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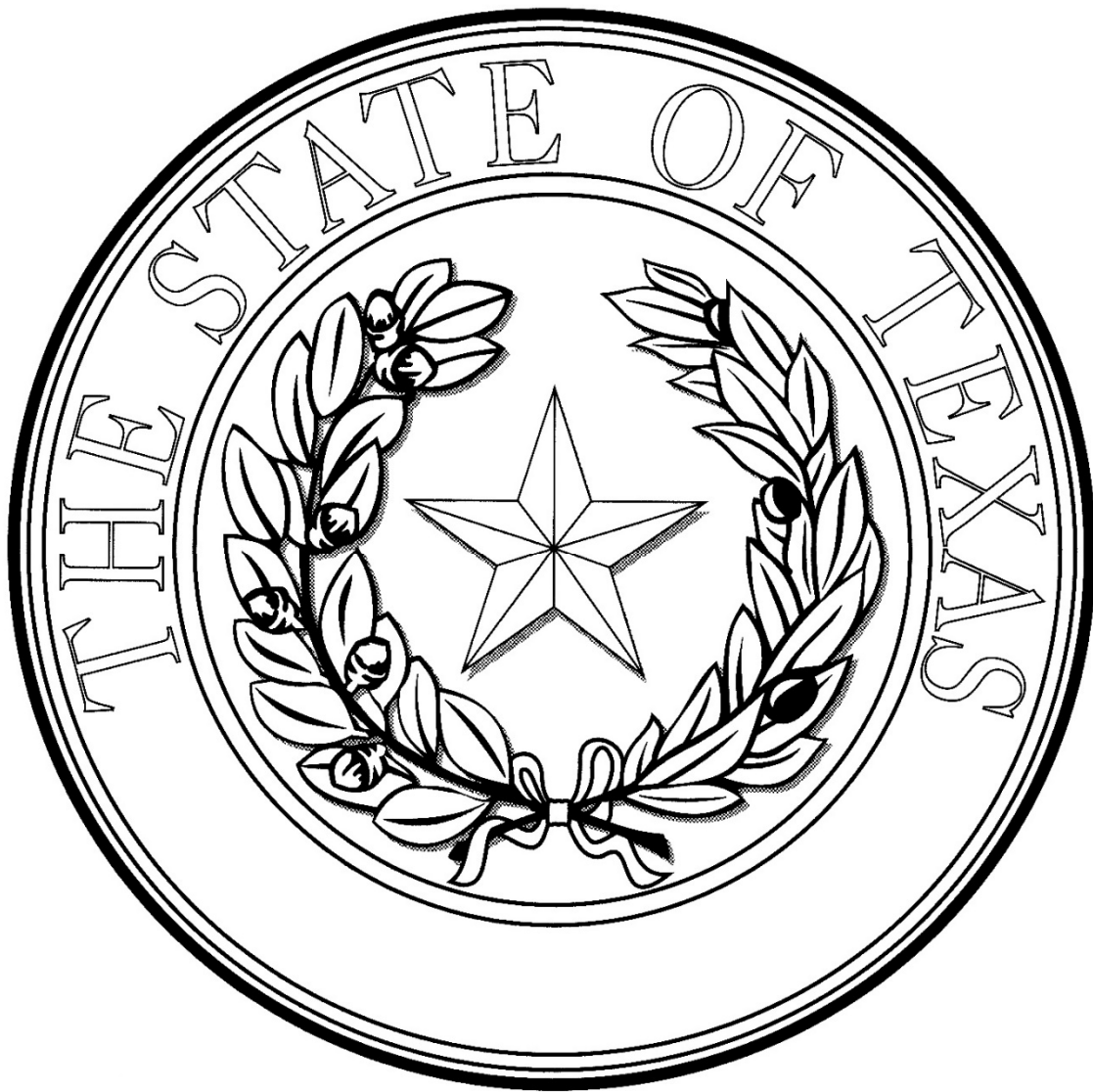
# TEXAS REGISTER

*Volume 46 Number 31*

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# TEXAS REGISTER

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# IN THIS ISSUE

## **GOVERNOR**

Appointments .....	4527
Proclamation 41-3849 .....	4527

## **EMERGENCY RULES**

### **HEALTH AND HUMAN SERVICES COMMISSION**

#### BEHAVIORAL HEALTH DELIVERY SYSTEM

26 TAC §306.1351 .....	4529
------------------------	------

## **PROPOSED RULES**

### **TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

#### LICENSES

22 TAC §515.3 .....	4531
22 TAC §515.11 .....	4532

#### PEER REVIEW

22 TAC §527.2 .....	4533
---------------------	------

### **HEALTH AND HUMAN SERVICES COMMISSION**

#### DIAGNOSTIC ASSESSMENT

26 TAC §304.101, §304.102 .....	4537
26 TAC §§304.201 - 304.203 .....	4538
26 TAC §304.301, §304.302 .....	4539
26 TAC §§304.401 - 304.404 .....	4540
26 TAC §304.502, §304.503 .....	4542

