosol Can Waste Rule by adding references to §335.53 instead of the reference to 40 CFR §§262.11 or 262.14 - 262.17 and reference to Chapter 335 instead of the reference to 40 CFR Parts 260 - 272 and renumbering the subsequent paragraphs.

The commission proposes to amend renumbered §335.261(b)(41) to replace the citation to §335.261(b)(16)(A) with §335.261(b)(19)(A) to conform with revisions associated with the Aerosol Can Waste Rule.

The commission proposes to amend renumbered §335.261(b)(45) to replace the citation to §335.261(b)(16)(F) with §335.261(b)(19)(F) to conform with revisions associated with the Aerosol Can Waste Rule.

The commission proposes to amend §335.261(c) to implement revisions associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes language consistent with 40 CFR §273.80(a).

The commission proposes §335.261(c)(4) to implement revisions associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes language consistent with 40 CFR §273.80(d). Specifically, the EPA added 40 CFR §273.80(d) to exclude hazardous waste pharmaceuticals from being added as a universal waste category.

#### *Division 6: Military Munitions*

§335.272, Standards.

The commission proposes to amend §335.272(b)(6) to replace the reference to §335.61(h) with proposed new §335.52 as described in the Section by Section

Discussion for those sections.

The commission proposes to amend §335.272(b)(7) to replace the section title for §335.91, which was incorrectly identified as "Standards Applicable to Transporters of Hazardous Waste", the title for Chapter 335, Subchapter D.

*Subchapter O: Land Disposal Restrictions*

*§335.431, Purpose, Scope, and Applicability*

The commission proposes to amend §335.431(c)(1) to adopt by reference revisions to 40 CFR Part 268 associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). Specifically, the EPA amended 40 CFR §§268.1, 268.7, and 268.50 in the Hazardous Waste Generator Improvements Rule.

The commission proposes to further amend §335.431(c)(1) to adopt by reference revisions associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citation for 40 CFR Part 268. Specifically, the EPA amended the section heading in 40 CFR §268.7 and the subject heading in 40 CFR §268.7(a) to include reverse distributors. The EPA also added 40 CFR §268.50(a)(4) and (5) to clarify that healthcare facilities and reverse distributors that meet certain conditions are not subject to the prohibition of storage of hazardous wastes restricted from land disposal under the RCRA.

The commission proposes to amend §335.431(d)(5) to replace the federal citation for 40 CFR §262.34 with 40 CFR §262.16 and §262.17 consistent with the revised language in 40 CFR §268.50(a)(1), and replace the reference to §335.69 with proposed new §335.53 as described in the Section by Section Discussion for that section.

The commission proposes §335.431(d)(6) and (7) to conform with revisions associated with the Pharmaceutical Waste Rule by adding state replacements for the new federal language proposed for adoption.

*Subchapter Q: Pollution Prevention: Source Reduction and Waste Minimization*

*§335.471, Definitions*

The commission proposes to delete §335.471(1) and renumber the subsequent paragraphs. The definition for "Acute hazardous waste" is proposed in §335.1(6) as further described in the Section by Section Discussion for that section.

The commission proposes to delete §335.471(3) and renumber the subsequent paragraphs. The EPA renamed the generator classification "conditionally exempt small quantity generator" as "very small quantity generator" in the Hazardous Waste Generator Improvements Rule, and definitions for "conditionally exempt small quantity generator" and "very small quantity generator" are proposed in §335.1(38) and (193) respectively as further described in the Section by Section Discussions for that section.

The commission proposes to delete §335.471(5) and renumber the subsequent paragraphs. The definition for "Environmental management system" would no longer be needed due to the proposed deletion of §335.477(3) as described in the Section by Section Discussion for that section.

The commission proposes to delete §335.471(8) and renumber the subsequent paragraphs. The definition for "Large quantity generator" is proposed in §335.1(105) as further described in the Section by Section Discussion for that section.

The commission proposes to delete §335.471(12) and renumber the subsequent paragraphs. The definition for "Small quantity generator" would no longer be needed in this subchapter due to the proposed expansion for the definition in §335.1(159) as further described in the Section by Section Discussion for that section.

*§335.474, Pollution Prevention Plans*

The commission proposes to amend §335.474(1) to replace the citation for the definition of "Large quantity generators" in §335.471(8) with §335.1, and to remove the citation for the definition of "TRI Form R reporters" in §335.471(15).

The commission proposes to amend §335.474(2) to replace the citation for the definition of "Small quantity generators" in §335.471(12) with §335.1, and to remove the citation for the definition of "TRI Form R reporters" in §335.471(15).

*§335.477, Exemptions*

The commission proposes to delete §335.477(3). The referenced section, 30 TAC §90.36, was repealed as published in the July 13, 2012 issue of the *Texas Register* (37 TexReg 5310).

*Subchapter R: Waste Classification*

*§335.503, Waste Classification and Waste Coding Required*

The commission proposes to amend §335.503(a)(1) to clarify that hazardous waste and industrial solid waste are subject to this chapter.

The commission proposes to amend §335.503(b) to clarify how a waste code number is assigned and the use of characters and digits in the waste code number.

The commission proposes to amend §335.503(b)(1) to clarify that the four characters of a waste code number which constitute the four-character sequence number may consist of numeric and or alpha characters.

The commission proposes to amend §335.503(b)(2) to delete the last two sentences since the commission no longer assigns alphanumeric sequences codes for one-time shipments for registered generators. The commission would continue to assign alphanumeric sequences codes for one-time shipments for unregistered generators in accordance with §335.503(b)(3).

The commission proposes to amend §335.503(b)(6) and (7) to replace references to CESQs with generators meeting the conditions for exemption for a VSQG in order to conform with federal revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The definition for VSQG is proposed in §335.1 as described in the Section by Section Discussion for that definition.

The commission proposes to further amend §335.503(b)(6) and (7) to replace the "CESQ" waste code with "VSQG." The commission intends to implement these proposed amendments by allowing generators who are not required to use a waste manifest to use the new four-character sequence number "VSQG" as the first four characters of the waste code or to continue using the four-character sequence number that is proposed for repeal "CESQ" through December 31, 2024. The commission intends to require the use of the sequence number "VSQG" beginning on January 1, 2025.

The commission proposes to amend §335.503(b)(8) by implementing plain language clarifications regarding the TSDf sequence code when shipping waste received from off-site, and by deleting manifesting instructions that have been reorganized and are proposed to be adopted under §335.54 and §335.12.

The commission proposes §335.503(b)(9) to conform to changes associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019

(84 FR 5816) by adding the requirement for healthcare facilities shipping non-creditable hazardous waste pharmaceuticals to a designated facility to use the sequence code "PHRM" for the first four characters of the waste code.

*§335.504, Hazardous Waste Determination*

The commission proposes to amend §335.504 to adopt revisions to 40 CFR §262.11 associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The commission proposes to accomplish the adoption of these revisions by labeling implied subsection (a) as subsection (a) and adding the catch line "Hazardous waste determination", and adding §335.504(a)(3)(A) and (B), (B)(i) and (ii), (b), and (c) to adopt certain requirements of 40 CFR §262.11 in writing.

The commission proposes to amend §335.504(a)(1) to adopt by reference revisions to 40 CFR Part 261, Subpart A associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732), the Definition of Solid Waste Rule promulgated in the *Federal Register* on May 30, 2018 (83 FR 24664), the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816), and the Aerosol Can Waste Rule promulgated in the *Federal Register* on December 9, 2019 (84 FR 67202). The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citation for 40 CFR Part 261, Subpart A.

The commission proposes to amend §335.504(a)(1) to adopt by reference revisions to 40 CFR Part 261, Subpart E associated with the Export and Import Confidentiality rule promulgated in the *Federal Register* on December 26, 2017 (82 FR 60894) and amended in the *Federal Register* on August 6, 2018 (83 FR 38262). The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citation for 40 CFR Part 261, Subpart E.

The commission proposes to amend §335.504(a)(2) to adopt revisions in the hazardous waste determination requirements of 40 CFR §262.11 and to adopt by reference revisions to 40 CFR Part 261, Subpart D associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732) and the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citation for 40 CFR Part 261, Subpart D.

#### *§335.510, Sampling Documentation*

The commission proposes to amend §335.510(a) to add the reference to 40 CFR §262.11(f) as adopted by reference at §335.53 to clarify the documentation required for generators to conform with revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732).

*§335.511, Use of Process Knowledge*

The commission proposes to amend §335.511(a) to require generators to follow §335.504 when using process knowledge to classify hazardous waste and to add language specifying what constitutes acceptable process knowledge generators may use to classify nonhazardous industrial waste. These amendments would conform with revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732).

*§335.513, Documentation Required*

The commission proposes to amend §335.513(a) to add the reference to 40 CFR §262.11(f) as adopted by reference at §335.53 to the documentation required for generators to conform with revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732).

*§335.521, Appendices*

The commission proposes to amend the Figure in 30 TAC §335.521(a)(2) to replace the word "non-hazardous" with "nonhazardous" for consistency with the rest of the chapter.

The commission proposes to amend §335.521(b) to revise the name of the agency and the agency website.

*Subchapter T: Permitting Standards for Owners and Operators of Commercial Industrial  
Nonhazardous Waste Landfill Facilities*

*§335.590, Operational and Design Standards*

The commission proposes to amend §335.590(25) to adopt revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The commission proposes to accomplish the adoption of these revisions by replacing references to a CESQG with VSQG. The reference to §335.78(a), which is proposed for repeal, would be deleted.

*Subchapter U: Standards for Owners and Operators of Hazardous Waste Facilities  
Operating Under a Standard Permit*

*§335.602, Standards*

The commission proposes to amend §335.602(a)(4) to adopt by reference revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citation for 40 CFR Part 267, Subpart E.

The commission proposes to amend §335.602(b)(2)(I) to adopt by reference revisions associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). The commission proposes to accomplish the adoption of these revisions by replacing the reference to 40 CFR §262.34 with 40 CFR §262.16 or §262.17 in accordance with revisions to 40 CFR

§267.71, and replacing the reference to §335.69 with proposed new §335.53, the location these federal sections are proposed for adoption.

*Subchapter V: Standards for Reclamation of Hazardous Secondary Materials*

*§335.702, Standards*

The commission proposes to amend §335.702(a)(3) to adopt by reference revisions to 40 CFR §261.420(g) associated with the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732), by adding a federal citation for 40 CFR Part 261, Subpart M.

*§335.703, Financial Assurance Requirements*

The commission proposes to amend §335.703(c)(1) to adopt revisions associated with the Definition of Solid Waste Rule published in the May 30, 2018 issue of the *Federal Register* (83 FR 24664) by deleting the phrase "receiving a variance for."

*Subchapter W: Management Standards for Hazardous Waste Pharmaceuticals*

*§335.751, Definitions*

The commission proposes new §335.751 to adopt definitions associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes to accomplish the adoption of these regulations by adding definitions for the terms "Evaluated hazardous waste pharmaceutical", "Hazardous waste pharmaceutical", "Healthcare facility", "Household waste pharmaceutical", "Long-term care facility", "Non-creditable hazardous waste

pharmaceutical", "Nonhazardous waste pharmaceutical", "Non-pharmaceutical hazardous waste", "Pharmaceutical", "Potentially creditable hazardous waste pharmaceutical", and "Reverse distributor", consistent with the definitions in 40 CFR §266.500.

*§335.753, Applicability*

The commission proposes new §335.753 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes to accomplish the adoption of these regulations by adding language consistent with language in 40 CFR §266.501 to establish the applicability of Chapter 335, Subchapter W to healthcare facilities and reverse distributors for the management of hazardous waste pharmaceuticals.

*§335.755, Standards for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals*

The commission proposes new §335.755 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes to accomplish the adoption of these regulations by adding language consistent with language in 40 CFR §266.502 to establish the standards for healthcare facilities managing non-creditable hazardous waste pharmaceuticals.

*§335.757, Standards for Healthcare Facilities Managing Potentially Creditable*

*Hazardous Waste Pharmaceuticals*

The commission proposes new §335.757 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes to accomplish the adoption of these regulations by adding language consistent with language in 40 CFR §266.503 to establish the standards for healthcare facilities managing potentially creditable hazardous waste pharmaceuticals.

*§335.759, Healthcare Facilities That are Very Small Quantity Generators for Both Hazardous Waste Pharmaceuticals and Non-pharmaceutical Hazardous Waste*

The commission proposes new §335.759 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes to accomplish the adoption of these regulations by adding language consistent with language in 40 CFR §266.504 to establish the standards applicable to healthcare facilities that are also VSQGs.

*§335.761, Prohibition of Sewering Hazardous Waste Pharmaceuticals*

The commission proposes new §335.761 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes to accomplish the adoption of these regulations by adding language consistent with language in 40 CFR §266.505 to establish the sewerage prohibition applicable to all hazardous waste pharmaceuticals.

*§335.763, Conditional Exemptions for Hazardous Waste Pharmaceuticals that are Controlled Substances and Household Waste Pharmaceuticals Collected in a Take-back Event or Program*

The commission proposes new §335.763 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes to accomplish the adoption of these regulations by adding language consistent with language in 40 CFR §266.506 to establish the conditional exemption from regulation under this subchapter for hazardous waste pharmaceuticals that are also subject to regulation by the federal Drug Enforcement Administration.

*§335.765, Residues of Hazardous Waste Pharmaceuticals in Empty Containers*

The commission proposes new §335.765 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes to accomplish the adoption of these regulations by adding language consistent with language in 40 CFR §266.507 to describe the requirements for containers with residues of hazardous waste pharmaceuticals to be considered empty.

*§335.767, Shipping Non-Creditable Hazardous Waste Pharmaceuticals from a Healthcare Facility or Evaluated Hazardous Waste Pharmaceuticals from a Reverse Distributor*

The commission proposes new §335.767 to adopt regulations associated with the

Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes to accomplish the adoption of these regulations by adding language consistent with language in 40 CFR §266.508 and adopting 40 CFR §266.508(a)(1)(iii)(b) by reference, to establish the shipping requirements for hazardous waste pharmaceuticals that are not eligible for a manufacturer's credit.

*§335.769, Shipping Potentially Creditable Hazardous Waste Pharmaceuticals from a Healthcare Facility or a Reverse Distributor to a Reverse Distributor*

The commission proposes new §335.769 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes to accomplish the adoption of these regulations by adding language consistent with language in 40 CFR §266.509 to establish the shipping requirements for hazardous waste pharmaceuticals that are potentially eligible for a manufacturer's credit.

*§335.771, Standards for the Management of Potentially Creditable and Evaluated Hazardous Waste Pharmaceuticals by Reverse Distributors*

The commission proposes new §335.771 to adopt regulations associated with the Pharmaceutical Waste Rule promulgated in the *Federal Register* on February 22, 2019 (84 FR 5816). The commission proposes to accomplish the adoption of these regulations by adding language consistent with language in 40 CFR §266.510 to establish the standards applicable to reverse distributors for the management of

hazardous waste pharmaceuticals. This section would also establish registration and reporting requirements for reverse distributors.

#### **Fiscal Note: Costs to State and Local Government**

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

This rulemaking addresses necessary changes in order to comply with federal waste regulations and codify a regulatory letter regarding foundry sand.

#### **Public Benefits and Costs**

Ms. Bearnse determined that for each year of the first five years the proposed rules would be in effect, the public benefit anticipated would be compliance with federal regulations and increased flexibility under the hazardous waste generator regulatory program for managing or recycling hazardous secondary materials, pharmaceuticals and aerosol cans. This increased flexibility could result in greater compliance with hazardous waste regulations.

#### **Local Employment Impact Statement**

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking would

not adversely affect a local economy in a material way for the first five years that the proposed rulemaking would be in effect.

#### **Rural Communities Impact Assessment**

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

#### **Small Business and Micro-Business Assessment**

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

#### **Small Business Regulatory Flexibility Analysis**

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

#### **Government Growth Impact Statement**

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a

government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking would not create, expand, repeal or limit an existing regulation, nor would the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

#### **Draft Regulatory Impact Analysis Determination**

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is not a major environmental rule because it is not anticipated to adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state since the proposed rulemaking implements requirements already imposed on the regulated community under 42

United States Code (USC), §6926(g). Likewise, there would be no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state from those revisions outside 42 USC, §6926(g), because either the changes are not substantive, or the regulated community would benefit from the greater flexibility and reduced compliance burden.

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

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

Second, although the rulemaking proposes some requirements that are more stringent

than existing state laws, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program.

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

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

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

### **Takings Impact Assessment**

The commission evaluated the proposed rulemaking and performed analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to maintain state's

authorization to implement RCRA hazardous waste program by adopting state hazardous waste rules that are equivalent to the federal regulations. The proposed rulemaking substantially advances these stated purposes by proposing rules that are equivalent to the federal regulations or incorporate the federal regulations.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the portions of the proposed rulemaking that propose to adopt rules that meet the minimum standards of the federal hazardous waste program because Texas Government Code, §2007.003(b)(4), exempts an action reasonably taken, by a state agency, to fulfill an obligation mandated by federal law from the requirements of Texas Government Code, Chapter 2007. Under 42 USC, §6926(g), the state must adopt rules that meet the minimum standards of the federal hazardous waste program administered by EPA in order to maintain authorization to administer the program. Therefore, the portions of the proposed rulemaking adopting rules that meet the minimum standards of the federal hazardous waste program are exempt from the requirements of Texas Government Code, Chapter 2007 because the rules are required by federal law.

Finally, to the extent that portions of the proposed rulemaking are not exempt under Texas of the proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations would not affect a landowner's rights in real property because the proposed rulemaking would not burden (constitutionally); nor restrict or limit the owner's right to property and reduce

its value by 25% or more beyond that which would otherwise exist in the absence of the regulations.

### **Consistency with the Coastal Management Program**

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goals applicable to the proposed rules include protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and to make agency and subdivision decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs. CMP policies applicable to the proposed rules include to construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the federal Solid

Waste Disposal Act, 42 United States Code, §§6901 et seq. Promulgation and enforcement of these rules would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the proposed rules would update and enhance the commission's rules concerning hazardous waste facilities.

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

### **Announcement of Virtual Hearing**

The commission will hold a *virtual* public hearing on this proposal on August 23, 2021 at 10:00 A.M.. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, staff will be available to discuss the proposal 30 minutes prior to the hearing.

### **Registration**

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must **register by Friday, August 20, 2021**. To register for the

hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on **August 20, 2021** to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_MTq1NzUyNmYtODFkZS00YjgyLTg1NmYtZjVkJjg0MTJlNGMO%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MTq1NzUyNmYtODFkZS00YjgyLTg1NmYtZjVkJjg0MTJlNGMO%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%22%7d)

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Ms. Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be

submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. **All comments should reference Rule Project Number 2019-086-335-WS. The comment period closes August 30, 2021.** Please choose one form of submittal when submitting *written* comments.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Jarita Sepulvado, Waste Permits Division, (512) 239-4413.

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

**§§335.1, 335.2, 335.6, 335.9, 335.10, 335.11, 335.12, 335.13, 335.14, 335.15, 335.18,  
335.19, 335.24, 335.26 - 335.27, 335.31**

**Statutory Authority**

The amendments and new sections are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments and new sections are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendments and new sections implement THSC, Chapter 361.

**§335.1. Definitions.**

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

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

(2) Act--Texas Health and Safety Code, Chapter 361.

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

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

(5) Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "Natural gas" and "Storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "Hydrocarbons" and "Underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.201; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency in accordance with the Federal Solid Waste Disposal Act, as amended (42 United States Code, §§6901 et seq.).

(6) Acute hazardous waste--Hazardous wastes that meet the listing criteria in 40 Code of Federal Regulations (CFR) §261.11(a)(2) and therefore are either listed in 40 CFR §261.31 with the assigned hazard code of (H) or are listed in 40 CFR §261.33(e).

(7) [(6)] Administrator--The administrator of the United States Environmental Protection Agency or his designee.

(8) Aerosol can--A non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

(9) [(7)] AES filing compliance date--The date that the United States Environmental Protection Agency (EPA) announces in the *Federal Register* [ ], on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System platform.

(10) [(8)] Airbag waste--Any hazardous waste airbag modules or hazardous waste airbag inflators.

(11) [(9)] Airbag waste collection facility--Any facility that receives airbag waste from airbag handlers subject to regulation under §335.281 of this title (relating to Airbag Waste) and accumulates the waste for more than ten days.

(12) [(10)] Airbag waste handler--Any person, by site, who generates airbag waste that is subject to regulation under this chapter.

(13) [(11)] Ancillary equipment--Any device that is used to distribute, meter, or control the flow of solid waste or hazardous waste from its point of generation to a storage or processing tank(s), between solid waste or hazardous waste storage and processing tanks to a point of disposal on site, or to a point of shipment for disposal off site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(14) [(12)] Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(15) [(13)] Area of concern--Any area of a facility under the control or ownership of an owner or operator where a release to the environment of hazardous wastes or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration.

(16) [(14)] Authorized representative--The person responsible for the overall operation of a facility or an operation unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

(17) [(15)] Battery--As defined in §335.261 of this title (relating to Universal Waste Rule).

(18) [(16)] Boiler--An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design:

(i) process heaters (units that transfer energy directly to a process stream); and

(ii) fluidized bed combustion units;

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance To Be Classified as a Boiler).

(19) [(17)] Captive facility--A facility that accepts wastes from only related (within the same corporation) off-site generators.

(20) [(18)] Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(21) [(19)] Captured receiver--A receiver that is located within the property boundaries of the generators from which it receives waste.

(22) [(20)] Carbon dioxide stream--Carbon dioxide that has been captured from an emission source (e.g., power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

(23) [(21)] Carbon regeneration unit--Any enclosed thermal treatment device used to regenerate spent activated carbon.

(24) [(22)] Cathode ray tube (CRT)--A vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means its glass has been removed from its housing, or casing whose vacuum has been released.

(25) [(23)] Cathode ray tube (CRT) collector--A person who receives used, intact CRTs for recycling, repair, resale, or donation.

(26) [(24)] Cathode ray tube (CRT) exporter--Any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

(27) [(25)] Cathode ray tube (CRT) glass manufacturer--An operation or part of an operation that uses a furnace to manufacture CRT glass.

(28) [(26)] Cathode ray tube (CRT) processing--Conducting all of the following activities:

(A) receiving broken or intact CRTs;

(B) intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(C) sorting or otherwise managing glass removed from CRT monitors.

(29) Central accumulation area--Any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either 40 Code of Federal Regulations (CFR) §262.16 or §262.17, as these sections are adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste). In accordance with 40 CFR Part 262, Subpart K, as adopted by reference under §335.59 of this title (relating to Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities), a central accumulation area at an eligible academic entity that chooses to operate under 40 CFR Part 262, Subpart K, is also subject to 40 CFR §262.211 as adopted by reference under §335.59 of this title when accumulating unwanted material and/or hazardous waste.

(30) [(27)] Certification--A statement of professional opinion based upon knowledge and belief.

(31) [(28)] Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(32) [(29)] Class 2 wastes--Any individual solid waste or combination of industrial solid waste which cannot be described as hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(33) [(30)] Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(34) [(31)] Closed portion--That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (*See also "Active portion" and "Inactive portion."*)

(35) [(32)] Closure--The act of permanently taking a waste management unit or facility out of service.

(36) [(33)] Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(37) [(34)] Component--Either the tank or ancillary equipment of a tank system.

(38) Conditionally exempt small quantity generator--A conditionally exempt small quantity generator (CESOG) is a very small quantity generator as defined in this section that meets the independent requirements and the conditions for exemption for a very small quantity generator under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste). A reference to a conditionally exempt small quantity generator, "CESOG", or a person who generates no more than 100 kilograms of hazardous waste in a calendar month is a reference to a very small quantity generator.

(39) [(35)] Confined aquifer--An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(40) [(36)] Contained--Hazardous secondary materials held in a unit (including a "Land-based unit" as defined in this section) that meets the following criteria:

(A) the unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to

water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(B) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit;

(C) the unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions; and

(D) hazardous secondary materials in units that meet the requirements of 40 Code of Federal Regulations Parts 264 and 265 are presumptively contained.

(41) [(37)] Container--Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

(42) [(38)] Containment building--A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.112(a)(21) or §335.152(a)(19) of this title (relating to Standards).

(43) [(39)] Contaminant--Includes, but is not limited to, "Solid waste," "Hazardous waste," and "Hazardous waste constituent" as defined in this section; "Pollutant" as defined in Texas Water Code (TWC), §26.001, and Texas Health and Safety Code (THSC), §361.401; "Hazardous substance" as defined in THSC, §361.003; and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, TWC, §§26.261 - 26.267.

(44) [(40)] Contaminated medium/media--A portion or portions of the physical environment to include soil, sediment, surface water, groundwater or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

(45) [(41)] Contingency plan--A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(46) [(42)] Control--To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective of human health and the environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

(47) [(43)] Corrosion expert--A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(48) [(44)] Decontaminate--To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

(49) [(45)] Designated facility--A hazardous waste treatment, storage, or disposal facility which: has received a permit (or interim status) in accordance with the requirements of 40 Code of Federal Regulations (CFR) Parts 124 and 270; has received a permit (or interim status) from a state authorized in accordance with 40 CFR Part 271; or is regulated under 40 CFR §261.6(c)(2) or 40 CFR Part 266, Subpart F and has been designated on the manifest by the generator pursuant to 40 CFR §262.20. For hazardous wastes, if a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste. For Class 1 wastes, a designated facility is any treatment, storage, or disposal

facility authorized to receive the Class 1 waste that has been designated on the manifest by the generator. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with 40 CFR §264.72(f) as adopted under §335.152 of this title (relating to Standards) or 40 CFR §265.72(f) as adopted under §335.112 of this title (relating to Standards) [§335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities)].

(50) [(46)] Destination facility--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(51) [(47)] Dike--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(52) [(48)] Dioxins and furans (D/F)--Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(53) [(49)] Discharge or hazardous waste discharge--The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

(54) [(50)] Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(55) [(51)] Disposal facility--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "Disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

(56) [(52)] Drip pad--An engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(57) [(53)] Electronic import-export reporting compliance date--The date that the United States Environmental Protection Agency (EPA) announces in the *Federal Register*, on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to EPA using EPA's waste Import Export Tracking System, or its successor system.

(58) [(54)] Electronic manifest or e-Manifest--The electronic format of the hazardous waste manifest that is obtained from the United States Environmental Protection Agency's (EPA's) national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

(59) [(55)] Electronic manifest system or e-Manifest system--The United States Environmental Protection Agency's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

(60) [(56)] Elementary neutralization unit--A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations (CFR) §261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of nonhazardous industrial solid waste; and

(B) meets the definition of "Tank," "Tank system," "Container," or "Transport vehicle," as defined in this section; or "Vessel" as defined in 40 CFR §260.10.

(61) [(57)] Essentially insoluble--Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or United States Environmental Protection Agency limits for drinking water as published in the *Federal Register*.

(62) [(58)] Equivalent method--Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

(63) [(59)] Existing portion--That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(64) [(60)] Existing tank system or existing component--A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(65) [(61)] Explosives or munitions emergency--A situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. These situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(66) [(62)] Explosives or munitions emergency response--All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency, subject to the following:

(A) an explosives or munitions emergency response includes in-place render-safe procedures, treatment or destruction of the explosives or munitions

and/or transporting those items to another location to be rendered safe, treated, or destroyed;

(B) any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency; and

(C) explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

(67) [(63)] Explosives or munitions emergency response specialist--An individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including United States Department of Defense (DOD) emergency explosive ordnance disposal, technical escort unit, and DOD-certified civilian or contractor personnel; and, other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

(68) [(64)] Extrusion--A process using pressure to force ground poultry carcasses through a decreasing-diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(69) [(65)] Facility--Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste, or for the management of hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) or §335.602(a)(5) of this title (relating to Standards), all contiguous property under the control of the owner or operator seeking a permit for the treatment, storage, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste);

(C) regardless of subparagraph (B) of this paragraph, a "Remediation waste management site," as defined in 40 Code of Federal Regulations §260.10, is not a facility that is subject to §335.167 of this title, but is subject to corrective action requirements if the site is located within such a facility.

(70) [(66)] Final closure--The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) [§335.69 of this title (relating to Accumulation Time)].

(71) [(67)] Food-chain crops--Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(72) [(68)] Freeboard--The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(73) [(69)] Free liquids--Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(74) [(70)] Gasification--A process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere and the mixture is converted into a valuable raw, intermediate, or final product,

including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel.

(75) [(71)] Gasification facility--A facility that receives, separates, stores, and converts post-use polymers and recoverable feedstocks using gasification.

(76) [(72)] Generator--Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class 3 wastes only shall not be considered a generator.

(77) [(73)] Groundwater--Water below the land surface in a zone of saturation.

(78) [(74)] Hazardous industrial waste--Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the Resource Conservation and Recovery Act of 1976, §3001 (42 United States Code, §6921). The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 261. The

executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

(79) [(75)] Hazardous secondary material--A secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as "Hazardous waste" as defined in this section.

(80) [(76)] Hazardous secondary material generator--Any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this paragraph, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of 40 Code of Federal Regulations §261.4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

(81) [(77)] Hazardous substance--Any substance designated as a hazardous substance under 40 Code of Federal Regulations Part 302.

(82) [(78)] Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*

(83) [(79)] Hazardous waste constituent--A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations (CFR) Part 261, Subpart D or a constituent listed in Table 1 of 40 CFR §261.24.

(84) [(80)] Hazardous waste management facility--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly- or privately-owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(85) [(81)] Hazardous waste management unit--A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(86) [(82)] In operation--Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

(87) [(83)] Inactive portion--That portion of a facility which is not operated after November 19, 1980. (See also "Active portion" and "Closed portion.")

(88) [(84)] Incinerator--

(A) Any enclosed device that:

(i) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(ii) meets the definition of "Infrared incinerator" or "Plasma arc incinerator."

(B) Does not include a "Gasification facility" or "Pyrolysis facility[,]" managing "Recoverable feedstock[,]" as defined in this section.

(89) [(85)] Incompatible waste--A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(90) [(86)] Individual generation site--The contiguous site at or on which one or more solid waste or hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of solid waste or hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.

(91) [(87)] Industrial furnace--Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for "Hazardous waste" burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

(92) [(88)] Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include "Hazardous waste" as defined in this section.

(93) [(89)] Infrared incinerator--Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(94) [(90)] Inground tank--A device meeting the definition of "Tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(95) [(91)] Injection well--A well into which fluids are injected. (*See also* "Underground injection.")

(96) [(92)] Inner liner--A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(97) [(93)] Installation inspector--A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(98) [(94)] Intermediate facility--Any facility that stores hazardous secondary materials for more than ten days, other than a hazardous secondary material generator or reclaimer of such material.

(99) [(95)] International shipment--The transportation of hazardous waste into or out of the jurisdiction of the United States.

(100) [(96)] Lamp--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(101) [(97)] Land-based unit--When used to describe recycling of hazardous secondary materials, an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

(102) [(98)] Land treatment facility--A facility or part of a facility at which solid waste or hazardous waste is applied onto or incorporated into the soil surface

and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

(103) [(99)] Landfill--A disposal facility or part of a facility where solid waste or hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(104) [(100)] Landfill cell--A discrete volume of a solid waste or hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(105) Large quantity generator--A generator who generates any of the following amounts in a calendar month:

(A) greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste; or

(B) greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 Code of Federal Regulations (CFR) §261.31 or §261.33(e); or

(C) greater than 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 40 CFR §261.31 or §261.33(e).

(106) [(101)] Leachate--Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(107) [(102)] Leak-detection system--A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste into the secondary containment structure.

(108) [(103)] Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(109) [(104)] Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste or hazardous waste, hazardous waste constituents, or leachate.

(110) [(105)] Management or hazardous waste management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of solid waste or hazardous waste.

(111) [(106)] Manifest--The waste shipping document, United States Environmental Protection Agency (EPA) Form 8700-22 (including, if necessary, EPA Form 8700-22A), or the electronic manifest, originated and signed by the generator or offeror in accordance with [the instructions in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste) and] the applicable requirements of this chapter and 40 Code of Federal Regulations Parts 262 - 265.

(112) [(107)] Manifest tracking number--The alphanumeric identification number (i.e., a unique three-letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the manifest by a registered source.

(113) [(108)] Military munitions--All ammunition products and components produced or used by or for the Department of Defense (DOD) or the

United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term "military munitions":

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

(114) [(109)] Miscellaneous unit--A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler,

industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, staging pile, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research, Development, and Demonstration Permits).

(115) [(110)] Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

(116) [(111)] Municipal hazardous waste--A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

(117) [(112)] Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(118) [(113)] New tank system or new tank component--A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations (CFR) §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR §265.193(g)(2)

(incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986. (See also "Existing tank system.")

(119) [(114)] No free liquids--As used in 40 Code of Federal Regulations §261.4(a)(26) and (b)(18), means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846), which is incorporated by reference at §335.31 of this title (relating to Incorporation of References), and that there is no free liquid in the container holding the wipes.

(120) Non-acute hazardous waste--All hazardous wastes that are not acute hazardous waste, as defined in this section.

(121) [(115)] Off-site--Property which cannot be characterized as on-site.

(122) [(116)] Onground tank--A device meeting the definition of "Tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(123) [(117)] On-Site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(124) [(118)] Open burning--The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (*See also "Incinerator" and "Thermal processing."*)

(125) [(119)] Operator--The person responsible for the overall operation of a facility.

(126) [(120)] Owner--The person who owns a facility or part of a facility.

(127) [(121)] Partial closure--The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(128) [(122)] PCBs or polychlorinated biphenyl compounds--Compounds subject to 40 Code of Federal Regulations Part 761.

(129) [(123)] Permit--A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste or industrial solid waste treatment, storage, or disposal facility in accordance with specified limitations.

(130) [(124)] Personnel or facility personnel--All persons who work at, or oversee the operations of, a solid waste or hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

(131) [(125)] Pesticide--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(132) [(126)] Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "Petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code (USC), §§6921, *et seq.*) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances--i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels--a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes, but is not limited to, stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines--i.e., Grade 80, Grade 100, and Grade 100-LL;

(iv) aviation jet fuels--i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(v) distillate fuel oils--i.e., Number 1-D, Number 1, Number 2-D, and Number 2;

(vi) residual fuel oils--i.e., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(vii) gas-turbine fuel oils--i.e., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(viii) illuminating oils--i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(ix) lubricants--i.e., automotive and industrial lubricants;

(x) building materials--i.e., liquid asphalt and dust-laying oils;

(xi) insulating and waterproofing materials--i.e., transformer oils and cable oils; and

(xii) used oils--See definition for "Used oil" in this section.

(B) For the purposes of this chapter, a "Petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 USC, §§6921, *et seq.*)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;

(ii) animal, microbial, and vegetable fats;

(iii) food grade oils;

(iv) hardened asphalt and solid asphaltic materials--i.e., roofing shingles, roofing felt, hot mix (and cold mix); and

(v) cosmetics.

(133) [(127)] Pile--Any noncontainerized accumulation of solid, nonflowing solid waste or hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

(134) [(128)] Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(135) [(129)] Post-closure order--An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from Resource Conservation and Recovery Act and solid waste management units.

(136) [(130)] Post-use polymers--Plastic polymers that derive from industrial sources or activities that would be classified as a nonhazardous industrial solid waste if not converted into a valuable raw, intermediate, or final product. Post-

use polymers include used polymers that contain incidental contaminants or impurities such as paper labels or metal rings but do not include used polymers mixed with solid waste, medical waste, hazardous waste, electronic waste, tires, or construction or demolition debris.

(137) [(131)] Poultry--Chickens or ducks being raised or kept on any premises in the state for profit.

(138) [(132)] Poultry carcass--The carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(139) [(133)] Poultry facility--A facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(140) [(134)] Processing--The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or

hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of "Processing" does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

(141) [(135)] Publicly-owned treatment works (POTW)--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the federal Clean Water Act, §502(4)). The definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(142) [(136)] Pyrolysis--A manufacturing process through which post-use polymers are heated in an oxygen-deficient atmosphere until melted and thermally

decomposed and then cooled, condensed, and converted into a valuable raw, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel.

(143) [(137)] Pyrolysis facility--A manufacturing facility that receives, separates, stores, and converts post-use polymers using pyrolysis.

(144) [(138)] Qualified groundwater scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(145) [(139)] Recognized trader--A person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

(146) [(140)] Recoverable feedstock--One or more of the following materials, derived from nonhazardous industrial solid waste, other than coal refuse, that has been processed so that it may be used as feedstock in a "Gasification facility" or "Pyrolysis facility" as defined in this section:

(A) post-use polymers; and

(B) material, including municipal solid waste containing post-use polymers and other post-industrial waste containing post-use polymers, that has been processed into a fuel or feedstock for which the commission or the United States Environmental Protection Agency has made a non-waste determination under 40 Code of Federal Regulations §241.3(c), as amended through February 8, 2016 (81 FR 6742).

(147) [(141)] Regional administrator--The regional administrator for the United States Environmental Protection Agency region in which the facility is located, or his designee.

(148) [(142)] Remanufacturing--Processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

(149) [(143)] Remediation--The act of eliminating or reducing the concentration of contaminants in contaminated media.

(150) [(144)] Remediation waste--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under §335.166(5) of this title (relating to Corrective Action Program) or §335.167(c) of this title.

(151) [(145)] Remove--To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility, or area to another location for treatment, storage, or disposal.

(152) [(146)] Replacement unit--A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or United States Environmental Protection Agency or state approved corrective action.

(153) [(147)] Representative sample--A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(154) [(148)] Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(155) [(149)] Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(156) [(150)] Saturated zone or zone of saturation--That part of the earth's crust in which all voids are filled with water.

(157) [(151)] Shipment--Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

(158) [(152)] Sludge dryer--Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 British thermal units per pound of sludge treated on a wet-weight basis.

(159) [(153)] Small quantity generator--A generator who generates the following amounts in a calendar month: [less than 1,000 kilograms of hazardous waste in a calendar month.]

(A) greater than 100 kilograms (220 pounds) but less than 1,000 kilograms (2,200 pounds) of non-acute hazardous waste;

(B) less than or equal to 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 Code of Federal Regulations (CFR) §261.31 or §261.33(e);  
and

(C) less than or equal to 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 40 CFR §261.31 or §261.33(e).

(160) [(154)] Solid waste--

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued in accordance with Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored, or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to

have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation of Waste Disposal), prior to sale or other conveyance of the property;

(iii) waste materials which result from "Activities associated with the exploration, development, or production of oil or gas or geothermal resources," as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas in accordance with the Texas Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas, or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency (EPA) in accordance with the federal Solid Waste Disposal Act, 42 United States Code, §§6901 *et seq.*, as amended;

(iv) a material excluded by 40 Code of Federal Regulations (CFR) §§261.4(a), 261.39, or 261.40, as adopted under §335.504 of this title (relating to Hazardous Waste Determination), [§261.40, as amended through January 13, 2015 (80 FR 1694), §261.4(a)(1) - (15), (17) - (24), (26), and (27), as amended through April 8, 2015 (80 FR 18777), or §261.39, as amended through November 28, 2016 (81 FR

85696),] subject to the changes in this clause, by variance, or by non-waste determination granted under §335.18 of this title (relating to Non-Waste Determinations and Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations), and §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations). For the purposes of the exclusions under 40 CFR §261.39 and §261.40, 40 CFR §261.41 is adopted by reference under §335.504 of this title [as amended through July 28, 2006 (71 FR 42928)]; or

(v) recoverable feedstocks that are processed through pyrolysis or gasification at a pyrolysis facility or gasification facility, where the primary function of the facility is to convert recoverable feedstocks into materials that have a resale value greater than the cost of processing the recoverable feedstock for subsequent beneficial use and where solid waste generated from converting recoverable feedstock is disposed of at an authorized solid waste management facility.

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph;

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph; or

(iv) a military munition identified as a solid waste in 40 CFR §266.202.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated;

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

(iv) sham recycling as explained in subparagraph (J) of this paragraph.

(D) Except for materials described in subparagraph (H) of this paragraph, materials are solid wastes if they are "recycled" or accumulated, stored, or

processed before recycling as specified in this subparagraph. The chart referred to as Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) [§335.1(154)(D)(iv)] indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of "Solid waste" provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) [§335.1(154)(D)(iv)] are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 CFR §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) [§335.1(154)(D)(iv)] are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 CFR §261.33, not listed in §261.33, but that exhibit one or more of the hazardous waste characteristics, or will be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (unless they meet the requirements of 40 CFR §261.4(a)(17), (23), (24), or (27)). Materials without an asterisk in Column 3 of Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) [§335.1(154)(D)(iv)] are not solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) [§335.1(154)(D)(iv)] are solid wastes when accumulated speculatively.

**Figure: 30 TAC §335.1(160)(D)(iv)**

**[Figure: 30 TAC §335.1(154)(D)(iv)]**

**TABLE 1**

	<b>Use Constituting Disposal S.W. Def. (D)(i)</b>	<b>Energy Recovery/Fuel S.W. Def. (D)(ii)</b>	<b>Reclamation S.W. Def. (D)(iii)<sup>2</sup></b>	<b>Speculative Accumulation S.W. Def. (D)(iv)</b>
Spent materials (listed hazardous and not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous) <sup>1</sup>	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (not listed characteristically hazardous)	*	*		*
Sludges (nonhazardous) <sup>1</sup>	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous) <sup>1</sup>	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		
Scrap metal that is not excluded under subparagraph (A)	*	*	*	*

of this paragraph (hazardous)				
Scrap metal other than excluded scrap metal (see §335.17(a)(9) of this title) (nonhazardous) <sup>1</sup>	*	*	*	*

NOTE: The terms "spent materials," "sludges," "by-products," "scrap metal," and "excluded scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

<sup>1</sup> These materials are governed by the provisions of §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) only.

<sup>2</sup> Reclamation (40 CFR §261.2(c)(3)), except as provided in [Except as provided in 40 CFR §261.2(c)(3) and] §261.4(a)(17) for mineral processing secondary materials or as provided in 40 CFR §261.4(a)(23), (24), or (27) for hazardous secondary materials.

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 CFR §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products;

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(17) apply rather than this provision; or

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) Except for materials described in subparagraph (H) of this paragraph, the following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the EPA, as described in 40 CFR §261.2(d)(1) and (2).

(H) With the exception of contaminated soils which are being relocated for use under §350.36 of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) and other contaminated media, materials that will otherwise be identified as nonhazardous solid wastes if disposed of are not

considered solid wastes when recycled by being applied to the land or used as ingredients in products that are applied to the land, provided these materials can be shown to meet all of the following criteria:

(i) a legitimate market exists for the recycling material as well as its products;

(ii) the recycling material is managed and protected from loss as will be raw materials or ingredients or products;

(iii) the quality of the product is not degraded by substitution of raw material/product with the recycling material;

(iv) the use of the recycling material is an ordinary use and it meets or exceeds the specifications of the product it is replacing without treatment or reclamation, or if the recycling material is not replacing a product, the recycling material is a legitimate ingredient in a production process and meets or exceeds raw material specifications without treatment or reclamation;

(v) the recycling material is not burned for energy recovery, used to produce a fuel, or contained in a fuel;

(vi) the recycling material can be used as a product itself or to produce products as it is generated without treatment or reclamation;

(vii) the recycling material must not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products which are applied to the land and the material, as generated:

(I) is a Class 3 waste under Subchapter R of this chapter (relating to Waste Classification), except for arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and total dissolved solids; and

(II) for the metals listed in subclause (I) of this clause:

(-a-) is a Class 2 or Class 3 waste under Subchapter R of this chapter; and

(-b-) does not exceed a concentration limit under §312.43(b)(3), Table 3 of this title (relating to Metal Limits); and

(viii) with the exception of the requirements under §335.17(a)(8) of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(I) at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on an annual basis; and

(II) if the recycling material is placed in protective storage, such as a silo or other protective enclosure, at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on a biennial basis.

(I) Respondents in actions to enforce the industrial solid waste regulations and facility operators who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(J) A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not

legitimate recycling as defined in §335.27 of this title (relating to Legitimate Recycling of Hazardous Secondary Materials).

(K) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 CFR §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(L) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §§335.17 - 335.19 of this title, §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(M) Steel slag may not be considered as solid waste if the steel slag is an intended output or result of the use of an electric arc furnace to make steel, introduced into the stream of commerce, and managed as an item of commercial value, including through a controlled use in a manner constituting disposal, and not as discarded material.

(N) Foundry sand from the iron and steel casting industry may not be considered as solid waste if the sand is an intended output or result of the use of

an iron or steel casting process to make cast iron and steel products, introduced into the stream of commerce, and managed as an item of commercial value, including through a controlled use in a manner constituting disposal, and not as discarded material.

(161) [(155)] Solvent-contaminated wipe--A wipe that, after use or after cleaning up a spill, either:

(A) contains one or more of the F001 through F005 solvents listed in 40 Code of Federal Regulations (CFR) §261.31 or the corresponding P- or U-listed solvents found in 40 CFR §261.33;

(B) exhibits a hazardous characteristic found in 40 CFR Part 261, Subpart C, when that characteristic results from a solvent listed in 40 CFR Part 261; and/or

(C) exhibits only the hazardous waste characteristic of ignitability found in 40 CFR §261.21 due to the presence of one or more solvents that are not listed in 40 CFR Part 261. Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at 40 CFR §261.4(a)(26) and (b)(18).

(162) [(156)] Sorbent--A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

(163) [(157)] Spill--The accidental spilling, leaking, pumping, emitting, emptying, or dumping of solid waste or hazardous wastes or materials which, when spilled, become solid waste or hazardous wastes into or on any land or water.

(164) [(158)] Staging pile--An accumulation of solid, non-flowing "Remediation waste," as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the executive director according to the requirements of 40 Code of Federal Regulations §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

(165) [(159)] Standard permit--A Resource Conservation and Recovery Act permit authorizing management of hazardous waste issued under Chapter 305, Subchapter R of this title (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units) and Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit). The standard permit may have two parts, a uniform portion issued in all cases and a supplemental portion issued at the executive director's discretion.

(166) [(160)] Storage--The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.

(167) [(161)] Sump--Any pit or reservoir that meets the definition of "Tank" in this section and those troughs/trenches connected to it that serve to collect solid waste or hazardous waste for transport to solid waste or hazardous waste treatment, storage, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(168) [(162)] Surface impoundment or impoundment--A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(169) [(163)] Tank--A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(170) [(164)] Tank system--A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(171) [(165)] TEQ--Toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(172) [(166)] Thermal processing--The processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "Incinerator" and "Open burning.")

(173) [(167)] Thermostat--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(174) [(168)] Totally enclosed treatment facility--A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

(175) [(169)] Transfer facility--Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste or hazardous secondary materials are held during the normal course of transportation.

(176) [(170)] Transport vehicle--A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(177) [(171)] Transporter--Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(178) [(172)] Treatability study--A study in which a hazardous or industrial solid waste is subjected to a treatment process to determine:

(A) whether the waste is amenable to the treatment process;

(B) what pretreatment (if any) is required;

(C) the optimal process conditions needed to achieve the desired treatment;

(D) the efficiency of a treatment process for a specific waste or wastes; or

(E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the exemptions under 40 Code of Federal Regulations §261.4(e) and (f) and §335.2 of this title (relating to Permit Required) [(§§335.2, 335.69, and 335.78 of this title (relating to Permit Required; and Accumulation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions] are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous or industrial solid waste.

(179) [(173)] Treatment--To apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

(180) [(174)] Treatment zone--A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(181) [(175)] Underground injection--The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (*See also "Injection well."*)

(182) [(176)] Underground tank--A device meeting the definition of "Tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(183) [(177)] Unfit-for-use tank system--A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing solid waste or hazardous waste without posing a threat of release of solid waste or hazardous waste to the environment.

(184) [(178)] United States Environmental Protection Agency (EPA) hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations (CFR) Part 261, Subpart D and to each characteristic identified in 40 CFR Part 261, Subpart C.

(185) [(179)] United States Environmental Protection Agency (EPA) identification number--The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

(186) [(180)] Universal waste--Any of the hazardous wastes defined as universal waste under §335.261(b)(19)(F) [§335.261(b)(16)(F)] of this title (relating to Universal Waste Rule) that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(187) [(181)] Universal waste handler--Has the definition adopted as "Large quantity handler of universal waste" and "Small quantity handler of universal waste" under §335.261 of this title (relating to Universal Waste Rule).

(188) [(182)] Universal waste transporter--Has the definition adopted under 40 Code of Federal Regulations §273.9.

(189) [(183)] Unsaturated zone or zone of aeration--The zone between the land surface and the water table.

(190) [(184)] Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

(191) [(185)] Used oil--Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, very [conditionally exempt] small quantity generator hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil Standards) and 40 Code of Federal Regulations Part 279 (Standards for Management of Used Oil).

(192) [(186)] User of the electronic manifest system--A hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(A) is required to use a manifest to comply with:

(i) any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(ii) any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are

shipped from a designated facility to an alternative facility, or returned to the generator; and

(B) elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the United States Environmental Protection Agency electronic manifest system; or

(C) elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with 40 Code of Federal Regulations (CFR) §264.71(a)(2)(v) as adopted under §335.152 of this title (relating to Standards) or 40 CFR §265.71(a)(2)(v) as adopted under §335.112 of this title (relating to Standards) [§335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste)]. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(193) Very small quantity generator--A generator who generates less than or equal to the following amounts in a calendar month:

(A) 100 kilograms (220 pounds) of non-acute hazardous waste; and

(B) 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 Code of Federal Regulations (CFR) §261.31 or §261.33(e); and

(C) 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 40 CFR §261.31 or §261.33(e).

(194) [(187)] Wastewater treatment unit--A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (federal Clean Water Act), 33 United States Code, §§466 *et seq.*, §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous or industrial solid waste, or generates and accumulates a wastewater treatment sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

(C) meets the definition of "Tank" or "Tank system" as defined in this section.

(195) [(188)] Water (bulk shipment)--The bulk transportation of municipal hazardous waste or Class 1 industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(196) [(189)] Well--Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(197) [(190)] Wipe--A woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

(198) [(191)] Zone of engineering control--An area under the control of the owner/operator that, upon detection of a solid waste or hazardous waste release, can be readily cleaned up prior to the release of solid waste or hazardous waste or hazardous constituents to groundwater or surface water.

### **§335.2. Permit Required.**

(a) Except with regard to storage, processing, or disposal to which subsections (c) - (h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) and §335.25 of this title (relating to Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit,

amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the Texas Department of State Health Services (DSHS), or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director will seek recourse against not only the person who stored, processed, or disposed of the waste, but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the commission approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a

hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency (EPA) or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities that satisfied this requirement by filing an application on or before November 19, 1980, with the EPA are not required to submit a separate application with the DSHS. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Texas Solid Waste Disposal Act (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act (RCRA), 42 United States Code, §§6901 *et seq.*, that render the facilities subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regulations by the EPA under RCRA, which first require them to comply with the standards in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the

standards in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the EPA by March 24, 1987, as required by 40 Code of Federal Regulations (CFR) §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title. For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(1) a continuous physical, on-site construction program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) No permit shall be required for:

(1) the processing or disposal of nonhazardous industrial solid waste, if the waste is processed or disposed on property owned or otherwise effectively

controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; the property is within 50 miles of the plant or operation; and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(2) the storage of nonhazardous industrial solid waste, if the waste is stored on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(3) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in an elementary neutralization unit;

(4) the collection, storage, or processing of nonhazardous industrial solid waste, if the waste is collected, stored, or processed as part of a treatability study;

(5) the storage of nonhazardous industrial solid waste, if the waste is stored in a transfer facility in containers for a period of ten days or less, unless the executive director determines that a permit should be required in order to protect human health and the environment;

(6) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a publicly owned treatment works with discharges subject to regulation under the federal Clean Waste Act, §402, as amended through October 4, 1996, if the owner or operator has a National Pollutant Discharge Elimination System permit and complies with the conditions of the permit;

(7) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater unit and is discharged in accordance with a Texas Pollutant Discharge Elimination System authorization issued under Texas Water Code, Chapter 26;

(8) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater treatment unit that discharges to a publicly owned treatment works and the units are located at a noncommercial solid waste management facility; or

(9) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a wastewater treatment unit that discharges to a publicly

owned treatment works liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at municipal solid waste facilities or commercial industrial solid waste landfill facilities.

(e) No permit shall be required for the on-site storage of hazardous waste by a person who meets the conditions for exemption for a very small quantity generator in 40 CFR §262.14 as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste) [is a conditionally exempt small quantity generator as described in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)].

(f) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous waste by a person described in §335.41(b) - (d) of this title (relating to Purpose, Scope, and Applicability) or for the storage of hazardous waste under the provisions of 40 CFR §261.4(c) and (d) as adopted under §335.504 of this title (relating to Hazardous Waste Determination).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste that is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements in 40 CFR §261.4(e) and (f) [, as amended through

November 28, 2016 (81 FR 83696), which are adopted by reference] as adopted under §335.504 of this title.

(h) A person may obtain authorization from the executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill that has qualified for interim status in accordance with 40 CFR Part 270, Subpart G, and that has complied with the standards in Subchapter E of this chapter, by complying with the notification and information requirements in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or grant the request for authorization subject to conditions, which may include, without limitation, public notice and technical requirements. A request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of 40 CFR §265.301(a). In accordance with §335.6 of this title, such person shall not engage in the requested activities if denied by the executive director or unless 90 days' notice has been provided and the executive director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

(1) nonhazardous industrial solid waste, the storage, processing, or disposal of which is expressly prohibited under an existing permit or site development plan applicable to the facility or a portion of the facility;

(2) polychlorinated biphenyl compounds wastes subject to regulation by 40 CFR Part 761;

(3) explosives and shock-sensitive materials;

(4) pyrophorics;

(5) infectious materials;

(6) liquid organic peroxides;

(7) radioactive or nuclear waste materials, receipt of which will require a license from the DSHS or the commission or any other successor agency; and

(8) friable asbestos waste unless authorization is obtained in compliance with the procedures established under §330.171(c)(3)(B) - (E) of this title (relating to Disposal of Special Wastes). Authorizations obtained under this subsection shall be effective during the pendency of the interim status and shall cease upon the termination of interim status, final administrative disposition of the subject permit

application, failure of the facility to operate the facility in compliance with the standards set forth in Subchapter E of this chapter, or as otherwise provided by law.

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under 40 CFR §270.1(c)(5) and (6), or obtain an order in lieu of a post-closure permit, as provided in subsection (m) of this section. If a post-closure permit is required, the permit must address applicable provisions of 40 CFR Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) provisions concerning groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(j) Upon receipt of the federal Hazardous and Solid Waste Act (HSWA) authorization for the commission's Hazardous Waste Program, the commission shall be authorized to enforce the provisions that the EPA imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

(k) Any person who intends to conduct an activity under subsection (d) of this section shall comply with the notification requirements of §335.6 of this title.

(l) No permit shall be required for the management of universal wastes by universal waste handlers or universal waste transporters, in accordance with the definitions and requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(m) At the discretion of the commission, an owner or operator may obtain a post-closure order in lieu of a post-closure permit for interim status units, a corrective action management unit unless authorized by a permit, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units. The post-closure order must address the facility-wide corrective action requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and groundwater monitoring requirements of §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response).

(n) Except as provided in subsection (d)(9) of this section, owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works are required to obtain a permit under this subchapter. By June 1, 2006, owners or operators of existing commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly

owned treatment works must have a permit issued under this subchapter or obtain a general permit issued under Chapter 205 of this title (relating to General Permits for Waste Discharges) to continue operating. A general permit issued under Chapter 205 of this title will authorize operations until a final decision is made on the application for an individual permit or 15 months, whichever is earlier. The general permit shall authorize operations for a maximum period of 15 months except that authorization may be extended on an individual basis in one-year increments at the discretion of the executive director. Should an application for a general permit issued under Chapter 205 of this title be submitted, the applicant shall also submit to the commission, by June 1, 2006, the appropriate information to demonstrate compliance with financial assurance requirements for closure of industrial solid waste facilities in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities). Owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works operating under a general permit issued under Chapter 205 of this title shall submit an application for a permit issued under this subchapter prior to September 1, 2006.

(o) Treatment, storage, and disposal facilities that are otherwise subject to permitting under RCRA and that meet the criteria in paragraphs (1) or paragraph (2) of this subsection, may be eligible for a standard permit under Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit) if they satisfy one of the two following criteria:

(1) facility generates hazardous waste and then non-thermally treats and/or stores hazardous waste on-site; or

(2) facility receives hazardous waste generated off-site by a generator under the same ownership as the receiving facility.

(p) No permit under this chapter shall be required for a reverse distributor accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in §335.751 of this title (relating to Definitions) in compliance with Subchapter W of this chapter (relating to Management Standards for Hazardous Waste Pharmaceuticals). Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals in compliance with Subchapter W of this chapter shall notify the executive director in accordance with §335.6 of this title.

#### **§335.6. Notification Requirements.**

(a) Notification of unpermitted industrial solid waste activities. Any person who intends to store, process, recycle, or dispose of industrial solid waste without a permit, as authorized by §335.2(d), (f), or (h) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the executive director using a method

approved by the executive director, that storage, processing, recycling, or disposal activities are planned.

(1) A person required to notify of activities under this subsection shall notify at least 90 days before conducting an activity under this subsection.

(2) A person required to notify under this section shall submit additional information, upon request, to the executive director to demonstrate that storage, processing, recycling, or disposal is compliant with the terms of this chapter, including but not limited to information listed under subsection (b)(3) of this section.

(b) Duty to notify of changed and new information. Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall promptly notify the executive director using a method approved by the executive director of:

(1) any new information concerning storage, processing, and disposal described in paragraph (3) of this subsection; and

(2) any changes to information previously submitted or reported under subsection (a) of this section:

(A) authorized in any permit issued by the commission; or

(B) submitted or reported to the commission in any application filed with the commission.

(3) Information concerning storage, processing, and disposal required to be submitted under this subsection includes and is not limited to:

(A) waste composition;

(B) waste management methods;

(C) facility engineering plans and specifications; and

(D) the geology where the facility is located.

(4) A person who notifies the executive director under this section shall immediately document and notify the executive director within 90 days of changes in information previously provided and additional information that was not provided.

(c) Generator registration.

(1) Any person, by site, that generates in any calendar month more than 100 kilograms of non-acute hazardous waste, more than 1 kilogram of acute

hazardous waste, or more than 100 kilograms of industrial Class 1 waste shall register in a method approved by the executive director.

(2) Large quantity generators must meet the requirements of this subsection using the electronic interface provided by the executive director unless:

(A) the executive director has granted a written request to use paper forms or an alternative notification method; or

(B) the software does not have features capable of meeting the requirements.

(3) Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title, or any reports required by §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste).

(4) If waste is recycled on-site or managed pursuant to §335.2(d)(1) - (4) or (6) - (9) of this title, the generator must also comply with the notification requirements specified in subsection (h) of this section.

(5) The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 of this title (relating to Waste Classification and Waste Coding Required) shall include, but is not limited to:

(A) a description of the waste including:

(i) a description of the process generating the waste; and

(ii) the composition of the waste;

(B) a hazardous waste determination in accordance with §335.504 of this title (relating to Hazardous Waste Determination), which includes the appropriate United States Environmental Protection Agency (EPA) hazardous waste number(s) described in 40 Code of Federal Regulations (CFR) Part 261;

(C) the disposition of each solid waste generated, if subject to the notification requirement of this subsection, including:

(i) whether the waste is managed on-site and/or off-site;

(ii) a description of the type and use of each on-site waste management facility unit;

(iii) a listing of the wastes managed in each unit; and

(iv) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title.

(d) Transporter registration. Any person who transports hazardous waste or industrial Class 1 waste shall notify the executive director of such activity by registering using a method approved by the executive director. A person, by site, that generates in any calendar month less than 100 kilograms of non-acute hazardous waste, less than 1 kilogram of acute hazardous waste, and less than 100 kilograms of industrial Class 1 waste and only transports their own waste is not required to comply with this subsection.

(e) Transfer facility registration. A person that intends to operate a transfer facility in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity by registering using a method approved by the executive director.

(f) Waste analysis. Any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste shall provide the chemical analysis of the solid waste performed in accordance with Subchapter R of this chapter (relating to Waste Classification) to the executive director upon written request.

(g) Notification prior to facility expansion. Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste shall notify the executive director in writing of any activity or facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter.

(h) Notification of recycling activities. Any person who intends to ship off-site or transfer to another person for recycling, or who conducts or intends to conduct the recycling of, industrial solid waste, municipal hazardous waste, recyclable materials, or nonhazardous recyclable materials as defined in §335.24 of this title or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §335.24 of this title or Subchapter H of this chapter shall notify the executive director using a method approved by the executive director.

(1) A person that is required to notify under this subsection shall include, at a minimum, the following information:

(A) the type(s), classification(s), Texas waste code(s) and EPA hazardous waste number(s) described in 40 CFR Part 261, if any, of each industrial solid waste and municipal hazardous waste intended to be recycled;

(B) the method of storage prior to recycling; and

(C) the nature of the recycling activity.

(2) A person required to notify the executive director of the intent to recycle under this subsection may begin recycling activities 90 days after submitting notification of intent to recycle under this subsection if the executive director has not requested additional information in response to the notification or upon receipt of an acknowledgment from the executive director.

(i) Notification of operating under the small quantity burner exemption. The owner or operator of a facility qualifying for the small quantity burner exemption under 40 CFR §266.108 must provide a one-time signed, written notification to the EPA and to the executive director indicating the following:

(1) the combustion unit is operating as a small quantity burner of hazardous waste;

(2) the owner and operator are in compliance with the requirements of 40 CFR §266.108, §335.221(a)(19) of this title (relating to Applicability and Standards) and this subsection; and

(3) the maximum quantity of hazardous waste that the facility may burn as provided by 40 CFR §266.108(a)(1).

(j) Notification of used oil activities. Notification and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), used oil generated by a very small quantity generator, and household used oil after collection that will be recycled shall notify in accordance with Chapter 324 of this title (relating to Used Oil).

(k) Notification exemption for the disposal of animal carcasses. A landowner who disposes of domestic or exotic animal carcasses and who complies with a certified water quality management plan developed for their site under Texas Agriculture Code, §201.026(f) as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution) is exempt from the notification requirements of subsections (a) and (b) of this section.

(l) Healthcare facilities notification. A person required to notify the executive director under §335.755 of this title (relating to Standards for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals) shall notify using a

method approved by the executive director.

(m) Reverse distributor registration. A person required to notify the executive director under §335.771 of this title (relating to Standards for the Management of Potentially Creditable Hazardous Waste Pharmaceuticals and Evaluated Hazardous Waste Pharmaceuticals by Reverse Distributors) shall register using a method approved by the executive director.

#### **§335.9. Recordkeeping and Annual Reporting Procedures Applicable to Generators.**

(a) A generator of hazardous or industrial solid waste shall comply with the recordkeeping and reporting requirements of this section. Nonhazardous recyclable materials regulated under §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), are not subject to the requirements of this section [Except with regard to nonhazardous recyclable materials regulated pursuant to §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), each generator of hazardous or industrial solid waste shall comply with the following].

(1) A [The] generator shall make and keep records of all hazardous and industrial solid waste activities regarding the quantities generated, received from off-site, stored, processed, and disposed of on-site or shipped off-site for storage, processing, recycling, or disposal. These records must [and which], at a minimum,

include [includes] the information described in subparagraphs (A) - (G) of this paragraph. These records must [may] be maintained in a readily retrievable format [any format, provided they are retrievable and easy to copy]. The required records must be sufficiently detailed and complete to support any contentions or claims made by the generator with respect to:

(A) the description, character, and classification of each waste, in accordance with Subchapter R of this chapter (relating to Waste Classification) and any changes and additional information required under §335.6(c) and (d) of this title (relating to Notification Requirements);

(B) the quantity generated;

(C) except generators that generate less than 100 kilograms of non-acute hazardous waste, less than 1 kilogram of acute hazardous waste, and less than 100 kilograms of industrial Class 1 waste per calendar month [for conditionally exempt small quantity generators-\ regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators)], the quantity held in on-site storage as of December 31 of each calendar year;

(D) the quantity processed or disposed of at each on-site facility unit during the calendar year;

(E) the method of storage, processing, or disposal as described by codes listed on the form or instructions;

(F) the quantity shipped off-site for storage, processing, or disposal each calendar year, including the transporter and the name, address, and location of each off-site facility [and transporter] receiving shipments; and

(G) the location of each [all] hazardous waste satellite accumulation area [areas, situated at or near any point of generation,] where hazardous wastes are temporarily accumulated in accordance with §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste) [under the control of the operator of the process generating the wastes are placed in containers and initially accumulated without a permit or interim status in accordance with §335.69(d) of this title (relating to Accumulation Time)].

(2) The generator shall submit to the executive director a complete and correct Annual Waste Summary using the electronic interface, paper forms, or other method approved by the executive director by the deadlines provided in, and in accordance with, this paragraph [detailing the management of each hazardous and Class 1 waste generated on-site during the reporting calendar year. The Annual Waste Summary shall also include the management of any hazardous or Class 1 waste generated in a year previous to the reporting year, but managed in the reporting

calendar year. The Annual Waste Summary shall be submitted using electronic software or paper forms provided or approved by the executive director. Upon written request by the generator, the executive director may authorize an extension to the report due date. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must submit the Annual Waste Summary using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative reporting method. Generators shall report as follows].

(A) Generators submitting their Annual Waste Summary on paper forms must do so on or before January 25 of the year following the reporting calendar year unless the executive director has approved a request for an extension.

(B) Generators submitting their Annual Waste Summary electronically must do so on or before March 1 of the year following the reporting calendar year unless the executive director has approved a request for an extension.

(C) The Annual Waste Summary shall include the information under paragraph (1) of this subsection and detailed information regarding:

(i) the management of each hazardous and industrial Class 1 waste generated on-site during the reporting calendar year;

(ii) the management of each hazardous and industrial Class 1 waste received from off-site during the reporting calendar year; and

(iii) the management of each hazardous and industrial Class 1 waste received from off-site or generated in a year prior to the reporting year and managed on-site during the reporting calendar year.

(D) A large quantity generator must submit the Annual Waste Summary using the electronic interface provided by the executive director unless the executive director has approved an alternative reporting method.

(3) A generator that certifies on the Annual Waste Summary that the generator met the conditions in this paragraph during the reporting calendar year is not required to submit the information in paragraph (2) of this subsection. [Generators are not required to submit the information required in paragraph (1) of this subsection if they certify on the annual summary that all of the following conditions have been met:]

(A) The volume of hazardous waste accumulated on-site did not exceed the volumes for a very small generator classification in 40 Code of Federal Regulations (CFR) §262.14(a)(3) and (4) as adopted under §335.53 of this title [during the year, total on-site accumulation of hazardous waste did not equal or exceed 1,000 kilograms].

(B) The generator generated less than: [no acute hazardous waste was generated or accumulated during the year exceeding the limits specified in §335.78(e)(1) and (2) of this title;]

(i) 1,200 kilograms of non-acute hazardous waste;

(ii) 1,200 kilograms of industrial Class 1 waste; and

(iii) 1 kilogram of acute hazardous waste.

[(C) a total of less than 1,200 kilograms of hazardous waste, and a total of less than 1,200 kilograms of Class 1 waste (2,400 kilograms or less of hazardous waste plus Class 1 waste combined) was generated during the year.]

(4) A generator is not required to submit an Annual Waste Summary if, during the entire calendar year, that generator: [Generators who are regulated under §335.78 of this title and also meet the requirements of paragraph (3) of this subsection are not required to submit an annual summary].

(A) meets the conditions for exemption for a very small quantity generator under §335.53 of this title;

(B) generates less than 100 kilograms of industrial class 1 waste per month; and

(C) meets the requirements of paragraph (3) of this subsection.

(b) A large quantity generator that ships hazardous waste off-site, treats, stores, or disposes of hazardous waste onsite, or receives hazardous waste from very small quantity generators must submit the biennial report information required by 40 CFR §262.41, adopted under §335.56 of this title (relating to Recordkeeping and Reporting Applicable to Small and Large Quantity Generators). Information submitted in accordance with Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General), Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste), and Subchapter R of this chapter (relating to Waste Classification) is not required to be resubmitted in a biennial report required by 40 CFR §262.41 [A generator who ships his hazardous waste off-site must also report the information specified in §335.71 of this title (relating to Biennial Reporting). Any waste related information that has already been submitted by generators under the requirements of this section or §335.71 of this title need not be included in the reports from permitted or interim status facilities under 40 CFR §264.75 or §265.75].

**§335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous**

**Waste or Class 1 Waste.**

(a) Except as provided in paragraph (2) of this subsection, no person who generates, transports, processes, stores, or disposes of hazardous waste shall cause, suffer, allow, or permit the shipment of hazardous waste unless the person complies with this subsection, §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste), §335.54 of this title (relating to Hazardous Waste Manifest), and §335.58 of this title (relating to Transboundary Movements of Hazardous Waste for Recovery or Disposal) [he complies with the requirements of paragraph (1) of this subsection, and the manifest requirements in 40 Code of Federal Regulations (CFR) §§262.20 - 262.25, 262.27, and 262.42, as these sections are amended through February 7, 2014 (79 FR 7518), and 40 CFR Part 262, Subpart H, and the Appendix to 40 CFR Part 262, as amended through November 28, 2016 (81 FR 85696)].

(1) In addition, generators and owners or operators of treatment, storage, or disposal facilities shall include a Texas waste code for each hazardous waste itemized on the manifest.

(2) The manifest required by this subsection is not required for the transportation of hazardous waste when all of the conditions of an applicable

exemption from manifesting have been met, including and not limited to the exemptions in this paragraph and subsection (b) of this section [No manifest is required for a hazardous waste generated by a generator that generates less than the quantity limits of hazardous waste specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) or a municipal generator that generates less than the quantity limit of hazardous waste specified in §335.78 of this title].

(A) The manifesting requirements of this section are not applicable to the transportation of hazardous waste generated by a very small quantity generator (VSQG) that meets the conditions for exemption in 40 Code of Federal Regulations (CFR) §262.14 as adopted in §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste).

(B) The manifesting requirements of this section are not applicable to the transportation of potentially creditable hazardous waste pharmaceuticals from a healthcare facility or a reverse distributor to a reverse distributor in compliance with §335.769 of this title (relating to Shipping Potentially Creditable Hazardous Waste Pharmaceuticals from a Healthcare Facility or a Reverse Distributor to a Reverse Distributor).

(b) The manifesting and marking requirements of §335.55 of this title (relating to Pre-Transport Requirements Applicable to Small and Large Quantity Generators) are

not applicable to the transportation of hazardous waste [No manifest and no marking in accordance with §335.67(b) of this title (relating to Marking) is required for hazardous waste transported] on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. However, in the event of a hazardous waste discharge on a public or private right-of-way, the generator or transporter must comply with the requirements of §335.93 of this title (relating to Hazardous Waste Discharges).

(c) Except as provided in subsections (d) and (e) of this section, persons who generate, transport, process, store, or dispose of Class 1 waste shall not cause, suffer, allow, or permit the shipment of Class 1 waste unless the person complies with the manifest requirements adopted in §335.54 of this title with the following changes and additions: [listed in subsection (a) of this section, with the following changes:]

(1) when Class 1 waste is itemized on the manifest, either [use] the Texas Commission on Environmental Quality solid waste registration (SWR) number or the United States Environmental Protection Agency (EPA) identification number must [to] identify the generator, transporter, and designated facility [receiver]; and [use] the Texas waste code, instead [in place] of the EPA waste code, must identify the waste; [and]

(2) when both hazardous and Class 1 waste are itemized on the same manifest, the [use] EPA identification numbers, not SWR numbers, must [to] identify the generator, transporter, and designated facility [receiver]; and [use] the Texas waste codes must identify [for] each waste itemized on the manifest; [.]

(3) the term "Designated facility" has the meaning in §335.1 of this title (relating to Definitions);

(4) the term "Hazardous waste" is replaced by the term "Class 1 waste";

(5) the exceptions for hazardous waste being reclaimed under 40 CFR §262.20(e) are not applicable to transportation of Class 1 waste;

(6) in the event of a discharge on a public right of way, the generator or transporter must comply with Chapter 327 of this title (relating to Spill Prevention and Control) and §335.93 of this title instead of complying with 40 CFR §263.30 and §263.31 as required by 40 CFR §262.20(f); and

(7) waste minimization certification required by 40 CFR §262.27 is not applicable to Class 1 waste.

(d) No manifest is required for the shipment of Class 1 waste generated by a person that generated less than 100 kilograms of Class 1 waste during the calendar

month in which the subject Class 1 waste was generated [where the generator is an industrial generator that generates less than the quantity limits of Class 1 waste specified in §335.78 of this title or is a municipal generator that generates less than the quantity limit of Class 1 waste specified in §335.78 of this title].

(e) No manifest is required for the shipment of Class 1 waste to property owned or otherwise effectively controlled by the owner or operator of an industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, provided that:

(1) the property is within 50 miles of the plant or operation; [and]

(2) the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered another source with respect to other plants or operations owned by the same person; and [.]

(3) the owner or operator of a facility that receives and stores, processes, or disposes Class 1 waste from off-site in compliance with an exception from permit required in §335.2(d)(1) or (2) of this title (relating to Permit Required) must report Class 1 industrial waste received from off-site in the Annual Waste Summary submitted for the receiving facility in accordance with §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators).

**§335.11. Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste.**

(a) Incorporation by reference. The commission adopts by reference 40 Code of Federal Regulations (CFR) Part 263, Subpart B (Compliance With the Manifest System and Recordkeeping), as amended through the January 3, 2018 issue of the *Federal Register* (83 FR 420).

(b) Hazardous waste transporters. Except as provided by §335.10(a)(2) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste), persons who transport hazardous waste must comply with:

(1) subsection (a) of this section;

(2) §335.4 of this title (relating to General Prohibitions);

(3) §335.6 of this title (relating to Notification Requirements);

(4) §335.10 of this title;

(5) §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste); and

(6) Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste).

(c) Class 1 industrial waste transporters. Except as provided by §335.10 of this title, a person who transports Class 1 waste shall comply with subsection (b)(1) - (5) of this section and the manifesting requirements adopted under subsection (a) of this section, with the changes and additions in this subsection.

(1) When only Class 1 waste is itemized on the manifest, a Texas Commission on Environmental Quality solid waste registration (SWR) number or a United States Environmental Protection Agency (EPA) identification number may be used for the generator, transporter, and designated facility.

(2) When both hazardous and Class 1 industrial waste are itemized on the same manifest, an EPA identification number must be used for the generator, transporter, and designated facility.

(3) A Texas waste code, instead of an EPA waste code, must identify each Class 1 waste itemized on the manifest.

(4) The term "Hazardous waste" is changed to the term "Class 1 waste."

(5) The import and export requirements of 40 CFR §263.20(a)(2), (c), and (g) are not applicable to the transportation of Class 1 waste.

(6) The exclusion from manifesting requirements for hazardous waste being transported pursuant to a reclamation agreement under 40 CFR §263.20(h) is not applicable to the transportation of Class 1 waste.

(7) In the event of a spill or discharge of Class 1 waste during transportation, the transporter shall notify the commission in accordance with Chapter 327 of this title (relating to Spill Prevention and Control), and Texas Water Code, §26.039, and take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge).

(8) A transporter shall clean up any Class 1 waste spill or discharge that occurs during transportation or take such action as required in §327.5 of this title (relating to Actions Required) so that the Class 1 waste discharge no longer presents a hazard to human health or the environment.

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

(a) Except as provided by §335.10(a)(2) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste), persons who generate, process, store, or dispose of hazardous waste must comply with this subsection as well as subsections (c) and (d) of this section and 40 Code of Federal Regulations (CFR) Part 264, Subpart E (Manifest System, Recordkeeping, and Reporting), as adopted in §335.152 of this title (relating to Standards) or 40 CFR Part 265, Subpart E (Manifest System, Recordkeeping, and Reporting), as adopted in §335.112 of this title (relating to Standards) [40 Code of Federal Regulations (CFR) §264.72 or §265.72, depending on the status of the person, as these sections are amended through February 7, 2014 (79 FR 7518); and 40 CFR §264.71 or §265.71, depending on the status of the person, as these sections are amended through November 28, 2016 (81 FR 85696), and with the Appendix to 40 CFR Part 262, as amended through November 28, 2016 (81 FR 85696). The references in §335.112(b)(1) and (10) and §335.152(c)(1) and (10) of this title (relating to Standards) do not apply to this provision].

(b) Except as provided by §335.10(d) and (e) of this title, persons who generate, transport, process, store, or dispose of Class 1 waste must comply with this subsection as well as subsections (c) and (d) of this section and 40 CFR Part 264, Subpart E as adopted in §335.152 of this title with the changes in this subsection [40 CFR §264.72 and §264.76, as amended through February 7, 2014 (79 FR 7518), and §264.71 and the Appendix to 40 CFR Part 262, as amended through November 28, 2016 (81 FR 85696),

and a manifest or copy of e-Manifest must accompany the shipment which designates that facility to receive the waste].

(1) "Hazardous waste" is changed to "Class 1 waste."

(2) When only Class 1 waste is itemized on the manifest a Texas Commission on Environmental Quality solid waste registration number or a United States Environmental Protection Agency identification number may be used for the generator, transporter, and designated facility.

(3) "Regional Administrator" is changed to "Executive director."

(4) The requirements of 40 CFR Part 262, Subpart H (Transboundary Movements of Hazardous Waste for Recovery or Disposal) are not applicable to Class 1 waste imported from outside of the United States.

(c) The commission adopts by reference 40 CFR §260.4 (Manifest copy submission requirements for certain interstate waste shipments), as adopted in the *Federal Register* on January 3, 2018 (83 FR 420).

(d) The commission adopts by reference 40 CFR §260.5 (Applicability of electronic manifest system and user fee requirements to facilities receiving state-only regulated waste shipments) as adopted in the *Federal Register* on January 3, 2018 (83

FR 420).

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

(a) The requirements of this section do not apply to a generator that generates less than 100 kilograms of Class 1 waste, 100 kilograms of hazardous waste, and 1 kilogram of acute hazardous in a calendar month, by site [The requirements 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 (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)].

(b) An unregistered generator that ships [Unregistered generators who ship] hazardous waste or Class 1 waste shall prepare a complete and correct Waste Shipment Summary from the manifests.

(c) The Waste Shipment Summary 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. An [The] unregistered generator must keep a copy of each summary for a period of at least three years from the due date of the summary. An unregistered generator must

[These generators are required to] prepare and submit a Waste Shipment Summary only for those months in which shipments are actually made.

(d) A registered generator is defined as an in-state generator who has complied with §335.6 of this title (relating to Notification Requirements) and has an active [, and is assigned a] solid waste registration number.

(e) An unregistered generator is defined as an in-state generator that:

(1) does not have an active solid waste registration;

(2) in a calendar month generates more than 100 kilograms of non-acute hazardous waste, 1 kilogram of acute hazardous waste, or 100 kilograms of Class 1 waste; and [who is not a conditionally exempt small quantity generator, as defined in §335.78 of this title, that]

(3) ships hazardous waste and/or Class 1 industrial waste using a temporary solid waste registration number and a temporary Texas waste code number assigned by the executive director.

(f) Both registered and unregistered generators shall comply with the manifest and recordkeeping requirements under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste)

[The registered/unregistered generator 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) for at least three years from the date of shipment by the registered/unregistered generator].

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

[h) A registered/unregistered generator 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 for at least three years from the date the waste was accepted by the initial transporter and must include:]

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

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

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

[(j) Any person who exports or imports hazardous waste must comply with 40 CFR §262.12 and 40 CFR Part 262, Subpart H, as adopted by reference under §335.76(a) of this title (relating to Additional Requirements Applicable to International Shipments).]

**§335.14. Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste.**

A hazardous waste transporter and a Class 1 waste transporter shall comply with the manifesting and recordkeeping requirements of 40 Code of Federal Regulations (CFR) Part 263, Subpart B as adopted under §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste).

**§335.15. Recordkeeping and Reporting Requirements Applicable to Owners or**

### **Operators of Treatment, Storage, or Disposal Facilities.**

This section applies to owners and operators of facilities that receive hazardous waste or Class 1 waste from off-site sources and owners and operators of facilities that have notified the executive director of the intent to receive hazardous waste or Class 1 waste from off-site sources. [who receive hazardous or Class 1 waste from off-site sources or who have notified that they intend to receive hazardous or Class 1 waste from off-site sources.]

(1) Manifest requirements. The owner or operator of the treatment, storage, or disposal facility designated on the manifest shall comply with the manifesting and recordkeeping requirements of 40 Code of Federal Regulations (CFR) Part 264, Subpart E as adopted under §335.152 of this title (relating to Standards) or 40 CFR Part 265, Subpart E as adopted under §335.112 of this title (relating to Standards), the manifest copy submission requirements for certain interstate waste shipments in 40 CFR §260.4 as adopted under §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), the electronic manifest system and user fees for facilities that receive state-only regulated waste shipments requirements in 40 CFR §260.5 as adopted under §335.12 of this title, and 40 CFR Part 262, Subpart B as adopted under §335.54 of this title (relating to Hazardous Waste Manifest) [retain a copy of each manifest or, in the case of shipments by rail or water (bulk shipment), a copy of each

manifest and shipping paper, for a minimum of three years from the date of initial shipment by the generator or primary exporter where appropriate].

(2) Monthly Waste Receipt Summary. Except as provided in paragraph (6) of this section or as provided in §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), the owner or operator shall prepare a complete and correct Monthly Waste Receipt Summary in accordance with this paragraph. The owner or operator shall: [for all manifested and unmanifested hazardous or Class 1 waste shipments received. The Monthly Waste Receipt Summary shall be submitted electronically, using software provided by the executive director. Upon written request by the receiver, authorization may be given by the executive director to use paper forms or an alternative reporting method. The Monthly Waste Receipt Summary shall be submitted to the executive director on or before the 25th of each month for wastes or manifests received during the previous month. (The appropriate abbreviations for method of treatment, storage, and disposal of waste and for units of measure may be found on the form or accompanying instructions.) Any owner or operator of a treatment, storage, or disposal facility required to comply with this paragraph shall prepare and submit a Monthly Waste Receipt Summary each month even if no waste was received.]

(A) submit a Monthly Waste Receipt Summary on or before the 25th of every month;

(B) include all manifested and unmanifested hazardous and Class 1 waste shipments received during the previous month, if any;

(C) use the electronic interface provided by the executive director unless the executive director has approved an alternative reporting method; and

(D) identify the methods of treatment, storage, and disposal of waste and units of measure using abbreviations and codes provided by the executive director.

(3) Unmanifested waste report. An owner or operator shall comply with the unmanifested waste reporting requirements of this paragraph. [If a facility accepts for treatment, storage, or disposal any hazardous waste or Class 1 waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and if the waste is not excluded from the manifest requirement of this chapter, then the owner or operator must prepare and submit a letter to the executive director within 15 days after receiving the waste. The unmanifested waste report must contain the following information:]

(A) An owner or operator that accepts hazardous waste from an off-site source that is not excluded from the manifest requirements of this chapter and

is not accompanied by a manifest shall complete and submit an unmanifested waste report within 15 days after receiving the waste to the executive director that includes:

(i) the United States Environmental Protection Agency (EPA) identification (ID) number, solid waste registration (SWR) number, name, and address of the facility;

(ii) the date the facility received the waste;

(iii) the EPA ID number, SWR number, name, and address of the generator and the transporter, if available;

(iv) a description and the quantity of each unmanifested hazardous waste the facility received which was not accompanied by a manifest;

(v) the method of treatment, storage, or disposal for each hazardous waste;

(vi) the certification signed by the owner or operator of the facility or his authorized representative; and

(vii) a brief explanation of why the waste was unmanifested, if known.

(B) An owner or operator that accepts Class 1 waste, that is not excluded from the manifest requirements of this chapter, from an off-site source without an accompanying manifest shall complete and submit an unmanifested waste report to the executive director within 15 days after receiving the waste that contains:

(i) [(A)] the EPA ID number, SWR number, [United States Environmental Protection Agency (EPA) identification number] name, and address of the receiving facility;

(ii) [(B)] the date the facility received the waste;

(iii) [(C)] the EPA identification number, SWR number, name, and address of the generator and the transporter, if available;

(iv) [(D)] a description and the quantity of each unmanifested Class 1 [hazardous] waste the facility received which was not accompanied by a manifest;

(v) [(E)] the method of treatment, storage, or disposal for each Class 1 hazardous waste;

(vi) [(F)] the certification signed by the owner or operator of the facility or his authorized representative; and

(vii) [(G)] a brief explanation of why the waste was unmanifested, if known.

(4) Records retention. The owner or operator shall retain a copy of each summary required by paragraphs (2) and (3) of this section for a minimum of three years from the date of each summary.

(5) Extended records retention. The period of record retention required by this section is automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(6) Monthly Waste Receipt Summary for reclamation of hazardous waste generated by very small quantity generators. An owner or operator reclaiming hazardous wastes received from a very small quantity generator shall complete and submit a Monthly Waste Receipt Summary unless the executive director has approved an exception from reporting. [An owner or operator reclaiming hazardous wastes received from a conditionally exempt small quantity generators is subject to the requirements of this section requiring completion of a Monthly Waste Receipt Summary, from his copy of all manifests received during the month, unless he has requested in writing a modification in the reporting requirements. A modification

relieving the owner or operator of having to report each manifested shipment on the Monthly Waste Receipt Summary may be granted at the discretion of the executive director on a case-by-case basis.]

(7) Biennial report information provided in a Monthly Waste Receipt Summary. Information which has already been submitted by permitted or interim status facilities under the requirements of this section and of Subchapter A of this chapter need not be included in the reports required by 40 CFR §264.75 or §265.75 (relating to Biennial Reports), as adopted under §335.112 and §335.152 of this title; these biennial reports must be submitted to the executive director using a method approved by the executive director [in letter format] rather than by EPA form.

(8) Class 1 industrial waste received from off-site reported in Annual Waste Summary. The owner or operator of a facility that stores, processes or disposes Class 1 industrial waste received from off-site in accordance with an exception from permit required under §335.2(d)(1) or (2) of this title (relating to Permit Required), must report Class 1 industrial waste received from off-site on the Annual Waste Summary submitted for the receiving facility in accordance with §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators).

**§335.18. Non-Waste Determinations and Variances from Classification as a Solid**

**Waste.**

(a) In accordance with the standards and criteria in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations), and in accordance with the procedures in §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations) the executive director may determine on a case-by-case basis that the following recyclable materials and nonhazardous recyclable materials are not solid wastes:

(1) materials that are accumulated speculatively without sufficient amounts being recycled (as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials));

(2) materials that are reclaimed and then reused within the original production process in which they were generated;

(3) materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;

(4) hazardous secondary materials that are reclaimed in a continuous industrial process; or

(5) hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate. [; or]

[(6) hazardous secondary materials that are transferred for reclamation under 40 Code of Federal Regulations §261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Resource Conservation and Recovery Act Part B permit or interim status standards.]