#### BEHAVIORAL HEALTH DELIVERY SYSTEM

26 TAC §306.1251 .....	4542
------------------------	------

#### MINIMUM STANDARDS FOR LISTED FAMILY HOMES

26 TAC §742.401 .....	4546
26 TAC §742.806 .....	4546

#### MINIMUM STANDARDS FOR SHELTER CARE

26 TAC §743.301 .....	4547
-----------------------	------

#### MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

26 TAC §744.307 .....	4549
26 TAC §744.501 .....	4550
26 TAC §744.701 .....	4551

#### LICENSING

26 TAC §745.469 .....	4551
-----------------------	------

#### MINIMUM STANDARDS FOR CHILD-CARE CENTERS

26 TAC §746.307 .....	4554
26 TAC §746.501 .....	4555

26 TAC §746.701 .....	4556
-----------------------	------

26 TAC §746.801 .....	4556
-----------------------	------

#### MINIMUM STANDARDS FOR CHILD-CARE HOMES

26 TAC §747.305 .....	4559
-----------------------	------

26 TAC §747.501 .....	4559
-----------------------	------

26 TAC §747.701 .....	4560
-----------------------	------

26 TAC §747.2107 .....	4560
------------------------	------

#### MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

26 TAC §748.2271 .....	4561
------------------------	------

### **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

#### COMPOSTING

30 TAC §§332.2 - 332.4, 332.6, 332.8 .....	4566
--	------

30 TAC §332.22, §332.23 .....	4572
-------------------------------	------

30 TAC §§332.32, 332.33, 332.35 - 332.37 .....	4573
--	------

30 TAC §§332.41 - 332.45, 332.47 .....	4576
--	------

30 TAC §332.61 .....	4582
----------------------	------

30 TAC §§332.71, 332.72, 332.75 .....	4583
---------------------------------------	------

#### INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

30 TAC §§335.1, 335.2, 335.6, 335.9 - 335.15, 335.18, 335.19, 335.24, 335.26, 335.27, 335.31 .....	4603
--	------

30 TAC §§335.6, 335.11, 335.14 .....	4630
--------------------------------------	------

30 TAC §335.41, §335.46 .....	4631
-------------------------------	------

30 TAC §§335.51 - 335.61 .....	4633
--------------------------------	------

30 TAC §§335.61 - 335.63, 335.65 - 335.71, 335.73 - 335.79 .....	4641
--	------

30 TAC §335.91, §335.94 .....	4641
-------------------------------	------

30 TAC §335.112 .....	4643
-----------------------	------

30 TAC §335.152 .....	4644
-----------------------	------

30 TAC §335.221 .....	4646
-----------------------	------

30 TAC §335.241 .....	4648
-----------------------	------

30 TAC §335.251 .....	4649
-----------------------	------

30 TAC §335.261 .....	4650
-----------------------	------

30 TAC §335.272 .....	4653
-----------------------	------

30 TAC §335.431 .....	4653
-----------------------	------

30 TAC §§335.471, 335.474, 371.477 .....	4654
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30 TAC §§335.503, 335.504, 335.510, 335.511, 335.513, 335.521 .....	4657
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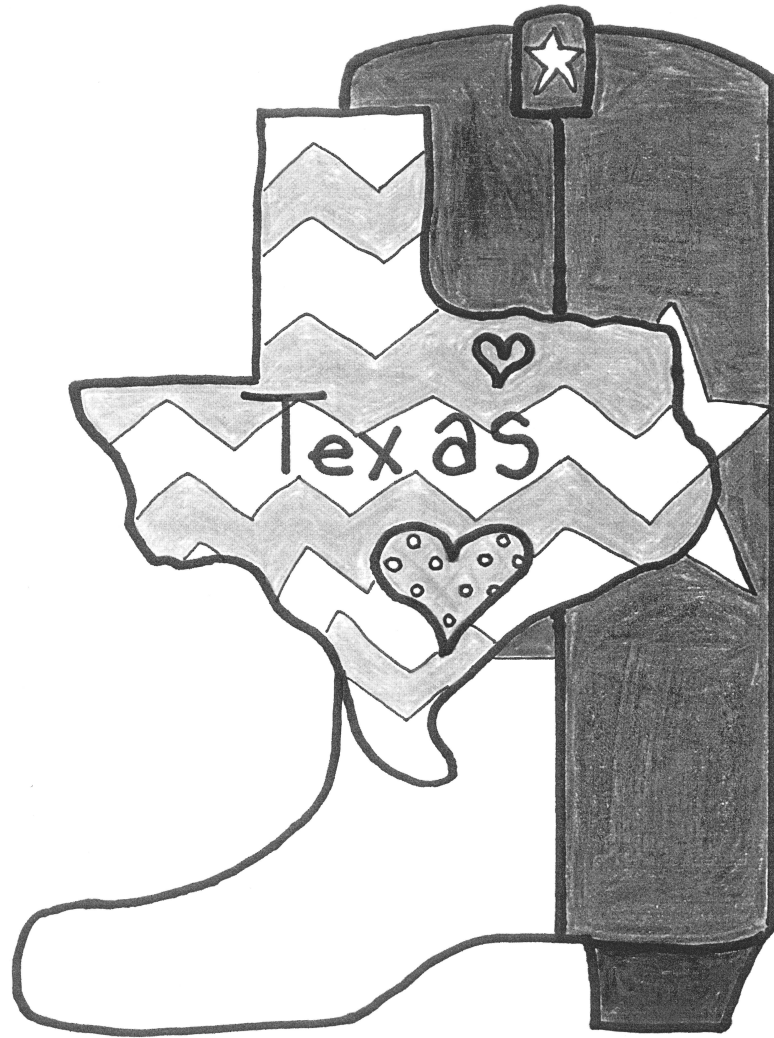
30 TAC §335.590 .....	4661
-----------------------	------

30 TAC §335.602 .....	4663
-----------------------	------

30 TAC §§335.702, §335.703.....	4664	25 TAC §§228.221 - 228.225 .....	4692
30 TAC §§335.751, 335.753, 335.755, 335.757, 335.759, 335.761, 335.763, 335.765, 335.767, 335.769, 335.771 .....	4667	25 TAC §§228.241 - 228.257 .....	4692
<b>TEXAS DEPARTMENT OF PUBLIC SAFETY</b>		25 TAC §§228.241 - 228.246 .....	4693
COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES		25 TAC §§228.271 - 228.278 .....	4693
37 TAC §4.81.....	4678	<b>HEALTH AND HUMAN SERVICES COMMISSION</b>	
<b>DEPARTMENT OF AGING AND DISABILITY SERVICES</b>		NURSE AIDES	
PROVIDER CLINICAL RESPONSIBILITIES--INTELLECTUAL DISABILITY SERVICES		26 TAC §§556.2, 556.3, 556.6, 556.9.....	4693
40 TAC §§5.151, 5.153 - 5.158, 5.161 .....	4679	<b>TEXAS BOARD OF PARDONS AND PAROLES</b>	
<b>ADOPTED RULES</b>		EXECUTIVE CLEMENCY	
<b>DEPARTMENT OF INFORMATION RESOURCES</b>		37 TAC §143.43.....	4699
STATEWIDE TECHNOLOGY CENTERS		37 TAC §143.57.....	4699
1 TAC §§215.1 - 215.4 .....	4682	<b>RULE REVIEW</b>	
1 TAC §§215.10 - 215.13 .....	4683	Adopted Rule Reviews	
1 TAC §§215.30 - 215.33 .....	4683	Texas Department of Licensing and Regulation.....	4701
1 TAC §§215.40 - 215.44 .....	4684	Texas Parks and Wildlife Department.....	4702
1 TAC §§215.50 - 215.53 .....	4684	<b>TABLES AND GRAPHICS</b>	
<b>TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY</b>		.....	4703
PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM		<b>IN ADDITION</b>	
22 TAC §520.6.....	4685	Office of the Attorney General	
22 TAC §520.9.....	4686	Texas Water Code and Texas Health and Safety Code Settlement Notice.....	4715
<b>DEPARTMENT OF STATE HEALTH SERVICES</b>		<b>Brazos Valley Council of Governments</b>	
RETAIL FOOD ESTABLISHMENTS		Public Notice - Request for Proposal for Independent Financial Monitoring Services .....	4715
25 TAC §228.1, §228.2.....	4687	<b>Office of Consumer Credit Commission</b>	
25 TAC §228.1, §228.2.....	4687	Notice of Rate Ceilings.....	4716
25 TAC §§228.31 - 228.45 .....	4689	<b>Office of Court Administration</b>	
25 TAC §228.31, §228.32.....	4690	Public Notice of Court Costs and Fees 2021 .....	4716
25 TAC §§228.61 - 228.83 .....	4690	<b>Credit Union Department</b>	
25 TAC §§228.61 - 228.64 .....	4690	Application of Out of State Branch .....	4718
25 TAC §§228.101 - 228.125 .....	4690	Application to Amend Articles of Incorporation.....	4718
25 TAC §§228.141 - 228.154 .....	4691	Applications to Expand Field of Membership.....	4718
25 TAC §§228.141 - 228.143 .....	4691	Notice of Final Action Taken.....	4719
25 TAC §§228.171 - 228.186 .....	4691	<b>Texas Council for Developmental Disabilities</b>	
25 TAC §228.171, §228.172.....	4691	Request for Stipend Applications: Increasing Community-based Access to Vaccines.....	4719
25 TAC §§228.201 - 228.213 .....	4692	<b>Texas Commission on Environmental Quality</b>	
25 TAC §228.211.....	4692	Agreed Orders.....	4719
25 TAC §§228.221 - 228.225 .....	4692	Enforcement Orders.....	4722



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 165591.....	4723	Notice of Water Quality Application .....	4731
Notice of Correction to Agreed Order Number 5 .....	4723	<b>Texas Health and Human Services Commission</b>	
Notice of District Petition .....	4724	Public Notice - Texas Managed Care Quality Strategy .....	4731
Notice of Hearing on Martin Marietta Materials Southwest, LLC: SOAH Docket No. 582-21-2182; TCEQ Docket No. 2021-0054-AIR; Permit No. 41849.....	4724	Public Notice: Texas State Plan Amendment for Event-based Rates for Potentially Preventable Readmissions .....	4732
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions .....	4725	Public Notice - Texas State Plan for Medical Assistance Amendment Effective September 1, 2021 .....	4733
Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Carol Maderer: SOAH Docket No. 582-21-2664; TCEQ Docket No. 2020-0297-MSW-E.....	4726	<b>Texas Higher Education Coordinating Board</b>	
Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of City of Moody: SOAH Docket No. 582-21-2663; TCEQ Docket No. 2020-0298-MLM-E.....	4727	Notice of Opportunity to Comment on Revision of State Long-range Master Plan for Higher Education .....	4733
Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Ygriega Environmental Services, LLC: SOAH Docket No. 582-21-2665; TCEQ Docket No. 2019-1579-MSW-E .....	4727	<b>Texas Department of Insurance</b>	
Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 332 .....	4728	Company Licensing .....	4734
Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 335 .....	4729	<b>Texas Lottery Commission</b>	
Notice of Public Meeting for an Air Quality Permit: Proposed Permit Number 162941 .....	4729	Scratch Ticket Game Number 2341 "SPECIAL EDITION CROSS-WORD" .....	4734
Notice of Public Meeting for TPDES Permit for Municipal Wastewater: Renewal of Permit No. WQ0010199001.....	4730	Scratch Ticket Game Number 2342 "SUPER LOTERIA" .....	4740
		<b>South East Texas Regional Planning Commission</b>	
		Notice of Cancellation of Request for Proposal (RFP).....	4745
		<b>Texas Department of Transportation</b>	
		Public Notice - Photographic Traffic Signal Enforcement Systems: Municipal Reporting of Traffic Crashes .....	4746



# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for July 19, 2021

Appointed to the Crime Victims' Institute Advisory Council, for a term to expire January 31, 2023, Brandi L. Reed of Amarillo, Texas (replacing Janis K. "Jan" Langbein of Dallas, whose term expired).