(b) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid waste," §335.6 of this title (relating to Notification Requirements), §335.17 of this title, §335.19 of this title, §335.20 of this title (relating to Variance To Be Classified as a Boiler), §335.21 of this title, §335.22 of this title (relating to Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis), §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and Subchapter V of this title (relating to Standards for Reclamation of Hazardous Secondary Materials).

**§335.19. Standards and Criteria for Variances from Classification as a Solid Waste.**

(a) The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based on the following criteria:

(1) the manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) the reason that the applicant has accumulated the material for one or more years without recycling 75% of the weight or volume accumulated at the beginning of the year;

(3) the quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) the extent to which the material is handled to minimize loss; and

(5) other relevant factors.

(b) The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) how economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) the extent to which the material is handled before reclamation to minimize loss;

(3) the time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(4) the location of the reclamation operation in relation to the production process;

(5) whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(6) whether the person who generates the material also reclaims it; and

(7) other relevant factors.

(c) The executive director may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like material will be based on whether the hazardous secondary material is legitimately recycled as specified in §335.27 of this title (relating to Legitimate Recycling of Hazardous Secondary Materials) and on whether all of the following decision criteria are satisfied:

(1) whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

(2) whether the partially reclaimed material has sufficient economic value that it will be purchased for further reclamation;

(3) whether the partially reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(4) whether there is a market for the partially reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading);

(5) whether the partially reclaimed material is handled to minimize loss;  
and

(6) other relevant factors.

[(d) The executive director may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that are transferred for reclamation in accordance with the requirements of 40 Code of Federal Regulations (CFR) §261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Resource Conservation and Recovery Act (RCRA) Part B permit or interim status standards. The executive director's decision will be based on the following criteria:]

[(1) the reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to §335.27 of this title;]

[(2) the reclamation facility or intermediate facility must satisfy the financial assurance requirements of §335.703 of this title (relating to Financial Assurance Requirements);]

[(3) the reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under RCRA, Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;]

[(4) the intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under 40 CFR Part 261, Subpart M;]

[(5) if residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits

required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment; and]

[ (6) the intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (i.e., releases that are not covered by a permit, such as a permit to discharge to water or air), which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures), and must include consideration of potential cumulative risks from other nearby potential stressors.]

(d) [(e)] Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid waste," §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Non-Waste Determinations and Variances from Classification as a Solid Waste), §335.20 of this title (relating to Variance To Be Classified as a Boiler), §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations), §335.22 of this title (relating to Additional Regulation of

Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis), §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and Subchapter V of this chapter (relating to Standards for Reclamation of Hazardous Secondary Materials).

**§335.24. Requirements for Recyclable Materials and Nonhazardous Recyclable Materials.**

(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (d) - (f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as recyclable materials. Nonhazardous industrial wastes that are recycled will be known as nonhazardous recyclable materials. Nonhazardous recyclable materials are subject to the requirements of subsections (h) - (l) of this section.

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General), Subchapter H of this chapter

(relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 17 of this title (relating to Tax Relief for Property Used for Environmental Protection); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); and Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings).

(1) recyclable materials used in a manner constituting disposal;

(2) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) or Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities);

(3) recyclable materials from which precious metals are reclaimed;

(4) spent lead-acid batteries that are being reclaimed.

(c) The following recyclable materials are not subject to regulation under Subchapters B - I or O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions); Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 17 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; or Chapter 305 of this title, except as provided in subsections (g) and (h) of this section:

(1) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials must comply with the requirements of 40 Code of Federal Regulations (CFR) Part 262, Subpart H, as adopted under §335.58 of this title (relating to Transboundary Movements of Hazardous Waste for Recovery or Disposal)

[amended through November 28, 2016 (81 FR 85696)]. Transporters transporting a shipment for export may not accept a shipment if they know the shipment does not conform to the United States Environmental Protection Agency (EPA) acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment, and must ensure that it is delivered to the facility designated by the person initiating the shipment;

(2) scrap metal that is not already excluded under 40 CFR §261.4(a)(13) as adopted under §335.504 of this title (relating to Hazardous Waste Determination);

(3) fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 40 CFR §261.4(a)(12), as adopted under §335.504 of this title [amended through April 8, 2015 (80 FR 18777)]); and

(4) the following hazardous waste fuels:

(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce

products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR §279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR §279.11;

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR §279.11.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General), Subchapter C of this chapter, Subchapter D of this chapter, and Subchapter R of this chapter [Subchapter C of this chapter and Subchapter D of this chapter], and the notification requirements of §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a) - (c) of this section.

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 17 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; and the notification requirements under §335.6 of this title, except as provided in subsections (a) - (c) of this section. The recycling process itself is exempt from regulation.

(f) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a) - (c) of this section:

(1) notification requirements under §335.6 of this title; [and]

(2) Section 335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities); [.]

(3) Section 335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities); and

(4) the biennial reporting requirements of 40 Code of Federal Regulations §264.75 or §265.75 as adopted under §335.112 or §335.152 of this title (relating to Standards; or Standards).

(g) Recyclable materials (excluding those listed in subsections (b)(4), and (c)(1) - (5) of this section) remain subject to the requirements of §§335.4, 335.6, and 335.9 - 335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities, respectively), as applicable. Recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of subsection (h) of this section.

(h) Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of §335.4 of this title. In addition, industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (c)(2)

of this section remain subject to the requirements of §335.6 of this title. Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsections (b)(4) and (c)(2) of this section may also be subject to the requirements of §§335.10 - 335.15 of this title, as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(2) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(4) the potential for the objectionable constituent to degrade into nonharmful constituents;

(5) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(6) the plausible types of improper management to which the waste could be subjected;

(7) the nature and severity of potential damage to the public health and environment;

(8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment; and

(9) other relevant factors.

(i) Except as provided in Texas Health and Safety Code, §361.090, facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

(1) whether managing nonhazardous recyclable materials will create an additional risk of release of the hazardous recyclable materials into the environment;

(2) whether hazardous and nonhazardous wastes that are incompatible are stored and/or processed in the same or connected units;

(3) whether the management of recyclable materials and nonhazardous recyclable materials is segregated within the facility;

(4) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(5) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(6) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(7) the potential for the objectionable constituent to degrade into harmful constituents;

(8) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(9) the plausible types of improper management to which the waste could be subjected;

(10) the nature and severity of potential damage to the public health and environment;

(11) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment; and

(12) other relevant factors.

(j) Closure cost estimates.

(1) Except as otherwise approved by the executive director, an owner or operator of a recycling facility that stores combustible nonhazardous materials outdoors, or that poses a significant risk to public health and safety as determined by the executive director, shall provide a written cost estimate, in current dollars, showing the cost of hiring a third party to close the facility by disposition of all processed and unprocessed materials in accordance with all applicable regulations. The closure cost estimate for financial assurance must be submitted with any new notification in accordance with §335.6 within 60 days of the effective date of this rule for existing facilities or as otherwise requested by the executive director.

(2) The estimate must:

(A) equal the costs of closure of the facility, including disposition of the maximum inventories of all processed and unprocessed combustible materials stored outdoors on site during the life of the facility, in accordance with all applicable regulations;

(B) be based on the costs of hiring a third party that is not affiliated (as defined in §328.2 of this title (relating to Definitions)) with the owner or operator; and

(C) be based on a per cubic yard and/or short ton measure for collection and disposition costs.

(k) Financial assurance. An owner or operator of a recycling facility that stores nonhazardous combustible recyclable materials outdoors, or that poses a significant risk to public health and safety as determined by the executive director, shall establish and maintain financial assurance for closure of the facility in accordance with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities).

(l) Closure requirements.

(1) Closure must include collecting processed and unprocessed materials, and transporting the materials to an authorized facility for disposition unless otherwise approved or directed in writing by the executive director.

(2) Closure of the facility must be completed within 180 days following the most recent acceptance of processed or unprocessed materials unless otherwise approved or directed in writing by the executive director.

(m) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Subchapters A - I or O of this chapter, but is regulated under Chapter 324 of this title (relating to Used Oil Standards). Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(n) Owners or operators of facilities subject to hazardous waste permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 40 CFR Part 264 or Part 265, Subparts AA and BB, as adopted by reference under §335.152(a)(17) and (18) and §335.112(a)(19) and (20) of this title (relating to Standards).

(o) Hazardous waste that is exported or imported for purpose of recovery is subject to the requirements of 40 CFR Part 262, Subpart H, as adopted under §335.58 of this title [amended through November 28, 2016 (81 FR 85696)].

(p) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid waste," §335.6 of this title, §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.26 of this title (relating to Notification Requirement for Hazardous Secondary Materials, §335.27 of this title (relating to Legitimate Recycling of Hazardous Secondary Materials), [and] Subchapter H of this chapter, and Subchapter V of this chapter (relating to Standards for Reclamation of Hazardous Secondary Materials).

**§335.26. Notification Requirement for Hazardous Secondary Materials.**

Persons who generate, process, store or recycle hazardous secondary materials must comply with the requirements of 40 Code of Federal Regulations (CFR) §260.42 (Notification requirements for hazardous secondary materials) as adopted and amended through May 30, 2018 (83 FR 24664) [January 13, 2015 (80 FR 1694)]. For the purposes of this section and 40 CFR §260.42, the term "Regional Administrator" is changed to the term "executive director" of the Texas Commission on Environmental Quality.

**§335.27. Legitimate Recycling of Hazardous Secondary Materials.**

Persons who generate, process, store or recycle hazardous secondary materials must comply with the requirements of 40 Code of Federal Regulations (CFR) §260.43 (Legitimate recycling of hazardous secondary materials) as adopted and amended through May 30, 2018 (83 FR 24664) [January 13, 2015 (80 FR 1694)]. For the purposes of this section and 40 CFR §260.43, the term, "Regional Administrator" is changed to the term "executive director" of the Texas Commission on Environmental Quality.

**§335.31. Incorporation of References.**

When used in this chapter, the references contained in 40 Code of Federal Regulations (CFR) §260.11 are incorporated by reference as amended and adopted in the CFR through November 28, 2016 (81 FR 85732) [November 28, 2016 (81 FR 85696)].

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

**[§§335.6, 335.11, 335.14]**

**Statutory Authority**

The repealed rules are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The repealed rules are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed repealed rules implement THSC, Chapter 361.

**[§335.6. Notification Requirements.]**

[(a) Any person who intends to store, process, or dispose of industrial solid waste without a permit, as authorized by §335.2(d), (e), (f), or (h) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the executive director in writing or using electronic notification software provided by the executive director, that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Recycling operations may commence 90 days after the initial notification of the intent to recycle, or upon receipt of confirmation that the executive director has reviewed the information found in this section. The executive director may require submission of information necessary to determine whether storage, processing, or disposal is compliant with the terms of this chapter. Required information may include, but is not limited to, information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements.]

[(b) Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall have the continuing obligation to immediately provide notice to the executive director in writing or using electronic notification software provided by the executive director, of any changes or additional information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located to that reported in subsection (a) of this section, authorized in any permit, or stated in any application filed with the commission. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements.]

[(c) Any person who generates hazardous waste in a quantity greater than the limits specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) in any calendar month or greater than 100 kilograms in any calendar month of industrial Class 1 waste shall notify the executive director of such activity using electronic notification software or paper forms provided by the executive director. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a

written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements. The executive director may require submission of information necessary to determine whether the storage, processing, or disposal is compliant with the terms of this chapter.

Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title, or any reports required by §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of such change or of becoming aware of such additional information, provide notice to the executive director in writing or using electronic notification software provided by the executive director, of any such changes or additional information to that reported previously. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements. If waste is

recycled on-site or managed pursuant to §335.2(d) of this title, the generator must also comply with the notification requirements specified in subsection (h) of this section.

The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 of this title (relating to Waste Classification and Waste Coding Required) shall include, but is not limited to:]

[(1) a description of the waste;]

[(2) a description of the process generating the waste;]

[(3) the composition of the waste;]

[(4) a proper hazardous waste determination which includes the appropriate EPA hazardous waste number(s) described in 40 Code of Federal Regulations (CFR) Part 261. Generators must determine whether such waste is hazardous as defined in 40 CFR Part 261 and submit the results of that hazardous waste determination to the executive director;]

[(5) the disposition of each solid waste generated, if subject to the notification requirement of this subsection, including the following information:]

[(A) whether the waste is managed on-site and/or off-site;]

[(B) a description of the type and use of each on-site waste management facility unit;]

[(C) a listing of the wastes managed in each unit; or]

[(D) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title.]

[(d) Any person who transports hazardous or Class 1 waste shall notify the executive director of such activity on forms furnished or approved by the executive director, except:]

[(1) industrial generators who generate less than 100 kilograms of Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title and who only transport their own waste; and]

[(2) municipal generators who generate less than the quantity limits of hazardous waste specified in §335.78 of this title and who only transport their own waste.]

[(e) Persons operating transfer facilities in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity.]

[(f) Upon written request of the executive director, any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste, as defined in this subchapter, shall perform a chemical analysis of the solid waste and provide results of the analysis to the executive director.]

[(g) Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste shall notify the executive director in writing of any activity of facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter.]

[(h) Any person who conducts or intends to conduct the recycling of industrial solid waste or municipal hazardous waste as defined in §335.24 of this title or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §335.24 of this title or Subchapter H of this chapter must submit in writing to the executive director, at a minimum, the following information: the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity. New recycling activities require such notification a minimum of 90 days prior to engaging in such activities. Recycling operations may commence 90 days after the initial notification of the intent to recycle,

or upon receipt of confirmation that the executive director has reviewed the information found in this section. Persons engaged in recycling of industrial solid waste or municipal hazardous waste prior to the effective date of this section shall submit such notification within 60 days of the effective date of this subsection.]

[(i) The owner or operator of a facility qualifying for the small quantity burner exemption under 40 CFR §266.108 must provide a one-time signed, written notification to the EPA and to the executive director indicating the following:]

[(1) The combustion unit is operating as a small quantity burner of hazardous waste;]

[(2) The owner and operator are in compliance with the requirements of 40 CFR §266.108, §335.221(a)(19) of this title (relating to Applicability and Standards) and this subsection of this section; and]

[(3) The maximum quantity of hazardous waste that the facility may burn as provided by 40 CFR §266.108(a)(1).]

[(j) Notification and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), CESQG hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil).]

[(k) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title, and Subchapter H of this chapter.]

[(l) A landowner who disposes of domestic or exotic animal carcasses and who complies with a certified water quality management plan developed for their site under Texas Agriculture Code, §201.026(f) as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution) is exempt from the notification requirements of subsections (a) and (b) of this section.]

**[§335.11. Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste.]**

[(a) Except as provided by §335.10(a)(2) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste), persons who transport hazardous waste must comply with the manifest requirements in 40 Code of Federal Regulations (CFR) §§263.21, 263.22, and 263.25, as these sections are amended through February 7, 2014 (79 FR 7518), and 40 CFR §263.20 and

the Appendix to 40 CFR Part 262, as these are amended through November 28, 2016 (81 FR 85696), as well as the following:]

[ (1) the person must comply with §335.10 of this title; and]

[ (2) in the case of hazardous waste exports, the person must ensure that the shipment conforms to the requirements set forth in the regulations contained in 40 CFR §263.20.]

[ (b) Except as provided by §335.10(d) and (e) of this title, a person who transports Class 1 waste must comply with the requirements of subsection (a) of this section, except those requirements in 40 CFR §263.20(a)(2).]

**[§335.14. Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste.]**

[ (a) A transporter of hazardous waste or Class 1 waste shall retain a copy of each manifest signed by the generator or, in the case of exports of hazardous waste, the primary exporter; the transporter; and the next designated transporter, or the owner or operator of the facility designated on the manifest for a minimum of at least three years from the date of initial shipment.]

[(b) For shipments delivered to the facility designated on the manifest by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required by §335.11(e) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) for a minimum of three years from the date of initial shipment.]

[(c) For shipments of hazardous waste or Class 1 waste by rail within the United States:]

[(1) the initial rail transporter must keep a copy of the manifest and shipping paper with all of the information required in §335.11(f)(2) of this title for a period of three years from the date the hazardous waste or Class 1 waste was accepted by the initial transporter; and]

[(2) the final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste or Class 1 waste was accepted by the initial transporter.]

[(d) A transporter who transports waste out of the United States must retain a copy of the manifest indicating that the hazardous waste or waste left the United States for a minimum of three years from the date of initial shipment.]

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

**SUBCHAPTER B: HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS**

**§335.41, §335.46**

**Statutory Authority**

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendments implement THSC, Chapter 361.

**§335.41. Purpose, Scope and Applicability.**

(a) The purpose of this chapter is to implement a state hazardous waste program which controls from point of generation to ultimate disposal those wastes which have been identified by the administrator of the United States Environmental Protection Agency (EPA) in 40 Code of Federal Regulations (CFR) Part 261.

(b) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities); Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste, Treatment, Storage, or Disposal Facilities); §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities); and §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities) do not apply to an owner or operator of a totally enclosed treatment facility, as defined in §335.1 of this title (relating to Definitions).

(c) Except as provided in §335.47 of this title (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule), Subchapters E and F of this chapter do not apply to the owner or operator of a publicly owned treatment works (POTW) that processes, stores, or disposes of hazardous waste.

(d) Subchapters E and F of this chapter do not apply to:

(1) the owner or operator of an elementary neutralization unit provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory as defined in 40 CFR §268.40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements in 40 CFR §264.17(b);

(2) persons engaged in processing or containment activities during immediate response to a discharge of a hazardous waste; an imminent and substantial threat of discharge of hazardous waste; a discharge of a material which, when discharged, becomes a hazardous waste; or an immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in §335.1 of this title, except that:

(A) an owner or operator of a facility otherwise regulated under Subchapter E of this chapter must comply with all applicable requirements of §335.112(a)(2) and (3) of this title (relating to Standards) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(B) an owner or operator of a facility otherwise regulated under Subchapter F of this chapter must comply with all applicable requirements of §335.152(a)(2) and (3) of this title (relating to Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(C) any person who continues or initiates hazardous waste processing or containment activities after the immediate response is over is subject to all applicable requirements of Subchapters E and F of this chapter and Chapter 305 of this title (relating to Consolidated Permits); and

(D) in the case of an explosives or munitions emergency response, if a federal, state, tribal, or local official acting within the scope of his or her official responsibilities, or an explosives or emergency response specialist, determines that immediate removal of the material is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition;

(3) persons adding absorbent material to waste in a container, as defined in §335.1 of this title and persons adding waste to absorbent material in a container,

provided that these actions occur at the time that waste is first placed in the container, and that in the case of permitted facilities, 40 CFR §§264.17(b), 264.171, and 264.172 are complied with, and for all other facilities, 40 CFR §§265.17(b), 265.171, and 265.172 are complied with;

(4) a farmer disposing of waste pesticides from the farmer's own use in compliance with 40 CFR §262.70 as adopted under §335.57 [§335.77] of this title (relating to Farmers);

(5) the owner or operator of a wastewater treatment unit, as defined in §335.1 of this title, provided that the wastewater is discharged in accordance with a Texas Pollutant Discharge Elimination System authorization issued under Texas Water Code, Chapter 26, and if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory as defined in 40 CFR §268.40) or reactive (D003) waste to remove the characteristic before land disposal, must comply with the requirements in 40 CFR §264.17(b);

(6) the owner or operator of a wastewater treatment unit, as defined in §335.1 of this title, located at a noncommercial solid waste management facility that discharges to a publicly owned treatment works, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory as defined in 40 CFR §268.40) or reactive (D003) waste to remove the

characteristic before land disposal, must comply with the requirements in 40 CFR §264.17(b);

(7) the owner or operator of a wastewater treatment unit, as defined in §335.1 of this title, located at a municipal solid waste facility or commercial industrial solid waste landfill disposal facility that discharges to a publicly owned treatment works liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory as defined in 40 CFR §268.40) or reactive (D003) waste to remove the characteristic before land disposal, must comply with the requirements in 40 CFR §264.17(b); [or]

(8) the owner or operator of a wastewater treatment unit, as defined in §335.1 of this title, located at a commercial industrial solid waste facility that receives waste for discharge to a publicly owned treatment works, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory as defined in 40 CFR §268.40) or reactive (D003) waste to remove the characteristic before land disposal, must comply with the requirements in 40 CFR §264.17(b), but is subject to the permitting requirements of §335.2(n) of this title (relating to Permit Required); [.]

(9) the owner or operator of a facility permitted, licensed, or registered by a state to manage municipal or industrial solid waste, if the only hazardous waste the

facility treats, stores, or disposes of is excluded from regulation under this chapter by 40 CFR §262.14 as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste);

(10) a generator accumulating waste on-site in compliance with applicable conditions for exemption in 40 CFR §§262.14, 262.15, 262.16, or 262.17 as adopted under §335.53 of this title except to the extent the requirements of Subchapter E or F of this chapter are included in 40 CFR §§262.14 - 262.17; or

(11) a reverse distributor accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, in compliance with Subchapter W of this chapter (relating to Management Standards for Hazardous Waste Pharmaceuticals).

(e) Subchapter E of this chapter does not apply to:

(1) a very small quantity generator that meets the conditions for exemption for a very small quantity generator in 40 CFR §262.14 as adopted under §335.53 of this title that [person who] stores, processes, or disposes of hazardous waste on-site [and meets the requirements of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)]; or

(2) A generator accumulating waste on-site in compliance with applicable conditions for exemption in and 40 CFR Part 262, Subparts K and L as adopted under §335.59 and §335.60 of this title (relating to Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities; and Alternative Standards for Episodic Generation), except to the extent the requirements of Subchapter E of this chapter are included in 40 CFR Part 262, Subparts K and L [the owner or operator of a solid waste facility who stores, processes, or disposes of hazardous waste received from a conditionally exempt small quantity generator].

(f) The following requirements apply to residues of hazardous waste in containers.

(1) Subchapters B - F and O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste, Treatment, Storage, or Disposal Facilities; and Land Disposal Restrictions) do not apply to any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in paragraph (2) of this subsection. This exemption does not apply to any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty.

(2) For purposes of determining whether a container is empty under this subsection, the following provisions apply:

(A) a container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e) is empty if:

(i) all wastes have been removed that can be using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

(ii) no more than 2.5 centimeters (one inch) of residue remains on the bottom of the container or inner liner; or

(iii) no more than 3.0% by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size, or no more than 0.3% by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size;

(B) a container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmosphere;  
[or]

(C) a container or an inner liner removed from a container that has held an acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e) is empty if:

(i) the container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) the container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) in the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container has been removed.

(D) A container of hazardous waste pharmaceuticals is subject to §335.765 of this title (relating to Residues of Hazardous Waste Pharmaceuticals in

Empty Containers) instead of this section for determining when it is considered empty, except as provided by §335.765(c) and (d) of this title.

(g) Subchapters B - F and O of this chapter do not apply to hazardous waste that is managed as a recyclable material described in §335.24(b) and (c) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), except to the extent that requirements of these subchapters are referred to in Subchapter H of this chapter and Chapter 324 of this title (relating to Used Oil Standards).

(h) Subchapters E and F of this chapter apply to owners or operators of all facilities that treat, store, or dispose of hazardous waste referred to in Subchapter O of this chapter.

(i) Except as provided in §335.47 of this title, Subchapter F of this chapter does not apply to persons disposing of hazardous waste by means of underground injection. However, Subchapter F of this chapter does apply to the aboveground storage or processing of hazardous waste before it is injected underground.

(j) Except as specified in Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule), Subchapters B - F and O of this chapter and Chapter 305 of this title do not apply to universal wastes, universal waste handlers, or universal waste transporters as defined in §335.261 of this title (relating to Universal Waste Rule).

Universal wastes are not fully regulated hazardous wastes, but are subject to regulation under Subchapter H, Division 5 of this chapter.

**§335.46. Sharing of Information.**

(a) Any information obtained or used by the commission in the administration of a hazardous waste program authorized under the Resource Conservation and Recovery Act of 1976, §3006 and 40 Code of Federal Regulations (CFR) Part 271 shall be available to the Environmental Protection Agency upon request without restriction. If the information has been submitted to the commission under a claim of confidentiality, the commission shall submit that claim to the Environmental Protection Agency when providing information under this section. Any information obtained from the commission and subject to a claim of confidentiality will be treated by the Environmental Protection Agency in accordance with 40 CFR Part 2. If the Environmental Protection Agency obtains information that is not claimed to be confidential, the Environmental Protection Agency may make that information available to the public without further notice.

(b) The commission adopts by reference 40 CFR §260.2(c) as amended through February 7, 2014 in the *Federal Register* (79 FR 7518).

(c) The commission adopts by reference 40 CFR §260.2(d) as amended through December 26, 2017 in the *Federal Register* (82 FR 60894).

**SUBCHAPTER C: STANDARDS APPLICABLE TO GENERATORS OF  
HAZARDOUS WASTE**

**§§335.51 - 335.61**

**Statutory Authority**

The new rules are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The new rules are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed new rules implement THSC, Chapter 361.

**§335.51. Definitions.**

The following terms have the following meanings when used in this subchapter.

(1) Condition for exemption--Any requirement in 40 Code of Federal Regulations (CFR) §262.14 (Conditions for exemption for a very small quantity generator), §262.15 (Satellite accumulation area regulations for small and large quantity generators), §262.16 (Conditions for exemption for a small quantity generator that accumulates hazardous waste), §262.17 (Conditions for exemption for a large quantity generator that accumulates hazardous waste), §262.70 (Farmers), or 40 CFR Part 262, Subpart K (Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities), or 40 CFR Part 262, Subpart L (Alternative Standards for Episodic Generation), as adopted under this subchapter, that states an event, action, or standard that must occur or be met in order to obtain an exemption from any applicable requirement in Chapter 37 of this title (relating to Financial Assurance), Chapter 39 of this title (relating to Public Notice), and Chapter 305 of this title (relating to Consolidated Permits), Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), or from any requirement for notification under Resource Conservation and Recovery Act, §3010.

(2) Independent requirement--A requirement of 40 Code of Federal Regulations (CFR) Part 262 (Standards Applicable to Generators of Hazardous Waste),

as adopted under this chapter, that states an event, action, or standard that must occur or be met; and that applies without relation to, or irrespective of, the purpose of obtaining a conditional exemption from storage facility permit, interim status, and operating requirements under 40 CFR §§262.14 - 262.17, or 40 CFR Part 262, Subpart K (Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities), or 40 CFR Part 262, Subpart L (Alternative Standards for Episodic Generation), as adopted in this subchapter.

**§335.52. Purpose, Scope, and Applicability.**

(a) The regulations in this subchapter establish standards for generators of hazardous waste. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General).

(1) A person who generates a hazardous waste as defined by 40 Code of Federal Regulations (CFR) §261.3, as adopted under §335.504 of this title (relating to Hazardous Waste Determination), is subject to all applicable independent requirements listed in this section.

(A) Independent requirements of a very small quantity generator:

(i) §335.504 of this title; and

(ii) 40 CFR §262.13 (Generator category determination) as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste).

(B) Independent requirements of a small quantity generator:

(i) §335.504 of this title;

(ii) 40 CFR §262.11(e) and (f) (Hazardous waste determination and recordkeeping), as adopted under §335.53 of this title;

(iii) 40 CFR §262.13, as adopted under §335.53 of this title;

(iv) 40 CFR §262.18 (EPA identification numbers and re-notification for small quantity generators and large quantity generators), as adopted under §335.53 of this title;

(v) 40 CFR Part 262, Subpart B (Manifest Requirements Applicable to Small and Large Quantity Generators), as adopted under §335.54 of this title (relating to Hazardous Waste Manifest);

(vi) 40 CFR Part 262, Subpart C (Pre-Transport Requirements Applicable to Small and Large Quantity Generators) as adopted under §335.55 of this title (relating to Pre-Transport Requirements Applicable to Large and Small Quantity Generators);

(vii) 40 CFR §262.40 (Recordkeeping) as adopted under §335.56 of this title (relating to Recordkeeping and Reporting Applicable to Large and Small Quantity Generators);

(viii) 40 CFR §262.44 (Recordkeeping for small quantity generators) as adopted under §335.56 of this title;

(ix) §§335.6(b), (c) and (f), 335.9, 335.10(a) and 335.13 of this title (relating to Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste); and

(x) 40 CFR Part 262, Subpart H (Transboundary Movements of Hazardous Waste for Recovery or Disposal), as adopted under §335.58 of this title (relating to Transboundary Movements of Hazardous Waste for Recovery or Disposal).

(C) Independent requirements of a large quantity generator:

(i) §335.504 of this title;

(ii) 40 CFR §262.11(e) and (f) as adopted under §335.53 of  
this title;

(iii) 40 CFR §262.13 as adopted under §335.53 of this title;

(iv) 40 CFR §262.18 as adopted under §335.53 of this title;

(v) 40 CFR Part 262, Subpart B as adopted under §335.54 of  
this title;

(vi) 40 CFR Part 262, Subpart C as adopted under §335.55 of  
this title;

(vii) 40 CFR Part 262, Subpart D (Recordkeeping and  
Reporting Applicable to Small and Large Quantity Generators), as adopted under  
§335.56 of this title except 40 CFR §262.44;

(viii) §§335.6(b), (c) and (f), 335.9, 335.10(a) and 335.13 of  
this title; and

(ix) 40 CFR Part 262, Subpart H, as adopted under §335.58  
of this title.

(2) A generator that accumulates hazardous waste on-site is a person that stores hazardous waste and is subject to the applicable requirements of Chapter 37 of this title (relating to Financial Assurance), Chapter 39 of this title (relating to Public Notice), Chapter 305 of this title (relating to General Provisions), Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), and Section 3010 of Resource Conservation and Recovery Act (RCRA) unless it is one of the following:

(A) a very small quantity generator that meets the conditions for exemption in 40 CFR §262.14 (Conditions for exemption for a very small quantity generator), as adopted under §335.53 of this title;

(B) a small quantity generator that meets the conditions for exemption in 40 CFR §262.16 (Conditions for exemption for a small quantity generator that accumulates hazardous waste) and meets the requirements of 40 CFR §262.15 (Satellite accumulation area regulations for small and large quantity generators), as 40 CFR §262.15 and §262.16 are adopted under §335.53 of this title; and

(C) a large quantity generator that meets the conditions for exemption in 40 CFR §262.17 (Conditions for exemption for a large quantity generator

that accumulates hazardous waste) and meets the requirements of 40 CFR §262.15, as 40 CFR §262.15 and §262.17 are adopted under §335.53 of this title.

(3) A generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in §335.1 of this title (relating to Definitions), or not otherwise authorized to receive the generator's hazardous waste.

(b) A generator must use 40 CFR §262.13 as adopted under §335.53 of this title to determine their generator category and which provisions of this subchapter are applicable to the generator based on the quantity of hazardous waste generated per calendar month.

(c) Any person who exports or imports hazardous wastes must comply with 40 CFR §262.18 as adopted under §335.53 of this title and 40 CFR Part 262, Subpart H, as adopted under §335.58 of this title.

(d) Any person who imports hazardous waste into the United States must comply with the standards applicable to generators established in 40 CFR Part 262.

(e) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of 40 CFR §262.70 (Farmers), as adopted under §335.57 of this title (relating to Farmers), is not required to comply with other

standards in this subchapter or this chapter with respect to such pesticides.

(f) This subsection describes the consequences of violating of an independent requirement and not complying with a condition for exemption.

(1) A generator's violation of an independent requirement is subject to penalty and injunctive relief under Texas Health and Safety Code, Chapter 361, Texas Water Code, Chapter 7, and Section 3008 of RCRA.

(2) A generator's noncompliance with a condition for exemption in this part is not subject to penalty or injunctive relief under Texas Health and Safety Code, Chapter 361, Texas Water Code, Chapter 7, or Section 3008 of RCRA as a violation of a Texas Administrative Code section adopting a 40 CFR Part 262 condition for exemption. Noncompliance by any generator with an applicable condition for exemption from storage permit and operations requirements means that the facility is a storage facility operating without an exemption from the permit, interim status, operations, and notification requirements in this chapter, and in Chapters 37, 39, and 305 of this title. Without an exemption, any violations of such storage requirements are subject to penalty and injunctive relief under Texas Health and Safety Code, Chapter 361, Texas Water Code, Chapter 7, and Section 3008 of RCRA.

(g) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards

established in this subchapter.

(h) Persons responding to an explosives or munitions emergency in accordance with §335.41(d)(2) of this title (relating to Purpose, Scope and Applicability) are not required to comply with the standards of this subchapter.

(i) The laboratories owned by an eligible academic entity (for purposes of this paragraph, the terms "laboratory" and "eligible academic entity" shall have the meaning defined in 40 CFR §262.200, as adopted under §335.59 of this title (relating to Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities) that elect to be subject to the requirements of 40 CFR Part 262, Subpart K, as adopted by reference under §335.59 of this title are not subject to:

(1) the independent requirements of §335.504 of this title or 40 CFR §262.11 as adopted under §335.53 of this title;

(2) the regulations in 40 CFR §262.15 as adopted under §335.53 of this title for large quantity generators and small quantity generators, except as provided in 40 CFR Part 262, Subpart K, as adopted under §335.59 of this title; or

(3) the conditions of 40 CFR §262.14 as adopted under §335.53 of this title, except as provided in 40 CFR Part 262, Subpart K, as adopted by reference under §335.59 of this title.

(j) A reverse distributor as defined in §335.751 of this title (relating to Definitions) is subject to Subchapter W of this chapter (relating to Management Standards for Hazardous Waste Pharmaceuticals) for the management of hazardous waste pharmaceuticals instead of this subchapter.

(k) A healthcare facility, as defined in §335.751 of this title, must determine whether it is subject to Subchapter W of this chapter for the management of hazardous waste pharmaceuticals, based on the total hazardous waste it generates per calendar month (including both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste). A healthcare facility that generates more than 100 kilograms (kg) (220 pounds) of hazardous waste per calendar month, or more than 1 kg (2.2 pounds) of acute hazardous waste per calendar month, or more than 100 kg (220 pounds) per calendar month of any residue or contaminated soil, water, or other debris, resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 CFR §261.31 or §261.33(e) as adopted under §335.504 of this title (relating to Hazardous Waste Determination), is subject to Subchapter W of this chapter for the management of hazardous waste pharmaceuticals in lieu of this subchapter. A healthcare facility that is a very small quantity generator when counting all of its hazardous waste, including both its hazardous waste pharmaceuticals and its

non-pharmaceutical hazardous waste, remains subject to 40 CFR §262.14 as adopted in §335.53 of this title, and is not subject to Subchapter W of this chapter, except for §335.761 and §335.765 of this title (relating to Prohibition of Sewering Hazardous Waste Pharmaceuticals; and Residues of Hazardous Waste Pharmaceuticals in Empty Containers), and the optional provisions of §335.759 of this title (relating to Healthcare Facilities That are Very Small Quantity Generators for Both Hazardous Waste Pharmaceuticals and Non-pharmaceutical Hazardous Waste).

**§335.53. General Standards Applicable to Generators of Hazardous Waste.**

(a) The commission adopts by reference the regulations contained in 40 Code of Federal Regulations (CFR) §262.11(e) - (g) (Hazardous waste determination and record keeping) as adopted and amended in the *Federal Register* through November 28, 2016 (81 FR 85732), subject to the changes in this subsection.

(1) In 40 CFR §262.11(e), "parts 261, 264, 265, 266, 267, 268, and 273 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(2) In 40 CFR §262.11(f), "40 CFR 261.3" means as this section is adopted under §335.504 of this title (relating to Hazardous Waste Determination); "paragraphs (c) and (d) of this section" are changed to "§335.504(a)(2) and (3) of this title";

"paragraph (d)(1)" is changed to "§335.504(a)(3)(A) of this title"; and the term "Administrator" is changed to the term "executive director."

(3) In 40 CFR §262.11(g), "subparts C and D of part 261 of this chapter" is changed to "40 CFR Part 261, Subparts C and D, as adopted by reference under §335.504 of this title"; and "§262.32" is changed to "40 CFR §262.32 as adopted by reference under §335.55 of this title (relating to Pre-Transport Requirements Applicable to Small and Large Quantity Generators)."

(b) The commission adopts by reference the regulations contained in 40 CFR §262.13 (Generator category determination), including Table 1, as adopted in the *Federal Register* on November 28, 2016 (81 FR 85732), and amended in the *Federal Register* through February 22, 2019 (84 FR 5816) subject to the changes in this subsection.

(1) In the introductory text to 40 CFR §262.13, "§260.10 of this chapter" is changed to "§335.1 of this title (relating to Definitions)."

(2) In 40 CFR §262.13(c), "this part" is changed to "this chapter."

(3) In 40 CFR §262.13(c)(1), "40 CFR 261.4(c) through (f), 261.6(a)(3), or 261.7(a)(1)" is changed to "§335.2(f) and (g) of this title (relating to Permit Required), §335.24(c)(1) - (4) of this title (relating to Requirements for Recyclable Materials and

Nonhazardous Recyclable Materials), and §335.41(f) of this title (relating to Purpose, Scope and Applicability)."

(4) In 40 CFR §262.13(c)(2), "40 CFR 260.10" is changed to "§335.1 of this title."

(5) In 40 CFR §262.13(c)(3), "40 CFR 261.6(c)(2)" is changed to "§335.24(g) of this title."

(6) In 40 CFR §262.13(c)(4), "40 CFR 261.6(a)(4) and 40 CFR part 279" is changed to "§335.24(m) of this title and Chapter 324 of this title (relating to Used Oil Standards)."

(7) In 40 CFR §262.13(c)(5), "40 CFR part 266 subpart G" is changed to "Subchapter H, Division 4 of this chapter (relating to Spent Lead-Acid Batteries Being Reclaimed)."

(8) In 40 CFR §262.13(c)(6), "40 CFR 261.9 and 40 CFR part 273" is changed to "40 CFR §261.9 as adopted under §335.504(a)(1) of this title and Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule)."

(9) In 40 CFR §262.13(c)(7), "listed in 40 CFR part 261 subpart D or exhibiting one or more characteristics in 40 CFR part 261 subpart C" is changed to

"listed in 40 CFR Part 261, Subpart D or exhibiting one or more characteristics in 40 CFR Part 261, Subpart C as adopted under §335.504 of this title"; "§262.213" is changed to "§335.59 of this title (relating to Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities)"; and "§262.200" is changed to "40 CFR §262.200 as adopted under §335.59 of this title."

(10) In 40 CFR §262.13(c)(8), "subpart L of this part" is changed to "§335.60 of this title (relating to Alternative Standards for Episodic Generation)."

(11) In 40 CFR §262.13(c)(9), "§266.500" is changed to "§335.751 of this title (relating to Definitions); "40 CFR part 266 subpart P" is changed to "Subchapter W of this chapter (relating to Management Standards for Hazardous Waste Pharmaceuticals)"; and "§266.506" is changed to "§335.763 of this title (relating to Conditional Exemptions for Hazardous Waste Pharmaceuticals that are Controlled Substances and Household Waste Pharmaceuticals Collected in a Take-back Event or Program)."

(12) In 40 CFR §262.13(e), "§262.10" is changed to "§335.52 of this title (relating to Purpose, Scope, and Applicability)"; and "§§262.14, 262.15, 262.16 or 262.17" is changed to "40 CFR §§262.14, 262.15, 262.16 or 262.17 as adopted under subsections (c) - (f) of this section."

(13) In 40 CFR §262.13(f)(1)(i):

(A) "§262.14" is changed to "40 CFR §262.14 as adopted in subsection (c) of this section";

(B) "§260.10 of this chapter" is changed to "§335.1 of this title";

and

(C) "part 261 subpart C of this chapter" is changed to "40 CFR Part 261, Subpart C as adopted under §335.504 of this title."

(14) In 40 CFR §262.13(f)(1)(ii), "40 CFR 260.10 of this chapter" is changed to "§335.1 of this title."

(15) In 40 CFR §262.13(f)(1)(iii), "40 CFR part 279" is changed to "Chapter 324 of this title."

(16) In 40 CFR §262.13(f)(2)(i):

(A) "§§261.3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i)" are changed to "40 CFR §§261.3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i) as adopted under §335.504 of this title";

(B) "§268.3(a)" is changed to "40 CFR §268.3(a), as adopted under §335.431(c) of this title (relating to Purpose, Scope, and Applicability)";

(C) "§268.40" is changed to "40 CFR §268.40 as adopted under §335.431(c) of this title"; and

(D) "§262.11" is changed to "§335.504 of this title and 40 CFR §262.11(e) - (g) as adopted under subsection (a) of this section."

(17) In 40 CFR §262.13(f)(2)(ii), "§260.10 of this chapter" is changed to "§335.1 of this title."

(c) The commission adopts by reference the regulations contained in 40 CFR §262.14, as adopted in the *Federal Register* on November 28, 2016 (81 FR 85732), and amended in the *Federal Register* through February 22, 2019 (84 FR 5816) subject to the changes in this subsection.

(1) In 40 CFR §262.14(a), "parts 124, 262 (except §§262.10 - 262.14) through 268 and 270 of this chapter" is changed to "40 CFR Part 262, except §§262.10 - 262.14, as adopted in this subchapter; §335.2 of this title (relating to Permit Required); Subchapters D - H and O of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Permitting Standards for

Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); and Chapters 37, 39, and 305 of this title (relating to Financial Assurance; Public Notice; and Consolidated Permits)."

(2) In 40 CFR §262.14(a)(1), "§260.10 of this chapter" is changed to "§335.1 of this title (relating to Definitions)."

(3) In 40 CFR §262.14(a)(2), "§262.11(a) through (d)" is changed to "§335.504 of this title."

(4) In 40 CFR §262.14(a)(3), "§§261.31 or 261.33(e) of this chapter" is changed to "40 CFR §261.31 or §261.33(e) as adopted under §335.504 of this title."

(5) In 40 CFR §262.14(a)(3)(ii), "§262.17(a) through (g)" is changed to "40 CFR §262.17(a) - (g) as adopted under subsection (f) of this section."

(6) In 40 CFR §262.14(a)(4)(iii), "§262.16(b)(2) through (f)" is changed to "40 CFR §262.16(b)(2) - (f) as adopted under subsection (e) of this section."

(7) In 40 CFR §262.14(a)(5)(i), "part 270 of this chapter" is changed to "40 CFR Part 270 or Chapter 335 of this title";

(8) In 40 CFR §262.14(a)(5)(ii), "parts 265 and 270 of this chapter" is changed to "40 CFR Parts 265 and 270 or Chapter 335 of this title:"

(9) In 40 CFR §262.14 (a)(5)(vii), after "part 273 of this chapter" is changed to "40 CFR Part 273 or Chapter 335, Subchapter H, Division 5 of this title (relating to Universal Waste Rule)."

(10) In 40 CFR §262.14(a)(5)(viii)(A), "§260.10 of this chapter" is changed to "§3.2 of this title (relating to Definitions)."

(11) In 40 CFR §262.14(a)(5)(ix), "§266.500" is changed to "§335.751 of this title (relating to Definitions)."

(12) In 40 CFR §262.14(a)(5)(x), "§266.500" is changed to "§335.751 of this title"; and "§§266.502(l) and 266.503(b)" is changed to "§335.755(l) and §335.757(b) of this title (relating to Standards for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals; and Standards for Healthcare Facilities Managing Potentially Creditable Hazardous Waste Pharmaceuticals)."

(13) In 40 CFR §262.14(a)(5)(xi), "§261.4(j) of this chapter" is changed to "§335.281 of this title (relating to Airbag Waste)."

(14) In 40 CFR §262.14(c), "subpart L of this part" is changed to "§335.60 of this title (relating to Alternative Standards for Episodic Generation)"; and "§§262.15, 262.16, and 262.17" is changed to "40 CFR §§262.15, 262.16 and 262.17 as adopted under subsections (d) - (f) of this section."

(d) The commission adopts by reference the regulations contained in 40 CFR §262.15, as adopted in the *Federal Register* on November 28, 2016 (81 FR 85732), subject to the changes in this subsection.

(1) In 40 CFR §262.15(a):

(A) "§261.31 or §261.33(e) of this chapter" is changed to "40 CFR §261.31 or §261.33(e) as adopted under §335.504 of this title";

(B) "parts 124, 264 through 267, and 270 of this chapter" is changed to "§335.2 of this title; Subchapters E - H of this chapter; Chapters 37, 39, and 305 of this title; and Chapter 281 of this title (relating to Consolidated Permits); and

(C) "§262.16(b) or §262.17(a), except as required in §262.15(a)(7) and (8)" is changed to "40 CFR §262.16(b) or §262.17(a), except as required in §262.15(a)(7) and (8) as adopted under subsections (d) - (f) of this section."

(2) In 40 CFR §262.15(a)(1), "§262.16(b) or §262.17(a)" is changed to "40 CFR §262.16(b) or §262.17(a)" as adopted under subsections (e) and (f) of this section.

(3) In 40 CFR §262.15(a)(3)(i), "appendix V of part 265" is changed to "Appendix V of 40 CFR Part 265 as adopted under §335.112(a)(25)(D) of this title (relating to Standards)"; and "§265.17(b) of this chapter" is changed to "40 CFR §265.17(b) as adopted under §335.112(a)(1) of this title."

(4) In 40 CFR §262.15(a)(3)(ii), "appendix V of part 265" is changed to "Appendix V of 40 CFR Part 265 as adopted under §335.112(a)(24)(D) of this title"; and "§265.17(b) of this chapter" is changed to "40 CFR §265.17(b) as adopted under §335.112(a)(1) of this title."

(5) In 40 CFR §262.15(a)(6), "§261.31 or §261.33(e) of this chapter" is changed to "40 CFR §261.31 or §261.33(e) as adopted under §335.504 of this title."

(6) In 40 CFR §262.15(a)(6)(i), "§262.16(b) or §262.17(a)" is changed to "40 CFR §262.16(b) or §262.17(a) as adopted under subsections (e) and (f) of this section."

(7) In 40 CFR §262.15(a)(6)(ii)(A), "§262.16(b) or §262.17(a)" is changed to "40 CFR §262.16(b) or §262.17(a) as adopted under subsections (e) and (f) of this section."

(8) In 40 CFR §262.15(a)(7), "§262.16(b)(8)" is changed to "40 CFR §262.16(b)(8) as adopted under subsection (e) of this section"; and "§262.16(b)(9)" is changed to "40 CFR §262.16(b)(9) as adopted under subsection (e) of this section."

(9) In 40 CFR §262.15(a)(8), "subpart M of this part" is changed to "40 CFR Part 262, Subpart M as adopted under §335.61 of this title (relating to Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators)."

(e) The commission adopts by reference the regulations contained in 40 CFR §262.16, as adopted in the *Federal Register* on November 28, 2016 (81 FR 85732), subject to the changes in this subsection.

(1) In the introductory text to 40 CFR §262.16, "parts 124, 264 through 267, and 270 of this chapter" is changed to "Chapters 37, 39, 281 and 305 of this title, §335.2 of this title and Subchapters E - H of this chapter."

(2) In 40 CFR §262.16(a), "§260.10 of this chapter" is changed to "§335.1 of this title."

(3) In 40 CFR §262.16(b), "paragraphs (d) and (e)" is changed to "paragraphs (c) and (d)";

(4) In 40 CFR §262.16(b)(2)(v)(A), "appendix V of part 265" is changed to "Appendix V of 40 CFR Part 265 as adopted under §335.112(A)(25)(D) of this title"; and "§265.17(b) of this chapter" is changed to "40 CFR §265.17(b) as adopted under §335.112(a)(1) of this title."

(5) In 40 CFR §262.16(b)(2)(v)(B), "appendix V of part 265" is changed to "Appendix V of 40 CFR Part 265 as adopted under §335.112(A)(25)(D) of this title"; and "§265.17(b) of this chapter" is changed to "40 CFR §265.17(b) as adopted under §335.112(a)(1) of this title."

(6) In 40 CFR §262.16(b)(3)(ii)(A), "§265.17(b) of this chapter" is changed to "40 CFR §265.17(b) as adopted under §335.112(a)(1) of this title."

(7) In 40 CFR §262.16(b)(3)(vi), "§261.3(c) or (d) of this chapter" is changed to "40 CFR §261.3(c) or (d) as adopted under 335.504"; and "parts 262, 263, 265 and 268 of this chapter" is changed to "Chapter 335 of this title and all applicable chapters of this title."

(8) In 40 CFR §262.16(b)(3)(vii)(A)(1), "§261.21 or §261.23 of this chapter" is changed to "40 CFR §261.21 or §261.23 as adopted under §335.504 of this title"; and "§265.17(b) of this chapter" is changed to "40 CFR §265.17(b) as adopted under §335.112(a)(1) of this title."

(9) In 40 CFR §262.16(b)(3)(vii)(B), "§260.11" is changed to "40 CFR §260.11, which is incorporated by reference under §335.31 of this title (relating to Incorporation of References)."

(10) In 40 CFR §262.16(b)(3)(vii)(C)(1), "part 265 appendix V " is changed to "Appendix V of 40 CFR Part 265 as adopted under §335.112(A)(24)(D) of this title"; and "§265.17(b) of this chapter" is changed to "40 CFR §265.17(b) as adopted under §335.112(a)(1) of this title."

(11) In 40 CFR §262.16(b)(3)(vii)(C)(2), "§265.17(b) of this chapter" is changed to "40 CFR §265.17(b) as adopted under §335.112(a)(1) of this title."

(12) In 40 CFR §262.16(b)(4)(i), "Subpart W of 40 CFR part 265 (except §265.445 (c))" is changed to "40 CFR Part 265, Subpart W (except §265.445(c) as adopted under §335.112(a)(18) of this title."

(13) In 40 CFR §262.16(b)(4)(ii), "§262.15" is changed to "40 CFR §262.15 as adopted under subsection (d) of this section."

(14) In 40 CFR §262.16(b)(5), "40 CFR part 265 subpart DD" is changed to "40 CFR Part 265, Subpart DD as adopted under §335.112(a)(22) of this title."

(15) In 40 CFR §262.16(b)(5)(i), "40 CFR 265.1101" is changed to "40 CFR §265.1101 as adopted under §335.112(a)(22) of this title."

(16) In 40 CFR §262.16(b)(7), "40 CFR part 268" is changed to "40 CFR Part 268 as adopted under Subchapter O of this title."

(17) In 40 CFR §262.16(b)(8)(iv)(A) and (B), "(a)(8)(ii)" is changed to "(b)(8)(ii)."

(18) In 40 CFR §262.16(d), "40 CFR parts 264, 265, 267, 268, and 270 of this chapter" is changed to "Chapter 335 of this title and the applicable chapters of this title" and the terms "EPA" and "Regional Administrator" are changed to the term "executive director."

(19) In 40 CFR §262.16(e), "\$264.72 or §265.72 of this chapter" is changed to "40 CFR §264.72 or §265.72 as adopted under §§335.112 or 335.152 of this title (relating to Standards and Standards)."

(20) In 40 CFR §262.16(f), "subpart L of this part" is changed to "§335.60 of this title (relating to Alternative Standards for Episodic Generation)"; and "§262.17" is changed to "40 CFR §262.17 as adopted under subsection (f) of this section."

(f) The commission adopts by reference the regulations contained in 40 CFR

§262.17, as adopted in the *Federal Register* on November 28, 2016 (81 FR 85732), subject to the changes in this subsection.

(1) In the introductory text to 40 CFR §262.17, "parts 124, 264 through 267, and 270 of this chapter" is changed to "Chapters 37, 39, 281 and 305 of this title, §335.2 of this title, and Subchapters E - H of this chapter."

(2) In 40 CFR §262.17(a)(1)(i), "subparts AA, BB, and CC of 40 CFR part 265" is changed to "40 CFR Part 265, Subparts AA, BB, and CC as adopted under §335.112(a)(19) - (21) of this title (relating to Standards)."

(3) In 40 CFR §262.17(a)(1)(vii)(A), "appendix V of part 265" is changed to "Appendix V of 40 CFR Part 265 as adopted under §335.112(A)(25)(D) of this title"; and "§265.17(b) of this chapter" is changed to "40 CFR §265.17(b) as adopted under §335.112(a)(1) of this title."

(4) In 40 CFR §262.17(a)(1)(vii)(B), "appendix V of part 265" is changed to "Appendix V of 40 CFR Part 265 as adopted under §335.112(A)(24)(D) of this title"; and "§265.17(b) of this chapter" is changed to "40 CFR §265.17(b) as adopted under §335.112(a)(1) of this title."

(5) In 40 CFR §262.17(a)(2), "subparts J, except §265.197(c) of Closure and post-closure care and §265.200" is changed to "40 CFR Part 265, Subpart J, except

§265.197(c) of Closure and post-closure care and §265.200 as adopted under §335.112(a)(9) of this title"; and "AA, BB, and CC of 40 CFR part 265" is changed to "40 CFR Part 265, Subparts AA, BB, and CC as adopted under §335.112(a)(19) - (21) of this title."

(6) In 40 CFR §262.17(a)(3)(i), "Subpart W of 40 CFR part 265 " is changed to "40 CFR Part 265, Subpart W as adopted under §335.112(a)(18) of this title."

(7) In 40 CFR §262.17(a)(3)(ii), "§262.15" is changed to "40 CFR §262.15 as adopted under subsection (d) of this section."

(8) In 40 CFR §262.17(a)(4), "40 CFR part 265 subpart DD" is changed to "40 CFR Part 265, Subpart DD as adopted under §335.112(a)(22) of this title."

(9) In 40 CFR §262.17(a)(4)(i), "40 CFR 265.1101" is changed to "40 CFR §265.1101 as adopted under §335.112(a)(22) of this title."

(10) In 40 CFR §262.17(a)(6), "subpart M of this part" is changed to "40 CFR Part 262, Subpart M as adopted under §335.61."

(11) In 40 CFR §262.17(a)(7)(i)(A), "(a)(7)(iv)" is changed to "(a)(7)(iv)(C)."

(12) In 40 CFR §262.17(a)(8)(ii)(B), "§265.310 of this chapter" is changed to "40 CFR §265.310 as adopted under §335.112(a)(13) of this title"; and "§265.445(b)" is changed to "40 CFR §265.445(b) as adopted under §335.112(a)(18) of this title."

(13) In 40 CFR §262.17(a)(8)(iii)(A)(2), "§261.3(d) of this chapter" is changed to "40 CFR §261.3(d) as adopted under §335.504 of this title."

(14) In 40 CFR §262.17(a)(8)(iii)(A)(3), "parts 262, 263, 265 and 268 of this chapter" is changed to "Chapter 335 of this title, and all applicable chapters of this title."

(15) In 40 CFR §262.17(a)(8)(iii)(A)(4), "(a)(8)(ii)(A)(2)" is changed to "(a)(8)(iii)(A)(2)"; "§265.310 of this chapter" is changed to "40 CFR §265.310 as adopted under §335.112(a)(13) of this title"; and "subparts G and H of part 265 of this chapter" is changed to "40 CFR Part 265, Subparts G and H as adopted under §335.112(a)(6) and (7) of this title."

(16) In 40 CFR §262.17(a)(8)(iv), "§265.445(a) and (b) of this chapter" is changed to "40 CFR §265.445(a) and (b) as adopted under §335.112(a)(18) of this title."

(17) In 40 CFR §262.17(a)(9), "40 CFR part 268" is changed to "40 CFR Part 268 as adopted under Subchapter O of this title."

(18) In 40 CFR §262.17(b), "40 CFR parts 124, 264 through 268, and part 270 of this chapter" is changed to "Chapters 37, 39, 281 and 305 of this title, §335.2 of this title and Subchapters E - H and O of this chapter" and the terms "EPA" and "Regional Administrator" are changed to the term "executive director."

(19) In 40 CFR §262.17(c), "parts 124, 264 through 267 and part 270 of this chapter" is changed to "Chapters 37, 39, 281 and 305 of this title, §335.2 of this title and Subchapters E - H and O of this chapter."

(20) In 40 CFR §262.17(c)(4)(i)(C), "subpart DD of 40 CFR part 265" is changed to "40 CFR Part 265, Subpart DD as adopted under §335.112(a)(22) of this title"; and "40 CFR 265.1101" is changed to "40 CFR §265.1101 as adopted under §335.112(a)(22) of this title."

(21) In 40 CFR §262.17(c)(4)(ii), "subparts G and H of part 265" is changed to "40 CFR Part 265, Subparts G and H as adopted under §335.112(a)(6) and (7) of this title."

(22) In 40 CFR §262.17(d), "parts 124, 264 through 267, 270" is changed to "Chapters 37, 39, 281 and 305 of this title, §335.2 of this title and Subchapters E - H of this chapter."

(23) In 40 CFR §262.17(e), "40 CFR parts 124, 264 through 268, and 270 of this chapter" is changed to "Chapters 37, 39, 281 and 305 of this title, §335.2 of this title and Subchapters E - H and O of this chapter"; and the terms "EPA" and "Regional Administrator" are changed to the term "executive director."

(24) In 40 CFR §262.17(f), "\$260.10 of this chapter" is changed to "\$3.2 of this title (relating to Definitions)" and "parts 124, 264 through 268, and 270 of this chapter" is changed to "Chapters 37, 39, 281 and 305 of this title, §335.2 of this title and Subchapters E - H and O of this chapter."

(25) In 40 CFR §262.17(f)(1), "EPA" is changed to "TCEQ"; and "EPA Form 8700-12" is changed to "a method approved by the executive director."

(26) In 40 CFR §262.17(f)(1)(ii), "Site ID form (EPA Form 8700-12)" is changed to "notification using a method approved by the executive director."

(27) In 40 CFR §262.17(f)(3), "\$262.10(a)(1)(iii)" is changed to "\$335.52(a)(1)(C) of this title (relating to Purpose, Scope, and Applicability)."

(28) In 40 CFR §262.17(g), "\$264.72 or §265.72 of this chapter" is changed to "40 CFR §264.72 or §265.72 as adopted under §§335.112 or 335.152 of this title."

(g) The commission adopts by reference the regulations contained in 40 CFR §262.18 (EPA identification numbers and re-notification for small quantity generators and large quantity generators), as adopted in the *Federal Register* on November 28, 2016 (81 FR 85732), subject to the changes in this subsection.

(1) The term "Administrator" is changed to the term "executive director."

(2) The generator shall provide the information required by the RCRA Site Identification Form (EPA Form 8700-12) using a method approved by the executive director.

(3) In 40 CFR §262.18(d)(1), the re-notification required of a small and large quantity generator must be made to the executive director instead of the EPA.

(4) In 40 CFR §262.18(d)(2), "Biennial Report required under §262.41" is changed to "Biennial Report required under 40 CFR §262.41 as adopted under §335.56 of this title (relating to Recordkeeping and Reporting Applicable to Small and Large Quantity Generators).

#### **§335.54. Hazardous Waste Manifest.**

The commission adopts by reference the regulations contained in 40 Code of Federal Regulations (CFR) Part 262, Subpart B, §§262.20 (General requirements),

262.21(a) - (f)(4) - (8) and (g) - (m) (Manifest tracking numbers, manifest printing, and obtaining manifests), 262.22 (Number of copies), 262.23 (Use of the manifest), 262.24 (Use of the electronic manifest), 262.25 (Electronic manifest signatures), and 262.27 (Waste minimization certification), as amended in the *Federal Register* through January 3, 2018 (83 FR 420), subject to the changes in this subsection.

(1) In the event of a discharge of hazardous waste on a public or private right-of-way during the transportation of hazardous wastes the generator or transporter must also comply with the requirements of §335.93 of this title (relating to Hazardous Waste Discharges) and Chapter 327 of this title (relating to Spill Prevention and Control).

(2) The reference to §262.40(a)(Recordkeeping) means 40 CFR §262.40(a) as adopted under §335.56 of this title (relating to Recordkeeping and Reporting Applicable to Small and Large Quantity Generators).

(3) References to 40 CFR §§264.71, 264.72, or 265.72 mean as the section is adopted under §335.112 or §335.152 of this title (relating to Standards).

(4) Generators shall comply with §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste).

(5) Users of the manifest are subject to 40 CFR §260.2(c) as adopted under §335.46(b) of this title (relating to Sharing of Information).

**§335.55. Pre-Transport Requirements Applicable to Small and Large Quantity Generators.**

The commission adopts by reference the regulations contained in 40 Code of Federal Regulations (CFR) Part 262, Subpart C, §§262.30 - 262.35 as amended in the *Federal Register* through November 28, 2016 (81 FR 85732), with the reference to §268.42(c) changed to "40 CFR §268.42(c) as adopted under §335.431 of this title (relating to Purpose, Scope, and Applicability)."

**§335.56. Recordkeeping and Reporting Applicable to Small and Large Quantity Generators.**

The commission adopts by reference the regulations contained in 40 Code of Federal Regulations (CFR) Part 262, Subpart D, §§262.40 - 262.44 as amended in the *Federal Register* through November 28, 2016 (81 FR 85732), subject to the changes in this subsection.

(1) The term "Administrator" is changed to the term "executive director."

(2) The terms "Regional Administrator" and "EPA Regional Administrator for the Region" are changed to the term "executive director."

(3) Under 40 CFR §262.41:

(A) a large quantity generator shall submit the information in United States Environmental Protection Agency (EPA) Form 8700-13 A/B required by 40 CFR §262.41 (Biennial report for large quantity generators), using the method approved by the executive director; and

(B) "in accordance with the provisions of 40 CFR parts 264, 265, 266, 267 and 270" means in accordance with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) and the applicable chapters of this title.

(4) References to "§261.31" or "§261.33(e)" mean as these sections are adopted under §335.504 of this title (relating to Hazardous Waste Determination).

(5) References to "§262.11(f)" or "§262.17(f)" mean as these sections are adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste).

(6) Reference to "§262.23(a)" means 40 CFR §262.23(a) as that section is adopted under §335.54 of this title (relating to Hazardous Waste Manifest).

(7) Reference to §262.83(g) means 40 CFR §262.83(g) as that section is adopted under §335.58 of this title (relating to Transboundary Movements of Hazardous Waste for Recovery or Disposal)."

(8) References to "40 CFR §264.72(e)(1) through (6)" or "40 CFR §265.72(e)(1) through (6)" mean as these sections are adopted under §335.112 and §335.152 of this title (relating to Standards).

**§335.57. Farmers.**

The commission adopts by reference the regulations contained in 40 Code of Federal Regulations (CFR) Part 262, Subpart G, §262.70 as amended in the *Federal Register* through July 14, 2006 (71 FR 40254), subject to the clarifications in this subsection.

(1) Reference to "§261.7(b)(3)" is changed to "40 CFR §261.7(b)(3) as adopted under §335.504 of this title (relating to Hazardous Waste Determination)."

(2) Reference to "40 CFR parts 264, 265, 268, or 270" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Solid Waste), or the applicable chapters of this title."

**§335.58. Transboundary Movements of Hazardous Waste for Recovery or Disposal.**

The commission adopts by reference the regulations contained in 40 Code of Federal Regulations Part 262, Subpart H, §§262.80 - 262.84 as amended in the *Federal Register* through August 6, 2018 (83 FR 38262). Availability and confidentiality of hazardous waste export, import, and transit information is subject to 40 CFR §260.2(d) as adopted under §335.46(c) of this title (relating to Sharing of Information).

**§335.59. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities.**

The commission adopts by reference the regulations contained in 40 Code of Federal Regulations (CFR) Part 262, Subpart K, §§262.200 - 262.216 as amended in the *Federal Register* through November 28, 2016 (81 FR 85732), subject to the changes in this subsection.

(1) "Operating under this subpart" is changed to "operating under 40 CFR Part 262, Subpart K as adopted under this section."

(2) "Provisions of this subpart" is changed to "provisions of 40 CFR Part 262, Subpart K as adopted under this section."

(3) "Requirements of this subpart" is changed to "requirements of 40 CFR Part 262, Subpart K as adopted under this section."

(4) An eligible academic entity notifying in accordance with 40 CFR §262.201 and §262.203 shall notify using a method approved by the executive director.

(5) References to "§260.10" are changed to "§335.1 of this title (relating to Definitions)."

(6) References to 40 CFR §§261.2, 261.3 and 261.5 mean as these sections are adopted under §335.504 of this title (relating to Hazardous Waste Determination).

(7) References to "40 CFR part 261, subpart D", "40 CFR part 261, subpart C", and "§261.33(e)" mean as these parts and this section are adopted under §335.504 of this title.

(8) Reference to "40 CFR part 262" means "40 CFR Part 262 as adopted under this subchapter."

(9) References to 40 CFR §§262.11, 262.13, 262.14, 262.15, 262.16, and 262.17 mean as these sections are adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste).

(10) References to 40 CFR §§262.203 and 262.206 - 262.214 mean as these sections are adopted under this section.

(11) Reference to "§265.16(e)" is changed to "40 CFR §265.16(e) as adopted under §335.112 of this title (relating to Standards)."

(12) In 40 CFR §262.213(a)(1), "1 kg or solid reactive acutely hazardous unwanted material" is changed to "1 kg of solid reactive acutely hazardous unwanted material."

(13) Eligible academic entities who are also registered generators as defined in §335.13(d) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste) must report any laboratory waste in accordance with §335.9(a)(2) of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators). Such generators must report the management of the laboratory waste but are not required to report the quantities generated.

**§335.60. Alternative Standards for Episodic Generation.**

The commission adopts by reference the regulations contained in 40 Code of Federal Regulations (CFR) Part 262, Subpart L, as adopted in the *Federal Register* on November 28, 2016 (81 FR 85732), subject to the changes in this subsection.

(1) Reference to "subpart B of this part" is changed to "40 CFR Part 262, Subpart B as adopted under §335.54 of this title (relating to Hazardous Waste Manifest)."

(2) Reference to "§260.10 of this chapter" is changed to "§335.1 of this title (relating to Definitions)."

(3) The term "EPA" is changed to the term "executive director."

(4) The term "Regional Administrator" is changed to the term "executive director."

(5) References to 40 CFR "§262.16(b)(2) of this chapter", "§262.16(b)(3)", and "§262.16(b)(9)(i)" mean as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste).

(6) Under 40 CFR §262.232(a)(1), the reference to "§262.233" means as 40 CFR §262.233 is adopted under this section.

(7) Under 40 CFR §262.232(a)(2) the very small quantity generator shall:

(A) notify the executive director 30 days prior to initiating a planned episodic event by submitting the information required in United States Environmental Protection Agency (EPA) Form 8700-12 using a method approved by the executive director;

(B) notify the executive director within 72 hours of an unplanned event in a manner approved by the executive director;

(C) notify the executive director of an unplanned episodic event by submitting the information required in EPA Form 8700-12 using a method approved by the executive director.

(D) When complying with the emergency procedures for a very small quantity generator under 40 CFR §262.16(b)(9)(i) referenced in 40 CFR §262.232(a)(2) or for a small quantity generator referred to in 40 CFR §262.232(b)(2), very small and small quantity generators shall also notify in accordance with and comply with §335.93 of this title (relating to Hazardous Waste Discharges), and Chapter 327 of this title (relating to Spill Prevention and Control).

(8) Under 40 CFR §262.232(a)(3), the very small quantity generator that has not been issued an EPA identification (ID) number must obtain an EPA ID number by submitting the information required in EPA Form 8700-12 to the executive director using a method approved by the executive director.

(9) In 40 CFR §262.232(b)(4), "from an episodic event waste on drip pads" is changed to "from an episodic event on drip pads."

(10) In 40 CFR §262.232(b)(4)(ii)(C), "the date upon which each period of accumulation begins and ends" is changed to "the date upon which each episodic event begins."

**§335.61. Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators.**

The commission adopts by reference the regulations contained in 40 Code of Federal Regulations (CFR) Part 262, Subpart M, §§262.250 - 262.256 and §§262.260 - 262.265, as adopted in the *Federal Register* on November 28, 2016 (81 FR 85732), subject to the changes in this subsection.

(1) "Regulations of this subpart" means regulations of 40 CFR Part 262, Subpart M as adopted under this section.

(2) "Standards of this part" means standards of 40 CFR Part 262 as adopted under this subchapter.

(3) Reference to "§261.3(c) or (d) of this chapter" is changed to "40 CFR §261.3(c) or (d) as adopted under §335.504 of this title (relating to Hazardous Waste Determination)."

(4) References to 40 CFR §§262.250, 262.252, 262.256, 262.260, 262.264, and 262.265 mean as these sections are adopted by reference under this section.

(5) Reference to "part 262 of this chapter" mean "40 CFR Part 262 as adopted under this subchapter."

(6) Reference to "part 263 of this chapter" is changed to "§335.11 and §335.14 of this title and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste)."

(7) Reference to "the applicable requirements and conditions for exemption in Parts 262, 263, and 265 of this chapter" is changed to "the applicable requirements and conditions for exemption in this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

**SUBCHAPTER C: STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS  
WASTE**

**[§§335.61 - 335.63, 335.65 - 335.71, 335.73 - 335.79]**

**Statutory Authority**

The repealed rules are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The repealed rules are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed repealed rules implement THSC, Chapter 361.

**[§335.61. Purpose, Scope and Applicability.]**

[(a) Except as provided in subsection (b) of this section, this subchapter establishes standards for generators of hazardous waste. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General).]

[(b) The provisions of this subchapter with which a generator who stores, processes or disposes of hazardous waste on-site must comply are §335.62 of this title (relating to Hazardous Waste Determination and Waste Classification), §335.63 of this title (relating to EPA Identification Numbers), §335.70 of this title (relating to Recordkeeping), §335.73 of this title (relating to Additional Reporting), and, if applicable, §335.77 of this title (relating to Farmers), and §335.69 of this title (relating to Accumulation Time).]

[(c) Any person who imports hazardous waste into the state from a foreign country shall comply with standards applicable to generators.]

[(d) An owner or operator who initiates a shipment of hazardous waste from a processing, storage or disposal facility must comply with the generator standards 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) and §335.13 of this title (relating to Recordkeeping and Reporting

Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and this subchapter. The provisions of §335.69 of this title are applicable to on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §335.69 of this title only apply to owners or operators who are shipping hazardous waste which they generate at that facility.]

[(e) A farmer who generates waste pesticides which are hazardous waste and who complies with §335.77 of this title is not required to comply with this chapter with respect to those pesticides.]

[(f) A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in Subchapters E, F, H, and O of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste) and with Chapter 305 of this title (relating to Consolidated Permits).]

[(g) Section 335.78(c) and (d) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) must be used to determine the applicability of provisions of this subchapter that are dependent on calculations of the quantity of hazardous waste generated per month.]

[(h) The requirements of this subchapter do not apply to persons responding to an explosives or munitions emergency in accordance with §335.41(d)(2) of this title (relating to Purpose, Scope and Applicability).]

[(i) For purposes of this subsection, the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in 40 Code of Federal Regulations §262.200. The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of §335.79 of this title (relating to Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities) are not subject to:]

[(1) for large and small quantity generators, the requirements of §335.504 of this title (relating to Hazardous Waste Determination) and §335.69 of this title, except as provided in §335.79 of this title; and]

[(2) for conditionally exempt small quantity generators, the conditions of §335.78 of this title, except as provided in §335.79 of this title.]

**[§335.62. Hazardous Waste Determination and Waste Classification.]**

[A person who generates a solid waste must determine if that waste is hazardous pursuant to §335.504 of this title (relating to Hazardous Waste Determination) and must classify any nonhazardous waste under the provisions of

Subchapter R of this chapter (relating to Waste Classification). If the waste is determined to be hazardous, the generator must refer to this chapter and to 40 Code of Federal Regulations Parts 261, 264, 265, 266, 267, 268, and 273 for any possible applicable exclusions or restrictions pertaining to management of the specific waste.]

**[§335.63. EPA Identification Numbers.]**

[(a) A generator must not store, process, dispose of, transport, or offer for transportation, hazardous waste without having received an Environmental Protection Agency (EPA) identification number.]

[(b) A generator must not offer hazardous waste to transporters or to storage, processing or disposal facilities that have not received an EPA identification number.]

[(c) A recognized trader must not arrange for import or export of hazardous waste without having received an EPA identification number from the EPA Administrator.]

**[§335.65. Packaging.]**

[Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the

applicable Department of Transportation regulations on packaging under 49 Code of Federal Regulations Parts 173, 178, and 179.]

**[§335.66. Labeling.]**

[Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with applicable Department of Transportation regulations on hazardous materials under 49 Code of Federal Regulations Part 172.]

**[§335.67. Marking.]**

[(a) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 Code of Federal Regulations (CFR) Part 172.]

[(b) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each container of 119 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR §172.304: HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency (EPA).]

**[Figure: 30 TAC §335.67(b)]**

[Generator's Name and Address \_\_\_\_\_  
Generator EPA Identification Number \_\_\_\_\_  
Manifest Tracking Number \_\_\_\_\_]

**[§335.68. Placarding.]**

[Before transporting or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 Code of Federal Regulations (CFR) Part 172, Subpart F. If placards are not required, a generator must mark each motor vehicle according to 49 CFR §171.3(b)(1), which states that no person may accept for transportation, transport, or deliver a hazardous waste for which a manifest is required unless that person has marked each motor vehicle used to transport hazardous waste in accordance with §390.21 or §1058.2 even though placards may not be required.]

**[§335.69. Accumulation Time.]**

[(a) Generators that comply with the requirements of paragraph (1) of this subsection are exempt from all requirements adopted by reference in §335.112(a)(6)

and (7) of this title (relating to Standards), except 40 Code of Federal Regulations (CFR) §265.111 and §265.114. Except as provided in subsections (f) - (h) and (n) of this section, a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that:]

[ (1) the waste is placed:]

[ (A) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, BB, and CC, as adopted by reference under §335.112(a) of this title; and/or]

[ (B) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, and CC, except 40 CFR §265.197(c) and §265.200, as adopted by reference under §335.112(a) of this title; and/or]

[ (C) on drip pads and the generator complies with §335.112(a)(18) of this title and maintains the following records at the facility: a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or]

[(D) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:]

[(i) a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90-day limit, and documentation that the procedures are complied with; or]

[(ii) documentation that the unit is emptied at least once every 90 days;]

[(2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and]

[(3) while being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and]

[(4) the generator complies with the following:]

[(A) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D and with 40 CFR §265.16, as adopted by reference in §335.112(a) of this title;]

[(B) all applicable requirements under 40 CFR Part 268, as adopted by reference under §335.431 of this title (relating to Purpose, Scope, and Applicability); and]

[(C) Section 335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).]

[(b) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kilogram of acute hazardous waste listed in 40 CFR §261.31 or §261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR Parts 264, 265, and 267 and the permit requirements of 40 CFR Part 270 unless he has been granted an extension to the 90-day period. Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.]

[(c) Persons exempted under this provision, who generate hazardous waste, are still subject to the requirements in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General) applicable to generators of Class 1 waste.]

[(d) A generator, other than a conditionally exempt small quantity generator regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 CFR §261.31 or §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (a) or (f) of this section provided he:]

[(1) complies with 40 CFR §§265.171, 265.172, and 265.173(a), as adopted by reference under §335.112(a) of this title; and]

[(2) marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.]

[(e) A generator who accumulates either hazardous waste or acutely hazardous waste listed in 40 CFR §261.31 or §261.33(e) in excess of the amounts listed in subsection (d) of this section at or near any point of generation must, with respect to

that amount of excess waste, comply within three days with subsection (a) of this section or other applicable provisions of this chapter. During the three-day period, the generator must continue to comply with subsection (d) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.]

[(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:]

[(1) the quantity of waste accumulated on-site never exceeds 6,000 kilograms;]

[(2) the generator complies with the requirements of 40 CFR Part 265, Subpart I, as adopted by reference under §335.112(a) of this title, except 40 CFR §265.176 and §265.178;]

[(3) the generator complies with the requirements of 40 CFR §265.201, as adopted by reference under §335.112(a) of this title;]

[(4) the generator complies with the requirements of:]

[(A) subsection (a)(2) and (3) of this section;]

[(B) 40 CFR Part 265, Subpart C, as adopted by reference under §335.112(a) of this title;]

[(C) all applicable requirements under 40 CFR Part 267, as adopted by reference under §335.601 and §335.602 of this title (relating to Purpose, Scope, and Applicability; and Standards); and]

[(D) all applicable requirements under 40 CFR Part 268, as adopted by reference under §335.431 of this title; and]

[(5) the generator complies with the following requirements.]

[(A) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subparagraph (D) of this paragraph. This employee is the emergency coordinator.]

[(B) The generator must post the following information next to telephones that may be used to summon emergency assistance:]

[(i) the name and telephone number of the emergency coordinator;]

[(ii) location of fire extinguishers and spill control material, and, if present, fire alarm; and]

[(iii) the telephone number of the fire department, unless the facility has a direct alarm.]

[(C) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;]

[(D) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows.]

[(i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher.]

[(ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil.]

[(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using its 24-hour toll free number (800) 424-8802) and the commission according to the procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The reports must include the following information:]

[(I) the name, address, and United States Environmental Protection Agency (EPA) identification number of the generator;]

[(II) date, time, and type of incident (e.g., spill or fire);]

[(III) quantity and type of hazardous waste involved in the incident;]

[(IV) extent of injuries, if any; and]

[(V) estimated quantity and disposition of recovered materials, if any.]

[(g) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site processing, storage, or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status, provided that he complies with the requirements of subsection (f) of this section.]

[(h) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste), and Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and the permit requirements of Chapter 305 of this title (relating to Consolidated Permits), unless he has been granted an extension to the 180-day (or 270-day, if applicable) period. Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30

days may be granted at the discretion of the executive director on a case-by-case basis.]

[(i) A generator who generates or collects hazardous waste for the purpose of treatability studies is not subject to this section.]

[(j) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:]

[(1) the generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering the F006 waste or otherwise released to the environment prior to its recycling;]

[(2) the F006 waste is legitimately recycled through metals recovery;]

[(3) no more than 20,000 kilograms of F006 waste is accumulated on-site at any one time; and]

[(4) the F006 waste is managed in accordance with the following:]

[(A) the F006 waste is placed:]

[(i) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, and BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC; and/or]

[(ii) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC, except 40 CFR §265.197(c) and §265.200; and/or]

[(iii) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:]

[(I) a written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or]

[(II) documentation that the unit is emptied at least once every 180 days;]

[(B) the generator complies with 40 CFR §265.111 and §265.114, as adopted by reference under §335.112(a)(6) of this title;]

[(C) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;]

[(D) while being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and]

[(E) the generator complies with the following:]

[(i) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D, and 40 CFR §265.16, as adopted by reference under §335.112(a) of this title;]

[(ii) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title; and]

[(iii) Section 335.113 of this title.]

[(k) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the requirements of subsection (j)(1) - (4) of this section.]

[(l) A generator accumulating F006 waste in accordance with subsection (j) or (k) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter and Chapter 305 of this title applicable to such owners and operators, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the executive director if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up

to 30 days or an exception to the accumulation limit may be granted at the discretion of the executive director on a case-by-case basis.]

[(m) A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste) may accumulate the returned waste on-site in accordance with subsections (a) and (b) of this section or subsections (f) - (h) of this section depending on the amount of hazardous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator must:]

[(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or]

[(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.]

[(n) A generator who sends a shipment of Class 1 waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with

the manifest discrepancy provisions of §335.10 of this title may accumulate the returned waste on-site. Upon receipt of the returned shipment, the generator must:]

[ (1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or]

[ (2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.]

**[§335.70. Recordkeeping.]**

[ (a) A generator of hazardous waste must keep records of any test results, waste analyses, or other determinations made in accordance with §335.62 of this title (relating to Hazardous Waste Determination) for at least three years from the date that the waste was last sent to an on-site or off-site storage, processing or disposal facility.]

[ (b) The generator shall keep a copy of each annual report and exception report required by this title for a period of at least three years from the due date of the report.]

[ (c) The periods of record retention required by subsections (a) and (b) of this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the executive director.]

**[§335.71. Biennial Reporting.]**

[In addition to annual reporting which is required under §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), in every even-numbered year facilities subject to the United States Environmental Protection Agency biennial reporting requirements shall submit to the commission information as required by 40 Code of Federal Regulations §262.41, as amended through November 28, 2016 (81 FR 85696). Upon request, this supplemental information shall be prepared in a form provided or approved by the executive director and submitted within the specified timeframe. Activities covered in the report shall be for the previous odd-numbered report year. Facilities subject to the United States Environmental Protection Agency biennial reporting requirements include all large quantity generators of hazardous waste for any month during the previous odd-numbered report year.]

**[§335.73. Additional Reporting.]**

[The executive director may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 40 Code of Federal Regulations Part 261, Subparts C and D.]

**[§335.74. Special Requirements for Generators of Between 100 and 1,000 Kilograms**

**per Month.]**

[A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month is exempt from the recordkeeping and reporting requirements of this subchapter, except for §335.70(a) and (c) of this title (relating to Recordkeeping); and §335.73 of this title (relating to Additional Reporting); and §335.13(a) and (g) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste and Primary Exporters of Hazardous Waste). Such generators are subject to the requirements of §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators).]

**[§335.75. Notification Requirements for Interstate Shipments.]**

[In the case of interstate shipments of hazardous waste for which a manifest has not been returned within 45 days of acceptance of the waste by the initial transporter, the generator shall notify the appropriate regulatory agency of the state in which the designated facility is located and the appropriate regulatory agency of the state in which the shipment may have been delivered. If a state required to be notified under this section has not received interim or final authorization pursuant to the Resource Conservation and Recovery Act of the 1976, §3006, the generator shall notify the administrator that the manifest has not been returned.]

**[§335.76. Additional Requirements Applicable to international Shipments.]**

[(a) Transboundary movements of hazardous waste shall comply with 40 Code of Federal Regulations (CFR) §262.12, and 40 CFR Part 262, Subpart H, as amended through November 28, 2016 (81 FR 85696).]

[(b) Imports of industrial solid waste shall comply with all applicable requirements of this chapter.]

[(c) Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR §262.83(g), as amended through November 28, 2016 (81 FR 85696), for hazardous waste exporters.]

**[§335.77. Farmers.]**

[A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with this chapter for those wastes provided that he triple rinses each emptied pesticide container in accordance with §335.41(f)(2)(C) of this title (relating to Purpose, Scope, and Applicability) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.]

**[§335.78. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.]**

[(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.]

[(b) Except for those wastes identified in subsections (e) - (g) and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Subchapters C - H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this

title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 305 of this title (relating to Consolidated Permits); or the notification requirements of the Resource Conservation and Recovery Act, §3010, provided the generator complies with the requirements of subsections (f), (g), and (j) of this section.]

[(c) When making the quantity determinations of Subchapters A - C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste), the generator must include all hazardous waste it generates, except hazardous waste that:]

[(1) is exempt from regulation under 40 Code of Federal Regulations (CFR) §261.4(c) - (f), as amended through November 28, 2016 (81 FR 85696), §335.24(c) of this title (relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials), §335.41(f)(1) of this title (relating to Purpose, Scope and Applicability), or 40 CFR §261.8;]

[(2) is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in §335.1 of this title (relating to Definitions);]

[(3) is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under §335.24(f) of this title;]

[(4) is used oil managed under the requirements of §335.24(j) of this title and Chapter 324 of this title (relating to Used Oil);]

[(5) are spent lead-acid batteries managed under the requirements of §335.251 of this title (relating to Applicability and Requirements);]

[(6) is universal waste managed under §335.41(j) of this title and Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule); or]

[(7) is an unused commercial chemical product (listed in 40 CFR Part 261, Subpart D or exhibiting one or more characteristics in 40 CFR Part 261, Subpart C) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity consistent with 40 CFR §262.213. For purposes of this provision, the phrase "eligible academic entity" shall have the meaning as defined in 40 CFR §262.200.]

[(d) In determining the quantity of hazardous waste generated, a generator need not include:]

[(1) hazardous waste when it is removed from on-site storage provided that the waste was counted at the time it was generated;]

[(2) hazardous waste which is generated or collected for the purpose of treatability studies;]

[(3) hazardous waste produced by on-site processing (including reclamation) of his hazardous waste, so long as the hazardous waste that is processed was counted once; or]

[(4) spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.]

[(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth in paragraphs (1) or (2) of this subsection, all quantities of that acute hazardous waste are subject to full regulation under Subchapters C - H and O of this chapter; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; Chapter 305 of this title; and the notification requirements of the Resource Conservation and Recovery Act, §3010:]

[(1) a total of one kilogram of acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e); or]

[(2) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 CFR §§261.31, 261.32, or 261.33(e).]

[(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e)(1) or (2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:]

[(1) The generator must comply with the requirements in §335.62 of this title (relating to Hazardous Waste Determination and Waste Classification).]

[(2) The generator may accumulate acute hazardous waste on-site. If the generator accumulates at any time acute hazardous wastes in quantities greater than those set forth in subsection (e)(1) or (2) of this section, all of those accumulated wastes are subject to regulation under Subchapters C - H and O of this chapter; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; Chapter 305 of this title; and the notification

requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit.]

[(3) A conditionally exempt small quantity generator may either process or dispose of its acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:]

[(A) permitted by the United States Environmental Protection Agency (EPA) under 40 CFR Part 270;]

[(B) in interim status under 40 CFR Parts 270 and 265;]

[(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;]

[(D) permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258;]

[(E) permitted, licensed, or registered by a state to manage non-municipal nonhazardous waste and, if managed in a non-municipal nonhazardous

waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5 - 257.30;]

[F) a facility which:]

[i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or]

[ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or]

[(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter.]

[(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:]

[(1) The conditionally exempt small quantity generator must comply with §335.62 of this title.]

[(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If such generator accumulates at any time more than a total of 1000 kilograms of its hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of this subchapter applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month as well as the requirements of Subchapters D - H and O of this chapter; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; Chapter 305 of this title; and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1,000 kilograms;]

[(3) A conditionally exempt small quantity generator may either process or dispose of its hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:]

[(A) permitted by the EPA under 40 CFR Part 270;]

[(B) in interim status under 40 CFR Parts 270 and 265;]

[(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;]

[(D) permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258 or equivalent or more stringent rules under Chapter 330 of this title (relating to Municipal Solid Waste);]

[(E) permitted, licensed, or registered by a state to manage non-municipal or industrial nonhazardous waste and, if managed in a non-municipal or industrial nonhazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5 - 257.30 or equivalent or more stringent counterpart rules that may be adopted by the commission relating to additional requirements for industrial nonhazardous waste disposal units that may receive hazardous waste from conditionally exempt small quantity generators;]

[(F) a facility which:]

[(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste;]

[(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation;]

[(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter; or]

[(H) for airbag waste, an airbag waste collection facility or a designated facility subject to the requirements of 40 CFR §261.4(j).]

[(h) Hazardous waste subject to the reduced requirements of this section may be mixed with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in 40 CFR Part 261, Subpart C.]

[(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation under this chapter.]

[(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Chapter 324 of this title (relating to Used Oil Standards) and 40 CFR Part 279. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated.]