### Appointments for July 21, 2021

Appointed to the Southwestern States Water Commission, for a term to expire February 1, 2025, Cody Harris of Palestine, Texas (replacing Representative Lyle Larson of San Antonio, whose term expired).

Greg Abbott, Governor

TRD-202102814



## Proclamation 41-3849

### TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation on June 25, 2021, including to modify the list of affected counties and therefore declare a state of disaster for Brewster, Brooks, Crockett, Culberson, DeWitt, Dimmit, Edwards, Frio, Goliad, Gonzales, Hudspeth, Jeff Davis, Jim Hogg, Kimble, Kinney, La Salle, Lavaca, Live Oak, Maverick, McMullen, Midland, Pecos, Presidio, Real, Terrell, Uvalde, Val Verde, and Zapata counties, and for all state agencies affected by this disaster; and

WHEREAS, on June 30, 2021, I renewed that disaster proclamation, as amended, and also declared a state of disaster for Colorado, Crane, Galveston, Kenedy, Mason, Medina, and Throckmorton counties based on the same certified conditions; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations; and

WHEREAS, communications with county officials have confirmed that the certified conditions now also pose an ongoing and imminent threat of disaster in Bee, Jackson, Schleicher, Sutton, Webb, and Zavala counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the Proclamation of June 30, 2021, to modify the list of affected counties and therefore also declare a state of disaster for Bee, Jackson, Schleicher, Sutton, Webb, and Zavala counties. The Proclamation of June 30, 2021, remains in full force and effect in all respects other than the addition of these affected counties. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended on June 25, 2021, and as renewed on June 30, 2021, are in full force and effect.

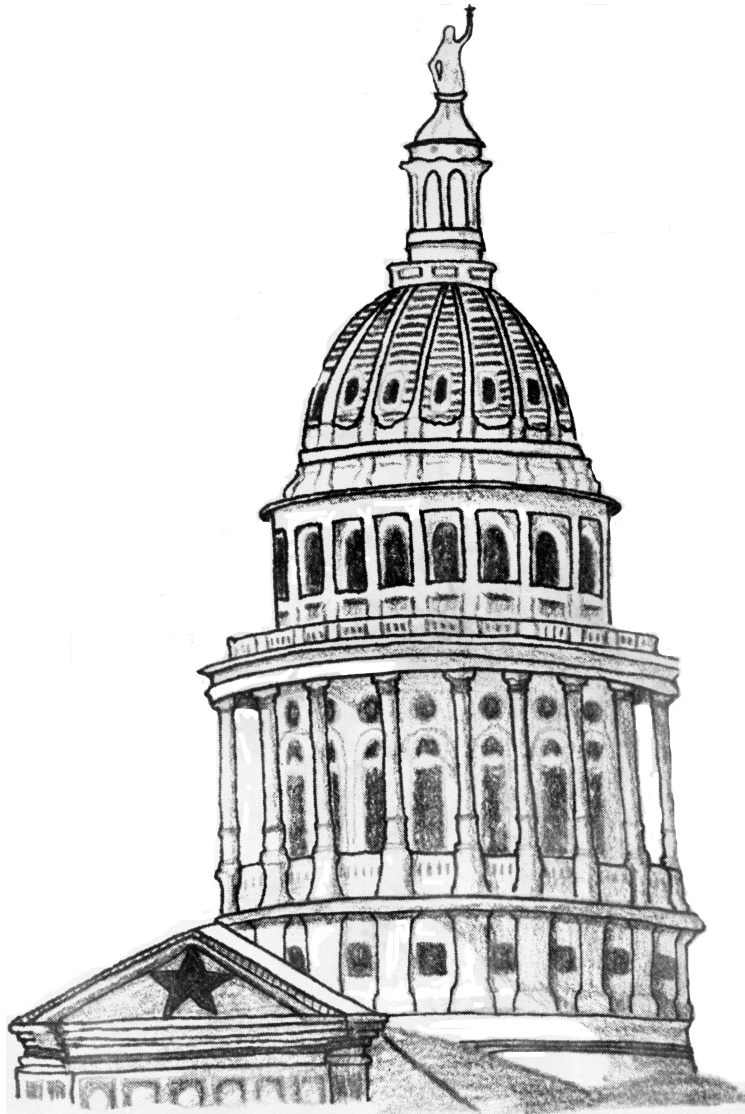
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 15th day of July, 2021.

Greg Abbott, Governor

TRD-202102700





# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

##### SUBCHAPTER Z. EMERGENCY RULEMAKING

###### 26 TAC §306.1351

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 306 Behavioral Health Delivery System, new §306.1351, concerning an emergency rule in response to COVID-19, in order to reduce the risk of transmission of COVID-19, and to ensure continuity of services for individuals receiving community-based mental health services. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

##### BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's renewal on July 1, 2021, of the March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rulemaking in response to COVID-19.

To protect individuals receiving mental health services and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to establish flexibility of certain requirements to allow alternative methods other than face-to-face contact or in-person interactions, such as the use of telehealth, telemedicine, video-conferencing, or telephonic methods; allow virtual platforms instead of a specific physical space or in-person interactions, such as the use of a telephone or videoconferencing; allow a child or adolescent participating in the YES Waiver Program to reside with another responsible adult as the child or adolescent may

not be residing with his or her legally authorized representative due to COVID-19 if the Centers for Medicare & Medicaid Services approves HHSC's request for activation of Appendix K; list rules under Title 25, Part 1 and Title 26, Part 1 of the TAC that require staff training through face-to-face or in person or a specific physical space or on site; and modify staff training requirements.

##### STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §§533.014, 533.035, 533.0356, 534.052, 534.058, 572.0025, 571.006, and 577.010. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code §533.014 authorizes the Executive Commissioner of HHSC to adopt rules governing certain responsibilities for local mental health authorities (LMHAs); §533.035 authorizes HHSC to contract with LMHAs for the delivery of mental health services; §533.0356 allows the Executive Commissioner of HHSC to adopt rules governing local behavioral health authorities (LBHAs); §534.052 authorizes the Executive Commissioner of HHSC to adopt rules to ensure the adequate provision of community-based mental health services; §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractor; §572.0025 authorizes the Executive Commissioner of HHSC to adopt rules governing the voluntary admission of a patient to an inpatient mental health facility; §571.006 authorizes the Executive Commissioner to adopt rules to ensure the proper and efficient treatment of persons with mental illness; and §577.010 authorizes the Executive Commissioner to adopt rules to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §533.014, §533.0356, and §534.052.

##### *§306.1351. COVID-19 Flexibilities.*

(a) Rules in Title 25 and Title 26 of the Texas Administrative Code (TAC) require community mental health providers to deliver certain services through face-to-face contact. Beginning on March 13, 2020 through the withdrawal or expiration of this emergency rule, the provision of community mental health services through a face-to-face contact, otherwise required by the rules identified in subsection (b) of this section, is not required. Instead, providers may use telehealth, telemedicine, video-conferencing, or telephonic methods to engage with the individual to provide these services, to the extent this

flexibility is permitted by and does not conflict with other law or obligation of the provider. Providers must ensure the selected method of contact complies with all applicable requirements related to security and privacy of information.

(b) Community mental health providers may use alternative interaction methods instead of a face-to-face contact to provide the services described in the following rules:

(1) §301.327 of this title (relating to Access to Mental Health Community Services);

(2) §301.351 of this title (relating to Crisis Services);

(3) §301.353 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization);

(4) §301.357 of this title (relating to Additional Standards of Care Specific to Mental Health Community Services for Children and Adolescents);

(5) §301.359 of this title (relating to Telemedicine Services);

(6) §306.207 of this chapter (relating to Post Discharge or Absence from Trial Placement: Contact and Implementation of the Recovery or Treatment Plan);

(7) §306.263 of this chapter (relating to MH Case Management Services Standards);

(8) §306.275 of this chapter (relating to Documenting MH Case Management Services);

(9) §306.277 of this chapter (relating to Medicaid Reimbursement);

(10) §306.305 of this chapter (relating to Definitions);

(11) §306.323 of this chapter (relating to Documentation Requirements);

(12) §306.327 of this chapter (relating to Medicaid Reimbursement);

(13) §307.53 of this title (relating to Eligibility Criteria and HCBS-AMH Assessment);

(14) 25 TAC §415.10 (relating to Medication Monitoring);  
and

(15) 25 TAC §415.261 (relating to Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency).