**[§335.79. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities.]**

[This section incorporates by reference the federal Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities in 40 Code of Federal Regulations Part 262, Subpart K, §§262.200 - 262.216 (known as the "Academic Laboratories rule"), as amended through December 20, 2010 (75 FR 79304).]

**SUBCHAPTER D: STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS  
WASTE**

**§§335.91, 335.94**

**Statutory Authority**

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendments implement THSC, Chapter 361.

**§335.91. Scope.**

(a) This subchapter establishes standards for persons [transporters] transporting hazardous waste to off-site storage, processing, or disposal facilities. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General).

(b) This subchapter does not apply to on-site transportation of hazardous waste by generators or by owners or operators of storage, processing or disposal facilities.

(c) A hazardous waste transporter must also comply with the standards applicable to generators of hazardous waste found in §§335.6, 335.9, 335.10, and 335.13 of this title (relating to Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste), Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) including §335.52(d) of this title (relating to Purpose, Scope, and Applicability), and Subchapter R of this chapter (relating to Waste Classification) if the transporter [A transporter of hazardous waste must also comply with any standards applicable to generators of hazardous waste if he]:

(1) transports hazardous waste into the state from a foreign country; or

(2) mixes hazardous waste of different Department of Transportation shipping descriptions by placing them into a single container.

(d) Transporters who store hazardous waste are owners or operators of storage facilities and, as such, are also subject to the permit requirements and storage standards contained in this chapter.

(e) A transporter of hazardous waste that is being imported from or exported to any other country for purposes of recovery or disposal is subject to all relevant requirements of 40 Code of Federal Regulations (CFR), Part 262, Subpart H, as adopted under §335.58 of this title (relating to Transboundary Movements of Hazardous Waste for Recovery or Disposal), including, but not limited to, 40 CFR §262.83(d) and §262.84(d) for movement documents [, as amended through November 28, 2016 (81 FR 85696)].

(f) The regulations in this chapter do not apply to transportation during an explosives or munitions emergency response conducted in accordance with §335.41(d)(2) of this title (relating to Purpose, Scope and Applicability).

(g) 40 CFR §266.203, as adopted by reference under Subchapter H, Division 6 of this chapter (relating to Military Munitions), identifies how the requirements of this

subchapter apply to military munitions classified as solid waste under 40 CFR §266.202.

**§335.94. Transfer Facility Requirements.**

(a) Unless the executive director determines that a permit should be required in order to protect human health and the environment, a transporter who stores manifested shipments of hazardous waste in containers meeting the independent requirements of 40 Code of Federal Regulations (CFR) §262.30 (Packaging) as adopted under §335.55 of this title (relating to Pre-Transport Requirements Applicable to Small and Large Quantity Generators), [§335.65 of this title (relating to Packaging)] at a transfer facility owned or operated by a registered transporter for a period of ten days or less is not subject to the requirement for a permit under §335.2 of this title (relating to Permit Required), with respect to the storage of those wastes provided that the transporter complies with the following sections:

(1) 40 CFR [Code of Federal Regulations (CFR)] §265.14 ([relating to] Security);

(2) 40 CFR §265.15 ([relating to] General Inspection Requirements);

(3) 40 CFR §265.16 ([relating to] Personnel Training);

(4) 40 CFR Part 265, Subpart C;

(5) 40 CFR Part 265, Subpart D (except §265.56(j)) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator); and

(6) 40 CFR Part 265, Subpart I.

(b) The executive director may require a permit for that portion of a facility otherwise exempted from that requirement under subsection (a) of this section, with respect to the storage of hazardous waste in containers, if the facility's operation also includes other storage and processing of hazardous waste which is not exempt under subsection (a) of this section.

(c) When consolidating the contents of two or more containers with the same hazardous waste into a new container, or when combining and consolidating two different hazardous wastes that are compatible with each other, the transporter must mark its containers of 119 gallons or less with the following information:

(1) The words "Hazardous Waste"; and

(2) The applicable United States Environmental Protection Agency hazardous waste number(s) in 40 CFR Part 261, Subparts C and D, as adopted under

§335.504 of this title (relating to Hazardous Waste Determination) or in compliance with 40 CFR §262.32(c), as adopted under §335.55 of this title.

**SUBCHAPTER E: INTERIM STANDARDS FOR OWNERS AND OPERATORS OF  
HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES**

**§335.112**

**Statutory Authority**

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendment implements THSC, Chapter 361.

**§335.112. Standards.**

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to 40 CFR Part 265) (except as otherwise specified in this section) are adopted by reference as amended in the *Federal Register* through June 1, 1990 (55 FR 22685) and as further amended as indicated in each paragraph of this subsection:

(1) Subpart B - General Facility Standards (as amended in the *Federal Register* through November 28, 2016 (81 FR 85732) [(81 FR 85696)]);

(2) Subpart C - Preparedness and Prevention;

(3) Subpart D - Contingency Plan and Emergency Procedures (as amended in the *Federal Register* through March 18, 2010 (75 FR 12989)), except 40 CFR §265.56(d);

(4) Subpart E - Manifest System, Recordkeeping, and Reporting (as amended in the *Federal Register* through January 3, 2018 (83 FR 420) [November 28, 2016 (81 FR 85696)]), except 40 CFR §265.76 and §265.77 [§§265.71, 265.72, and 265.75 - 265.77];

(5) Subpart F - Groundwater Monitoring (as amended in the *Federal Register* through April 4, 2006 (71 FR 16862)), except 40 CFR §265.90 and §265.94;

(6) Subpart G - Closure and Post-Closure (as amended in the *Federal Register* through July 14, 2006 (71 FR 40254)); except 40 CFR §265.112(d)(3) and (4) and §265.118(e) and (f);

(7) Subpart H - Financial Requirements (as amended in the *Federal Register* through September 16, 1992 (57 FR 42832)); except 40 CFR §§265.140, 265.141, 265.142(a)(2), (b) and (c), 265.143(a) - (g), 265.144(b) and (c), 265.145(a) - (g), 265.146 [264.146], 265.147(a) - (d), and (f) - (k), and 265.148 - 265.150;

(8) Subpart I - Use and Management of Containers (as amended in the *Federal Register* through November 28, 2016 (81 FR 85732) [July 14, 2006 (71 FR 40254)]);

(9) Subpart J - Tank Systems (as amended in the *Federal Register* through November 28, 2016 (81 FR 85732) [July 14, 2006 (71 FR 40254)]);

(10) Subpart K - Surface Impoundments (as amended in the *Federal Register* through July 14, 2006 (71 FR 40254));

(11) Subpart L - Waste Piles (as amended in the *Federal Register* through July 14, 2006 (71 FR 40254)), except 40 CFR §265.253;

(12) Subpart M - Land Treatment (as amended in the *Federal Register* through July 14, 2006 (71 FR 40254)) except, 40 CFR §§265.272, 265.279, and 265.280;

(13) Subpart N - Landfills (as amended in the *Federal Register* through March 18, 2010 (75 FR 12989)), except 40 CFR §§265.301(f) - (i), 265.314, and 265.315;

(14) Subpart O - Incinerators (as amended in the *Federal Register* through October 12, 2005 (70 FR 59402));

(15) Subpart P - Thermal Treatment (as amended in the *Federal Register* through July 17, 1991 (56 FR 32692));

(16) Subpart Q - Chemical, Physical, and Biological Treatment (as amended in the *Federal Register* through July 14, 2006 (71 FR 40254));

(17) Subpart R - Underground Injection;

(18) Subpart W - Drip Pads (as amended in the *Federal Register* through July 14, 2006 (71 FR 40254));

(19) Subpart AA - Air Emission Standards for Process Vents (as amended in the *Federal Register* through November 28, 2016 (81 FR 85732) [July 14, 2006 (71 FR 40254)]);

(20) Subpart BB - Air Emission Standards for Equipment Leaks (as amended in the *Federal Register* through November 28, 2016 (81 FR 85732) [April 4, 2006 (71 FR 16862)]);

(21) Subpart CC - Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended in the *Federal Register* through January 3, 2018 (83 FR 420) [July 14, 2006 (71 FR 40254)]);

(22) Subpart DD - Containment Buildings (as amended in the *Federal Register* through November 28, 2016 (81 FR 85732) [July 14, 2006 (71 FR 40254)]);

(23) Subpart EE - Hazardous Waste Munitions and Explosives Storage (as amended in the *Federal Register* through February 12, 1997 (62 FR 6622)); [and]

(24) Subpart FF - Fees for the Electronic Hazardous Waste Manifest Program (as amended in the *Federal Register* through January 3, 2018 (83 FR 420); and

(25) [(24)] the following appendices contained in 40 CFR Part 265:

(A) Appendix I - Recordkeeping Instructions (as amended in the Federal Register through March 24, 1994 (59 FR 13891));

(B) Appendix III - EPA Interim Primary Drinking Water Standards;

(C) Appendix IV - Tests for Significance;

(D) Appendix V - Examples of Potentially Incompatible Waste; and

(E) Appendix VI - Compounds With Henry's Law Constant Less Than 0.1 Y/X.

(b) Except in 40 CFR §265.71 adopted under subsection (a)(4) of this section and 40 CFR Part 265, Subpart FF adopted under subsection (a)(24) of this section, the [The] regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B.

(2) The term "treatment" is changed to "processing."

(3) Reference to Resource Conservation and Recovery Act, §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (Corrective Action Relating to Hazardous Waste).

(4) Reference to:

(A) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);

(B) 40 CFR §264.90 is changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(C) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(D) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

(E) 40 CFR §265.1 is changed to §335.111 of this title (relating to Purpose, Scope, and Applicability);

(F) 40 CFR §265.90 is changed to §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements);

(G) 40 CFR §265.94 is changed to §335.117 of this title (relating to Recordkeeping and Reporting);

(H) 40 CFR §265.314 is changed to §335.125 of this title (relating to Special Requirements for Bulk and Containerized Waste);

(I) 40 CFR §270.1 is changed to §335.2 of this title (relating to Permit Required);

(J) 40 CFR §270.28 is changed to §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order);

(K) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendments);

(L) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee); and

(M) Qualified professional engineer is changed to Texas licensed professional engineer.

(5) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

(6) Reference to 40 CFR Part 265, Subpart D (Contingency Plan and Emergency Procedures) is changed to §335.112(a)(3) of this title (relating to Standards) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(7) References to 40 CFR §265.76 and §265.77 are changed to [Reference to 40 CFR §§265.71, 265.72, 265.76, and 265.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), §335.12(a) of this title,] §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), and §335.115 of this title (relating to Additional Reports), respectively.

(8) Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §335.157 of this title (relating to Required Programs), §335.158 of this title

(relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title.

(9) Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 and §335.117 of this title, in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.

(10) Reference to the EPA is changed to the Texas Commission on Environmental Quality.

[(c) A copy of 40 CFR Part 265 is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.]

**SUBCHAPTER F: PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF  
HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES**

**§335.152**

**Statutory Authority**

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendment implements THSC, Chapter 361.

**§335.152. Standards.**

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended in the *Federal Register* through June 1, 1990 (55 FR 22685) and as further amended and adopted as indicated in each paragraph of this subsection:

(1) Subpart B--General Facility Standards (as amended in the *Federal Register* through November 28, 2016 (81 FR 85732) [(81 FR 85696)]); in addition, the facilities which are subject to 40 CFR Part 264, Subpart X, are subject to regulation under 40 CFR §264.15(b)(4) and §264.18(b)(1)(ii);

(2) Subpart C--Preparedness and Prevention;

(3) Subpart D--Contingency Plan and Emergency Procedures (as amended in the *Federal Register* through March 18, 2010 (75 FR 12989)), except 40 CFR §264.56(d);

(4) Subpart E--Manifest System, Recordkeeping and Reporting (as amended in the *Federal Register* through January 3, 2018 (83 FR 420) [November 28, 2016 (81 FR 85696)]), except 40 CFR §264.76 and §264.77 [40 CFR §§264.71, 264.72, 264.76, and 264.77]; facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.73(b)(6);

(5) Subpart G--Closure and Post-Closure (as amended in the *Federal Register* through July 14, 2006 (71 FR 40254)); facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1)(i) and (ii), and 264.118(b)(1) and (2)(i) and (ii);

(6) Subpart H--Financial Requirements (as amended in the *Federal Register* through April 4, 2006 (71 FR 16862)); except 40 CFR §§264.140, 264.141, 264.142(a)(2), (b) and (c), 264.143(a) - (h), 264.144(b) and (c), 264.145(a) - (h), 264.146, 264.147(a) - (d), and (f) - (k), and 264.148 - 264.151; and subject to the following limitations: facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR§264.142(a) and §264.144(a), and §37.6031(c) of this title (relating to Financial Assurance Requirements for Liability);

(7) Subpart I--Use and Management of Containers (as amended in the *Federal Register* through November 28, 2016 (81 FR 85732) [July 14, 2006 (71 FR 40254)]);

(8) Subpart J--Tank Systems (as amended in the *Federal Register* through November 28, 2016 (81 FR 85732) [July 14, 2006 (71 FR 40254)]);

(9) Subpart K--Surface Impoundments (as amended in the *Federal Register* through July 14, 2006 (71 FR 40254)), except 40 CFR §264.221 and §264.228:

(A) reference to 40 CFR §264.221 is changed to §335.168 of this title (relating to Design and Operating Requirements (Surface Impoundments));

(B) reference to 40 CFR §264.228 is changed to §335.169 of this title (relating to Closure and Post-Closure Care (Surface Impoundments));

(10) Subpart L--Waste Piles (as amended in the *Federal Register* through July 14, 2006 (71 FR 40254)), except 40 CFR §264.251;

(11) Subpart M--Land Treatment (as amended in the *Federal Register* through July 14, 2006 (71 FR 40254)), except 40 CFR §264.273 and §264.280;

(12) Subpart N--Landfills (as amended in the *Federal Register* through March 18, 2010 (75 FR 12989)), except 40 CFR §§264.301, 264.310, 264.314, and 264.315;

(13) Subpart O--Incinerators (as amended in the *Federal Register* through April 8, 2008 (73 FR 18970));

(14) Subpart S--Special Provisions for Cleanup (as amended in the *Federal Register* through March 18, 2010 (75 FR 12989));

(15) Subpart W--Drip Pads (as amended in the *Federal Register* through July 14, 2006 (71 FR 40254));

(16) Subpart X--Miscellaneous Units (as amended in the *Federal Register* through July 14, 2006 (71 FR 40254));

(17) Subpart AA--Air Emission Standards for Process Vents (as amended in the *Federal Register* through November 28, 2016 (81 FR 85732) with the reference to "40 CFR 262.34(a)" replaced with "40 CFR §262.17 as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste)" [July 14, 2006 (71 FR 40254)]);

(18) Subpart BB--Air Emission Standards for Equipment Leaks (as amended in the *Federal Register* through November 28, 2016 (81 FR 85732) with the reference to "40 CFR 262.34(a)" replaced with "40 CFR §262.17 as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste)" [July 14, 2006 (71 FR 40254)]);

(19) Subpart CC--Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended in the *Federal Register* through January 3, 2018 (83 FR 420) [July 14, 2006 (71 FR 40254)]);

(20) Subpart DD--Containment Buildings (as amended in the *Federal Register* through November 28, 2016 (81 FR 85732) [July 14, 2006 (71 FR 40254)]);

(21) Subpart EE--Hazardous Waste Munitions and Explosives Storage (as amended in the *Federal Register* through August 1, 2005 (70 FR 44150)); [and]

(22) Subpart FF--Fees for the Electronic Hazardous Waste Manifest Program (as amended in the *Federal Register* through January 3, 2018 (83 FR 420); and

(23) [(22)] the following appendices contained in 40 CFR Part 264:

(A) Appendix I--Recordkeeping Instructions (as amended in the *Federal Register* through March 24, 1994 (59 FR 13891));

(B) Appendix IV--Cochron's Approximation to the Behrens-Fisher Students' T-Test;

(C) Appendix V--Examples of Potentially Incompatible Waste;

(D) Appendix VI--Political Jurisdictions in Which Compliance With §264.18(a) Must Be Demonstrated; and

(E) Appendix IX--Ground-Water Monitoring List (as amended in the Federal Register through June 13, 1997 (62 FR 32451)).

(b) The provisions of 40 CFR §264.18(b) are applicable to owners and operators of hazardous waste management facilities, for which a permit is being sought, which are not subject to the requirements of §§335.201 - 335.206 of this title (relating to Purpose, Scope, and Applicability; Definitions; Site Selection to Protect Groundwater or Surface Water; Unsuitable Site Characteristics; Prohibition of Permit Issuance; and Petitions for Rulemaking). [A copy of 40 CFR §264.18(b) is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.]

(c) Except in 40 CFR §264.71 adopted under subsection (a)(4) of this section and 40 CFR Part 264, Subpart FF adopted under subsection (a)(22) of this section, the [The] regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B.

(2) The term "treatment" is changed to "processing."

(3) Reference to Resource Conservation and Recovery Act, §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (Corrective Action Relating to Hazardous Waste).

(4) Reference to:

(A) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);

(B) 40 CFR §264.1 is changed to §335.151 of this title (relating to Purpose, Scope, and Applicability);

(C) 40 CFR §264.280 is changed to §335.172 of this title (relating to Closure and Post-Closure Care (Land Treatment Units));

(D) 40 CFR §264.90 is changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(E) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(F) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

(G) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendments); and

(H) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(5) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

(6) Reference to 40 CFR Part 264, Subpart D is changed to §335.152(a)(3) of this title (relating to Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(7) References [Reference] to 40 CFR §264.76 and §264.77 are changed to [§§264.71, 264.72, 264.76, and 264.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), §335.12(a) of this title,] §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of

Treatment, Storage, or Disposal Facilities), and §335.155 of this title (relating to Additional Reports), respectively.

(8) Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title.

(9) Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements) and §335.117 of this title (relating to Recordkeeping and Reporting), in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.

(10) Reference to the EPA is changed to the Texas Commission on Environmental Quality.

(11) Reference to qualified professional engineer is changed to Texas licensed professional engineer.

[(d) A copy of 40 CFR Part 264 is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.]

**SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND  
SPECIFIC TYPES OF FACILITIES**

**DIVISION 2: HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY**

**§335.221**

**Statutory Authority**

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendment implements THSC, Chapter 361.

**§335.221. Applicability and Standards.**

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 266 (including all appendices to 40 CFR Part 266) are adopted by reference, as amended and adopted in the CFR through April 8, 2008 (73 FR 18970), except as noted in this section:

(1) 40 CFR §266.100--Applicability (as amended through July 14, 2006 (71 FR 40254)), except 40 CFR §266.100(c); and reference to "the applicable requirements of subparts A through H, BB, and CC of parts 264 and 265 of this chapter" is changed to "the applicable requirements of §§335.111 of this title (relating to Purpose, Scope, and Applicability), 335.112(a)(1) - (7), (20), and (21) of this title (relating to Standards), 335.151 of this title (relating to Purpose, Scope, and Applicability), and 335.152(a)(1) - (6), (18), and (19) of this title (relating to Standards)";

(2) 40 CFR §266.102(a)--Permit Standards for Burners - Applicability, excepting those portions of 40 CFR §266.102(a) containing references to 40 CFR §§264.56(d), 264.71 - 264.72, 264.75 - 264.77, 264.90, 264.101, and 264.142(a)(2);

(3) 40 CFR §266.102(b)--Permit Standards for Burners - Hazardous Waste Analysis;

- (4) 40 CFR §266.102(c)--Permit Standards for Burners - Emission Standards;
- (5) 40 CFR §266.102(d)--Permit Standards for Burners - Permits;
- (6) 40 CFR §266.102(e)--Permit Standards for Burners - Operating Requirements (as amended in the *Federal Register* through July 14, 2006 (71 FR 40254));
- (7) 40 CFR §266.103 (a)(1) - (3)--Interim Status Standards for Burners - Purpose, Scope, and Applicability--General; Exemptions; and Prohibition on Burning Dioxin-Listed Wastes, respectively, except 40 CFR §266.103(a)(1)(iii) and §266.103(a)(2);
- (8) 40 CFR §266.103(a)(4)--Interim Status Standards for Burners--Purpose, Scope, and Applicability--Applicability of Part 265 Standards (as amended in the *Federal Register* through (July 14, 2006 (71 FR 40254))), excepting those portions of 40 CFR §266.103(a)(4) containing references to 40 CFR §§265.56(d), 265.71 - 265.72, 265.75 - 265.77, 265.142(a)(2); facilities qualifying for a corporate guarantee for liability are subject to 40 CFR §265.147(g)(2) and §264.151(h)(2), as amended;
- (9) 40 CFR §266.103(a)(5) - (6)--Interim Status Standards for Burners - Purpose, Scope, and Applicability: Special Requirements for Furnaces; and Restrictions on Burning Hazardous Waste That Is Not a Fuel;

(10) 40 CFR §266.103(b)--Interim Status Standards for Burners -  
Certification of Precompliance (as amended through (July 14, 2006 (71 FR 40254))),  
except 40 CFR §266.103(b)(1) and (6);

(11) 40 CFR §266.103(c)--Interim Status Standards for Burners -  
Certification of Compliance (as amended through (July 14, 2006 (71 FR 40254))), except  
40 CFR §266.103(c)(3)(i);

(12) 40 CFR §266.103(f)--Interim Status Standards for Burners - Start-Up  
and Shut-Down;

(13) 40 CFR §266.103(g)(1) - (2)--Interim Status Standards for Burners -  
Automatic Waste Feed Cutoff (as amended in the *Federal Register* through [(July 14,  
2006 (71 FR 40254))]);

(14) 40 CFR §266.103(h) - (l)--Interim Status Standards for Burners:  
Fugitive Emissions; Changes; Monitoring and Inspections; Recordkeeping; and Closure,  
respectively, as amended in the *Federal Register* through April 4, 2006 (71 FR 16862);

(15) 40 CFR §266.104--Standards to Control Organic Emissions, except 40  
CFR §266.104(h);

(16) 40 CFR §266.105--Standards to Control Particulate Matter, except 40 CFR §266.105(d);

(17) 40 CFR §266.106--Standards to Control Metals Emissions (as amended in the *Federal Register* through (July 14, 2006 (71 FR 40254))), except 40 CFR §266.106(i);

(18) §266.107--Standards to Control Hydrogen Chloride (HCl) and Chlorine Gas (Cl<sub>2</sub>) Emissions, except 40 CFR §266.107(h);

(19) 40 CFR §266.108--Small Quantity On-Site Burner Exemption, except §266.108(d), and except that hazardous wastes generated by a very small quantity generator [subject to §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)] may not be burned in an off-site device under the exemption provided by 40 CFR §266.108;

(20) 40 CFR §266.109--Low-Risk Waste Exemption (as amended in the *Federal Register* through (July 14, 2006 (71 FR 40254)));

(21) 40 CFR §266.110--Waiver of DRE Trial Burn for Boilers;

(22) 40 CFR §266.111--Standards for Direct Transfer; and

(23) 40 CFR §266.112--Regulation of Residues.

(b) The following hazardous wastes and facilities are not regulated under this division:

(1) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 40 CFR Part 261, Subpart C, from use versus mixing. Such used oil is subject to regulation by the United States Environmental Protection Agency (EPA) under 40 CFR Part 279 and Chapter 324 of this title (relating to Used Oil Standards). This exception does not apply if the used oil has been made hazardous by mixing with characteristic or listed hazardous waste other than by a generator that meets the conditions for exemption for a very [conditionally exempt] small quantity generator or household generator;

(2) hazardous wastes that are exempt from regulation under [the provisions of] 40 CFR §261.4 [,] and §335.24(c)(3) - (4) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) [, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under the provisions of §335.78 of this title];

(3) hazardous wastes generated by a very small quantity generator that meets the conditions for exemption of a very small quantity generator;

(4) [(3)] gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery; and

(5) [(4)] coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

**SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND  
SPECIFIC TYPES OF FACILITIES**

**DIVISION 3: RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY**

**§335.241**

**Statutory Authority**

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendment implements THSC, Chapter 361.

**§335.241. Applicability and Requirements.**

(a) The regulations of this section apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these.

(b) Persons who generate, transport, or store recyclable materials that are regulated under this section are subject to the following requirements:

(1) §335.4 of this title (relating to General Prohibitions);

(2) §335.6 of this title (relating to Notification Requirements);

(3) §§335.9 - 335.12 of this title (relating to Shipping and Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class 1 [Industrial Solid] Waste; Shipping Requirements for Transporters of Municipal Hazardous Waste or Class 1 [Industrial Solid] Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), §335.54 of this title (relating to Hazardous Waste Manifest), 40 Code of Federal Regulations (CFR) §265.71 and §265.72 as adopted by reference under §335.112(a)(4) of this title (relating to Standards), and 40 CFR §264.71

and §264.72 as adopted by reference under §335.152(a)(4) of this title (relating to Standards), for generators, transporters, or persons who store, as applicable; and

(4) For precious metals exported to or imported from other countries for recovery [designated OECD member countries for recovery], 40 Code of Federal Regulations (CFR) Part 262, Subpart H[,] and §265.12 adopted by reference under §335.112 of this title (relating to Standards) [§265.12(a). For precious metals exported to or imported from non-OECD countries for recovery, §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)].

(c) Persons who store recyclable materials that are regulated under this section shall keep the following records to document that they are not accumulating these materials speculatively, as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) records showing the volume of these materials stored at the beginning of the calendar year;

(2) the amount of these materials generated or received during the calendar year; and

(3) the amount of materials remaining at the end of the calendar year.

(d) Recyclable materials that are regulated under this section that are accumulated speculatively, as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), are subject to all applicable provisions of this chapter (excluding this subchapter), Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); and Chapter 305 of this title (relating to Consolidated Permits).

**SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND  
SPECIFIC TYPES OF FACILITIES**

**DIVISION 4: SPENT LEAD-ACID BATTERIES BEING RECLAIMED**

**§335.251**

**Statutory Authority**

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendment implements THSC, Chapter 361.

**§335.251. Applicability and Requirements.**

(a) The regulations of this section adopt by reference 40 Code of Federal Regulations (CFR) Part 266, Subpart G as amended in the *Federal Register* through November 28, 2016 (81 FR 85732 [85696]). This section applies to persons who reclaim (including regeneration) spent lead-acid batteries that are recyclable materials (spent batteries). Persons who generate, transport, or collect spent batteries, who regenerate spent batteries, who store spent batteries that are to be regenerated, or who store spent batteries but do not reclaim them (other than spent batteries that are to be regenerated), are not subject to regulation under this chapter, except that §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) applies; and are not subject to regulation under Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); or

Chapter 305 of this title (relating to Consolidated Permits). Such persons, however, remain subject to the requirements of the Texas Water Code, Chapter 26.

(b) Owners or operators of facilities that store spent lead-acid batteries before reclaiming them (other than spent batteries that are to be regenerated) are subject to the following requirements:

(1) all applicable provisions in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General), Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions), Subchapter E of this chapter (relating to Interim Standards of Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards of Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), and Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standard Permit), except for the requirements in §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities) and 40 CFR §265.13; and

(2) all applicable provisions in Chapters 1, 3, 10, 20, 37, 39, 40, 50, 55, 70, 80, and 305 of this title.

(c) Persons who export spent batteries for reclamation in a foreign country where they will be reclaimed through regeneration or any other means are not subject to the requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste), except for §335.53(a) and (g) of this title (relating to General Standards Applicable to Generators of Hazardous Waste) [§335.63 of this title (relating to EPA Identification Numbers)]; Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), except for §335.91(e) of this title (relating to Scope); Subchapter E of this chapter (relating to Interim Standards of Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities); Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities); or Subchapter O of this chapter (relating to Land Disposal Restrictions), or Chapter 1, 3, 10, 20, 37, 39, 40, 50, 55, 70, 80, 86, or 305 of this title. Such persons must comply with [, however, remain subject to the requirements of §§335.63, 335.91(e), and] §335.504 of this title (relating to Hazardous Waste Determination).

(d) Persons who transport spent batteries in the United States to export them for reclamation in a foreign country where they will be reclaimed through regeneration or any other means are not subject to the requirements of Subchapter C of this chapter; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter; or Subchapter O of this chapter, or Chapter 1, 3, 10, 20, 37, 39, 40, 50, 55, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §335.91(e) of this title.

(e) Persons who import spent batteries from a foreign country and store these spent batteries, but are not the reclaimer, and where the spent battery will be reclaimed other than through regeneration, are not subject to the requirements of Subchapter C of this chapter, except for §335.53(a) and (g) [§335.63] of this title; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter, or Chapter 1, 3, 10, 37, 39, 40, 50, 55, 70, 80, 86, or 305 of this title. Such persons must comply with §335.504 [, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504] of this title, and applicable provisions of Subchapter O of this chapter.

(f) Persons who import spent batteries from a foreign country and store these spent batteries before reclaiming them, and where the spent battery will be reclaimed other than through regeneration, are not subject to the requirements of Subchapter C of this chapter, except for §335.53(a) and (g) [§335.63] of this title; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter, or Chapter 1, 3, 10, 37, 39, 40, 50, 70, 80, 86, or 305 of this title. Such persons must comply with §335.504 [, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504] of this title, and applicable provisions of Subchapter O of this chapter.

(g) Persons who import spent batteries from a foreign country and do not store these spent before reclaiming them, and where they will be reclaimed other than

through regeneration, are not subject to the requirements of Subchapter C of this chapter, except for §335.53(a) and (g) of this title [§335.63 of this title]; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter, or Chapter 1, 3, 10, 37, 39, 40, 50, 70, 80, 86, or 305 of this title. Such persons must comply with §335.504 [, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504] of this title, and applicable provisions of Subchapter O of this chapter.

**SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND  
SPECIFIC TYPES OF FACILITIES**

**DIVISION 5: UNIVERSAL WASTE RULE**

**§335.261**

**Statutory Authority**

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendment implements THSC, Chapter 361.

**§335.261. Universal Waste Rule.**

(a) This section establishes requirements for managing universal wastes as defined in this section, and provides an alternative set of management standards in lieu of regulation, except as provided in this section, under all otherwise applicable chapters under 30 Texas Administrative Code. Except as provided in subsection (b) of this section, 40 Code of Federal Regulations (CFR) Part 273 is adopted by reference as amended in the *Federal Register* through December 9, 2019 (84 FR 67202) [November 28, 2016 (81 FR 85696)].

(b) 40 CFR Part 273, except 40 CFR §§273.1, 273.20, 273.39(a) and (b), 273.40, 273.56, 273.62(a), and 273.70, is adopted subject to the following changes:

(1) The term "regional administrator" is changed to "executive director" or "commission" consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5.

(2) The terms "U.S. Environmental Protection Agency" and "EPA" are changed to "the Texas Commission on Environmental Quality," "the agency," or "the commission" consistent with the organization of the commission as set out in Texas Water Code, Chapter 5. This paragraph does not apply to 40 CFR §273.32(a)(3) or

§273.52 or to references to the following: "EPA Acknowledgment of Consent" or "EPA Identification Number."

(3) The term "treatment" is changed to "processing."

(4) The term "universal waste" is changed to "universal waste as defined under §335.261(b)(19)(F) [§335.261(b)(16)(F)] of this title (relating to Universal Waste Rule)."

(5) The term "this part" is changed to "Chapter 335, Subchapter H, Division 5 of this title (relating to Universal Waste Rule)."

(6) In 40 CFR §273.2(a) and (b), references to "40 CFR Part 266, Subpart G," are changed to "§335.251 of this title (relating to Applicability and Requirements)."

(7) In 40 CFR §273.2(b)(2), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(8) In 40 CFR §273.3(b)(1), the reference to "40 CFR §262.70" is changed to "§335.57 [§335.77] of this title (relating to Farmers)." Also, the phrase "(40 CFR §262.70 addresses pesticides disposed of on the farmer's own farm in a manner

consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with 40 CFR §261.7(b)(3))" is deleted.

(9) In 40 CFR §273.3(b)(2), the reference to "40 CFR parts 260 through 272" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(10) In 40 CFR §273.3(b)(3), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(11) In 40 CFR §273.3(d)(1)(i) and (ii), references to "40 CFR §261.2" are changed to "§335.1 of this title (relating to Definitions)."

(12) In 40 CFR §273.4(a), the reference to "§273.9" as it relates to the definition of "mercury-containing equipment" is amended to include the commission definition of "thermostats" as contained in §335.261(b)(19)(E) [§335.261(b)(16)(E)] of this title (relating to Universal Waste Rule) and in 40 CFR §273.4(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(13) In 40 CFR §273.5(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(14) In 40 CFR §273.6(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(15) In 40 CFR §273.6(b)(2), the references to "part 261, subpart C, of this chapter" and "part 261, subpart D, of this chapter" are changed to "Chapter 335, Subchapter R of this title (relating to Waste Classification)."

(16) In 40 CFR §273.6(b)(3), the reference to "§261.7 of this chapter" is changed to "§335.41(f) of this title (relating to Purpose, Scope and Applicability)."

(17) [(14)] In 40 CFR §273.8(a)(1), the reference to "40 CFR §261.4(b)(1)" is changed to "§335.1 and §335.402(5) of this title (relating to Definitions; and Definitions)" and the reference to "§273.9" is changed to "§335.261(b)(19)(F) [§335.261(b)(16)(F)] of this title (relating to Universal Waste Rule)."

(18) [(15)] In 40 CFR §273.8(a)(2), the reference to "40 CFR §262.14 [§261.5]" is changed to "40 CFR §262.14 as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste) [§335.78 of this

title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)]" [and to "§335.402(5) of this title (relating to Definitions)"] and the reference to "§273.9" is changed to "§335.261(b)(19)(F) [§335.261(b)(16)(F)] of this title (relating to Universal Waste Rule)."

(19) [(16)] In 40 CFR §273.9, the following definitions are changed to the meanings described in this paragraph.

(A) Destination facility--A facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in 40 CFR §273.13(a) and (c) and 40 CFR §273.33(a) and (c), as adopted by reference in this section. A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste.

(B) Generator--Any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261 or whose act first causes a hazardous waste to become subject to regulation.

(C) Large quantity handler of universal waste--A universal waste handler (as defined in this section) who accumulates at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively. This designation as a large quantity handler of universal waste is retained through the end

of the calendar year in which 5,000 kilograms or more total universal waste is accumulated.

(D) Small quantity handler of universal waste--A universal waste handler (as defined in this section) who does not accumulate at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively.

(E) Thermostat--A temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR §273.13(c)(2) or §273.33(c)(2) as adopted by reference in this section.

(F) Universal waste--Any of the following hazardous wastes that are subject to the universal waste requirements of this section:

(i) batteries, as described in 40 CFR §273.2;

(ii) pesticides, as described in 40 CFR §273.3;

(iii) mercury-containing equipment, including thermostats, as described in 40 CFR §273.4;

(iv) paint and paint-related waste, as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); [and]

(v) lamps, as described in 40 CFR §273.5; and [.]

(vi) aerosol cans, as described in 40 CFR §273.6.

(20) [(17)] In 40 CFR §273.10, the reference to "40 CFR §273.9" is changed to "§335.261(b)(19)(D) [§335.261(b)(16)(D)] of this title (relating to Universal Waste Rule)."

(21) [(18)] 40 CFR §273.11(b) is changed to read as follows: "Prohibited from diluting or treating universal waste, except when responding to releases as provided in 40 CFR §273.17; managing specific wastes as provided in 40 CFR §273.13; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."

(22) [(19)] In 40 CFR §273.13(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(23) [(20)] In 40 CFR §273.13(c)(2)(iii) and (iv), references to "40 CFR parts 260 through 272 [§262.34]" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) [§335.69 of this title (relating to Accumulation Time)]."

(24) [(21)] In 40 CFR §273.13(d)(1), the phrase "adequate to prevent breakage" is changed to "adequate to prevent breakage, except as specified in §335.261(e) of this title (relating to Universal Waste Rule)."

(25) In 40 CFR §273.13(e)(4)(iv), the reference to "40 CFR 262.14, 262.15, 262.16, or 262.17" is changed to "§335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste)."

(26) In 40 CFR §273.13(e)(4)(v), the reference to "40 CFR 262.11" is changed to "§335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste)" and the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(27) [(22)] In 40 CFR §273.17(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(28) [(23)] In 40 CFR §273.30, the reference to "§273.9" is changed to "§335.261(b)(19)(C) [§335.261(b)(16)(C)] of this title (relating to Universal Waste Rule)."

(29) [(24)] 40 CFR §273.31(b) is changed to read as follows: "Prohibited from diluting or treating universal waste, except when responding to releases as provided in 40 CFR §273.37; managing specific wastes as provided in 40 CFR §273.33; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."

(30) [(25)] In 40 CFR §273.33(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(31) [(26)] In 40 CFR §273.33(c)(2)(iii) and (iv), the references to "40 CFR parts 260 through 272 [§262.34]" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) [§335.69 of this title (relating to Accumulation Time)]."

(32) [(27)] In 40 CFR §273.33(c)(4)(i), the reference, "40 CFR part 261, subpart C," is changed to "Chapter 335, Subchapter R of this title (relating to Waste Classification)."

(33) [(28)] In 40 CFR §273.33(c)(3)(ii), the reference, "40 CFR parts 260 through 272," is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(34) [(29)] In 40 CFR §273.33(d)(1), the phrase "adequate to prevent breakage" is changed to "adequate to prevent breakage, except as specified in §335.261(e) of this title (relating to Universal Waste Rule)."

(35) In 40 CFR §273.33(e)(4)(iv), the reference to "40 CFR 262.14, 262.15, 262.16, or §262.17" is changed to "§335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste)."

(36) In 40 CFR §273.33(e)(4)(v), the reference to "40 CFR 262.11" is changed to "§335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste)" and the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(37) [(30)] In 40 CFR §273.37(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(38) [(31)] In 40 CFR §273.52(a), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(39) [(32)] In 40 CFR §273.52(b), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(40) [(33)] In 40 CFR §273.54(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(41) [(34)] In 40 CFR §273.60(a), the reference to "§273.9" is changed to "§335.261(b)(19)(A) [§335.261(b)(16)(A)] of this title (relating to Universal Waste Rule)" and the reference to "parts 264, 265, 266, 268, 270, and 124 of this chapter" is changed to " 30 Texas Administrative Code (relating to Environmental Quality)."

(42) [(35)] In 40 CFR §273.60(b), the reference to "40 CFR §261.6(c)(2)" is changed to "§335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)."

(43) [(36)] In 40 CFR §273.80(a), the reference to "40 CFR §260.20 and §260.23" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules) and §335.261(c) of this title (relating to Universal Waste Rule)."

(44) [(37)] In 40 CFR §273.80(b), the reference to "40 CFR §260.20(b)" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules)."

(45) [(38)] In 40 CFR §273.81(a), the reference to "40 CFR §260.10" is changed to "§335.1 of this title (relating to Definitions) and the reference to "§273.9" is changed to "§335.261(b)(19)(F) [§335.261(b)(16)(F)] of this title (relating to Universal Waste Rule)."

(c) Except as provided in paragraph (4) of this subsection, any [Any] person seeking to add a hazardous waste or a category of hazardous waste to the universal waste rule may file a petition for rulemaking under this section, §20.15 of this title, and 40 CFR Part 273, Subpart G as adopted by reference in this section.

(1) To be successful, the petitioner must demonstrate to the satisfaction of the commission that regulation under the universal waste rule: is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by §20.15 of this title. The petition

should also address as many of the factors listed in 40 CFR §273.81 as are appropriate for the waste or category of waste addressed in the petition.

(2) The commission will grant or deny a petition using the factors listed in 40 CFR §273.81. The decision will be based on the commission's determinations that regulation under the universal waste rule is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(3) The commission may request additional information needed to evaluate the merits of the petition.

(4) Hazardous waste pharmaceuticals are regulated under Subchapter W of this chapter (relating to Management Standards for Hazardous Waste Pharmaceuticals) and may not be added as a category of hazardous waste for management under this section.

(d) Any waste not qualifying for management under this section must be managed in accordance with applicable state regulations.

(e) Crushing lamps is permissible only in a crushing system for which the following control conditions are met:

(1) an exposure limit of no more than 0.05 milligrams of mercury per cubic meter is demonstrated through sampling and analysis using Occupational Safety and Health Administration (OSHA) Method ID-140 or National Institute for Occupational Safety and Health Method Number 6009, based on an eight-hour time-weighted average of samples taken at the breathing zone height near the crushing system operating at the maximum expected level of activity;

(2) compliance with the notification requirements of §106.262 of this title (relating to Facilities (Emission and Distance Limitations) (Previously SE 118)) is demonstrated;

(3) documentation of the demonstrations under paragraphs (1) and (2) of this subsection is provided in a written report to the executive director; and

(4) the executive director approves the crushing system in writing.

**SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND  
SPECIFIC TYPES OF FACILITIES**

**DIVISION 6: MILITARY MUNITIONS**

**§335.272**

**Statutory Authority**

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendment implements THSC, Chapter 361.

**§335.272. Standards.**

(a) The regulations contained in 40 Code of Federal Regulations (CFR) Part 266 Subpart M, as amended in the *Federal Register* through February 12, 1997[,] (at 62 FR [FedReg] 6622) are adopted by reference, subject to the changes indicated in subsection (b) of this section.

(b) Reference to:

(1) August 12, 1997 is changed to the effective date of this rule;

(2) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapter 50 of this title (relating to Action on Applications and Other Authorizations), Chapter 305 of this title (relating to Consolidated Permits), and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), as applicable;

(3) 40 CFR Parts 260 - 279 means the commission's rules including, but not limited, to Chapter 50 of this title, Chapter 305 of this title, Chapter 328 of this title (relating to Waste Minimization and Recycling), and Chapter 335 of this title, as applicable;

(4) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);

(5) 40 CFR §261.2 is changed to the definition of "solid waste" in §335.1 of this title);

(6) 40 CFR §262.10(i) means as this section is adopted by reference under §335.52 of this title (relating to Purpose, Scope, and Applicability) [is changed to §335.61(h) of this title (relating to Standards Applicable to Generators of Hazardous Waste)];

(7) 40 CFR §263.10(e) means as this section is adopted under [is changed to] §335.91(f) of this title (relating to Scope [Standards Applicable to Transporters of Hazardous Waste]);

(8) 40 CFR §§264.1(g)(8), 265.1(c)(11), and 270.1(c)(3) are changed to §335.41(d)(2) of this title (relating to Hazardous Waste Management General Provisions);

(9) 40 CFR §270.61 is changed to §335.402 of this title (related to Emergency Actions Concerning Hazardous Waste);

(10) Resource Conservation and Recovery Act (RCRA) §1004(27) is changed to Texas Health and Safety Code (THSC), §361.003(34) (related to the definition of Solid Waste);

(11) RCRA §3004(u) is changed to Texas Water Code (TWC), §7.031(a) and (b) (relating to Corrective Action Relating to Hazardous Waste);

(12) RCRA §3008(h) is changed to TWC, §7.031(c) - (e) (relating to Corrective Action Relating to Hazardous Waste);

(13) RCRA §7003 is changed to THSC, §361.272 (relating to Administrative Orders Concerning Imminent and Substantial Endangerment), THSC, §361.273 (relating to Injunction as Alternative to Administrative Order), THSC, §361.301 (relating to Emergency Order), TWC, §26.121, (relating to Unauthorized Discharges Prohibited.)

**SUBCHAPTER O: LAND DISPOSAL RESTRICTIONS**

**§335.431**

**Statutory Authority**

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendment implements THSC, Chapter 361.

**§335.431. Purpose, Scope, and Applicability.**

(a) Purpose. The purpose of this subchapter is to identify hazardous wastes that are restricted from land disposal and define those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(b) Scope and Applicability.

(1) Except as provided in paragraph (2) of this subsection, the requirements of this subchapter apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(2) The requirements of this subchapter do not apply to any entity that is either specifically excluded from coverage by this subchapter or would be excluded from the coverage of 40 Code of Federal Regulations (CFR) Part 268 by 40 CFR Part 261, if those parts applied.

(3) Universal waste handlers and universal waste transporters, as defined in and subject to regulation under Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule) are exempt from 40 CFR §268.7 and §268.50.

(c) Adoption by Reference.

(1) Except as provided in paragraph (2) of this subsection, and subject to the changes indicated in subsection (d) of this section, the regulations contained in 40 CFR Part 268, as amended in the *Federal Register* through February 22, 2019 (84 FR 5816) [June 13, 2011 (76 FR 34147)] are adopted by reference.

(2) The following sections of 40 CFR Part 268 are excluded from the sections adopted in paragraph (1) of this subsection: 40 CFR §§268.1(f), 268.5, 268.6, 268.7(a)(10), 268.13, 268.42(b), and 268.44.

(3) Appendices IV, VI - IX, and XI of 40 CFR Part 268 are adopted by reference as amended through July 14, 2006 (71 FR 40254).

(d) Changes to Adopted Parts. The parts of the CFR that are adopted by reference in subsection (c) of this section are changed as follows:

(1) The words "Administrator" or "Regional Administrator" are changed to "Executive Director;"

(2) The word "treatment" is changed to "processing;"

(3) The words "*Federal Register*," when they appear in the text of the regulation, are changed to "*Texas Register*;"

(4) In 40 CFR §268.7(a)(6) and (7) [(a)(7)], the applicable definition of hazardous waste and solid waste is the one that is set out in this chapter rather than the definition of hazardous waste and solid waste that is set out in 40 CFR Part 261.

(5) In 40 CFR §268.50(a)(1), the reference to "§§262.16 and 262.17 [the citation to §262.34]" is changed to "40 CFR §262.16 and §262.17 as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste)." ["§335.69."]

(6) In 40 CFR §268.50(a)(4), the reference to "§§266.502 and 266.503 of this chapter" is changed to "§335.755 of this title (relating to Standards for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals) and §335.757 of this title (relating to Standards for Healthcare Facilities Managing Potentially Creditable Hazardous Waste Pharmaceuticals)."

(7) In 40 CFR §268.50(a)(5), the reference to "§266.510 of this chapter" is changed to "§335.771 of this title (relating to Standards for the Management of Potentially Creditable Hazardous Waste Pharmaceuticals and Evaluated Hazardous Waste Pharmaceuticals by Reverse Distributors)."

**SUBCHAPTER Q: POLLUTION PREVENTION: SOURCE REDUCTION AND WASTE  
MINIMIZATION**

**§§335.471, 335.474, 335.477**

**Statutory Authority**

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendments implement THSC, Chapter 361.

**§335.471. Definitions.**

The words and terms used in this subchapter have the meanings given in the Waste Reduction Policy Act of 1991, or the regulations promulgated thereunder. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Further, the following words and terms, as defined herein, shall only have application to this subchapter.

[~~(1) Acute hazardous waste--Hazardous waste listed by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, because the waste meets the criteria for listing hazardous waste identified in 40 Code of Federal Regulations §261.11(a)(2).~~]

~~(1) [(2)] Base year--The year preceding the first year of the plan.~~

[~~(3) Conditionally exempt small quantity generator--A generator that does not accumulate more than 1,000 kilograms of hazardous waste at any one time at his facility and who generates less than 100 kilograms of hazardous waste in any given month.~~]

~~(2) [(4)] Environment--Water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.~~

[(5) Environmental management system--As defined in §90.30(3) of this title (relating to Definitions). A documented management system to address applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.]

(3) [(6)] Facility--All buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites that are owned or operated by a person who is subject to this subchapter or by a person who controls, is controlled by, or is under common control with a person subject to this subchapter.

(4) [(7)] Generator and generator of hazardous waste--Has the meaning assigned by Texas Health and Safety Code, §361.131. A person whose act or process produces industrial solid waste or hazardous waste or whose act first causes an industrial solid waste or a hazardous waste to be regulated by the commission.

[(8) Large quantity generator--A generator that generates, through ongoing processes and operations at a facility:]

[(A) more than 1,000 kilograms of hazardous waste in a month; or]

[(B) more than one kilogram of acute hazardous waste in a month.]

(5) [(9)] Media and medium--Air, water, and land into which waste is emitted, released, discharged, or disposed.

(6) [(10)] Pollutant or contaminant--Includes any element, substance, compound, disease-causing agent, or mixture that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, crude oil, or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under §101(14)(A) - (F) of the environmental response law, nor does it include natural gas, natural gas liquids, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(7) [(11)] Release--Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended ((42 United States Code, §§2011 *et seq.*), if the release is subject to requirements concerning financial protection established by the United States Nuclear Regulatory Commission under that Act, §170;

(D) for the purposes of the federal Comprehensive Environmental Responsibility, Compensation and Liability Act [CERCLA] (Superfund), §104, or other response action, a release of source, by-product, or special nuclear material from a processing site designated under the Uranium Mill Tailings Radiation Control Act of 1978 (42 United States Code, §7912 and §7942), §102(a)(1), or §302(a)); and

(E) the normal application of fertilizer.

[(12) Small quantity generator--A generator that generates through ongoing processes and operation at a facility:]

[A] equal to or less than 1,000 kilograms but more than or equal to 100 kilograms of hazardous waste in a month; or]

[B] equal to or less than one kilogram of acute hazardous waste in a month.]

(8) [(13)] Source reduction--Has the meaning assigned by the federal Pollution Prevention Act of 1990, Publication Law 101-508, §6603, 104 Stat. 1388. The term "source reduction" means any practice which:

(A) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(B) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants. The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(9) [(14)] Tons--2,000 pounds, also referred to as short tons.

(10) [(15)] Toxic release inventory--A program which includes those chemicals on the list in Committee Print Number 99-169 of the United States Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA, 42 United States Code, §11023), 313" including any revised version of the list as may be made by the administrator of the EPA.

(11) [(16)] Waste minimization--A practice that reduces the environmental or health hazards associated with hazardous wastes, pollutants, or contaminants. Examples may include reuse, recycling, neutralization, and detoxification.

#### **§335.474. Pollution Prevention Plans.**

All persons identified under §335.473 of this title (relating to Applicability) shall prepare a five-year pollution prevention plan that shall be updated as necessary. Plans shall be maintained on-site and available to commission personnel for inspection. Prior to expiration of the initial plan and each succeeding five-year plan, a new five-year plan shall be prepared. Plans prepared under paragraphs (1) - (3) of this section shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

(1) Large quantity generators or toxic release inventory (TRI) Form R reporters. For facilities that are large quantity generators as defined in §335.1

[§335.471(8)] of this title (relating to Definitions) or TRI Form R reporters [defined in §335.471(15) of this title], the plan shall include, at a minimum:

(A) an initial survey that identifies:

(i) for facilities described in §335.473(1) of this title, all activities that generate hazardous waste; and

(ii) for facilities described in §335.473(3), all activities that result in a release of TRI reportable chemicals;

(B) based on the initial survey, a prioritized list of economically and technologically feasible source reduction and waste minimization projects;

(C) an explanation of source reduction or waste minimization projects to be undertaken, with a discussion of technical and economic considerations, and environmental and human health risks considered in selecting each project to be undertaken;

(D) an estimate of the type and amount of reduction anticipated;

(E) a schedule for the implementation of each source reduction and waste minimization project;

(F) measurable source reduction and waste minimization goals for the entire facility, including incremental goals to aid in evaluating progress;

(G) an explanation of employee awareness and training programs to aid in accomplishing source reduction and waste minimization goals;

(H) identification of cases where the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium;

(I) certification that the plan is complete and correct by the owner of the facility, or, if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan. A copy of the certification is to be submitted to the commission; and

(J) an executive summary of the plan submitted to the commission that shall include at a minimum:

(i) a description of the facility that shall include:

(I) name of facility;

(II) mailing and physical address;

(III) point-of-contact, including phone number and electronic mail (e-mail) address, if available;

(IV) a general description of the facility;

(V) applicable identification numbers, including: Texas Commission on Environmental Quality (TCEQ) solid waste registration number, EPA identification number, and TRI identification number;

(VI) primary standard industrial classification (SIC) code and, if applicable, North American Industry Classification System (NAICS); and

(VII) the specific time period the five-year plan is in effect;

(ii) a list of all hazardous wastes generated and the volume of each;

(iii) a list of all reportable TRI releases and transfers and the volume of each;

(iv) a prioritized list of pollutants and contaminants to be reduced;

(v) a statement of measurable reduction goals;

(vi) an explanation of environmental and human health risks considered in determining reduction goals;

(vii) a list of source reduction and waste minimization projects with an associated schedule toward implementation;

(viii) an implementation schedule for future reduction goals;  
and

(ix) identification and description of cases where the implementation of source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium. Included in this description shall be a discussion of the change in characteristic of the normal waste stream or release and how it will be managed in the affected medium.

(K) The executive summary of the plan may include:

(i) a discussion of the person's previous efforts at the facility to reduce risk to human health and the environment or to reduce the generation of hazardous waste or the release of pollutants or contaminants;

(ii) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(iii) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals;

(iv) a description of projects that have reduced the generation of hazardous waste or the release of pollutants or contaminants; and

(v) a discussion of the operational decisions made at the facility that have affected the achievement of the source reduction or waste minimization goals or other risk reduction efforts.

(2) Small quantity generators/non-TRI Form R reporters. For facilities that are small quantity generators as defined in §335.1 [§335.471(12)] of this title and are

not TRI Form R reporters [as defined in §335.471(15) of this title], the plan shall include, at a minimum:

(A) a description of the facility which shall include:

(i) name of the facility;

(ii) mailing and physical address;

(iii) point-of-contact, including phone numbers and electronic mail (e-mail) address, if available;

(iv) general description of the facility; and

(v) applicable identification numbers, including: TCEQ solid waste registration number and EPA identification number;

(B) a list of all hazardous wastes generated and the volume of each;

(C) a prioritized list of pollutants and contaminants to be reduced;

(D) a statement of measurable reduction goals;

(E) information on environmental and human health risks, such as material safety data sheets or other available documentation, considered in determining reduction goals;

(F) A list of source reduction and waste minimization projects with an associated schedule of implementation;

(G) an implementation schedule for future reduction goals;

(H) certification that the plan is complete and correct by the owner of the facility or if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan. A copy of the certification must be submitted to the commission; and

(I) an executive summary of the plan submitted to the commission that shall include at a minimum:

(i) a description of the facility that shall include:

(I) name of facility;

(II) mailing and physical address;

(III) point-of-contact, including a phone number and email, if available;

(IV) EPA identification number and TCEQ solid waste registration number;

(V) primary SIC code; and if applicable, NAICS;

(VI) the specific time period the five-year plan is in effect;

(ii) a projection of the amount of hazardous waste that the facility will generate (based on what is reported as hazardous waste under §335.9 of this title (relating to Record Keeping and Annual Reporting Procedures Applicable to Generators)) at the end of the five-year period that the plan is in place;

(iii) prioritized list of pollutants and contaminants to be reduced;

(iv) a list of source reduction activities associated with reductions of pollutants and contaminants identified under subparagraph (C) of this paragraph.

(J) The executive summary of the plan may include:

(i) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through the pollution prevention plan;

(ii) a discussion of the effect that changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(iii) the effects that events the person could not control have had on the achievement of the source reduction and waste minimization goals;

(iv) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals; and

(v) identification and description of cases where the implementation of source reduction and waste minimization activities designed to

reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium. Included in this description shall be a discussion of the change in characteristic of the normal waste stream or release and how it will be managed in the affected medium.

**§335.477. Exemptions.**

This subchapter does not apply to:

(1) facilities regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101 or §141.012;

(2) owners and operators of facilities listed in §335.473 of this title (relating to Applicability) who may apply on a case-by-case basis to the executive director for an exemption from this subchapter. The executive director may grant an exemption if the applicant demonstrates that sufficient reductions have been achieved. If an exemption is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based upon the following standards and criteria for determining practical economic and technical completion of the plan:

(A) the facility has reduced the amount of pollutants and contaminants being generated or released by 90% since the base year;

(B) potential impact on human health and the environment of any remaining hazardous waste generated, or pollutant or contaminant released; and

(C) a demonstration that additional reductions are not economically and technically feasible.

[(3) facilities that have an environmental management system (EMS) that meets the requirements and is approved by the executive director, as described in §90.36 of this title (relating to Evaluation of an Environmental Management System by the Executive Director) and report annually under the EMS program.]

## **SUBCHAPTER R: WASTE CLASSIFICATION**

### **§§335.503, 335.504, 335.510, 335.511, 335.513, 335.521**

#### **Statutory Authority**

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendments implement THSC, Chapter 361.

**§335.503. Waste Classification and Waste Coding Required.**

(a) All industrial solid and municipal hazardous waste generated, stored, processed, transported, or disposed of in the state shall be classified according to the provisions of this subchapter.

(1) All solid waste shall be classified at the point of generation of the waste. A generator may not dilute a waste to avoid a Class 1 classification; however, combining nonhazardous waste streams for subsequent legitimate processing, storage, or disposal does not constitute dilution and is acceptable. Wastes shall be classified prior to, and following any type of processing or mixing of the waste. Hazardous waste and industrial solid waste are subject to the waste management requirements of this chapter.

(2) All industrial solid and municipal hazardous waste shall be classified as either:

(A) hazardous;

(B) Class 1;

(C) Class 2; or

(D) Class 3.

(3) A person who generates a solid waste shall first determine if that waste is hazardous pursuant to §335.504 of this title (relating to Hazardous Waste Determination).

(4) After making the hazardous waste determination as required in paragraph (3) of this subsection, if the waste is determined to be nonhazardous, the generator shall then classify the waste as Class 1, Class 2, or Class 3, pursuant to §§335.505 - 335.507 of this title (relating to Class 1 Waste Determination, Class 2 Waste Determination, and Class 3 Waste Determination) using one or more of the following methods:

(A) use the criteria for waste classification as provided in §§335.505 - 335.507 of this title;

(B) use process knowledge as provided in §335.511 of this title (relating to Use of Process Knowledge);

(C) classify the waste as directed under §335.508 of this title (relating to Classification of Specific Industrial Wastes); or

(D) choose to classify a nonhazardous waste as Class 1 without any analysis to support that classification. However, documentation (analytical data and/or process knowledge) is necessary to classify a waste as Class 2 or Class 3, pursuant to §335.513 of this title (relating to Documentation Required).

(b) All industrial solid waste and municipal hazardous waste generated, stored, processed, transported or disposed of in the state shall be coded with an eight-digit waste code number that consists of a four-character sequence number followed by a three-digit form code provided in §335.521(c) of this title (relating to Appendix 3) followed by one-character, H, 1, 2, or 3, depicting the waste classification identified in subsection (a)(2) of this section. Procedures for assigning sequence numbers are outlined as follows [which shall include a four-digit waste sequence number, a three-digit form code, and a one-character classification (either H, 1, 2, or 3). Form codes are provided in §335.521(c) of this title (relating to Appendix 3). Procedures for assigning waste code numbers and sequence numbers are outlined as follows and available from the agency at the address listed in §335.521(b) of this title (relating to Appendix 2)].

(1) The four-character sequence number consists of alpha and/or numeric characters [A waste code is represented by the following 8-digit character string: sequence number + form code + classification code (H, 1, 2, or 3)].

(2) Registered generators must assign a unique numeric sequence number between 0001 to 9999 to each individual waste. Sequence numbers need not be

assigned in sequential order [In-state generators will assign a unique four-digit sequence number to each individual waste. These sequence numbers will range from 0001 to 9999. They need not be assigned in sequential order. An in-state registered generator may choose to request the executive director assign a sequence number to a specific waste which is not regularly generated by a facility and is being shipped as a one-time shipment or choose to add that waste to the regular sequence numbers on a notice of registration. Sequence numbers provided by the executive director may be a combination of alpha and numeric characters].

(3) The executive director will provide [in-state] unregistered generators a [four-digit] sequence number for each regulated waste it generates, which may be a combination of alpha and numeric characters.

(4) Generators of wastes resulting from a spill may obtain a sequence number for the spill related wastes from the agency's Emergency Response Section.

(5) Out-of-state generators must use the sequence number "OUTS" as the first four characters of the waste code [will use the sequence code "OUTS" in the first four digits of the waste code].

(6) A generator that meets the conditions of an applicable exemption from manifesting requirements that manifests their hazardous and/or Class 1 nonhazardous waste must use the sequence number "VSQG" as the first four

characters of the waste code [CESQs or industrial Class 1 non-hazardous waste generators that are exempt from manifesting as specified 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) who voluntarily manifest their hazardous and or Class 1 nonhazardous waste may use "CESQ" as the first four digits of the waste code].

(7) A facility which receives and consolidates like waste from a person who meets the conditions for exemption for a very small quantity generator and generated less than 100 kilograms of non-acute hazardous waste, 1 kilogram of acute hazardous waste, and 100 kilograms of Class 1 industrial waste in the calendar month during which the waste was generated must use the sequence number "VSQG" as the first four characters of the waste code for any manifesting and/or reporting associated with that waste [Municipal Conditionally Exempt Small Quantity Generators should use "CESQ" in the first four positions of the waste code for any manifesting and/or reporting associated with that waste].

(8) A facility which receives a waste from off-site and consolidates that waste with other like waste received from off-site, other than its own (thus not changing the form code of the waste stream or its composition, hazardous waste classification, or Texas waste class), or stores a waste without treating, processing (as defined in §335.1 of this title (relating to Definitions), and without changing the form or composition of that waste may use the sequence number "TSDF" as the first four

characters of the waste code. The sequence number TSDf may not be used to identify wastes which are treated or altered or combined with unlike wastes. The sequence number TSDf is only to be used by facilities that store and/or accumulate a quantity of wastes from more than one site for subsequent shipment to a treatment or disposal facility. [A facility which receives a waste and consolidates that waste with other like waste, other than its own, (thus not changing the form code of the waste stream or its composition, hazardous, or Texas waste class), or stores a waste without treating, processing (as defined in §335.1 of this title (relating to Definitions)), or changing the form or composition of that waste may ship that waste to a storage, treatment, or disposal facility using the sequence code "TSDf" in the first four positions of the waste code. This does not pertain to wastes which are treated or altered or combined with unlike wastes. This "TSDf" designation is only to be used by facilities that store and/or accumulate a quantity of wastes from more than one site for subsequent shipment to a treatment or disposal facility. Manifest documents must note a final destination designated to receive a consolidated waste. The designated "final destination" receiving facility noted on the manifest must be a permitted facility in order to terminate the manifest, unless the waste is nonhazardous and does not require manifesting in accordance with §335.10(e) of this title and is going to a facility described in §335.10(e) of this title. A consolidated waste shipped to a non-permitted facility prior to being shipped to the final destination must proceed with the original manifests (noted with any appropriate changes) to the facility designated on the manifest for final handling.]

(9) A healthcare facility shipping non-creditable hazardous waste pharmaceuticals to a designated facility must use the sequence number "PHRM" as the first four characters of the waste code.

#### **§335.504. Hazardous Waste Determination**

(a) Hazardous waste determination. A person who generates a solid waste, as defined in §335.1 of this title (relating to Definitions), must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable Resource Conservation and Recovery Act (RCRA) and Texas Administrative Code regulations. The hazardous waste determination for each solid waste must be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the RCRA classification of the waste may change. A hazardous waste determination is made using the following steps: [must determine if that waste is hazardous using the following method:]

(1) A person must determine whether the material is excluded or exempted from regulation as a solid waste or as hazardous waste under the definition of solid waste in §335.1 of this title or identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart A as amended in the *Federal Register* through February 22,

2019 (84 FR 5816), or Subpart E as amended in the *Federal Register* through August 6, 2018 (83 FR 38262) [Determine if the material is excluded or exempted from being a solid waste or hazardous waste per §335.1 of this title (relating to Definitions)] or identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart A or E, as amended through November 28, 2016 (81 FR 85696)].

(2) If the waste is not excluded from regulation as a solid waste, the person must then use knowledge of the waste to determine whether the waste is a hazardous waste because it meets any of the listing descriptions, or is mixed with or derived from a waste that meets any of the listing descriptions identified in 40 CFR Part 261, Subpart D, as amended in the *Federal Register* through February 22, 2019 (84 FR 5816). Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information [If the material is a solid waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 CFR Part 261, Subpart D, as amended through April 13, 2012 (77 FR 22229)].

(3) The person must also determine whether the waste exhibits one or more hazardous characteristics as identified in 40 CFR Part 261, Subpart C, as amended in the *Federal Register* through March 18, 2010 (75 FR 12989) by following the procedures in subparagraph (A) or (B) of this paragraph or a combination of both [If the material is a solid waste, determine whether the waste exhibits any

characteristics of a hazardous waste as identified in 40 CFR Part 261, Subpart C, as amended through March 18, 2010 (75 FR 12989)].

(A) The person must apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste. Acceptable knowledge may include process knowledge (e.g., information about chemical feedstocks and other inputs to the production process); knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents. A test other than a test method set forth in 40 CFR Part 261, Subpart C or an equivalent test method approved by the United States Environmental Protection Agency (EPA) Administrator under 40 CFR §260.21, or by the executive director under §335.509 of this title (relating to Waste Analysis), may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing their waste must obtain a representative sample, as defined in §335.1 of this title, of the waste for the testing.

(B) When available knowledge is inadequate to make an accurate determination, the person must test the waste according to the applicable methods set

forth in 40 CFR Part 261, Subpart C or according to an equivalent method approved by the EPA Administrator under 40 CFR §260.21, or approved by the executive director under §335.509 of this title, and in accordance with the following:

(i) Persons testing their waste must obtain a representative sample, as defined in §335.1 of this title, of the waste for the testing.

(ii) Where a test method is specified in 40 CFR Part 261, Subpart C, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

(b) Recordkeeping for small or large quantity generators. A large quantity generator and a small quantity generator shall maintain records supporting its hazardous waste determinations in accordance with 40 CFR §262.11(f) as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste).

(c) Recordkeeping for hazardous waste and Class 1 waste generators. Generators shall make and maintain records of a hazardous waste determination in accordance with §335.513 of this title (relating to Documentation Required), and 40 CFR §262.11(f) as adopted under §335.53 of this title.

**§335.510. Sampling Documentation.**

(a) Generators who use analytical data to classify their waste pursuant to §335.509 of this title (relating to Waste Analysis) must maintain documentation of their sampling procedures in accordance with this section and 40 Code of Federal Regulations §262.11(f) as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste).

(b) The sampling documentation must, at a minimum, include the following:

(1) dates samples were collected;

(2) a description of the site or unit from which the sample is taken and sampling location(s) at the site unit;

(3) sample methods and sample equipment utilized; and

(4) description of sample handling techniques, including containerization, preservation, and chain of custody.

(c) Generators shall document all the information listed in subsection (b) of this section, and shall retain copies on-site in accordance with §335.513 of this title (relating to Documentation Required).

(d) Generators who have existing sampling documentation, which includes the information listed in subsection (b) of this section, do not need to prepare any new documentation specifically for this section.

**§335.511. Use of Process Knowledge.**

(a) Generators using knowledge of the waste and the process producing the waste to classify or assist in classifying a waste as hazardous shall comply with §335.504 of this title (relating to Hazardous Waste Determination). Generators using knowledge of the waste to classify or assist in classifying a waste as Class 1, Class 2, or Class 3 shall comply with this section and consider the waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information [Generators may use their existing knowledge about the process to classify or assist in classifying a waste as hazardous, Class 1, Class 2, or Class 3]. Process knowledge must be documented and maintained on-site pursuant to §335.513 of this title (relating to Documentation Required), and 40 CFR §262.11(f) as adopted by reference under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste). Material safety data sheets, manufacturers' literature, and other documentation generated in conjunction with a particular process may be used to classify a waste provided that the literature provides reliable and relevant [sufficient] information about the waste and addresses the criteria set forth in §§335.504 - 335.508 of this title (relating to Hazardous Waste Determination, Class 1 Waste

Determination, Class 2 Waste Determination, Class 3 Waste Determination, and Classification of Specific Industrial Solid Wastes). For classes other than hazardous or Class 1, a generator must be able to demonstrate requisite knowledge of his or her process by satisfying all of the following.

(1) The generator must have a full description of the process, including a list of chemical constituents that enter the process. Constituents listed in Appendix 1 in §335.521 of this title (relating to Appendices) [of this subchapter] must be addressed in this description.

(2) The generator must have a full description of the waste, including a list of chemical constituents likely to be in the waste. This list should be based on paragraph (1) of this subsection.

(3) The generator may develop a subset of Appendix 1 of §335.521 of this title constituents by which to evaluate the waste utilizing the information from paragraphs (1) and (2) of this subsection.

(4) Documentation of the waste classification must be maintained and, if requested or required, provided to the executive director pursuant to §335.513 of this title.

(b) If the total concentration of the constituents demonstrates that individual analytes are not present in the waste, or that they are present but at such low concentrations that the appropriate maximum leachable concentrations could not possibly be exceeded, the Toxicity Characteristic Leaching Procedure (TCLP) [TCLP] extraction procedure discussed in §335.505(1) of this title need not be run. If an analysis of any one of the liquid fractions of the TCLP extract indicates that a regulated constituent is present at such high concentrations that, even after accounting for dilution from the other fractions of the extract, the concentration would be equal to or greater than the maximum leachable concentration for that constituent, then the waste is Class 1, and it is not necessary to analyze the remaining fractions of the extract.

**§335.513. Documentation Required.**

(a) Documentation on each waste stream is required to be maintained by the generator in accordance with the requirements of this subchapter, [and in accordance with] §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), and 40 Code of Federal Regulations §262.11(f) as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste).

(b) The following documentation shall be submitted by the generator to the executive director prior to waste shipment or disposal and not later than 90 days of initial waste generation:

(1) description of waste;

(2) date of initial waste generation;

(3) description of process that generated the waste;

(4) hazardous waste determination;

(5) all analytical data and/or process knowledge allowed under §335.511 of this title (relating to Use of Process Knowledge) used to characterize Class 3 wastes, including quality control data; and

(6) waste classification determination.

(c) The following documentation shall be maintained by the generator on site immediately upon waste generation and for a minimum of three years after the waste is no longer generated or stored or until site closure:

(1) all information required under subsection (b) of this section;

(2) all analytical data and/or process knowledge allowed under §335.511 of this title used to characterize hazardous, Class 1, Class 2, and Class 3 wastes, including quality control data.

(d) The executive director may request that a generator submit all documentation listed in subsections (b) and (c) of this section for auditing the classification assigned. Documentation requested under this section shall be submitted within ten working days of receipt of the request.

(e) Any changes to the information required in sections (b) and (c) of this subsection shall be maintained or submitted according to the timing requirements of this section.

(f) A generator may request information provided to the agency remain confidential in accordance with the Texas Open Records Act, the Texas Government Code, Chapter 552.

**§335.521. Appendices.**

(a) Appendix 1.

(1) Table 1.

**Figure: 30 TAC §335.521(a)(1) (No change to the figure as it currently exists in TAC.)**

Constituents of Concern and  
 Their Maximum Leachable Concentrations.

Values are based on information contained in Federal Registers Vol. 55 / Friday, July 27, 1990; Vol. 56 / June 7, 1991; and Integrated Risk Information Systems, U.S. Environmental Protection Agency, and 40 CFR 264 Appendix 9.

Compound	CAS No.	Concentration (mg/l)
Acenaphthene	83-32-9	210
Acetone	67-64-1	400
Acetonitrile	75-05-8	20
Acetophenone	98-86-2	400
Acrylamide	79-06-1	0.08
Acrylonitrile	107-13-1	0.6
Aniline	62-53-3	60
#Anthracene	120-12-7	1050
Antimony	7440-36-0	1
Arsenic	7440-38-2	1.8
Barium	7440-39-3	100.0
Benzene	71-43-2	0.50
Benzidine	92-87-5	0.002
Beryllium	7440-41-7	0.08
Bis(2-chloroethyl)ether	111-44-4	0.3
Bis(2-ethylhexyl) phthalate	117-81-7 --	30 --
Bromodichloromethane	75-27-4	0.3
Bromomethane	74-83-9	5
Butylbenzyl phthalate	85-68-7	700
Cadmium	7440-43-9	0.5
Carbon disulfide	75-15-0	400
Carbon tetrachloride	56-23-5	0.50
Chlordane	57-74-9	0.03
Chlorobenzene	08-90-7	70
Chloroform	67-66-3	6.0
#Chloro-m-cresol, p	59-50-7	7000
2-Chlorophenol	95-57-8	20
Chromium	7440-47-3	5.0
m-Cresol	108-39-4	200.0*
o-Cresol	95-48-7	200.0*
p-Cresol	106-44-5	200.0*
DDD	72-54-8	1
DDE	72-55-9	1
DDT	50-29-3	1
Dibutyl phthalate	84-74-2	400

1,4-Dichlorobenzene	106-46-7	7.5
3,3-Dichlorobenzidine	91-94-1	0.8
1,2-Dichloroethane	107-06-2	0.50
Dichlorodifluoromethane	75-71-8	700
1,1-Dichloroethylene	75-35-4	0.6
1,3-Dichloropropene	542-75-6	1
2,4-Dichlorophenol	120-83-2	10
2,4-Dichlorophenoxy- acetic acid (2,4-D)	94-75-7 --	10.0 --
Dieldrin	60-57-1	0.02
Diethyl phthalate	84-66-2	3000
Dimethoate	60-51-5	70
#2,4-Dimethylphenol	105-67-9	70
#2,6-Dimethylphenol	576-26-1	21
m-Dinitrobenzene	99-65-0	0.4
2,4-Dinitrophenol	51-28-5	7
2,4 -Dinitrotoluene (and 2,6-, mixture)	602-01-7 --	0.13 --
#Dinoseb	88-85-7	3.5
1,4-Dioxane	123-91-1	30
Dioxins (Poly chlorinated dibenzo-p-dioxins)		
2,3,7,8-TCDD	1746-01-6	0.005
1,2,3,7,8-PeCDD	0321-76-4	0.010
1,2,3,4,7,8-HxCDD	57653-85-7	0.050
1,2,3,6,7,8-HxCDD	34465-46-8	0.050
1,2,3,7,8,9-HxCDD		0.050
Diphenylamine	122-39-4	90
1,2-Diphenylhydrazine	122-66-7	0.4
Disulfoton	298-04-4	0.1
Endosulfan	959-98-8	0.2
Endrin	72-20-8	0.02
#2-Ethoxyethanol	110-80-5	1400
Ethylbenzene	100-41-4	400
Ethylene dibromide	106-93-4	0.004
#Ethylene Glycol	107-21-1	7000
#Fluoranthene	206-44-0	140
#Fluorene	86-73-7	140
Furans (Polychlorinated dibenzo furans)		
2,3,7,8-TCDF	51207-31-9	0.050
1,2,3,7,8-PeCDF		0.100
2,3,4,7,8-PeCDF		0.010
1,2,3,4,7,8-HxCDF		0.050
1,2,3,6,7,8-HxCDF		0.050
1,2,3,7,8,9-HxCDF		0.050
Heptachlor (and its hydroxide)	76-44-8 --	0.008 --
Heptachlor epoxide	1024-57-3	0.04
Hexachlorobenzene	118-74-1	0.13
Hexachloro-1,3-butadiene	87-68-3	0.4

Hexachlorocyclopentadiene	77-47-4	20
Hexachloroethane	67-72-1	3.0
Hexachlorophene	70-30-4	1
Isobutyl alcohol	78-83-1	1000
Isophorone	78-59-1	90
Lead	7439-92-1	1.5
Lindane	58-89-9	0.3
Mercury	7439-97-6	0.2
Methacrylonitrile	126-98-7	0.4
Methomyl	16752-77-5	90
Methoxychlor	72-43-5	10.0
#2-Methoxyethanol	109-86-4	14.0
Methyl ethyl ketone	78-93-3	200.0
Methyl isobutyl ketone	108-10-1	200
Methylene chloride	75-09-2	50
Methyl parathion	298-00-0	0.9
#Mirex	2385-85-5	0.7
Nickel	7440-02-0	70
Nitrobenzene	98-95-3	2.0
N-Nitroso-di-n-butylamine	924-16-3	0.06
N-Nitrosodiphenylamine	86-30-6	70
N-Nitrosomethylethylamine	10595-95-6	0.02
N-Nitroso-n-propylamine	621-64-7	0.05
N-Nitrosopyrrolidine	930-55-2	0.2
p-Phenylene diamine	106-50-3	20
Parathion	56-38-2	20
Pentachlorobenzene	608-93-5	3
Pentachloronitrobenzene	82-68-8	10
Pentachlorophenol	87-86-5	100.0
Phenol	108-95-2	2000
Pronamide	23950-58-5	300
#Pyrene	129-00-0	5.9
Pyridine	110-86-1	4
Selenium	7782-49-2	1.0
Silver	7440-22-4	5.0
Styrene	100-42-5	700
1,1,1,2-Tetrachloroethane	630-20-6	10
1,1,2,2-Tetrachloroethane	79-34-5	2
Tetrachloroethylene	127-18-4	0.7
2,3,4,6-Tetrachlorophenol	58-90-2	100
Toluene	108-88-3	1000
Toxaphene	8001-35-2	0.3
trans-1,3-Dichloro- propene	542-75-6	1
Tribromomethane (Bromoform)	75-25-2	70
1,2,4-Trichlorobenzene	120-82-1	70
1,1,1-Trichloroethane	71-55-6	300
Trichloroethylene	79-01-6	0.5

1,1,2-Trichloroethane	79-00-5	6
Trichlorofluoromethane	75-69-4	1000
2,4,5-Trichlorophenoxy- propionic acid (2,4,5 TP or Silvex)	93-72-1 --	1.0 --
1,2,3-Trichloropropane	96-18-4	20
2,4,5-Trichlorophenol	95-95-4	400.0
2,4,6-Trichlorophenol	88-06-2	2
Vanadium Pentoxide	1314-62-1	30
Vinyl chloride	75-01-4	0.2
Xylenes (all isomers)	1330-82-1	7000

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 # Constituent added since original rule publication.

\* If o-, m-, and p-Cresol concentrations cannot be differentiated, the total cresol concentration is used. The Maximum Concentration for total cresol is 200.0 mg/l.

(2) Table 2.

**Figure: 30 TAC §335.521(a)(2)**

**[Figure: 30 TAC §335.521(a)(2)]**

Appendix 1, Table 2.

Examples of Ignitable Solids.
Constituents listed from Department of Transportation Regulations, 49 CFR Part 173 Subpart E, October 1, 1993. (Note: The presence of a constituent on this table in a <u>nonhazardous</u> [non-hazardous] waste does not automatically identify that waste as a Class 1 ignitable waste. The constituents on this table are examples of materials which could be considered Class 1 ignitable waste. The physical characteristics of the waste will be the determining factor as to whether or not a waste is ignitable. Refer to §335.505(2) of this title (relating to Class 1 Waste Determination) for the Class 1 ignitable criteria.)
Compound or Material
Aluminum, metallic, powder
Alkali metal amalgams
Alkali metal amides
Aluminum alkyl halides
Aluminum alkyl hydrides

Aluminum alkyls
Aluminum borohydrides
Aluminum carbide
Aluminum ferrosilicon powder
Aluminum hydride
Aluminum phosphide
Aluminum resinate
Aluminum silicon powder
Ammonium picrate
2, 2'-Azodi-(2,4-dimethyl-4-methoxyvaleronitrile)
2, 2'-Azodi-(2,4-dimethylvaleronitrile)
1, 1' Azodi-(hexahydrobenzonitrile)
2,2'-Azodi (2-methyl-butryronitrile)
Azodiisobutryonitrile
Barium, metallic
Barium alloys, pyrophoric
Barium azide
Benzene-1,3-disulfohydrazide
Benzene sulfohydrazide
4-(Benzyl(ethyl)amino)-3-ethoxybenzenediazonium zinc chloride
4-(Benzyl(methyl)amino)-3-ethoxybenzenediazonium zinc chloride
Borneol
Boron trifluoride dimethyl etherate
5-tert-Butyl-2,4,6-trinitro-m-xylene
Calcium, metallic
Calcium carbide
Calcium chlorite
Calcium cyanamide
Calcium dithionite
Calcium hypochlorite
Calcium manganese silicon
Calcium silicon powder
Calcium phosphide
Calcium pyrophoric
Calcium resinate
Calcium silicide
Camphor, synthetic
Carbon, activated
Celluloid
Cerium
Cesium metal
Chromic acid or chromic acid mixture, dry
Cobalt naphthenates, powder

Cobalt resinate
Decaborane
2-Diazo-1-naphthol-4-sulpho-chloride
2-Diazo-1-naphthol-5-sulpho-chloride
2,5-Diethoxy-4-morpholinobenzenediazonium zinc chloride
Diethylzinc
4-Dimethylamino-6-(2-dimethylaminoethoxy) toluene-2-diazonium zinc chloride
Dimethylzinc
Dinitrophenolates
Dinitroresorcinol
N,N'-Dinitroso-N,N'-dimethyl terephthalamide
N,N'-Dinitrosopentamethylenetetramine
Diphenyloxide-4,4'disulfohydrazide
Dipicryl sulfide
4-Dipropylaminobenzenediazonium zinc chloride
Ferrocium
Ferrosilicon
Ferrous metal
Hafnium powder
Hexamine
Hydrides, metal
3-(2-Hydroxyethoxy)-4-pyrrolidin-1-ylbenzenediazonium zinc chloride
Iron oxide, spent
Isosorbide dinitrate mixture
Lead phosphite, dibasic
Lithium acetylde-ethylene diamine complex
Lithium alkyls
Lithium aluminum hydride
Lithium amide, powdered
Lithium borohydride
Lithium ferro silicon
Lithium hydride
Lithium metal
Lithium nitride
Lithium silicon
Magnesium granules
Magnesium aluminum phosphide
Magnesium diamide
Magnesium phosphide
Magnesium silicide
Maneb
Manganese resinate
Methyl magnesium bromide

Methyldichlorosilane
Mono-(trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetriene
N-methyl-N'-nitro-Nitrosoguanidine
Naphthalene
Nitrocellulose mixtures
Nitroguanidine
p-Nitrosodimethylaniline
Paraformaldehyde
Pentaborane
Peratic acid
Phosphorous, amorphous, red
Phosphorous, white or yellow
Phosphoric anhydride
Phosphorous pentachloride
Phosphorus pentasulfide
Phosphorus sesquisulfide
Phosphorus trisulfide
Picric acid
Potassium, metallic
Potassium dichloro-s-triazine-triene
Potassium borohydride
Potassium dithionite
Potassium phosphide
Potassium sulfide, anhydrous
Rubidium metal
Silicon powder, amorphous
Silver picrate
Sodium, metallic
Sodium aluminum hydride
Sodium amide
Sodium borohydride
Sodium chlorite
Sodium 2-diazo-1-naphthol-4-sulphonate
Sodium 2-diazo-1-naphthol-5-sulphonate
Sodium dichloro-s-triazine-triene
Sodium dinitro-ortho-cresolate
Sodium hydride
Sodium hydrosulfite
Sodium methylate
Sodium nitrite and mixtures
Sodium picramate, wet
Sodium potassium alloys
Sodium sulfide, anhydrous

Stannic phosphide
Strontium phosphide
Sulfur
Titanium metal powder
Titanium hydride
Trichloroisocyanuric acid
Trichlorosilane
Trichloro-s-triazinetrione
Trinitrobenzoic acid
Trinitrophenol
Trinitrotoluene
Urea nitrate
Zinc ammonium nitrite
Zinc phosphide
Zinc powder
Zinc resinate
Zirconium hydride, powdered
Zirconium picramate
Zirconium powder
Zirconium scrap

(3) Table 3.

**Figure: 30 TAC §335.521(a)(3) (No change to the figure as it currently exists in TAC.)**

Maximum Contaminant Levels (MCLs).

Values obtained from 40 CFR Part 141, Subparts B and G, Maximum Contaminant Levels and 40 CFR Part 143, Total Dissolved Solids.

Constituent	MCL (mg/l)
Arsenic	0.05
Barium	1
*Benzene	0.005
Cadmium	0.005
*Carbon tetrachloride	0.005
Chlordane	0.002

*Chlorobenzene	0.1
Chromium	0.1
2,4-D	0.07
*Dibromochloropropane	0.0002
*ortho-Dichlorobenzene	0.6
*para-Dichlorobenzene	0.075
*1,2-Dichloroethane	0.005
*1,1-Dichloroethylene	0.007
*trans-1,2-Dichloroethylene	0.1
*1,2-Dichloropropane	0.005
*Ethylbenzene	0.7
Heptachlor	.0004
Heptachlor epoxide	0.0002
Lead	0.05
Mercury	0.002
Methoxychlor	0.04
Pentachlorophenol	0.001
Selenium	0.05
Silver	0.05
*Styrene	0.1
*Tetrachloroethylene	0.005
*1,1,1-Trichloroethane	0.20
*Trichloroethylene	0.005
*Toluene	1
Toxaphene	0.003
2,4,5-TP (Silvex)	0.05
*Vinyl chloride	0.002
*Xylenes (total)	10
Total Dissolved Solids	500

\* For a class 3 waste classification, these constituents must also be evaluated using the test methods described in 40 Code of Federal Regulations Part 261, Appendix II. See 335.507(4)(A)(ii) for additional information.

(b) Appendix 2.

**Figure: 30 TAC §335.521(b)**

**[Figure: 30 TAC §335.521(b)]**Appendix 2. TCEQ Mailing Information.

Texas Commission on Environmental Quality [Texas Natural Resource Conservation  
 Commission]  
 Waste Permits Division  
 Industrial and Hazardous Waste Permits Section  
 MC 130

P.O.Box 13087  
 Austin, Texas 78711-3087

<https://www.tceq.texas.gov/> [<http://home.tnrcc.state.tx.us/>]

(c) Appendix 3.

**Figure: 30 TAC §335.521(c)**

[Figure: 30 TAC §335.521(c)]

Appendix 3.