(c) Section 414.554 of Title 25 of the TAC requires community mental health providers to provide a private physical space for certain in-person interactions. Beginning on March 13, 2020 through the withdrawal or expiration of this emergency rule, the provision of a private physical space, otherwise required by the rule identified in subsection (d) of this section, is not required. Instead, providers may provide virtual platforms, such as telephone or videoconferencing, rather than providing a private physical space for these interactions to the extent this flexibility is permitted by and does not conflict with other law or obligation of the provider. Providers must ensure the selected method of contact complies with all applicable requirements related to security and privacy of information.

(d) Community mental health providers may provide virtual platforms instead of a private physical space for these interactions provided under 25 TAC §414.554 (relating to Responsibilities of Local Authorities, Community Centers, and Contractors).

(e) Section 307.5 of Title 26 of the TAC requires a child or adolescent participating in the Youth Empowerment Services (YES) Waiver Program to reside with their legally authorized representative. Children or adolescents participating in the YES Waiver Program are not required to reside with their legally authorized representative, notwithstanding the requirements of §307.5 of this title (relating to Eligibility Criteria).

(f) Community mental health providers may use the alternative interaction methods described under subsection (a) instead of a face-to-face contact to comply with the following training requirements:

(1) §306.83 of this chapter (relating to Staff Training);

(2) 25 TAC §448.603 (relating to Training); and

(3) §301.331 of this title (relating to Competency and Credentialing).

(g) The Texas Health and Human Services Commission (HHSC) may extend time frames for compliance with staff training requirements based on training availability and feasibility in:

(1) §306.83 of this chapter;

(2) 25 TAC §448.603; and

(3) §301.331 of this title.

(h) Community mental health providers that avail themselves of the flexibilities allowed under this section must comply with:

(1) all guidance on the application of the rules during the declaration of disaster that is published by HHSC on its website or in another communication format HHSC determines appropriate; and

(2) all policy guidance applicable to the rules identified in this section issued by HHSC's Medicaid Services Division.

(i) Community mental health providers must ensure any method of contact complies with all applicable requirements related to security and privacy of information.

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

Filed with the Office of the Secretary of State on July 16, 2021.

TRD-202102701

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: July 18, 2021

Expiration date: November 14, 2021

For further information, please call: (512) 468-1729



# PROPOSED RULES

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

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

## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 515. LICENSES

##### 22 TAC §515.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.3, concerning License Renewals for Individuals and Firm Offices.

##### Background, Justification and Summary

Section 161.0085 of the Health and Safety Code requires state agencies to ensure that businesses do not require a client to provide documentation certifying the client's COVID-19 vaccination or post transmission recovery in order to gain access or receive services from the client or business.

##### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

##### Public Benefit

The adoption of the proposed amendment will make licensees aware of the statutory prohibition on what the legislation describes as a "vaccination passport."

##### Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

##### Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

##### Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

##### Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

##### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 30, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

##### Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.3. *License Renewals for Individuals and Firm Offices.*

(a) License renewals for individuals shall be as follows:

(1) Licenses for individuals have staggered expiration dates based on the last day of the individual's birth month. The license will be issued for a 12-month period following the initial licensing period.

(2) An individual's license will not be renewed if the individual has not earned the required CPE credits, has not completed all required parts of the renewal, has not completed the affidavit affirming the renewal submitted is correct or has not provided the required fingerprinting unless it has been previously submitted to the board.

(3) At least 30 days before the expiration of an individual's license, the board shall send notice of the impending license expiration to the individual at the last known address according to board records. Failure to receive notice does not relieve the licensee from the responsibility to timely renew nor excuse or otherwise affect the renewal deadlines imposed on the licensee.

(b) A licensee is exempt from any penalty or increased fee imposed by the board for failing to renew the license in a timely manner if the individual establishes to the satisfaction of board staff that the individual failed to renew the license because the individual was serving as a military service member. In addition, the military service member has an additional two years to complete any other requirement related to the renewal of the military service member's license.

(c) License renewal requirements for firm offices shall be as follows:

(1) Licenses for offices of firms have staggered expiration dates for payment of fees, which are due the last day of a board assigned renewal month. All offices of a firm will have the same renewal month. All offices of a firm will be issued a license for a 12-month period following the initial licensing period.

(2) At least 30 days before the expiration of a firm's office license, the board shall send notice of the impending license expiration to the main office of the firm at the last known address according to the records of the board. Failure to receive notice does not relieve the firm from the responsibility to timely renew nor excuse or otherwise affect the renewal deadlines imposed on the firm.

(3) A firm's office license shall not be renewed unless the sole proprietor, each partner, officer, director, or shareholder of the firm who is listed as a member of the firm and who is certified or registered under the Act has a current individual license. This does not apply to firms providing work pursuant to the practice privilege provisions of this title.

(4) If a firm is subject to peer review, then a firm's office license shall not be renewed unless the office has met the peer review requirements as defined in Chapter 527 of this title (relating to Peer Review).

(d) A firm and individual are subject to Section 161.0085 of the Health and Safety Code, which prohibits a business from requiring a client to provide any documentation certifying the client's COVID-19 vaccination or post-transmission recovery in order to gain access or to receive services from the firm.

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

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TRD-202102696

J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Earliest possible date of adoption: August 29, 2021  
For further information, please call: (512) 305-7842



## 22 TAC §515.11

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.11, concerning Licensing for Military Service Members, Military Veterans, and Military Spouses.

### Background, Justification and Summary

HB 139 (2021) adds to the definition of "armed forces of the United States" to include Space Force. Members of the military are provided licensing accommodations to minimize the hardships of military service. Members of the recently created Space Force are being included in the definition of armed forces of the United States.

### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

### Public Benefit

The adoption of the proposed rule amendment is to recognize members of this country's Space Force as eligible for certain licensing accommodations.

### Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

### Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

### Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

### Takings Impact Assessment



No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

#### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 30, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

#### Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

*§515.11. Licensing for Military Service Members, Military Veterans, and Military Spouses.*

(a) This section applies to all board licensing requirements, other than the examination requirement, for the issuance of a license to a military service member, military veteran or military spouse as applicable for the practice of public accountancy in this state.

(b) The following definitions apply to the licensing of service members, military veterans and military spouses.

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001 of the Texas Government Code (relating to Definitions), or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Military service member" means a person who is on active duty.

(4) "Military spouse" means a person who is married to a military service member.

(5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(c) A military service member, military veteran or military spouse may obtain a license if the applicant for licensure:

(1) holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in this state; or

(2) within the five years preceding the application date held a license in this state.

(d) The executive director may waive any prerequisite to obtaining a license for an applicant described in subsection (c) of this section after reviewing the applicant's credentials. The board may not give credit if the applicant holds a restricted license issued by another jurisdiction or has an unacceptable criminal history according to Chapter 53 of the Texas Occupations Code (relating to Consequences of Criminal Conviction).

(e) The board will process a license, as soon as practical, to a military service member, military veteran or military spouse and issue a non-provisional license when the board determines the applicant is qualified in accordance with board rules.

(f) The board will notify the license holder of the requirements for renewing the license in writing or by electronic means and the term of the license.

(g) In lieu of the standard method(s) provided in §511.161 of this title (relating to Qualifications for Issuance of a Certificate) for obtaining a license, a military service member, military veteran or military spouse may be licensed and the executive director may consider, other methods that demonstrate the applicant is qualified to be licensed.

(h) The board, pursuant to §511.123 of this title (relating to Reporting Work Experience), requires a minimum of one year of work experience and the board shall credit verified military service, training or education that is relevant toward this experience requirement as described in §511.122(c)(3)(D) of this title (relating to Acceptable Work Experience).

(i) The board shall, with respect to a military service member or military veteran, apply credit toward the licensing requirement for verified military service, training, or education. The board may not substitute credit for the examination requirement.

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

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



## CHAPTER 527. PEER REVIEW

### 22 TAC §527.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.2, concerning Definitions.

Background, Justification and Summary

The amendment eliminates the requirement for an onsite peer review. Technology permits enhanced communications without a requirement for in-person evaluations.

#### Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

#### Public Benefit

The adoption of the proposed amendment will eliminate the requirement of an on-site peer review.

#### Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

#### Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

#### Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

#### Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

#### Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 30, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have

an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

#### Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

#### §527.2. Definitions.

The following words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Engagement Review" means a peer review evaluating engagements performed and reported on in conformity with applicable professional standards in all material respects and unless agreed to otherwise is performed off-site from the reviewed firm's office and does not provide a basis for expressing any assurance regarding the firm's system of quality control for its accounting practice.