FORM CODES	
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Code	Waste description
-----	
LAB PACKS	
LAB PACKS - Lab packs of mixed wastes, chemicals, lab wastes	
001	Lab packs of old chemicals only
002	Lab packs of debris only
003	Mixed lab packs
004	Lab packs containing acute hazardous wastes
005	Waste pharmaceuticals managed as hazardous waste
006	Airbag waste (airbag modules or airbag inflators managed as hazardous waste)
009	Other lab packs (Specify in Comments)
LIQUIDS	
INORGANIC LIQUIDS - Waste that is primarily inorganic and highly fluid (e.g., aqueous), with low suspended inorganic solids and low organic content	
101	Aqueous waste with low solvents
102	Aqueous waste with low other toxic organics
103	Spent acid with metals
104	Spent acid without metals
105	Acidic aqueous waste
106	Caustic solution with metals but no cyanides
107	Caustic solution with metals and cyanides
108	Caustic solution with cyanides but no metals

109 Spent caustic
110 Caustic aqueous waste
111 Aqueous waste with reactive sulfides
112 Aqueous waste with other reactives (e.g., explosives)
113 Other aqueous waste with high dissolved solids
114 Other aqueous waste with low dissolved solids
115 Scrubber water
116 Leachate
117 Waste liquid mercury
119 Other inorganic liquids (Specify in Comments)
198 Nonhazardous photographic chemical wastes (inorganic)
199 Brine solution that could also bear the form code 113
ORGANIC LIQUIDS - Waste that is primarily organic and is highly fluid, with low inorganic solids content and low-to-moderate water content
201 Concentrated solvent-water solution
202 Halogenated (e.g., chlorinated) solvent
203 Non-halogenated solvent
204 Halogenated/non-halogenated solvent mixture
205 Oil-water emulsion or mixture
206 Waste oil
207 Concentrated aqueous solution of other organics
208 Concentrated phenolics
209 Organic paint, ink, lacquer, or varnish
210 Adhesives or epoxies
211 Paint thinner or petroleum distillates
212 Reactive or polymerizable organic liquids
219 Other organic liquids (Specify in Comments)
296 Ethylene glycol based antifreeze
297 Nonhazardous liquids containing greater than or equal to ( ) 50 and less than ( ) 500 ppm PCBs
298 Nonhazardous liquids containing greater than or equal to ( ) 500 ppm PCBs
299 Nonhazardous photographic chemical waste (organic)
SOLIDS
INORGANIC SOLIDS - Waste that is primarily inorganic and solid, with low organic content and low-to-moderate water content; not pumpable
301 Soil Contaminated with organics
302 Soil contaminated with inorganics only
303 Ash, slag, or other residue from incineration of wastes
304 Other "dry" ash, slag, or thermal residue
305 "Dry" lime or metal hydroxide solids chemically "fixed"

306 "Dry" lime or metal hydroxide solids not "fixed"
307 Metal scale, filings, or scrap
308 Empty or crushed metal drums or containers
309 Batteries or battery parts, casings, cores
310 Spent solid filters or adsorbents
311 Asbestos solids and debris
312 Metal-cyanide salts/chemicals
313 Reactive cyanide salts/chemicals
314 Reactive sulfide salts/chemicals
315 Other reactive salts/chemicals
316 Other metal salts/chemicals
319 Other waste inorganic solids (Specify in Comments)
388 Empty or crushed glass containers
389 Nonhazardous sandblasting waste
390 Nonhazardous concrete/cement/construction debris
391 Nonhazardous dewatered wastewater treatment sludge
392 Nonhazardous dewatered air pollution control device sludge
393 Catalyst waste
394 Nonhazardous solids containing greater than or equal to ( ) 50 ppm and less than (<) 500 ppm PCBs
395 Nonhazardous solids containing greater than or equal to ( ) 500 ppm PCBs
396 Nonhazardous electrical equipment/devices containing greater than or equal to ( ) 50 ppm and less than (<) 500 ppm PCBs.
397 Nonhazardous electrical equipment/devices containing greater than or equal to ( ) 500 ppm PCBs
398 Nonhazardous soils containing greater than or equal to ( ) 50 ppm and less than (<) 500 ppm PCBs
399 Nonhazardous soils containing greater than or equal to ( ) 500 ppm PCBs
ORGANIC SOLIDS - Waste that is primarily organic and solid, with low-to-moderate inorganic content and water content; not pumpable
401 Halogenated pesticide solid
402 Non-halogenated pesticide solid
403 Solids resins or polymerized organics
404 Spent carbon
405 Reactive organic solid
406 Empty fiber or plastic containers
407 Other halogenated organic solids (Specify in Comments)
409 Other non-halogenated organic solids (Specify in Comments)
488 Wood debris
489 Petroleum contaminated solids
490 Sand blasting waste
491 Dewatered biological treatment sludge

492 Dewatered sewage or other untreated biological sludge
493 Catalyst waste
494 Solids containing greater than or equal to ( ) 50 ppm and less than (<) 500 ppm PCBs
495 Solids containing greater than or equal to ( ) 500 ppm PCBs
496 Electrical equipment/devices containing greater than or equal to ( ) 50 ppm and less than (<) 500 ppm PCBs.
497 Electrical equipment/devices containing greater than or equal to ( ) 500 ppm PCBs
498 Soils containing greater than or equal to ( ) 50 ppm and less than (<) 500 ppm PCBs
499 Soils containing greater than or equal to ( ) 500 ppm PCBs
SLUDGES
INORGANIC SLUDGES - Waste that is primarily inorganic, with moderate-to-high water content and low organic content, and pumpable
501 Lime sludge without metals
502 Lime sludge with metals/metal hydroxide sludge
503 Wastewater treatment sludge with toxic organics
504 Other wastewater treatment sludge
505 Untreated plating sludge without cyanides
506 Untreated plating sludge with cyanides
507 Other sludge with cyanides
508 Sludge with reactive sulfides
509 Sludge with other reactives
510 Degreasing sludge with metal scale or filings
511 Air pollution control device sludge (e.g., fly ash, wet scrubber sludge)
512 Sediment or lagoon dragout contaminated with organics
513 Sediment or lagoon dragout contaminated with inorganics only
514 Drilling mud
515 Asbestos slurry or sludge
516 Chloride or other brine sludge
519 Other inorganic sludges (Specify in Comments)
597 Catalyst waste
598 Nonhazardous sludges containing greater than or equal to ( ) 50 ppm and less than (<) 500 ppm PCBs
599 Nonhazardous sludges containing greater than or equal to ( ) 500 ppm PCBs
ORGANIC SLUDGES - Waste that is primarily organic with low-to-moderate inorganic solids content and water content, and pumpable
601 Still bottoms of halogenated (e.g., chlorinated) solvents or other organic liquids
602 Still bottoms of non-halogenated solvents or other organic liquids

603 Oily sludge
604 Organic paint or ink sludge
605 Reactive or polymerizable organics
606 Resins, tars, or tarry sludge
607 Biological treatment sludge
608 Sewage or other untreated biological sludge
609 Other organic sludges (Specify in Comments)
695 Petroleum contaminated sludges other than still bottoms and oily sludges
696 Grease
697 Catalyst waste
698 Nonhazardous sludges containing greater than or equal to ( ) 50 ppm and less than (<) 500 ppm PCBs
699 Nonhazardous sludges containing greater than or equal to ( ) 500 ppm PCBs
GASES
INORGANIC GASES - Waste that is primarily inorganic with a low organic content and is a gas at atmospheric pressure
701 Inorganic gases
ORGANIC GASES - Waste that is primarily organic with low-to-moderate inorganic content and is a gas at atmospheric pressure
801 Organic gases
PLANT TRASH
902 Supplemental plant production refuse - Class 2 waste from production, manufacturing, or laboratory operations. The total amount of the supplemental plant production refuse shall not exceed 20% of the annual average of the total plant refuse (form code 999) volume or weight, whichever is less.
999 Plant Trash - Class 2 waste originating in the facility offices or plant production area that is composed of paper, cardboard, linings, wrappings, paper and/or wooden packaging materials, food wastes, cafeteria waste, glass, aluminum foil, aluminum cans, aluminum scrap, stainless steel, steel, iron scrap, plastics, styrofoam, rope, twine, uncontaminated rubber, uncontaminated wooden materials, equipment belts, wirings, uncontaminated cloth, metal bindings, empty containers with a holding capacity of five gallons or less, uncontaminated floor sweepings, and/or food packaging, that are produced as a result of plant production, manufacturing, laboratory, general office, cafeteria, or food services operations. Personal cosmetics generated by facility personnel, excluding those cosmetics generated as a result of manufacturing or plant production operations.

(d) Appendix 4.

**Figure: 30 TAC §335.521(d) (No change to the figure as it currently exists in TAC.)**

#### Appendix 4. Seven-Day Distilled Water Leachate Test

This test is intended only for dry, solid wastes, i.e., waste materials without any free liquids.

1. Place a 250 gm. (dry weight) representative sample of the waste material in a 1,500 ml. Erlenmayer flask.
2. Add one liter of deionized or distilled water into the flask and mechanically stir the material at a low speed for five minutes.
3. Stopper the flask and allow to stand for seven days.
4. At the end of seven days, filter the supernatant solution through a .45-micron filter, collecting the supernatant into a separate flask.
5. Subject the filtered leachate to the appropriate analysis.

**SUBCHAPTER T: PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF  
COMMERCIAL INDUSTRIAL NONHAZARDOUS WASTE LANDFILL FACILITIES**

**§335.590**

**Statutory Authority**

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendment implements THSC, Chapter 361.

**§335.590. Operational and Design Standards.**

The following requirements, including those applicable to municipal solid waste facilities, apply to owners and operators of facilities subject to this subchapter:

(1) §330.121 of this title (relating to General);

(2) §330.123 of this title (relating to Pre-operation Notice);

(3) §330.125 of this title (relating to Recordkeeping Requirements), except that the requirements under §330.125(b)(3) of this title concerning recordkeeping for gas monitoring and remediation plans relating to explosive and other gases do not apply, except as determined necessary by the executive director;

(4) §330.127 of this title (relating to Site Operating Plan);

(5) §330.129 of this title (relating to Fire Protection);

(6) §330.131 of this title (relating to Access Control);

(7) §330.133(a) - (c) of this title (relating to Unloading of Waste);

(8) §330.137 of this title (relating to Site Sign);

- (9) §330.139 of this title (relating to Control of Windblown Waste and Litter);
- (10) §330.141 of this title (relating to Easements and Buffer Zones);
- (11) §330.143(a) of this title (relating to Landfill Markers and Benchmark);
- (12) §330.149 of this title (relating to Odor Management Plan);
- (13) §330.153 of this title (relating to Site Access Roads);
- (14) §330.155 of this title (relating to Salvaging and Scavenging);
- (15) §330.157 of this title (relating to Endangered Species Protection);
- (16) §330.159 of this title (relating to Landfill Gas Control) as determined necessary by the executive director;
- (17) §330.161 of this title (relating to Oil, Gas, and Water Wells);
- (18) §330.163 of this title (relating to Compaction);

(19) §330.165 of this title (relating to Landfill Cover);

(20) §330.167 of this title (relating to Poned Water);

(21) §330.175 of this title (relating to Visual Screening of Deposited Waste);

(22) §330.207 of this title (relating to Contaminated Water Management);

(23) the owner or operator shall have and follow procedures for the suppression and control of dust; and

(24) the owner or operator shall ensure that each commercial industrial nonhazardous waste landfill unit meets the requirements of subparagraphs (A) - (F) of this paragraph.

(A) Design criteria.

(i) Landfill cells shall be designed and constructed in accordance with subclause (I) or (II) of this clause, and shall also be constructed in accordance with subclause (III) of this clause.

(I) a design that ensures that the concentration values for constituents listed in §330.419(a) of this title (relating to Constituents for Detection Monitoring) will not be exceeded in the uppermost aquifer at the point of compliance, as specified by the executive director under clause (iv) of this subparagraph; or

(II) a composite liner, as defined in clause (ii) of this subparagraph, and a leachate collection system that is designed and constructed in accordance with subparagraph (B) of this paragraph; and

(III) unless the executive director approves an engineered design that the applicant has demonstrated will provide equal or greater protection to human health and the environment, a landfill cell must be constructed where the base of the containment structure, which includes the sides and bottom of the containment structure, is at least five feet above the uppermost saturated soil unit having a Unified Soil Classification of GW (well-graded gravel), GP (poorly-graded gravel), GM (silty gravel), GC (clayey gravel), SW (well-graded sand), SP (poorly-graded sand), or SM (silty sand), or a hydraulic conductivity greater than  $1 \times 10^{-5}$  cm/sec, unless such saturated soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(ii) For purposes of this section, "composite liner" means a system consisting of two components. The upper component shall consist of a

minimum 30-mil (0.75 mm) geomembrane liner and the lower component shall consist of at least a three-foot layer of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec. Geomembrane liner components consisting of high density polyethylene shall be at least 60-mil thick. The geomembrane liner component must be installed in direct and uniform contact with the compacted soil component.

(iii) When approving a design that complies with clause (i)(I) of this subparagraph, the executive director may consider at least the following factors:

(I) the hydrogeologic characteristics of the facility and surrounding land;

(II) the climatic factors of the area; and

(III) the volume and physical and chemical characteristics of the leachate.

(iv) For purposes of this paragraph, the point of compliance is defined in §330.3 of this title (relating to Definitions). In determining the point of compliance, the executive director may consider at least the following factors:

- (I) the hydrogeologic characteristics of the facility and surrounding land;
- (II) the volume and physical and chemical characteristics of the leachate;
- (III) the quantity, quality, and direction of flow of groundwater;
- (IV) the proximity and withdrawal rate of the groundwater users;
- (V) the availability of alternative drinking water supplies;
- (VI) the existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater and whether groundwater is currently used or reasonably expected to be used for drinking water;
- (VII) public health, safety, and welfare effects; and
- (VIII) practicable capability of the owner or operator.

(B) Landfill cells shall have a leachate-collection system designed and constructed to maintain less than a 30-cm depth of leachate over the liner. The leachate-collection and leachate-removal system shall be:

(i) constructed of materials that are chemically resistant to the leachate expected to be generated;

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(iii) designed and operated to function through the scheduled closure and post-closure period of the landfill.

(C) Storm water run-on/run-off facilities such as berms and ditches shall be provided in accordance with §330.63 of this title (relating to Contents of Part III of the Application).

(D) The site shall have a groundwater monitoring system installed that is capable of detecting the migration of pollutants from the landfill and is sampled semiannually for the parameters specified in Chapter 330, Subchapter J of this title (relating to Groundwater Monitoring and Corrective Action).

(E) The final cover placed over the commercial industrial nonhazardous waste landfill unit shall consist of a minimum of 18 inches of uncontaminated topsoil overlying four feet of compacted clay-rich soil material meeting the requirements of §330.457 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units That Receive Waste on or after October 9, 1993). The final cover over the aerial fill shall meet the requirements of §330.457 of this title and shall include a flexible membrane component.

(F) Nonhazardous waste may be placed above natural grade in commercial industrial nonhazardous waste landfill units provided the conditions in clauses (i) - (vi) of this subparagraph are met, except as provided in clause (vii) of this subparagraph:

(i) waste placed above grade shall be laterally contained by dikes that are constructed to:

(I) prevent washout, release, or exposure of waste;

(II) be physically stable against slope failure, with a minimum safety factor of 1.5;

(III) prevent washout from hydrostatic and hydrodynamic forces from storms and floods;

(IV) prevent storm water from reaching the waste;

(V) minimize release of leachate; and

(VI) minimize long-term maintenance;

(ii) the liner required in paragraph (22) of this section shall extend to the crest of the dike;

(iii) waste placed against the dike is placed no higher than three feet below the crest of the dike;

(iv) the slope of the wastes placed in the commercial industrial nonhazardous waste landfill units does not exceed 3% to the center of the unit;

(v) no waste is placed higher than the lowest elevation of the dike crest; and



(vii) a commercial industrial nonhazardous waste landfill is not subject to the requirements of clauses (ii) - (v) of this subparagraph provided that the owner or operator submits a demonstration that the standards of clause (i) of this subparagraph can be met without meeting the requirements of clauses (ii) - (v) of this subparagraph, the demonstration is approved in writing by the executive director, and the owner or operator enters the approval into the facility operating record.

(25) Hazardous waste generated by a very small quantity generator that meets the conditions for exemption for a very small quantity generator [from a conditionally exempt small quantity generator as defined in §335.78(a) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators),] may be accepted for disposal in a [any] commercial industrial nonhazardous waste landfill facility provided the amount of hazardous waste accepted from each very [conditionally exempt] small quantity generator does not exceed 220 pounds (100 kilograms) a calendar month, and provided the landfill owner or operator is willing to accept the hazardous waste.

**SUBCHAPTER U: STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS  
WASTE FACILITIES OPERATING UNDER A STANDARD PERMIT**

**§335.602**

**Statutory Authority**

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendment implements THSC, Chapter 361.

**§335.602. Standards.**

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 267 (including all appendices to 40 CFR Part 267) are adopted by reference as amended in the *Federal Register* through September 8, 2005 (70 FR 53420) and as further amended and adopted as indicated in each paragraph of this subsection:

(1) 40 CFR Part 267, Subpart B--General Facility Standards;

(2) 40 CFR Part 267, Subpart C--Preparedness and Prevention:

(3) 40 CFR Part 267, Subpart D--Contingency Plan and Emergency Procedures;

(4) 40 CFR Part 267, Subpart E--Recordkeeping, Reporting, and Notifying (as amended in the *Federal Register* through November 28, 2016 (81 FR 85732 [85696]));

(5) 40 CFR Part 267, Subpart F--Releases from Solid Waste Management Units;

(6) 40 CFR Part 267, Subpart G--Closure;

(7) 40 CFR Part 267, Subpart I--Use and Management of Containers;

(8) 40 CFR Part 267, Subpart J--Tank Systems;

(9) 40 CFR Part 267, Subpart DD--Containment buildings; and

(10) 40 CFR §267.142, concerning Cost estimate for closure.

(b) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B.

(2) Reference to:

(A) 40 CFR Part 261 is changed to §335.504 of this title (relating to Hazardous Waste Determination);

(B) 40 CFR Part 262 is changed to Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste):

(C) 40 CFR §264.1 is changed to §335.151 of this title (relating to Purpose, Scope, and Applicability);

(D) Reference to 40 CFR Part 264, Subpart D is changed to §335.152(a)(3) of this title (relating to Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(E) 40 CFR Part 264, Subpart S is changed to §335.152(a)(14) of this title;

(F) 40 CFR Part 265 is changed to Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities);

(G) 40 CFR Part 268 is changed to Subchapter O of this chapter (relating to Land Disposal Restrictions);

(H) 40 CFR Part 270, Subpart J is changed to Chapter 305, Subchapter R of this title (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units);

(I) 40 CFR §262.16 or §262.17 are [~~§262.34 is~~] changed to §335.53 [~~§335.69~~] of this title (relating to General Standards Applicable to Generators of Hazardous Waste [Accumulation Time]);

(J) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units); and

(K) Reference to "standardized permit" is changed to "standard permit".

(3) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste, respectively), as applicable.

(c) An owner or operator of a unit that treats, stores, or disposes of hazardous waste in tanks, containers, and containment buildings authorized by a standard permit as specified in this section shall establish and maintain financial assurance in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities).

**SUBCHAPTER V: STANDARDS FOR RECLAMATION OF HAZARDOUS SECONDARY  
MATERIALS**

**§335.702, §335.703**

**Statutory Authority**

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendments implement THSC, Chapter 361.

**§335.702. Standards.**

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 261 (including all appendices to 40 CFR Part 261) are adopted by reference as amended and adopted in the CFR through January 13, 2015 (80 FR 1694) and as further amended and adopted as indicated in each paragraph of this subsection:

(1) 40 CFR Part 261, Subpart I--Use and Management of Containers;

(2) 40 CFR Part 261, Subpart J--Tank Systems:

(3) 40 CFR Part 261, Subpart M--Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials as amended through November 28, 2016 (81 FR 85732), except all references to "operating under a verified recycler variance under 40 CFR §260.31(d)";

(4) 40 CFR Part 261, Subpart AA--Air Emission Standards for Process Vents;

(5) 40 CFR Part 261, Subpart BB--Air Emission Standards for Equipment Leaks; and

(6) 40 CFR Part 261, Subpart CC--Air Emission Standards for Tanks and Containers.

(b) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B;

(2) 40 CFR §260.10 is changed to §335.1 of this title [chapter] (relating to Definitions);

(3) The terms "EPA" and "Environmental Protection Agency" are changed to "Texas Commission on Environmental Quality."

### **§335.703. Financial Assurance Requirements.**

(a) Applicability.

(1) The requirements of this section apply to owners or operators of reclamation facilities and intermediate facilities managing hazardous secondary materials excluded under 40 Code of Federal Regulations (CFR) §261.4(a)(24), except:

(2) States and the Federal government are exempt from the financial assurance requirements of this section.

(b) When used in this section, the following words and terms shall have the same meanings as the definitions in §37.11 and §335.1 of this title (relating to Definitions) except:

(1) Closure--Includes the activities under §335.8 of this title (relating to Closure and Remediation) and applicable closure requirements of 40 CFR Parts 264 and 265.

(2) Closure plan--Includes the removal and decontamination plan for release as set out in §335.705 of this title (relating to Removal and Decontamination Plan for Release).

(c) Owners and operators of a reclamation facility or an intermediate facility required by 40 CFR §261.4(a)(24) to provide financial assurance, shall establish and maintain financial assurance for removal and decontamination and corrective action as a condition of the exclusion under 40 CFR §261.4(a)(24) and comply with Chapter 37,

Subchapters A and B of this title (relating to General Financial Assurance Requirements; and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action) except:

(1) an owner or operator must submit an acceptable originally signed mechanism to the executive director prior to [receiving a variance for] the management of hazardous secondary materials under the exclusion in 40 CFR §261.4(a)(24);

(2) in addition to the reasons to draw specified in §37.101 of this title (relating to Drawing on the Financial Assurance Mechanisms), the executive director may draw on the financial assurance mechanism(s) following a determination by the executive director that the hazardous secondary materials do not meet the conditions of the exclusion under 40 CFR §261.4(a)(24).

(d) Owners or operators of a reclamation facility or intermediate facility required by 40 CFR §261.4(a)(24) to provide financial assurance must comply with Chapter 37, Subchapter C of this title (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action), by establishing financial assurance for removal and decontamination and corrective action using any of the following mechanisms as specified in Chapter 37, Subchapter C of this title:

(1) Trust fund (fully funded), except reimbursements to the owner or operator as specified under §37.201(j) of this title (relating to Trust Fund) may only be

made if the owner or operator begins final closure under the applicable requirements of 40 CFR Part 264 or 265;

(2) Surety bond guaranteeing payment, except:

(A) the bond must guarantee that the owner or operator will fund the standby trust fund in an amount equal to the penal sum of the bond before the loss of the exclusion under 40 CFR §261.4(a)(24) rather than the criteria set out in §37.211(d) of this title (relating to Surety Bond Guaranteeing Payment); and

(B) the alternate financial assurance to be provided by the Principal must meet the requirements specified in this section;

(3) Irrevocable standby letter of credit, except:

(A) the executive director may draw pursuant to subsection (c)(2) of this section in addition to §37.231 of this title (relating to Irrevocable Standby Letter of Credit); and

(B) alternate financial assurance must meet the requirements specified in this section;

(4) Financial test, except:

(A) the financial assurance amounts required by this section, for hazardous secondary materials must be included as an additional environmental obligation when determining eligibility for the financial test in accordance with §37.251 of this title (relating to Financial Test); and

(B) alternate financial assurance must meet the requirements of this section;

(5) Corporate guarantee except:

(A) the terms of the guarantee specified in §37.261(e)(1) of this title (relating to Corporate Guarantee), shall provide that following a determination by the executive director that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the requirements of the exclusion under 40 CFR §261.4(a)(24) the guarantor will dispose of any hazardous secondary material as hazardous waste and close the facility in accordance with the applicable closure requirements of 40 CFR Part 264 or 265, or establish a trust fund as specified in this section, in the name of the owner or operator in the amount of the current cost estimate; and

(B) the terms of the guarantee requiring alternate financial assurance in §37.261(e)(3) of this title must meet the requirements of this section.

(e) Owners or operators of a reclamation facility or intermediate facility required by 40 CFR §261.4(a)(24) to provide financial assurance for removal and decontamination and corrective action shall comply with the wording requirements of Chapter 37, Subchapter D of this title (relating to Wording of the Mechanisms for Closure, Post Closure and Corrective Action) for the mechanisms indicated in subsection (d) of this section except:

(1) the phrases in the Payment Bond under §37.311 of this title (relating to Payment Bond) shall be revised by:

(A) replacing the following language identified here by quotation marks "Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of, or corrective action at, each facility identified above, fund into the standby trust fund the amount(s) identified above for the facility," with the following language identified here by quotation marks "Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of, or corrective action at, each facility identified above, fund into the standby trust fund the amount(s) identified above for the facility; or, if the Principal shall satisfy all the requirements for exclusion of hazardous secondary materials from classification as solid waste under 40 CFR §261.4(a)(24) and be released from the financial assurance requirements by the executive director"; and

(B) replacing the following language identified here by quotation marks "Or, if the Principal shall provide alternate financial assurance, as specified in 30 Texas Administrative Code, Chapter 37 (relating to Financial Assurance)" with the following language set off here by quotation marks "Or, if the Principal shall provide alternate financial assurance, as specified in 30 Texas Administrative Code, §335.703 (relating to Financial Assurance Requirements)"; and

(C) replacing the certification statement at the end of the Payment Bond with the following statement identified by quotation marks "The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 30 Texas Administrative Code §37.311 (relating to Payment Bond), as modified by 30 Texas Administrative Code §335.703 (relating to Financial Assurance Requirements), as such regulations were constituted on the date the bond was executed.";

(2) The Chief Financial Officer's letter associated with the financial test specified in §37.351 of this title (relating to Financial Test), shall include the environmental obligations associated with the exclusion in paragraph 5(f) of the Chief Financial Officer's Letter in Figure: 30 TAC §37.351;

(3) The wording of the Corporate Guarantee required by §37.361 of this title (relating to Corporate Guarantee) shall be revised by:

(A) replacing Recital number 4 with "For value received from (owner or operator) (describe consideration and dollar amount), guarantor guarantees to the TCEQ that in the event of a determination by the executive director that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under 40 CFR §261.4(a)(24), the guarantor will dispose of any hazardous secondary material as hazardous waste, and close the facility in accordance with the applicable closure requirements of 40 CFR Part 264 or 265, or establish a trust fund as specified in 30 Texas Administrative Code §335.703 (relating to Financial Assurance Requirements) in the name of the (owner or operator) in the amount of the current cost estimate";

(B) replacing Recital number 5 with "Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the TCEQ executive director and to (owner or operator) that the guarantor intends to provide alternate financial assurance as specified in 30 Texas Administrative Code §335.703 (relating to Financial Assurance Requirements), as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so";

(C) replacing Recital number 7 with "Guarantor agrees that within 30 days after being notified by the TCEQ executive director of a determination that guarantor no longer meets the financial test criteria or is disallowed from continuing as a guarantor of (closure, post closure, or corrective action), guarantor shall establish alternate financial assurance as specified in 30 Texas Administrative Code §335.703 (relating to Financial Assurance Requirements) in the name of (owner or operator) unless (owner or operator) has done so";

(D) replacing Recital number 11 with "Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in 30 Texas Administrative Code §335.703 (relating to Financial Assurance Requirements), and obtain written approval of alternate financial assurance from the TCEQ executive director within 90 days after a notice of termination by the guarantor is received by the TCEQ executive director from guarantor, guarantor shall provide such alternate financial assurance in the name of the (owner or operator)"; and

(E) The wording of the certification statement at the end of the Corporate Guarantee shall be replaced with the following language identified by quotation marks "I hereby certify that the wording of this guarantee is identical to the wording specified in 30 Texas Administrative Code §37.361 (relating to Corporate Guarantee) as modified by 30 Texas Administrative Code §335.703 (relating to

Financial Assurance Requirements) as such regulations were constituted on the date first above written."

(f) An owner or operator of a reclamation or intermediate facility, or a group of facilities, subject to financial assurance requirements under 40 CFR §261.4(a)(24) shall establish and maintain financial assurance for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs.

(g) An owner or operator of a reclamation or intermediate facility, or group of facilities, with a land-based unit as defined in §335.1 of this title shall establish and maintain financial assurance for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs.

(h) An owner or operator who must meet the requirements of subsections (f) and (g) of this section may combine the required per-occurrence coverage levels for sudden and nonsudden [non-sudden] accidental occurrences into a single per-

occurrence level, and combine the required annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden [non-sudden] accidental occurrences must maintain liability coverage in the amount of \$4 million per occurrence and \$8 million annual aggregate.

(i) Owners or operators of a reclamation facility or intermediate facility, or a group of facilities, subject to financial assurance requirements under 40 CFR §261.4(a)(24) must also comply with Chapter 37, Subchapters A and E of this title (relating to General Financial Assurance Requirements; and Financial Assurance Requirements for Liability Coverage) and shall use any of the mechanisms specified in Chapter 37, Subchapter F of this title (relating to Financial Assurance Mechanisms for Liability) to meet the liability requirements of this section except:

(1) liability insurance may only be demonstrated by providing an Endorsement for Liability as specified in §37.641 of this title (relating to Endorsement for Liability); and

(2) when using the financial test in accordance with §37.541 of this title (relating to Financial Test for Liability) the financial assurance amounts required by of this section, for hazardous secondary materials excluded under 40 CFR §261.4(a)(24) must be included as an additional environmental obligation.

(j) An owner or operator of a reclamation facility, an intermediate facility, or a group of facilities required by 40 CFR §261.4(a)(24) to provide financial assurance demonstrating liability coverage shall comply with the requirements of Chapter 37, Subchapter G of this title (relating to Wording of the Mechanisms for Liability) for the mechanisms required by subsection (i) of this section except The Chief Financial Officer's letter associated with the financial test for liability specified in §37.651 of this title (relating to Financial Test for Liability), must include the financial assurance amounts required by this section, for hazardous secondary materials excluded under 40 CFR §261.4(a)(24) as an additional environmental obligation in paragraph 5(f) of the Chief Financial Officer's Letter in Figure: 30 TAC §37.351.

(k) If the state of Texas either assumes legal responsibility for an owner's or operator's compliance with the closure, post closure, corrective action, or liability requirements of this chapter, or assures that funds will be available from state sources to cover those requirements, the owner or operator will be in compliance with the requirements of this chapter if the executive director determines that the state's assumption of responsibility is at least equivalent to the financial mechanisms specified in this chapter. The executive director will evaluate the equivalency of state guarantees principally in terms of certainty of the availability of funds for the required closure, post closure, or corrective action activities, or liability coverage; and the amount of funds that will be made available. The executive director may also consider other factors as the executive director deems appropriate. The owner or operator must submit to the executive director a letter from the State of Texas describing the nature

of the state's assumption of responsibility together with a letter from the owner or operator requesting that the state's assumption of responsibility be considered acceptable for meeting the requirements of this chapter. The letter from the state must include the following information: the facility's permit number and/or solid waste registration number, name, physical and mailing addresses, and the amount of funds for closure, post closure, or corrective action or liability coverage that are guaranteed by the state. The executive director will notify the owner or operator of the determination regarding the acceptability of the state's guarantee in lieu of financial mechanisms specified in this chapter. The executive director may require the owner or operator to submit additional information as is deemed necessary to make this determination. Upon approval by the executive director, the owner or operator will be deemed to be in compliance with the requirements of this chapter. If the State of Texas' assumption of responsibility is found acceptable as specified in this section except for the amount of funds available, the owner or operator may satisfy the requirements of this chapter by use of both the state's assurance and additional financial mechanisms as specified in this chapter. The amount of funds available through the state and the owner or operator's mechanisms shall equal at least the required amount.

**SUBCHAPTER W: MANAGEMENT STANDARDS FOR HAZARDOUS WASTE**

**PHARMACEUTICALS**

**§§335.751, 335.753, 335.755, 335.757, 335.759, 335.761, 335.763, 335.765, 335.767,**  
**335.769, 335.771**

**Statutory Authority**

The new rules are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The new rules are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class 1 industrial solid waste or hazardous waste; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed new rules implement THSC, Chapter 361.

**§335.751. Definitions.**

The following definitions apply to this subchapter:

(1) Evaluated hazardous waste pharmaceutical--A prescription hazardous waste pharmaceutical that has been evaluated by a reverse distributor in accordance with §335.771(a)(3) of this title (relating to Standards for the Management of Potentially Creditable Hazardous Waste Pharmaceuticals and Evaluated Hazardous Waste Pharmaceuticals by Reverse Distributors) and will not be sent to another reverse distributor for further evaluation or verification of manufacture credit.

(2) Hazardous waste pharmaceutical--A pharmaceutical that is a solid waste, as defined in §335.1 of this title (relating to Definitions), and exhibits one or more characteristics identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart C, or is listed in 40 CFR Part 261, Subpart D as these subparts are adopted by reference under §335.504 of this title (relating to Hazardous Waste Determination). A pharmaceutical is not a solid waste, as defined in §335.1 of this title, and therefore not a hazardous waste pharmaceutical, if it is legitimately used/reused (e.g., lawfully donated for its intended purpose) or reclaimed. An over-the-counter pharmaceutical, dietary supplement, or homeopathic drug is not a solid waste, as defined in §335.1 of this title, and therefore not a hazardous waste pharmaceutical, if it has a reasonable

expectation of being legitimately used/reused (e.g., lawfully redistributed for its intended purpose) or reclaimed.

(3) Healthcare facility--Any person that is lawfully authorized to:

(A) provide preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, and counseling, service, assessment or procedure for the physical or mental condition, or functional status, of a human or animal or that affects the structure or function of the human or animal body; or

(B) distribute, sell, or dispense pharmaceuticals, including over-the-counter pharmaceuticals, dietary supplements, homeopathic drugs, or prescription pharmaceuticals. This definition includes, but is not limited to, wholesale distributors, third-party logistics providers that serve as forward distributors, military medical logistics facilities, hospitals, psychiatric hospitals, ambulatory surgical centers, health clinics, physicians' offices, optical and dental providers, chiropractors, long-term care facilities, ambulance services, pharmacies, long-term care pharmacies, mail-order pharmacies, retailers of pharmaceuticals, veterinary clinics, and veterinary hospitals. This definition does not include pharmaceutical manufacturers, reverse distributors, or reverse logistics centers.

(4) Household waste pharmaceutical--A pharmaceutical that is a solid waste, as defined in §335.1 of this title (relating to Definitions), but is excluded from

being a hazardous waste under 40 Code of Federal Regulations §261.4(b)(1) as adopted under §335.504 of this title (relating to Hazardous Waste Determination).

(5) Long-term care facility--A licensed entity that provides assistance with activities of daily living, including managing and administering pharmaceuticals to one or more individuals at the facility. This definition includes, but is not limited to, hospice facilities, nursing facilities, skilled nursing facilities, and the nursing and skilled nursing care portions of continuing care retirement communities. Not included within the scope of this definition are group homes, independent living communities, assisted living facilities, and the independent and assisted living portions of continuing care retirement communities.

(6) Non-creditable hazardous waste pharmaceutical--A prescription hazardous waste pharmaceutical that does not have a reasonable expectation to be eligible for manufacturer credit or a nonprescription hazardous waste pharmaceutical that does not have a reasonable expectation to be legitimately used/reused or reclaimed. This includes but is not limited to, investigational drugs, free samples of pharmaceuticals received by healthcare facilities, residues of pharmaceuticals remaining in empty containers, contaminated personal protective equipment, floor sweepings, and clean-up material from the spills of pharmaceuticals.

(7) Nonhazardous waste pharmaceutical--A pharmaceutical that is a solid waste, as defined in §335.1 of this title (relating to Definitions), and is not listed in 40

Code of Federal Regulations (CFR) Part 261, Subpart D, and does not exhibit a characteristic identified in 40 CFR Part 261, Subpart C.

(8) Non-pharmaceutical hazardous waste--A solid waste, as defined in §335.1 of this title (relating to Definitions), that is listed in 40 Code of Federal Regulations (CFR) Part 261, Subpart D or exhibits one or more characteristics identified in 40 CFR Part 261, Subpart C, but is not a pharmaceutical, as defined in this section.

(9) Pharmaceutical--Any drug or dietary supplement for use by humans or other animals; any electronic nicotine delivery system (e.g., electronic cigarette or vaping pen); or any liquid nicotine (e-liquid) packaged for retail sale for use in electronic nicotine delivery systems (e.g., pre-filled cartridges or vials). This definition includes, but is not limited to, dietary supplements, as defined by the Federal Food, Drug and Cosmetic Act; prescription drugs, as defined by 21 Code of Federal Regulations §203.3(y); over-the-counter drugs; homeopathic drugs; compounded drugs; investigational new drugs; pharmaceuticals remaining in non-empty containers; personal protective equipment contaminated with pharmaceuticals; and clean-up material from spills of pharmaceuticals. This definition does not include dental amalgam or sharps.

(10) Potentially creditable hazardous waste pharmaceutical--A prescription hazardous waste pharmaceutical that has a reasonable expectation to receive manufacturer credit and:

(A) is in original manufacturer packaging (except pharmaceuticals that were subject to a recall);

(B) is undispensed;

(C) is unexpired or less than one year past expiration date; and

(D) is not an evaluated hazardous waste pharmaceutical.

(11) Reverse distributor--Any person that receives and accumulates prescription pharmaceuticals that are potentially creditable hazardous waste pharmaceuticals for the purpose of facilitating or verifying manufacturer credit. Any person, including forward distributors, third-party logistics providers, and pharmaceutical manufacturers, that processes prescription pharmaceuticals for the facilitation or verification of manufacturer credit is considered a reverse distributor.

**§335.753. Applicability.**

(a) A healthcare facility that is a very small quantity generator when counting all of its hazardous waste, including both its hazardous waste pharmaceuticals and its non-pharmaceutical hazardous waste, remains subject to 40 Code of Federal Regulations (CFR) §262.14 as adopted under §335.53 of this title (relating to General

Standards Applicable to Generators of Hazardous Waste) and is not subject to this subchapter, except for §335.761 and §335.765 of this title (relating to Prohibition of Sewering Hazardous Waste Pharmaceuticals; and Residues of Hazardous Waste Pharmaceuticals in Empty Containers) and the optional provisions of §335.759 of this title (relating to Healthcare Facilities That Are Very Small Quantity Generators for Both Hazardous Waste Pharmaceuticals and Non-pharmaceutical Hazardous Waste).

(b) A healthcare facility that is a very small quantity generator when counting all of its hazardous waste, including both its hazardous waste pharmaceuticals and its non-pharmaceutical hazardous waste, has the option of complying with subsection (d) of this section for the management of its hazardous waste pharmaceuticals as an alternative to complying with 40 CFR §262.14 as adopted in §335.53 of this title and the optional provisions of §335.759 of this title.

(c) A healthcare facility or reverse distributor remains subject to all applicable hazardous waste regulations for the management of its non-pharmaceutical hazardous waste.

(d) Unless a healthcare facility is managing waste in compliance with subsection (a) of this section, a healthcare facility is subject to this subsection instead of Subchapters C, D, E, and F of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment,

Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) except as provided in this subchapter.

(1) A healthcare facility managing potentially creditable hazardous waste pharmaceuticals that are not destined for a reverse distributor or non-creditable hazardous waste pharmaceuticals must comply with §335.755 of this title (relating to Standards for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals) and §§335.761, 335.763, 335.765, and 335.767 of this title (relating to Prohibition of Sewering Hazardous Waste Pharmaceuticals; Conditional Exemptions for Hazardous Waste Pharmaceuticals that are Controlled Substances and Household Waste Pharmaceuticals Collected in a Take-back Event or Program; Residues of Hazardous Waste Pharmaceuticals in Empty Containers; and Shipping Non-Creditable Hazardous Waste Pharmaceuticals from a Healthcare Facility or Evaluated Hazardous Waste Pharmaceuticals from a Reverse Distributor).

(2) A healthcare facility managing potentially creditable hazardous waste pharmaceuticals that are prescription pharmaceuticals and are destined for a reverse distributor must comply with §335.755(a) and §335.757 (relating to Standards for Healthcare Facilities Managing Potentially Creditable Hazardous Waste Pharmaceuticals), §§335.761, 335.763, 335.765, and 335.769 of this title (relating to Shipping Potentially Creditable Hazardous Waste Pharmaceuticals from a Healthcare Facility or a Reverse Distributor to a Reverse Distributor).

(e) A reverse distributor is subject to §§335.761, 335.763, 335.765, 335.767, 335.769, and 335.771 of this title (relating to Standards for the Management of Potentially Creditable Hazardous Waste Pharmaceuticals and Evaluated Hazardous Waste Pharmaceuticals by Reverse Distributors) of this title in lieu of Subchapters C, D, E or F of this chapter for the management of hazardous waste pharmaceuticals.

(f) Hazardous waste pharmaceuticals generated or managed by entities other than healthcare facilities and reverse distributors (e.g., pharmaceutical manufacturers and reverse logistics centers) are not subject to this subchapter. Other generators are subject to Subchapter C of this chapter for the generation and accumulation of hazardous wastes, including hazardous waste pharmaceuticals.

(g) Except as specified in this subsection and §335.4 of this title (relating to General Prohibitions), and unless the Commission finds or the executive director determines that industrial solid waste or recycling requirements are necessary to protect human health, the environment, or property, the following are not subject to this chapter:

(1) pharmaceuticals that are not solid waste, as defined by §335.1 of this title (relating to Definitions), because they are legitimately used/reused (e.g., lawfully donated for their intended purpose) or reclaimed;

(2) over-the-counter pharmaceuticals, dietary supplements, or homeopathic drugs that are not solid wastes, as defined in §335.1 of this title, because they have a reasonable expectation of being legitimately used/reused (e.g., lawfully redistributed for their intended purpose) or reclaimed;

(3) pharmaceuticals being managed in accordance with a recall strategy that has been approved by the Food and Drug Administration (FDA) in accordance with 21 CFR Part 7, Subpart C, until the FDA approves the destruction of the pharmaceuticals or the pharmaceuticals are discarded;

(4) pharmaceuticals being managed in accordance with a recall corrective action plan that has been accepted by the Consumer Product Safety Commission in accordance with 16 CFR Part 1115, until the Consumer Product Safety Commission approves the destruction of the recalled pharmaceuticals;

(5) pharmaceuticals stored according to a preservation order, or stored in accordance with a litigation hold pursuant to an investigation or judicial proceeding until after the preservation order, investigation, or judicial proceeding has concluded or the pharmaceuticals are discarded;

(6) investigational new drugs for which an investigational new drug application is in effect in accordance with the Food and Drug Administration's regulations in 21 CFR Part 312, until the decision is made to discard the investigational

new drug or the Food and Drug Administration approves the destruction of the investigational new drug, if the investigational new drug is a hazardous waste; and

(7) household waste pharmaceuticals, including those that have been collected by an authorized collector (as defined by the Drug Enforcement Administration), provided the authorized collector complies with the conditional exemption in §335.763(a)(2) and §335.763(b) of this title.

(h) Healthcare facilities and reverse distributors regulated under this subchapter remain subject to Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General), Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions), Subchapter O of this chapter (relating to Land Disposal Restrictions), and Subchapter R of this chapter (relating to Waste Classification), except as provided under this subchapter.

**§335.755. Standards for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals.**

(a) Notification and withdrawal from this subchapter for healthcare facilities managing hazardous waste pharmaceuticals. A healthcare facility must notify the executive director that it is either subject to this subchapter, or is withdrawing from regulation under this subchapter, using the following procedures.

(1) Notification. A healthcare facility must notify the executive director that it is a healthcare facility operating under this subchapter using a method approved by the executive director within 60 days of becoming subject to this chapter. The method approved by the executive director collects the information required by the United States Environmental Protection Agency (EPA) Site Identification Form.

(A) A healthcare facility must submit a separate notification for each site or EPA identification number.

(B) A healthcare facility is not required to submit EPA hazardous waste numbers with this notification.

(C) A healthcare facility must retain a copy of a notification as long as the healthcare facility is subject to this subchapter.

(2) Withdrawal. A healthcare facility that elects to withdraw from this subchapter because it is a very small quantity generator that meets the conditions for exemption for a very small quantity generator under 40 Code of Federal Regulations (CFR) §262.14 as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste) must notify the executive director that it elects to withdraw from this subchapter using a method approved by the executive director. A healthcare facility is not required to submit any EPA hazardous waste

numbers with this notification. A healthcare facility must submit a separate notification for each site or EPA identification number.

(A) A healthcare facility must submit the notification that it is withdrawing from this subchapter in accordance with this paragraph before it begins operating under the conditions for exemption of a very small quantity generator in 40 CFR §262.14 as adopted under §335.53 of this title.

(B) A healthcare facility must retain a copy of a notification of withdrawal for three years from the date of the signature on the notification of withdrawal.

(b) Training of personnel managing non-creditable hazardous waste pharmaceuticals at healthcare facilities. A healthcare facility must ensure that all personnel that manage non-creditable hazardous waste pharmaceuticals are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

(c) Hazardous waste determination for non-creditable pharmaceuticals. A healthcare facility that generates a solid waste that is a non-creditable pharmaceutical must determine whether that pharmaceutical is a hazardous waste pharmaceutical by determining if it exhibits a characteristic identified in 40 CFR Part 261, Subpart C or is listed in 40 CFR Part 261, Subpart D as adopted under §335.504 of this title (relating to

Hazardous Waste Determination) in order to determine whether the waste is subject to this subchapter. A healthcare facility may elect to manage its nonhazardous waste pharmaceuticals as non-creditable hazardous waste pharmaceuticals under this subchapter.

(d) Standards for containers used to accumulate non-creditable hazardous waste pharmaceuticals at healthcare facilities. A healthcare facility must store containers containing non-creditable hazardous waste pharmaceuticals in accordance with the following container management standards.

(1) Container requirements. A healthcare facility must place non-creditable hazardous waste pharmaceuticals in a container that is structurally sound, compatible with its contents, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) Ignitable, reactive, or incompatible wastes. A healthcare facility that manages ignitable or reactive non-creditable hazardous waste pharmaceuticals, or that mixes or commingles incompatible non-creditable hazardous waste pharmaceuticals must manage the container so that it does not have the potential to:

(A) generate extreme heat or pressure, fire or explosion, or violent reaction;

(B) produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(C) produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(D) damage the structural integrity of the container of non-creditable hazardous waste pharmaceuticals; or

(E) through other like means threaten human health or the environment.

(3) Container security. A healthcare facility must keep containers of non-creditable hazardous waste pharmaceuticals closed and secured in a manner that prevents unauthorized access to its contents.

(4) Accumulating non-creditable waste pharmaceuticals in the same container. A healthcare facility may accumulate non-creditable hazardous waste pharmaceuticals and nonhazardous non-creditable waste pharmaceuticals in the same container, except that non-creditable hazardous waste pharmaceuticals prohibited from being combusted because of the dilution prohibition of 40 CFR §268.3(c) as adopted under §335.431 of this title (relating to Purpose, Scope, and Applicability)

must be accumulated in separate containers and labeled with all applicable EPA hazardous waste numbers.

(e) Labeling containers used to accumulate non-creditable hazardous waste pharmaceuticals at healthcare facilities. A healthcare facility must label or clearly mark each container of non-creditable hazardous waste pharmaceuticals with the phrase "Hazardous Waste Pharmaceuticals."

(f) Maximum accumulation time for non-creditable hazardous waste pharmaceuticals at healthcare facilities. A healthcare facility must observe the following standards for on-site accumulation time of non-creditable hazardous waste pharmaceuticals.

(1) Maximum accumulation time. A healthcare facility may accumulate non-creditable hazardous waste pharmaceuticals on-site for one year or less without a permit or having interim status.

(2) Accumulation start date. A healthcare facility that accumulates non-creditable hazardous waste pharmaceuticals on-site must demonstrate the length of time that the non-creditable hazardous waste pharmaceuticals have been accumulating, starting from the date it first becomes a waste. A healthcare facility may make this demonstration by any of the following methods:

(A) marking or labeling the container of non-creditable hazardous waste pharmaceuticals with the date that the non-creditable hazardous waste pharmaceuticals became a waste;

(B) maintaining an inventory system that identifies the date the non-creditable hazardous waste pharmaceuticals being accumulated first became a waste;

(C) placing the non-creditable hazardous waste pharmaceuticals in a specific area and identifying the earliest date that any of the non-creditable hazardous waste pharmaceuticals in the area became a waste.

(g) Land disposal restrictions for non-creditable hazardous waste pharmaceuticals. The non-creditable hazardous waste pharmaceuticals generated by a healthcare facility are subject to the land disposal restrictions of 40 CFR Part 268 as adopted under Subchapter O of this chapter (relating to Land Disposal Restrictions). A healthcare facility that generates non-creditable hazardous waste pharmaceuticals must comply with the land disposal restrictions in accordance with 40 CFR §268.7(a) requirements as adopted under §335.431 of this title, except that it is not required to include the EPA hazardous waste numbers on the land disposal restrictions notification.

(h) Procedures for healthcare facilities for managing rejected shipments of non-

creditable hazardous waste pharmaceuticals. A healthcare facility that sends a shipment of non-creditable hazardous waste pharmaceuticals to a designated facility with the understanding that the designated facility can accept and manage the waste, and later receives that shipment back as a rejected load in accordance with the manifest discrepancy provisions of 40 CFR §264.72 as adopted under §335.152 of this title (relating to Standards) or 40 CFR §265.72 as adopted under §335.112 of this title (relating to Standards) may accumulate the returned non-creditable hazardous waste pharmaceuticals on-site for up to an additional 90 days provided the rejected or returned shipment is managed in accordance with subsections (d) and (e) of this section. Upon receipt of the returned shipment, the healthcare facility must complete the following.

(1) Healthcare facility manifest signature. The healthcare facility must sign either:

(A) item 18c of the original manifest, if the original manifest was used for the returned shipment; or

(B) item 20 of the new manifest, if a new manifest was used for the returned shipment.

(2) Transporter manifest copy. The healthcare facility must provide the transporter a copy of the manifest used for the returned shipment.

(3) Designated facility manifest copy. Within 30 days of receipt of the rejected shipment, the healthcare facility must send a copy of the manifest to the designated facility that returned the shipment to the healthcare facility; and

(4) Maximum time to re-ship a rejected shipment. Within 90 days of receipt of the rejected shipment, the healthcare facility must transport or offer for transport the returned shipment in accordance with the shipping standards of §335.767(a) of this title (relating to Shipping Non-Creditable Hazardous Waste Pharmaceuticals from a Healthcare Facility or Evaluated Hazardous Waste Pharmaceuticals from a Reverse Distributor).

(i) Reporting by healthcare facilities for non-creditable hazardous waste pharmaceuticals. A healthcare facility must comply with the following reporting requirements.

(1) Biennial and annual waste reporting by healthcare facilities. A healthcare facility is not subject to the Annual Waste Summary reporting requirements under §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) or the biennial reporting requirements under 40 CFR §262.41 as adopted under §335.56 of this title (relating to Recordkeeping and Reporting Applicable to Small and Large Quantity Generators) for non-creditable hazardous waste pharmaceuticals managed under this subchapter.

(2) Exception reporting by healthcare facilities for a missing copy of the manifest. A healthcare facility must submit an exception report to the executive director in the following situations.

(A) For shipments from a healthcare facility to a designated facility, if a healthcare facility does not receive a copy of the manifest with the signature of the owner or operator of the designated facility within 60 days of the date the non-creditable hazardous waste pharmaceuticals were accepted by the initial transporter, the healthcare facility must submit:

(i) a legible copy of the original manifest, indicating that the healthcare facility has not received confirmation of delivery, to the executive director; and

(ii) a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received and explaining the efforts taken to locate the non-creditable hazardous waste pharmaceuticals and the results of those efforts.

(B) For shipments rejected by the designated facility and shipped to an alternate facility, if a healthcare facility does not receive a copy of the manifest for a rejected shipment of the non-creditable hazardous waste pharmaceuticals that is

forwarded by the designated facility to an alternate facility (using appropriate manifest procedures), with the signature of the owner or operator of the alternate facility, within 60 days of the date the non-creditable hazardous waste was accepted by the initial transporter forwarding the shipment of non-creditable hazardous waste pharmaceuticals from the designated facility to the alternate facility, the healthcare facility must submit:

(i) a legible copy of the original manifest, indicating that the healthcare facility has not received confirmation of delivery, to the executive director; and

(ii) a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received and explaining the efforts taken to locate the non-creditable hazardous waste pharmaceuticals and the results of those efforts.

(3) Additional reports. The executive director may require a healthcare facility to furnish additional reports concerning the quantities and disposition of non-creditable hazardous waste pharmaceuticals.

(j) Recordkeeping by healthcare facilities for non-creditable hazardous waste pharmaceuticals. A healthcare facility is subject to the following recordkeeping requirements.

(1) Signed manifest retention. A healthcare facility must keep a copy of each manifest signed in accordance with 40 CFR §262.23(a) as adopted under §335.54 of this title (relating to Hazardous Waste Manifest) for three years or until it receives a signed copy from the designated facility which received the non-creditable hazardous waste pharmaceuticals. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(2) Exception report retention. A healthcare facility must keep a copy of each exception report for a period of at least three years from the date of the report.

(3) Waste determination documentation retention. A healthcare facility must keep records of any test results, waste analyses, or other determinations made to support its hazardous waste determination(s) consistent with 40 CFR §262.11(f) as adopted under §335.53 of this title, for at least three years from the date the waste was last sent to on-site or off-site treatment, storage or disposal. A healthcare facility that manages all its non-creditable nonhazardous waste pharmaceuticals as non-creditable hazardous waste pharmaceuticals is not required to keep documentation of hazardous waste determinations.

(4) Documentation retention extension. The periods of retention referred to in this section are extended automatically during the course of any unresolved

enforcement action regarding the regulated activity, or as requested by the executive director.

(5) Record inspections. All records must be readily available upon request by an inspector.

(k) Response to spills of non-creditable hazardous waste pharmaceuticals at healthcare facilities. A healthcare facility must immediately contain all spills of non-creditable hazardous waste pharmaceuticals and manage the spill clean-up materials as non-creditable hazardous waste pharmaceuticals in accordance with the requirements of this subchapter.

(l) Accepting non-creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a very small quantity generator. A healthcare facility may accept non-creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a very small quantity generator under 40 CFR §262.14 as adopted under §335.53 of this title, without a permit or without having interim status, if the receiving healthcare facility complies with the following.

(1) Consolidating waste pharmaceuticals at another healthcare facility under the control of the same person. The healthcare facility must be under the control of the same person as the very small quantity generator healthcare facility that is sending the non-creditable hazardous waste pharmaceuticals off-site or has a

contractual or other documented business relationship whereby the receiving healthcare facility supplies pharmaceuticals to the very small quantity generator healthcare facility. "Control," for the purposes of this section, means the power to direct the policies of the healthcare facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate healthcare facilities on behalf of a different person shall not be deemed to "control" such healthcare facilities.

(2) Operating under this subchapter. The healthcare facility must be operating under this subchapter for the management of its non-creditable hazardous waste pharmaceuticals.

(3) Compliance with this subchapter. The healthcare facility must manage the non-creditable hazardous waste pharmaceuticals that it receives from off-site in compliance with this subchapter.

(4) Recordkeeping requirements. The healthcare facility must keep records of the non-creditable hazardous waste pharmaceuticals shipments it receives from off-site for three years from the date that the shipment is received.

**§335.757. Standards for Healthcare Facilities Managing Potentially Creditable Hazardous Waste Pharmaceuticals.**

(a) Hazardous waste determination for potentially creditable pharmaceuticals. A

healthcare facility that generates a solid waste that is a potentially creditable pharmaceutical must determine whether the potentially creditable pharmaceutical is a potentially creditable hazardous waste pharmaceutical by determining if it is listed in 40 Code of Federal Regulations (CFR) Part 261, Subpart D or exhibits a characteristic identified in 40 CFR Part 261, Subpart C as adopted under §335.504 of this title (relating to Hazardous Waste Determination). A healthcare facility may choose to manage its potentially creditable nonhazardous waste pharmaceuticals as potentially creditable hazardous waste pharmaceuticals under this subchapter.

(b) Accepting potentially creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a very small quantity generator. A healthcare facility may accept potentially creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a very small quantity generator under 40 CFR §262.14 as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste) without a permit or without having interim status, provided the receiving healthcare facility:

(1) is under the control of the same person as the very small quantity generator healthcare facility that is sending the potentially creditable hazardous waste pharmaceuticals off-site, or has a contractual or other documented business relationship whereby the receiving healthcare facility supplies pharmaceuticals to the very small quantity generator healthcare facility;

(2) is operating under this subchapter for the management of its potentially creditable hazardous waste pharmaceuticals;

(3) manages the potentially creditable hazardous waste pharmaceuticals that it receives from off-site in compliance with this subchapter; and

(4) keeps records of the potentially creditable hazardous waste pharmaceuticals shipments it receives from off-site for three years from the date that the shipment is received.

(c) Prohibition. Healthcare facilities are prohibited from sending hazardous wastes other than potentially creditable hazardous waste pharmaceuticals to a reverse distributor.

(d) Biennial and Annual Waste Summary reporting by healthcare facilities. A healthcare facility is not subject to the Annual Waste Summary reporting requirements under §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) or the biennial reporting requirements in 40 CFR §262.41 as adopted under §335.56 of this title (relating to Recordkeeping and Reporting Applicable to Small and Large Quantity Generators) for potentially creditable hazardous waste pharmaceuticals managed under this subchapter.

(e) Recordkeeping by healthcare facilities. Healthcare facilities are subject to the

following recordkeeping requirements for managing potentially creditable hazardous waste pharmaceuticals.

(1) A healthcare facility that initiates a shipment of potentially creditable hazardous waste pharmaceuticals to a reverse distributor must keep the following records (paper or electronic) for each shipment of potentially creditable hazardous waste pharmaceuticals for three years from the date of shipment:

(A) the confirmation of delivery; and

(B) the shipping papers prepared in accordance with 49 CFR Part 172, Subpart C, if applicable.

(2) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the executive director.

(3) All records must be readily available upon request by an inspector.

(f) Response to spills of potentially creditable hazardous waste pharmaceuticals at healthcare facilities. A healthcare facility must immediately contain all spills of potentially creditable hazardous waste pharmaceuticals and manage the spill clean-up materials as non-creditable hazardous waste pharmaceuticals in accordance with this

subchapter.

**§335.759. Healthcare Facilities That are Very Small Quantity Generators for Both Hazardous Waste Pharmaceuticals and Non-pharmaceutical Hazardous Waste.**

(a) Potentially creditable hazardous waste pharmaceuticals. A healthcare facility that is a very small quantity generator for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste may send its potentially creditable hazardous waste pharmaceuticals to a reverse distributor.

(b) Off-site collection of hazardous waste pharmaceuticals generated by a healthcare facility that is a very small quantity generator. A healthcare facility that is a very small quantity generator for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste may send its hazardous waste pharmaceuticals off-site to another healthcare facility, provided:

(1) the receiving healthcare facility meets the conditions in §335.755(l) and §335.757(b) of this title (relating to Standards for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals; Standards for Healthcare Facilities Managing Potentially Creditable Hazardous Waste Pharmaceuticals), as applicable; or

(2) the very small quantity generator healthcare facility meets the conditions in 40 Code of Federal Regulations (CFR) §262.14(a)(5)(viii) and the receiving

large quantity generator meets the conditions in 40 CFR §262.17(f), both as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste).

(c) Long-term care facilities that are very small quantity generators. A long-term care facility that is a very small quantity generator for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste may dispose of its hazardous waste pharmaceuticals (excluding contaminated personal protective equipment or clean-up materials) in an on-site collection receptacle of an authorized collector (as defined by the Drug Enforcement Administration) that is registered with the Drug Enforcement Administration provided the contents are collected, stored, transported, destroyed and disposed of in compliance with all applicable Drug Enforcement Administration regulations for controlled substances.

(d) Long-term care facilities with 20 beds or fewer. A long-term care facility with 20 beds or fewer is presumed to be a very small quantity generator subject to 40 CFR §262.14 as adopted under §335.53 of this title for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste and not subject to this subchapter, except for §335.761 and §335.765 of this title (relating to Prohibition of Sewering Hazardous Waste Pharmaceuticals; and Residues of Hazardous Waste Pharmaceuticals in Empty Containers) and the other optional provisions of this section. A long-term care facility with 20 beds or fewer is subject to this subchapter if the executive director determines that the facility generates quantities of hazardous

waste in excess of the very small quantity generator limits as defined in §335.1 of this title (relating to Definitions). A long-term care facility with more than 20 beds that operates as a very small quantity generator under 40 CFR §262.14 must demonstrate that it generates quantities of hazardous waste that are within the very small quantity generator limits as defined by §335.1 of this title.

**§335.761. Prohibition of Sewering Hazardous Waste Pharmaceuticals.**

All healthcare facilities—including very small quantity generators operating under 40 Code of Federal Regulations (CFR) §262.14 as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste) in lieu of this subchapter—and reverse distributors are prohibited from discharging hazardous waste pharmaceuticals to a sewer system that passes through to a publicly-owned treatment works. Healthcare facilities and reverse distributors remain subject to the prohibitions in 40 CFR §403.5(b)(1).

**§335.763. Conditional Exemptions for Hazardous Waste Pharmaceuticals that are Controlled Substances and Household Waste Pharmaceuticals Collected in a Take-back Event or Program.**

(a) Conditional exemptions. Provided the conditions of subsection (b) of this section are met, the following are exempted from the requirements of this chapter:

(1) Hazardous waste pharmaceuticals that are also listed on a schedule of controlled substances by the Drug Enforcement Administration in 21 Code of Federal Regulations (CFR) Part 1308; and

(2) Household waste pharmaceuticals that are collected in a take-back event or program, including those that are collected by an authorized collector (as defined by the Drug Enforcement Administration) registered with the Drug Enforcement Administration that commingles the household waste pharmaceuticals with controlled substances from an ultimate user (as defined by the Drug Enforcement Administration).

(b) Conditions for exemption. The hazardous waste pharmaceuticals must be:

(1) managed in compliance with the sewer prohibition of §335.761 of this title (relating to Prohibition of Sewering Hazardous Waste Pharmaceuticals);

(2) collected, stored, transported, and disposed of in compliance with all applicable Drug Enforcement Administration regulations for controlled substances; and

(3) destroyed by a method that Drug Enforcement Administration has publicly deemed in writing to meet their non-retrievable standard of destruction or combusted at one of the following:

(A) a permitted large municipal waste combustor, subject to 40 CFR Part 62, Subpart FFF or applicable state plan for existing large municipal waste combustors, or 40 CFR Part 60, Subpart Eb for new large municipal waste combustors;

(B) a permitted small municipal waste combustor, subject to 40 CFR Part 62, Subpart JJJ or applicable state plan for existing small municipal waste combustors, or 40 CFR Part 60, Subpart AAAA for new small municipal waste combustors;

(C) a permitted hospital, medical and infectious waste incinerator, subject to 40 CFR Part 62, Subpart HHH or applicable state plan for existing hospital, medical and infectious waste incinerators, or 40 CFR Part 60, Subpart Ec for new hospital, medical and infectious waste incinerators;

(D) a permitted commercial and industrial solid waste incinerator, subject to 40 CFR Part 62, Subpart III or applicable state plan for existing commercial and industrial solid waste incinerators, or 40 CFR Part 60, Subpart CCCC for new commercial and industrial solid waste incinerators; or

(E) a permitted hazardous waste combustor subject to 40 CFR Part 63, Subpart EEE.

**§335.765. Residues of Hazardous Waste Pharmaceuticals in Empty Containers.**

(a) Stock, dispensing and unit-dose containers. A stock bottle, dispensing bottle, vial, or ampule (not to exceed 1 liter or 10,000 pills); or a unit-dose container (e.g., a unit-dose packet, cup, wrapper, blister pack, or delivery device) is considered empty and the residues are not regulated as hazardous waste provided the pharmaceuticals have been removed from the stock bottle, dispensing bottle, vial, ampule, or the unit-dose container using the practices commonly employed to remove materials from that type of container.

(b) Syringes. A syringe is considered empty and the residues are not regulated as hazardous waste under this subchapter provided the contents have been removed by fully depressing the plunger of the syringe. If a syringe is not empty, the syringe must be placed with its remaining hazardous waste pharmaceuticals into a container that is managed and disposed of as a non-creditable hazardous waste pharmaceutical under this subchapter and any applicable federal, state, and local requirements for sharps containers and medical waste.

(c) Intravenous (IV) bags. An IV bag is considered empty and the residues are not regulated as hazardous waste provided the pharmaceuticals in the IV bag have been fully administered to a patient. If an IV bag is not empty, the IV bag must be placed with its remaining hazardous waste pharmaceuticals into a container that is managed and disposed of as a non-creditable hazardous waste pharmaceutical under this

subchapter, unless the IV bag held non-acute hazardous waste pharmaceuticals and is empty as described in §335.41(f) of this title (relating to Purpose, Scope, and Applicability).

(d) Other containers, including delivery devices. Hazardous waste pharmaceuticals remaining in all other types of unused, partially administered, or fully administered containers must be managed as non-creditable hazardous waste pharmaceuticals under this subchapter, unless the container held non-acute hazardous waste pharmaceuticals and is empty as described in §335.41(f) of this title. This includes, but is not limited to, residues in inhalers, aerosol cans, nebulizers, tubes of ointments, gels, or creams.

**§335.767. Shipping Non-Creditable Hazardous Waste Pharmaceuticals from a Healthcare Facility or Evaluated Hazardous Waste Pharmaceuticals from a Reverse Distributor.**

(a) Shipping non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals. A healthcare facility must ship non-creditable hazardous waste pharmaceuticals and a reverse distributor must ship evaluated hazardous waste pharmaceuticals off-site to a designated facility (such as a permitted or interim status treatment, storage, or disposal facility) in compliance with this subsection.

(1) The healthcare facility and reverse distributor must comply with the pre-transport requirements in this paragraph before transporting or offering non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals for transport off-site.

(A) Packaging. Package the waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 Code of Federal Regulations (CFR) Parts 173, 178, and 180.

(B) Labeling. Label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR Part 172, Subpart E.

(C) Marking. Mark hazardous waste pharmaceuticals in accordance with this subparagraph.

(i) Mark each package of hazardous waste pharmaceuticals in accordance with the applicable federal Department of Transportation (DOT) regulations on hazardous materials under 49 CFR Part 172, Subpart D.

(ii) Mark each container of 119 gallons or less used in such transportation in accordance with 40 CFR §266.508(a)(1)(iii)(B) which is adopted by reference as adopted in the *Federal Register* on February 22, 2019 (84 FR 5940).

(iii) Lab packs that will be incinerated in compliance with 40 CFR §268.42(c) as adopted under §335.431 of this title (relating to Purpose, Scope, and Applicability) are not required to be marked with EPA Hazardous Waste Number(s), except D004, D005, D006, D007, D008, D010, and D011, where applicable. A nationally recognized electronic system, such as bar coding or radio frequency identification, may be used to identify the EPA hazardous waste number(s).

(D) Placarding. Placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR Part 172, Subpart F.

(2) The healthcare facility and reverse distributor must comply with the manifest requirements of 40 CFR Part 262, Subpart B as adopted under §335.54 of this title (relating to Hazardous Waste Manifest) and list a complete Texas waste code in Item 13 of the manifest), except:

(A) a healthcare facility shipping non-creditable hazardous waste pharmaceuticals is not required to list all applicable EPA hazardous waste numbers in Item 13 of the manifest; and

(B) a healthcare facility shipping non-creditable hazardous waste pharmaceuticals must use the four-letter sequence code "PHRM" in addition to the applicable Texas form code and classification code in Item 13 of the manifest.

(b) Exporting non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals. A healthcare facility or reverse distributor that exports non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals is subject to 40 CFR Part 262, Subpart H, as adopted under §335.58 of this title (relating to Transboundary Movements of Hazardous Waste for Recovery or Disposal).

(c) Importing non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals. Any person that imports non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals is subject to 40 CFR Part 262, Subpart H, as adopted by reference under §335.58 of this title, Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General), Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions), Subchapter O of this chapter (relating to Land Disposal Restrictions), and Subchapter R of this chapter (relating to Waste Classification), except as provided under this subchapter. A healthcare facility or reverse distributor may not accept imported non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals unless they have a permit or interim status that authorizes the owner or operator of the facility to accept

hazardous waste from off-site.

**§335.769. Shipping Potentially Creditable Hazardous Waste Pharmaceuticals from a Healthcare Facility or a Reverse Distributor to a Reverse Distributor.**

(a) Shipping potentially creditable hazardous waste pharmaceuticals. A healthcare facility or a reverse distributor who transports or offers for transport potentially creditable hazardous waste pharmaceuticals off-site to a reverse distributor must comply with all applicable United States Department of Transportation regulations in 49 Code of Federal Regulations (CFR) Parts 171 - 180 for any potentially creditable hazardous waste pharmaceutical that meets the definition of hazardous material in 49 CFR §171.8. For purposes of the federal Department of Transportation regulations, a material is considered a hazardous waste if it is subject to the Hazardous Waste Manifest Requirements of the United States Environmental Protection Agency specified in 40 CFR Part 262 as adopted under Subchapter C of this title (relating to Standards Applicable to Generators of Hazardous Waste). Because a potentially creditable hazardous waste pharmaceutical does not require a manifest, it is not considered hazardous waste under the Department of Transportation regulations.

(b) Delivery confirmation. Upon receipt of each shipment of potentially creditable hazardous waste pharmaceuticals, the receiving reverse distributor must provide confirmation (paper or electronic) to the healthcare facility or reverse

distributor that initiated the shipment that the shipment of potentially creditable hazardous waste pharmaceuticals has arrived at its destination and is under the custody and control of the reverse distributor.

(c) Procedures for when delivery confirmation is not received within 35 days. If a healthcare facility or reverse distributor initiates a shipment of potentially creditable hazardous waste pharmaceuticals to a reverse distributor and does not receive delivery confirmation within 35 calendar days from the date that the shipment of potentially creditable hazardous waste pharmaceuticals was sent, the healthcare facility or reverse distributor that initiated the shipment must contact the carrier and the intended recipient (i.e., the reverse distributor) promptly to report that the delivery confirmation was not received and to determine the status of the potentially creditable hazardous waste pharmaceuticals.

(d) Exporting potentially creditable hazardous waste pharmaceuticals. A healthcare facility or reverse distributor that sends potentially creditable hazardous waste pharmaceuticals to a foreign destination must comply with the applicable sections of 40 CFR Part 262, Subpart H, as adopted under §335.58 of this title (relating to Transboundary Movements of Hazardous Waste for Recovery or Disposal), except the manifesting requirement of 40 CFR §262.83(c), in addition to subsections (a) - (c) of this section.

(e) Importing potentially creditable hazardous waste pharmaceuticals. Any

person that imports potentially creditable hazardous waste pharmaceuticals into the United States is subject to subsections (a) - (c) of this section instead of 40 CFR Part 262, Subpart H. Immediately after the potentially creditable hazardous waste pharmaceuticals enter the United States, they are subject to all applicable requirements of this subchapter.

**§335.771. Standards for the Management of Potentially Creditable Hazardous Waste Pharmaceuticals and Evaluated Hazardous Waste Pharmaceuticals by Reverse Distributors.**

(a) A reverse distributor may accept potentially creditable hazardous waste pharmaceuticals from off-site and accumulate potentially creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals on-site without a hazardous waste permit or without having interim status, provided that it complies with the conditions in this section. The following standards apply to reverse distributors managing potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(1) Registration. A reverse distributor must register with the executive director in accordance with §335.6 of this title (relating to Notification Requirements) using a method approved by the executive director within 60 days of becoming subject to this chapter.

(2) Inventory by the reverse distributor. A reverse distributor must maintain a current inventory of all the potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals that are accumulated on site.

(A) A reverse distributor must inventory each potentially creditable hazardous waste pharmaceutical within 30 calendar days of each waste arriving at the reverse distributor.

(B) The inventory must include the identity (e.g., name or national drug code) and quantity of each potentially creditable hazardous waste pharmaceutical and evaluated hazardous waste pharmaceutical.

(C) A reverse distributor that meets the inventory requirements of this paragraph by complying with other regulatory requirements, such as the Texas State Board of Pharmacy regulations, is not required to provide a separate inventory pursuant to this section.

(3) Evaluation by a reverse distributor that is not a manufacturer. A reverse distributor that is not a pharmaceutical manufacturer must evaluate a potentially creditable hazardous waste pharmaceutical within 30 calendar days of the waste arriving at the reverse distributor to establish whether it is destined for another

reverse distributor for further evaluation or verification of manufacturer credit or for a permitted or interim status treatment, storage, or disposal facility.

(A) A potentially creditable hazardous waste pharmaceutical that is destined for another reverse distributor is still considered a "potentially creditable hazardous waste pharmaceutical" and must be managed in accordance with subsection (b) of this section.

(B) A potentially creditable hazardous waste pharmaceutical that is destined for a permitted or interim status treatment, storage or disposal facility is considered an "evaluated hazardous waste pharmaceutical" and must be managed in accordance with subsection (c) of this section.

(4) Evaluation by a reverse distributor that is a manufacturer. A reverse distributor that is a pharmaceutical manufacturer must evaluate a potentially creditable hazardous waste pharmaceutical to verify manufacturer credit within 30 calendar days of the waste arriving at the facility. Following the evaluation, the reverse distributor must manage the evaluated hazardous waste pharmaceuticals in accordance with subsection (c) of this section.

(5) Maximum accumulation time. The maximum accumulation time for hazardous waste pharmaceuticals at a reverse distributor is outlined in subparagraphs (A) and (B) of this paragraph.

(A) A reverse distributor may accumulate potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals on site for 180 calendar days or less. The 180 days start after the potentially creditable hazardous waste pharmaceutical has been evaluated and applies to all hazardous waste pharmaceuticals accumulated on site, regardless of whether they are destined for another reverse distributor (i.e., potentially creditable hazardous waste pharmaceuticals) or a permitted or interim status treatment, storage, or disposal facility (i.e., evaluated hazardous waste pharmaceuticals).

(B) Unexpired pharmaceuticals that are otherwise creditable but are awaiting their expiration date (i.e., aging in a holding morgue) can be accumulated for up to 180 days after the expiration date, provided that the unexpired pharmaceuticals are managed in accordance with subsection (a) of this section and the container labeling and management standards in §335.771(c)(4)(A) - (F).

(6) Security at the reverse distributor facility. A reverse distributor must prevent unknowing entry and minimize the possibility for the unauthorized entry into the portion of the facility where potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals are kept.

(A) Examples of methods that may be used to prevent unknowing entry and minimize the possibility for unauthorized entry include, but are not limited to:

(i) a 24-hour continuous monitoring surveillance system;

(ii) an artificial barrier such as a fence; or

(iii) a means to control entry, such as keycard access.

(B) If the reverse distributor already meets the security requirements of this subsection because of other regulatory requirements, such as Drug Enforcement Administration or Texas State Board of Pharmacy regulations, the facility is not required to provide separate security measures pursuant to this section.

(7) Contingency plan and emergency procedures at a reverse distributor. A reverse distributor that accepts potentially creditable hazardous waste pharmaceuticals from off-site must prepare a contingency plan and comply with the other requirements of 40 Code of Federal Regulations (CFR) Part 262, Subpart M as adopted under §335.61 of this title (relating to Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators).

(8) Closure of a reverse distributor. When closing an area where a reverse distributor accumulates potentially creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals, the reverse distributor must comply with §335.8 of this title (relating to Closure and Remediation) and 40 CFR §262.17(a)(8)(ii) and (iii) as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste).

(9) Reporting. Reverse distributors are subject to the following reporting requirements.

(A) A reverse distributor must submit an unauthorized waste report if the reverse distributor receives waste from off-site that it is not authorized to receive (e.g., non-pharmaceutical hazardous waste, regulated medical waste). The reverse distributor must prepare and submit an unauthorized waste report to the executive director within 45 calendar days after the unauthorized waste arrives at the reverse distributor and must send a copy of the unauthorized waste report to the healthcare facility (or other entity) that sent the unauthorized waste. The reverse distributor must manage the unauthorized waste in accordance with all applicable regulations. The unauthorized waste report must be signed by the owner or operator of the reverse distributor, or its authorized representative, and contain the following information:

(i) the United States Environmental Protection Agency (EPA) identification number, name and address of the reverse distributor;

(ii) the date the reverse distributor received the unauthorized waste;

(iii) the EPA identification number, name, and address of the healthcare facility that shipped the unauthorized waste, if available;

(iv) a description and the quantity of each unauthorized waste the reverse distributor received;

(v) the method of treatment, storage, or disposal for each unauthorized waste; and

(vi) a brief explanation of why the waste was unauthorized, if known.

(B) The executive director may require reverse distributors to furnish additional reports concerning the quantities and disposition of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(10) Recordkeeping by reverse distributors. A reverse distributor must keep the following records (paper or electronic) readily available upon request by an inspector. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the executive director.

(A) A copy of its notification on file for as long as the facility is subject to this subchapter;

(B) A copy of the delivery confirmation and the shipping papers for each shipment of potentially creditable hazardous waste pharmaceuticals that it receives, and a copy of each unauthorized waste report, for at least three years from the date the shipment arrives at the reverse distributor;

(C) A copy of its current inventory for as long as the facility is subject to this subchapter.

(b) Additional standards for reverse distributors managing potentially creditable hazardous waste pharmaceuticals destined for another reverse distributor. A reverse distributor that does not have a permit or interim status must comply with the following conditions, in addition to the requirements in subsection (a) of this section, for the management of potentially creditable hazardous waste pharmaceuticals that are destined for another reverse distributor for further evaluation or verification of

manufacturer credit:

(1) A reverse distributor that receives potentially creditable hazardous waste pharmaceuticals from a healthcare facility must send those potentially creditable hazardous waste pharmaceuticals to another reverse distributor within 180 days after the potentially creditable hazardous waste pharmaceuticals have been evaluated or follow subsection (c) of this section for evaluated hazardous waste pharmaceuticals.

(2) A reverse distributor that receives potentially creditable hazardous waste pharmaceuticals from another reverse distributor must send those potentially creditable hazardous waste pharmaceuticals to a reverse distributor that is a pharmaceutical manufacturer within 180 days after the potentially creditable hazardous waste pharmaceuticals have been evaluated or follow subsection (c) of this section for evaluated hazardous waste pharmaceuticals.

(3) A reverse distributor must ship potentially creditable hazardous waste pharmaceuticals destined for another reverse distributor in accordance with §335.769 of this title (relating to Shipping Potentially Creditable Hazardous Waste Pharmaceuticals from a Healthcare Facility or a Reverse Distributor to a Reverse Distributor).

(4) Recordkeeping by reverse distributors. A reverse distributor must keep the following records (paper or electronic) readily available upon request by an inspector for each shipment of potentially creditable hazardous waste pharmaceuticals that it initiates to another reverse distributor, for at least three years from the date of shipment. The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the executive director.

(A) The confirmation of delivery; and

(B) The DOT shipping papers prepared in accordance with 49 CFR Part 172, Subpart C, if applicable.

(c) Additional standards for reverse distributors managing evaluated hazardous waste pharmaceuticals. A reverse distributor that does not have a permit or interim status must comply with the following conditions, in addition to the requirements of subsection (a) of this section, for the management of evaluated hazardous waste pharmaceuticals:

(1) Accumulation area at the reverse distributor. A reverse distributor must designate an on-site accumulation area where it will accumulate evaluated hazardous waste pharmaceuticals.

(2) Inspections of on-site accumulation area. A reverse distributor must inspect its on-site accumulation area at least once every seven days, looking at containers for leaks and for deterioration caused by corrosion or other factors, as well as for signs of diversion.

(3) Personnel training at a reverse distributor. Personnel at a reverse distributor that handle evaluated hazardous waste pharmaceuticals are subject to the training requirements of 40 CFR §262.17(a)(7) as adopted under §335.53 of this title.

(4) Labeling and management of containers at on-site accumulation areas. A reverse distributor accumulating evaluated hazardous waste pharmaceuticals in containers in an on-site accumulation area must:

(A) label the containers with the words, "hazardous waste pharmaceuticals";

(B) ensure the containers are in good condition and managed to prevent leaks;

(C) use containers that are made of or lined with materials which will not react with, and are otherwise compatible with, the evaluated hazardous waste pharmaceuticals, so that the ability of the container to contain the waste is not impaired;

(D) keep containers closed, if holding liquid or gel evaluated hazardous waste pharmaceuticals. If the liquid or gel evaluated hazardous waste pharmaceuticals are in their original, intact, sealed packaging; or repackaged, intact, sealed packaging, they are considered to meet the closed container standard;

(E) manage any container of ignitable or reactive evaluated hazardous waste pharmaceuticals, or any container of commingled incompatible evaluated hazardous waste pharmaceuticals so that the container does not have the potential to:

(i) generate extreme heat or pressure, fire or explosion, or violent reaction;

(ii) produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(iii) produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(iv) damage the structural integrity of the container of hazardous waste pharmaceuticals; or

(v) through other like means threaten human health or the environment; and

(F) Accumulate evaluated hazardous waste pharmaceuticals that are prohibited from being combusted because of the dilution prohibition of 40 CFR §268.3(c) as adopted under §335.431 of this title (relating to Purpose, Scope, and Applicability) (e.g., arsenic trioxide (P012)) in separate containers from other evaluated hazardous waste pharmaceuticals at the reverse distributor.

(5) United States Environmental Protection Agency (EPA) hazardous waste numbers. Prior to shipping evaluated hazardous waste pharmaceuticals off-site, all containers must be marked with the applicable EPA hazardous waste numbers. A nationally recognized electronic system, such as bar coding or radio frequency identification, may be used to identify the EPA hazardous waste number(s).

(6) Shipments. A reverse distributor must ship evaluated hazardous waste pharmaceuticals that are destined for a permitted or interim status treatment, storage or disposal facility in accordance with the applicable shipping standards in §335.767(a) or (b) of this title (relating to Shipping Non-Creditable Hazardous Waste Pharmaceuticals from a Healthcare Facility or Evaluated Hazardous Waste Pharmaceuticals from a Reverse Distributor).

(7) Procedures for a reverse distributor for managing rejected shipments.

A reverse distributor that sends a shipment of evaluated hazardous waste pharmaceuticals to a designated facility with the understanding that the designated facility can accept and manage the waste, and later receives that shipment back as a rejected load in accordance with the manifest discrepancy provisions of 40 CFR §264.72 as adopted under §335.152 of this title (relating to Standards) or 40 CFR §265.72 as adopted under §335.112 of this title (relating to Standards) may accumulate the returned evaluated hazardous waste pharmaceuticals on site for up to an additional 90 days in the on-site accumulation area provided the rejected or returned shipment is managed in accordance with subsection (a) or (c) of this section. Upon receipt of the returned shipment, the reverse distributor must:

(A) Sign either:

(i) item 18c of the original manifest, if the original manifest was used for the returned shipment; or

(ii) item 20 of the new manifest, if a new manifest was used for the returned shipment;

(B) Provide the transporter a copy of the manifest;

(C) Within 30 days of receipt of the rejected shipment of the evaluated hazardous waste pharmaceuticals, send a copy of the manifest to the designated facility that returned the shipment to the reverse distributor; and

(D) Within 90 days of receipt of the rejected shipment, transport or offer for transport the returned shipment of evaluated hazardous waste pharmaceuticals in accordance with the applicable shipping standards of §335.767(a) or (b) of this title.

(8) Land disposal restrictions. Evaluated hazardous waste pharmaceuticals are subject to the land disposal restrictions of 40 CFR Part 268 as adopted under Subchapter O of this chapter (relating to Land Disposal Restrictions). A reverse distributor that accepts potentially creditable hazardous waste pharmaceuticals from off-site must comply with the land disposal restrictions in accordance with 40 CFR §268.7(a) as adopted under §335.431 of this title (relating to Purpose, Scope, and Applicability).

(9) Reporting by a reverse distributor for evaluated hazardous waste pharmaceuticals. Reverse distributors are subject to the following reporting requirements.

(A) A reverse distributor that ships evaluated hazardous waste pharmaceuticals off-site must:

(i) comply with the reporting requirements of §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), and

(ii) in every even-numbered year, submit supplemental biennial reporting information for the previous odd-numbered report year required by 40 CFR §262.41 as adopted by reference under §335.56 of this title (relating to Recordkeeping and Reporting Applicable to Small and Large Quantity Generators), upon request, in a method approved by the executive director within the specified timeframe. Information submitted to the executive director in accordance with Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General), Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste), and Subchapter R of this chapter (relating to Waste Classification) is not required to be resubmitted in a biennial report.

(B) If a reverse distributor does not receive a copy of the manifest with the signature of the owner or operator of the designated facility within 35 days of the date the evaluated hazardous waste pharmaceuticals were accepted by the initial transporter, the reverse distributor must contact the transporter or the owner or operator of the designated facility to determine the status of the evaluated hazardous waste pharmaceuticals.

(C) A reverse distributor must submit an exception report to the executive director if it has not received a copy of the manifest with the signature of the owner or operator of the designated facility within 45 days of the date the evaluated hazardous waste pharmaceutical was accepted by the initial transporter. The exception report must include:

(i) a legible copy of the manifest for which the reverse distributor does not have confirmation of delivery; and

(ii) a cover letter signed by the reverse distributor, or its authorized representative, explaining the efforts taken to locate the evaluated hazardous waste pharmaceuticals and the results of those efforts.

(D) For shipments rejected by the designated facility and shipped to an alternate facility, a reverse distributor that does not receive a copy of the manifest with the signature of the owner or operator of the alternate facility within 35 days of the date the evaluated hazardous waste pharmaceuticals were accepted by the initial transporter must contact the transporter or the owner or operator of the alternate facility to determine the status of the hazardous waste. The 35-day time frame begins the date the evaluated hazardous waste pharmaceuticals are accepted by the transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

(E) For shipments rejected by the designated facility and shipped to an alternate facility, a reverse distributor must submit an exception report to the executive director if it has not received a copy of the manifest with the signature of the owner or operator of the alternate facility within 45 days of the date the evaluated hazardous waste pharmaceuticals were accepted by the initial transporter. The 45-day time frame begins the date the evaluated hazardous waste pharmaceuticals are accepted by the transporter forwarding the hazardous waste pharmaceutical shipment from the designated facility to the alternate facility. The exception report must include:

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

(ii) A cover letter signed by the reverse distributor, or its authorized representative, explaining the efforts taken to locate the evaluated hazardous waste pharmaceuticals and the results of those efforts.

(10) Recordkeeping by a reverse distributor for evaluated hazardous waste pharmaceuticals. Reverse distributors are subject to the following recordkeeping requirements.

(A) A reverse distributor must keep a log (written or electronic) of the inspections of the on-site accumulation area, required by subsection (c)(2) of this

section. This log must be retained as a record for at least three years from the date of the inspection.

(B) A reverse distributor must keep a copy of each manifest signed in accordance with 40 CFR §262.23(a) as adopted under §335.54 of this title (relating to Hazardous Waste Manifest) for three years or until it receives a signed copy from the designated facility that received the evaluated hazardous waste pharmaceutical. This signed copy must be retained as a record for at least three years from the date the evaluated hazardous waste pharmaceutical was accepted by the initial transporter.

(C) A reverse distributor must keep a copy of each report required by subparagraph (9)(A) of this subsection for at least three years from the due date of the report.

(D) A reverse distributor must keep a copy of each exception report for at least three years from the submission of the report.

(E) A reverse distributor must keep records to document personnel training, in accordance with 40 CFR §262.17(a)(7)(iv) as adopted under §335.53 of this title.

(F) All records must be readily available upon request by an inspector. The periods of retention referred to in this section are extended

automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the executive director.

(d) When a reverse distributor must have a permit. A reverse distributor is an operator of a hazardous waste treatment, storage, or disposal facility and is subject to the permitting and other requirements of this chapter if the reverse distributor:

(1) does not meet the conditions of this section;

(2) accepts manifested hazardous waste from off-site; or

(3) treats or disposes of hazardous waste pharmaceuticals on-site.