(2) "Systems Review" means a an on-site peer review designed to provide a peer reviewer with a reasonable basis for expressing an opinion on whether, during the year under review:

(A) the reviewed firm's system of quality control for its accounting and auditing practice has been designed in accordance with quality control standards; and

(B) the reviewed firm's quality control policies and procedures were being complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.

(3) "Review Year" means the one-year (12-month) period covered by the peer review. Financial statement engagements selected for review normally would have periods ending during the year under review. Engagements related to financial forecasts or projections, or agreed upon procedures engagements, with report dates during the year under review would also be subject to selection for review.

(4) "Sponsoring organization" means an entity that meets the standards specified by the board for administering the review. The board shall periodically publish a list of sponsoring organizations, which have been approved by the board.

(5) "Firm inspection program" means the process of firm inspection administered by the PCAOB.

(6) "Rating" of a peer review refers to the type of report issued. The three types of reports are pass, pass with deficiencies, or fail. The peer review rating is clearly indicated in the peer review report. A peer review report with a rating of pass with deficiencies or fail is considered a deficient review.

(7) "Assigned review date" is the reporting due date to the board of an accepted peer review report.

(8) "Acceptance date" of a peer review is the date that the sponsoring organization's peer review report committee (PRRC), referred to in §527.9(a)(1) of this chapter (relating to Procedures for a Sponsoring Organization), is presented the peer review report on a review with the rating of pass and the PRRC approves the review. The acceptance date and in this case the completion date of the peer review are the same date and is noted in a letter from the administering entity to the reviewed firm. The PRRC will be presented with the peer review report and the firm's letter of response on reviews with a rating of pass with deficiencies or fail. Ordinarily, the PRRC will require the reviewed firm to take corrective action(s) and those actions will be communicated in a letter to the firm from the administering entity. In this circumstance, the "acceptance date" is defined as the date that the reviewed firm signs the letter from the administering entity agreeing to perform the required corrective action(s).

(9) "Completion date" of a peer review is the date that the sponsoring organization's PRRC, referred to in §527.9(a)(1) of this chapter, is presented the corrective action and the committee decides that the reviewed firm has performed the agreed-to corrective action(s) to the committee's satisfaction and the committee requires no additional corrective action(s) by the firm. The date is noted in a final letter from the administering entity to the reviewed firm.

(10) "AICPA Public File" is the file for firms that are members of AICPA's Employee Benefit Plan Audit Quality Center, Governmental Audit Quality Center, Private Companies Practice Section, or other firms that voluntarily post their review information to this public file on AICPA's web site as a membership requirement. Information in the public file includes the firm's most recently accepted peer review report and the firm's response thereto, if any.

(11) "Facilitated State Board Access (FSBA)" is a secure website accessible only to the state board that provides the most recently accepted peer review report, the firm's letter of response (LOR), the corrective action letter (CAL), and the final letter of acceptance (FLOA).

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

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General Counsel

Texas State Board of Public Accountancy

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## **TITLE 26. HEALTH AND HUMAN SERVICES**

### **PART 1. HEALTH AND HUMAN SERVICES COMMISSION**

#### **CHAPTER 304. DIAGNOSTIC ASSESSMENT**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new Chapter 304 of Title 26 of the Texas Administrative Code (TAC), including §§304.101, concerning Purpose; 304.102, concerning Definitions; 304.201, concerning Use of Information from a DID or Diagnostic Assessment; 304.202, concerning Request for a Determination of Intellectual Disability; 304.203, concerning Right

to an Independent Determination of Intellectual Disability or Administrative Hearing; 304.301, concerning Qualifications and Requirements for an Authorized Provider; 304.302, concerning Certified Authorized Provider; 304.401, concerning Conducting a Determination of Intellectual Disability; 304.402, concerning The Determination of Intellectual Disability Report; 304.403, concerning Review and Endorsement of a Determination of Intellectual Disability Report; 304.404, concerning Elements of a Transfer; 304.502, concerning Related Condition; and 304.503, concerning Autism Spectrum Disorder.

#### **BACKGROUND AND PURPOSE**

The Texas Secretary of State created Title 26, Part 1, of the Texas Administrative Code (TAC) to consolidate rules currently in Titles 1, 25, and 40, that govern functions of HHSC. As part of the consolidation into Title 26, HHSC proposes new rules in Chapter 304 of Title 26 to replace rules in Title 40, Chapter 5, Subchapter D, Diagnostic Assessment. The rules in Chapter 5, Subchapter D are proposed for repeal elsewhere in this issue of the *Texas Register*.

The proposed new rules are substantially similar to the rules in Title 40, Chapter 5. The proposed new rules update licensure requirements for authorized providers who are employed by or contract with local intellectual and developmental disability authorities (LIDDAs) or state supported living centers (SSLCs); identify authorized providers who are responsible for completing Determinations of Intellectual Disability (DID) which are required for admissions into Intellectual and Developmental Disability (IDD) Medicaid waiver programs and SSLCs; update diagnostic and other terminology while aligning with HHSC technical guidelines; clarify the right to an administrative hearing; and address requirements in the rule that are unrelated to diagnostic responsibilities.

#### **SECTION-BY-SECTION SUMMARY**

Proposed new §304.101 establishes the purpose of the rules in the chapter.

Proposed new §304.102 provides definitions of words and terms used in the chapter.

Proposed new §304.201 requires that a LIDDA use information from a DID or a report endorsed as a DID that was conducted in accordance with Subchapter D to determine an individual's eligibility for LIDDA services. HHSC must use information from a DID or a report endorsed as a DID that was conducted in accordance with Subchapter D to determine an individual's eligibility for certain services and supports provided through HHSC. The proposed new rule also lists the time-limited services an individual may receive without being determined to be a person with an intellectual disability, which includes emergency services and respite care in a residential care facility.

Proposed new §304.202 describes the three ways a DID can be requested. An individual or the individual's legally authorized representative (LAR) may make a written request for a DID to: 1) a LIDDA serving the area in which the individual resides, 2) a psychologist licensed to practice in Texas, or 3) a physician licensed to practice in Texas. The proposed new rule also specifies that an authorized provider must conduct the DID.

Proposed new §304.203 provides that if the DID is conducted at a LIDDA or an SSLC, the LIDDA or SSLC must inform the person who requested the DID, orally and in writing, of the right to an additional, independent DID to be conducted at the person's expense if the person questions the validity or results of the DID

and the right to an administrative hearing to contest the determination of an intellectual disability, as described in 40 TAC Chapter 4, Subchapter D (relating to Administrative Hearings under Texas Health and Safety Code, Title 7, Subtitle D). Documentation that this information was provided orally and in writing is required.

Proposed new §304.301 outlines the educational qualifications as well as professional experience for those individuals identified as authorized providers who may conduct a DID at a LIDDA or an SSLC. The proposed new rule also includes a reference to those individuals classified as "certified authorized providers" who may also conduct a DID.

Proposed new §304.302 outlines the process to designate an employee or contractor of the LIDDA or SSLC who is not a licensed psychologist or physician as a certified authorized provider. The proposed new rule also describes the two levels of certified authorized providers.

Proposed new §304.401 describes the process of completing a DID and the components included in this process.

Proposed new §304.402 describes the required information and elements to be incorporated in the DID reports. The proposed new rule also includes the timeframe by which an authorized provider must provide the written report to the person who requested the DID, which is within 30 days after completing the interview and assessment.

Proposed new §304.403 describes the process of requesting an endorsement of a DID or an endorsement of a private or school assessment report as a DID that reflects current functioning. The proposed new rule also requires that the LIDDA or SSLC inform the individual or LAR of the right to an administrative hearing to contest the determination of an intellectual disability.

Proposed new §304.404 outlines the process when an individual relocates from one local service area or SSLC to another local service area or SSLC. The sending LIDDA or SSLC must ensure certain documentation is provided to the receiving LIDDA or SSLC.

Proposed new §304.502 describes how a LIDDA may use information from the DID to assist in establishing the individual's eligibility for certain Medicaid services based on the existence of a related condition on the current HHSC-approved list of related conditions. The proposed new rule also describes the required components that must be included in the DID report pertaining to the related condition diagnosis.

Proposed new §304.503 describes how an authorized provider may use information from the DID to assist in establishing the individual's eligibility for LIDDA services based on the existence of Autism Spectrum Disorder (ASD). The proposed new rule also establishes the required components that must be included in the DID report pertaining to the ASD diagnosis.

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the proposed rules will be in effect, enforcing or administering the proposed rules do not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the proposed rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) the proposed rules will not create new HHSC employee positions;
- (3) the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rules do not require small businesses or micro-businesses to change current business practices. No rural communities contract with HHSC in any program or service affected by the proposed rules.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and do not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner, Intellectual and Developmental Disability and Behavioral Health Services, has determined that for each year of the first five years the proposed rules are in effect, the public benefit is providing clarification regarding the roles and responsibilities in the completion of the diagnostic assessments which are required for admissions into waiver programs and SSLCs.

Trey Wood has also determined that for the first five years the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The proposal does not require a change to current business practices nor are there any new fees or costs for those required to comply.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC IDD Services, Lisa Habbit, Mail Code 354, P.O. Box 149030, Austin, Texas 78714-9030, or by email to [IDDServicesPolicyandRules@hhs.texas.gov](mailto:IDDServicesPolicyandRules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of

the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R124" in the subject line.

## SUBCHAPTER A. GENERAL PROVISIONS

### 26 TAC §304.101, §304.102

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; and Health and Safety Code §§593.003 - 593.010, which provide that a person is not eligible to receive intellectual disability services unless the person first is determined to be a person with an intellectual disability, and set forth requirements for such determinations.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code §§593.003 - 593.010.

#### §304.101. Purpose.

(a) The purpose of this chapter is to describe the criteria used and the process followed:

(1) by an authorized provider employed by or contracting with a local intellectual and developmental disability authority (LIDDA) or a state supported living center (SSLC), to conduct a diagnostic assessment for intellectual disability (ID), autism spectrum disorder (ASD), and a related condition; and

(2) by a LIDDA or SSLC, to review a determination of ID or a diagnosis of ASD, or related condition for endorsement.

(b) This chapter identifies the qualifications and requirements of an authorized provider employed by or contracting with a LIDDA or an SSLC.

#### §304.102. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) ABL--Adaptive behavior level. The categorization of an individual's functioning level of adaptive behavior into one of five levels ranging from minimal limitations (0) through profound limitations (IV).

(2) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.

(3) ASD--Autism spectrum disorder. As described in the most current Diagnostic and Statistical Manual of Mental Disorders (DSM), a disorder characterized by persistent impairment in reciprocal social communication and social interaction and restricted, repetitive patterns of behavior, interests, or activities. These symptoms are present from early childhood and limit or impair everyday functioning.

(4) Asperger disorder--A neurodevelopmental disorder characterized by severe, sustained, clinically significant impairment

of social interaction or communication skills and restricted, repetitive, and stereotyped patterns of behavior or interests. Symptoms may present later during the developmental period. Since the expanded definition of ASD in the DSM, effective 2013, Asperger disorder is subsumed under the diagnosis of ASD.

(5) Authorized provider--A person who is:

(A) a physician licensed to practice in Texas;

(B) a psychologist licensed to practice in Texas; or

(C) a certified authorized provider.

(6) Certified authorized provider--A person who is certified by the Texas Health and Human Services Commission (HHSC) as described in §304.302 of this chapter (relating to Certified Authorized Provider).

(7) Developmental period--The period of time between birth and 18 years of age.

(8) Diagnostic assessment--An assessment, including a determination of intellectual disability (DID), conducted to determine if an individual meets the criteria for a diagnosis of intellectual disability (ID), ASD, or a related condition.

(9) Diagnostic assessment report--The written report from a diagnostic assessment not conducted by an authorized provider employed by or contracting with a local intellectual and developmental disability authority (LIDDA) or state supported living center (SSLC).

(10) DID--Determination of intellectual disability. An assessment conducted in accordance with §304.401 of this chapter (relating to Conducting a Determination of Intellectual Disability) by an authorized provider to determine if an individual meets the criteria for a diagnosis of intellectual disability as defined in paragraph (15) of this section.

(11) DID report--Determination of intellectual disability report. The findings of the diagnostic assessment conducted by an authorized provider employed by or contracting with a LIDDA or SSLC written in accordance with §304.402 of this chapter (relating to The Determination of Intellectual Disability Report).

(12) DSM--The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

(13) Endorsement--The process by which an existing DID or assessment report is determined by an authorized provider to be a current representation of the individual's functioning for the purposes of diagnosis and service eligibility. When appropriate, an endorsement is completed in lieu of a DID.

(14) HHSC--Texas Health and Human Services Commission.

(15) ID--Intellectual disability. Consistent with Texas Health and Safety Code (THSC), §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(16) Individual--A person who is the subject of a diagnostic assessment or who has been determined to be in the LIDDA priority population.

(17) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and who may be a parent, guardian, or managing conservator of a minor individual, a guardian of an adult individual, or a personal representative of a deceased individual.

(18) LIDDA--Local intellectual and developmental disability authority. An entity designated in accordance with THSC, §533A.035(a).

(19) LIDDA priority population--Local intellectual and developmental disability authority priority population. A group comprised of persons who meet one or more of the following descriptions:

(A) a person with an ID;

(B) a person with ASD;

(C) a person with a related condition on the current HHSC-approved list of related conditions who is eligible for and enrolling in services in the Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID) Program, the Home and Community-based Services (HCS) Program, the Texas Home Living (TxHmL) Program, or other HHSC-approved programs;

(D) a nursing facility resident who is eligible for specialized services for an ID or a related condition pursuant to §1919(e)(7) of the Social Security Act (United States Code, Title 42, §1396r(e)(7));

(E) a child who is eligible for Early Childhood Intervention services through HHSC; or

(F) a person diagnosed by an authorized provider as having a pervasive developmental disorder (PDD) or Asperger disorder through a diagnostic assessment completed before 2013.

(20) LIDDA services--Local intellectual and developmental disability authority services. Services provided by or through a LIDDA that are funded with general revenue pursuant to a performance contract with HHSC.

(21) PDD--Pervasive development disorder. A severe and pervasive impairment in the developmental areas of reciprocal social interaction skills or communication skills, or the presence of stereotyped behaviors, interests, and activities manifested during the developmental period. Since the expanded definition of ASD in the DSM, effective 2013, PDD is subsumed under the diagnosis of ASD.

(22) Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1010, a severe and chronic disability that:

(A) is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an ID because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with an ID, and requires treatment or services similar to those required for persons with an ID;

(B) is manifested before the person reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(23) Residential care facility--A facility defined in THSC, §591.003.

(24) SSLC--State supported living center.

(25) Subaverage general intellectual functioning--Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(26) TAC--Texas Administrative Code.

(27) THSC--Texas Health and Safety Code.

(28) Validation--The acceptance by an authorized provider of test results from a previous assessment as a current representation of the individual's functioning and utilized for diagnostic and eligibility purposes as part of a DID and incorporated into the DID report.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-5018



## SUBCHAPTER B. PURPOSE OF THE DETERMINATION OF INTELLECTUAL DISABILITY

### 26 TAC §§304.201 - 304.203

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; and Health and Safety Code §§593.003 - 593.010, which provide that a person is not eligible to receive intellectual disability services unless the person first is determined to be a person with an intellectual disability, and set forth requirements for such determinations.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code §§593.003 - 593.010.

*§304.201. Use of Information from a DID or Diagnostic Assessment.*

(a) A LIDDA uses information from a DID or a report endorsed as a DID that was conducted in accordance with Subchapter D of this chapter (relating to Determination of Intellectual Disability) to determine an individual's eligibility for LIDDA services.

(b) HHSC uses information from a DID or a report endorsed as a DID that was conducted in accordance with Subchapter D of this chapter to determine an individual's eligibility for certain services and supports provided through HHSC.

(c) An individual may receive the following time-limited services without first being determined to be a person with an intellectual disability:

(1) emergency services provided in accordance with THSC, §593.027 or §593.0275; and

(2) respite care in a residential care facility provided in accordance with THSC, §593.028.

§304.202. Request for a Determination of Intellectual Disability.

(a) An individual or the individual's LAR may make a written request for a DID on a form provided by HHSC to:

(1) the SSLC or LIDDA serving the area in which the individual resides; or

(2) a psychologist licensed to practice in Texas; or

(3) a physician licensed to practice in Texas.

(b) An authorized provider must conduct the DID.

(c) A DID conducted by an authorized provider who is not employed by or contracting with a LIDDA or SSLC must be reviewed in accordance with §304.403 of this chapter (relating to Review and Endorsement of a Determination of Intellectual Disability Report) to establish eligibility for services.

§304.203. Right to an Independent Determination of Intellectual Disability or Administrative Hearing.

If the DID is conducted at a LIDDA or SSLC, the LIDDA or SSLC must:

(1) inform the person who requested the DID, orally and in writing, of the right to:

(A) an additional, independent DID to be conducted at the person's expense if the person questions the validity or results of the DID; and

(B) an administrative hearing to contest the determination of ID, as described in 40 TAC Chapter 4, Subchapter D (relating to Administrative Hearings under Texas Health and Safety Code, Title 7, Subtitle D); and

(2) document that the person who requested the DID was informed orally and in writing of these rights.

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## SUBCHAPTER C. AUTHORIZED PROVIDERS

### 26 TAC §304.301, §304.302

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of ser-

vices by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; and Health and Safety Code §§593.003 - 593.010, which provide that a person is not eligible to receive intellectual disability services unless the person first is determined to be a person with an intellectual disability, and set forth requirements for such determinations.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code §§593.003 - 593.010.

§304.301. Qualifications and Requirements for an Authorized Provider:

(a) An authorized provider employed by or contracting with an SSLC may conduct a DID only for an individual receiving services from that SSLC.

(b) At a LIDDA or an SSLC, a person conducting a DID must be:

(1) a psychologist licensed to practice in Texas who is employed by or contracting with the LIDDA or SSLC and who has completed:

(A) graduate course work in assessing intellectual and adaptive behavior for individuals with an ID or developmental disability; or

(B) one year of supervised experience in assessing intellectual and adaptive behavior for individuals with an ID or developmental disability;

(2) a physician licensed to practice in Texas who is employed by or contracting with the LIDDA or SSLC and who has completed:

(A) one year of employment experience in the field of ID; and

(B) an internship or residency that includes specialized training in assessing intellectual and adaptive behavior for individuals with an ID or developmental disability or 12 hours of specialized continuing education in assessing individual intellectual and adaptive behavior; or

(3) a certified authorized provider, as described in §304.302 of this subchapter (relating to Certified Authorized Provider).

§304.302. Certified Authorized Provider:

(a) To designate an employee or contractor of the LIDDA or SSLC who is not a licensed psychologist or physician as a certified authorized provider:

(1) a LIDDA may submit a request to HHSC, in accordance with the LIDDA Handbook; or

(2) an SSLC may submit a request to HHSC, in accordance with HHSC procedures.

(b) A level I certified authorized provider must:

(1) be a current employee of the LIDDA or SSLC;

(2) be:

(A) a provisionally licensed psychologist;

(B) a licensed psychological associate (LPA), other than an LPA authorized to practice independently (LPA-IP);

(C) a licensed specialist in school psychology (LSSP);  
or

(D) recognized as a certified authorized provider prior to September 1, 2013 as provided per written approval by Texas Department of Mental Health and Mental Retardation (TDMHMR) or Department of Aging and Disability Services (DADS) prior to September 1, 2013 to conduct a Determination of Mental Retardation (DMR) or DID;

(3) have supervised experience or successful completion of graduate course work in assessing intellectual and adaptive behavior for individuals with an ID or developmental disability; and

(4) have one year of employment, internship, or practicum in the field of ID.

(c) A level II certified authorized provider:

(1) may be employed by or contracting with the LIDDA or SSLC;

(2) must be a psychological associate licensed to practice in Texas who is authorized to practice independently in accordance with 22 TAC §463.8 (relating to Licensed Psychological Associate);

(3) must have supervised experience or successful completion of graduate course work in assessing intellectual and adaptive behavior for individuals with an ID or developmental disability; and

(4) must have one year of employment, internship, or practicum in the field of ID.

(d) A certified authorized provider is permitted to conduct a DID in accordance with this chapter only while functioning as an employee or contractor of the requesting LIDDA or SSLC.

(e) HHSC may, at any time, revoke a person's designation as a certified authorized provider.

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

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## SUBCHAPTER D. DETERMINATION OF INTELLECTUAL DISABILITY

### 26 TAC §§304.401 - 304.404

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; and Health and Safety Code §§593.003 - 593.010, which provide that a person is not eligible to receive intellectual disability services unless the person first is determined to be a person with an intellectual disability, and set forth requirements for such determinations.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code §§593.003 - 593.010.

#### §304.401. Conducting a Determination of Intellectual Disability.

(a) In conducting a DID, an authorized provider employed by or contracting with a LIDDA or SSLC must:

(1) adhere to the Determination of Intellectual Disability (DID): Best Practice Guidelines and Requirements, available on the HHSC website;

(2) interview the individual; and

(3) perform a diagnostic assessment that, at a minimum, includes:

(A) a standardized measure of the individual's intellectual functioning using the most appropriate test based on the characteristics of the individual;

(B) a standardized measure of the individual's adaptive abilities and deficits reported as the individual's ABL;

(C) a review of evidence supporting the origination of ID during the individual's developmental period, which includes, but is not limited to, as available:

(i) reports concerning the cause of the suspected ID;

(ii) results of all relevant assessments;

(iii) types of services the individual has received or is receiving;

(iv) reports by other people, including the individual's family members and friends; and

(v) educational records; and

(D) a review of the individual's previous and current psychological and psychiatric treatments and diagnoses, as available.

(b) An authorized provider employed by or contracting with a LIDDA or SSLC must conduct the interview and assessment described in subsection (a) of this section using diagnostic techniques and appropriate accommodations adapted to the individual's age; cultural background; ethnic origins; language; and physical, behavioral, or sensory capabilities.

(c) A previous assessment, social history, or relevant record from another entity, including a school district, public or private agency, or another authorized provider, may be used to meet the requirements in subsection (a)(3)(A) or (a)(3)(B) of this section if the authorized provider employed by or contracting with the LIDDA or SSLC who is conducting the DID considers the assessment, social history, or relevant record to be a valid reflection of the individual's current level of functioning.

#### §304.402. The Determination of Intellectual Disability Report.

(a) An authorized provider employed by or contracting with a LIDDA or SSLC must complete a written report of the DID that is dated, signed, and includes the license number or, when applicable, the certification number of the authorized provider. The written report must contain:

(1) background information summarizing the individual's:

(A) developmental history, including a description of the evidence of origination of ID during the individual's developmental period; and

(B) previous and current psychological and psychiatric evaluations, treatments and diagnoses;



(2) results of current intellectual and adaptive behavior assessments, including:

(A) instrument names;

(B) composite or full-scale scores;

(C) cluster, area, and specific or subscale scores, if available; and

(D) overall intellectual functioning and ABL;

(3) a narrative description of:

(A) test results, including the individual's relative strengths and weaknesses;

(B) testing conditions, including any accommodations provided or technology used; and

(C) any relevant impact on the test results related to the individual's:

(i) cultural background;

(ii) primary language;

(iii) communication style;

(iv) physical or sensory impairments;

(v) motivation;

(vi) attentiveness;

(vii) emotional and behavioral factors; and

(viii) home and family variables;

(4) an integrative summary that includes diagnostic impressions, conclusions, and diagnoses, including applicable diagnostic codes; and

(5) recommendations, including a statement of:

(A) whether the individual has an ID; and

(B) if applicable, whether the individual has:

(i) ASD as described in §304.503 of this chapter (relating to Autism Spectrum Disorder); or

(ii) a related condition on the current HHSC-approved list of related conditions.

(b) An authorized provider must provide the written report to the individual or individual's LAR who requested the DID within 30 days after completing the interview and assessment described in §304.401(a) of this subchapter (relating to Conducting a Determination of Intellectual Disability).

(c) If a DID has been ordered by a court for guardianship proceedings, the authorized provider who conducts the DID:

(1) must submit the written findings and recommendations as specified in the court's order; and

(2) may submit a current capacity assessment regarding self-care and financial management of the individual using an HHSC-approved form.

§304.403. Review and Endorsement of a Determination of Intellectual Disability Report.

(a) An individual or the individual's LAR may make a written or oral request to the LIDDA serving the area in which the individual resides for a review of an existing DID, or a private assessment, or a school assessment report that reflects current functioning to determine

eligibility. An authorized provider may endorse the report or may require additional testing to determine eligibility.

(b) Except as provided in subsection (d) of this section, if an individual has been determined to have an ID, ASD, or a related condition on the current HHSC-approved list of related conditions, by an authorized provider who is not employed by or contracting with the LIDDA at which the individual or the individual's LAR is seeking services, the LIDDA must ensure that:

(1) the diagnostic assessment report is reviewed by an authorized provider employed by or contracting with the LIDDA; and

(2) the authorized provider conducting the review interviews and observes the individual in-person or in real time using audio-visual technology.

(c) Except as provided in subsection (d) of this section, if an individual has been determined to have an ID, ASD, or a related condition on the current HHSC-approved list of related conditions by an authorized provider who is not employed by or contracting with the SSLC at which the individual is receiving services, the SSLC must ensure that:

(1) the diagnostic assessment report is reviewed by an authorized provider employed by or contracting with the SSLC; and

(2) the authorized provider conducting the review interviews and observes the individual in-person or in real time using audio-visual technology.

(d) An authorized provider employed by or contracting with a LIDDA or SSLC:

(1) may, but is not required to, endorse a DID conducted by another authorized provider employed by or contracting with a LIDDA or SSLC; and

(2) must not endorse a DID that they conducted without adhering to endorsement requirements in subsections (b) - (c) of this section.

(e) If a diagnostic assessment report reviewed in accordance with subsection (b) or (c) of this section is endorsed by the authorized provider employed by or contracting with the LIDDA as a valid reflection of the individual's current level of functioning, within 30 days after the review is completed:

(1) the authorized provider must:

(A) document the outcome of the review; and

(B) inform the individual or the individual's LAR orally and in writing of the outcome of the review; and

(2) the LIDDA or SSLC must inform the individual or the individual's LAR orally and in writing of the right to an administrative hearing to contest the determination of ID, as described in 40 TAC Chapter 4, Subchapter D (relating to Administrative Hearings under Texas Health and Safety Code, Title 7, Subtitle D).

(f) If a DID report reviewed in accordance with subsection (b) or (c) of this section is not endorsed by the authorized provider as a valid reflection of the individual's current level of functioning, the authorized provider must, within 30 days after the review is completed:

(1) document the outcome of the review;

(2) inform the individual or the individual's LAR orally and in writing of:

(A) the outcome of the review; and

(B) the opportunity to have an authorized provider employed by or contracting with the LIDDA or SSLC conduct a diagnostic assessment at no expense to the individual or the individual's LAR; and

(3) the LIDDA or SSLC must inform the individual or the individual's LAR orally and in writing of the right to an administrative hearing to contest the determination of ID, as described in 40 TAC Chapter 4, Subchapter D.

§304.404. Elements of a Transfer.

(a) When an individual relocates from one local service area or SSLC to another local service area or SSLC, the sending LIDDA or SSLC must ensure the following documentation is provided to the receiving LIDDA or SSLC:

(1) previous and current psychological and psychiatric evaluations;

(2) documents regarding treatments and diagnoses;

(3) all assessments, including previous DIDs and school assessments, if applicable; and

(4) any other information requested by the receiving LIDDA or SSLC.

(b) When an individual relocates from one local service area or SSLC to another local service area or SSLC, the receiving LIDDA or SSLC may:

(1) accept the DID report;

(2) review and endorse the current DID report in accordance with §304.403 of this subchapter (relating to Review and Endorsement of a Determination of Intellectual Disability Report); or

(3) conduct a new DID.

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

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Karen Ray

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## SUBCHAPTER E. INTELLECTUAL DISABILITY AND RELATED CONDITIONS

### 26 TAC §304.502, §304.503

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system; and Health and Safety Code §§593.003 - 593.010, which provide that a person is not eligible to receive intellectual disability services unless the person first is determined to be a person with an intellectual disability, and set forth requirements for such determinations.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code §§593.003 - 593.010.

#### §304.502. Related Condition.

(a) If an individual is determined not to have an ID, an authorized provider employed by or contracting with a LIDDA may use information from the DID to assist in establishing the individual's eligibility for certain Medicaid services based on the existence of a related condition on the current HHSC-approved list of related conditions available on the HHSC website and §261.238 of this title (relating to ICF/MR Level of Care I Criteria) or §261.239 of this title (relating to ICF/MR Level of Care VIII Criteria).

(b) The DID report must include information about the date of onset and a description of the individual's deficits, skills, behaviors, and current functioning level.

#### §304.503. Autism Spectrum Disorder.

(a) If an individual is determined not to have an ID, an authorized provider employed by or contracting with a LIDDA may use information from the DID to assist in establishing the individual's eligibility for LIDDA services based on the existence of ASD.

(b) The DID report must include information about the date of onset and a description of the individual's deficits, skills, behaviors, and current functioning level that support the criteria for ASD described in the current DSM.

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

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## CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

### SUBCHAPTER X. DISASTER RULE

#### FLEXIBILITIES FOR BEHAVIORAL HEALTH PROVIDERS

##### 26 TAC §306.1251

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §306.1251, concerning Disaster Rule Flexibilities for Community Behavioral Health Providers.

#### BACKGROUND AND PURPOSE

HHSC adopts rules to establish requirements and flexibilities to protect public health and safety during a disaster declared by the Governor. The requirements established in these rules are effective in all Texas counties or in a particular Texas county or counties during an active state of disaster as declared pursuant to Texas Government Code §418.014. The purpose of the proposal is to allow HHSC the flexibility to waive certain requirements

for the delivery of services in response to a declared disaster. This proposed new rule is based on the existing emergency rule created in Texas Administrative Code Title 26, Part 1, Chapter 306, Subchapter Z, §306.1351, relating to COVID-19 Flexibilities. This proposal creates a standing rule, allowing providers subject to the rule to operate with the same flexibilities afforded by the emergency rule and it ensures continuity of services for individuals receiving community-based behavioral health services.

#### SECTION-BY-SECTION SUMMARY

Proposed new §306.1251(a) establishes that in the event of a state of disaster, HHSC will waive the types of rules listed in subsection (b) until the state of disaster is terminated.

Proposed new §306.1251(b) identifies the types of rules HHSC will waive to the extent authorized under federal and state law as of the date of the state of disaster is declared. HHSC will waive rules that require providers to deliver certain services face-to-face or in-person contact, or in a specific physical space or on site. HHSC will also waive rules that require a child or adolescent participating in the Youth Empowerment Services Waiver Program to reside with their legally authorized representative to receive services; and rules that require staff training through face-to-face or in-person contact or for training to occur in a specific physical space or on site.

Proposed new §306.1251(c) requires providers subject to the rules to comply with all guidance on the application of the rules identified in subsection (b) published by HHSC, including policy guidance issued by HHSC's Medicaid Services Department.

Proposed new §306.1251(d) requires that, pursuant to subsection (b), providers must ensure any method of contact complies with all applicable requirements related to security and privacy of information.

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will create a new rule;
- (6) the proposed rule will expand, limit, or repeal existing rules;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined there will not be an adverse economic effect on small businesses, micro-businesses, or rural

communities. The proposed rule provides certain flexibilities for operating under a declared disaster, but there is no requirement to alter current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas, and does not impose a cost on regulated persons.

#### PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner of IDD and Behavioral Health Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from continuity of services to vulnerable Texans during declared disasters.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule. The proposed rule permits certain flexibilities in the provision of services during a declared disaster but there is no requirement to alter current business practices.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R130" in the subject line.

#### STATUTORY AUTHORITY

The new section is authorized by Texas Health and Safety Code §§531.0055, 533.014, 533.035, 533.0356, 534.052, 534.058, 572.0025, 571.006, and 577.010. Texas Government Code §531.0055 authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by health and human services system; Texas Health and Safety Code §533.014 requires the Executive Commissioner of HHSC to adopt rules regarding certain responsibilities for LMHAs; §533.035 authorizes HHSC to contract with LMHAs for the delivery of mental health services; §533.0356 allows the Executive Commissioner of HHSC to adopt rules governing Lo-

cal Behavioral Health Authorities (LBHAs); §534.052 authorizes the Executive Commissioner of HHSC to adopt rules to ensure the adequate provision of community-based mental health services; §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractor; §572.0025 authorizes the Executive Commissioner of HHSC to adopt rules governing the voluntary admission of a patient to an inpatient mental health facility; §571.006 authorizes the Executive Commissioner to adopt rules to ensure the proper and efficient treatment of persons with mental illness; and §577.010 authorizes the Executive Commissioner to adopt rules to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The new section affects Texas Government Code §531.0055.

§306.1251. Disaster Flexibilities.

(a) In the event of a state of disaster declared pursuant to Texas Government Code §418.014 for statewide disasters or limited areas subject to the declaration, the flexibilities listed under subsection (b) of this section will be available until the state of disaster is terminated.

(b) The following flexibilities are available to community behavioral health providers to the extent allowed by federal and state law.

(1) Rules under Title 25, Part 1 and Title 26, Part 1 of the Texas Administrative Code (TAC) that require providers to deliver certain services:

(A) through face-to-face or in-person contact may use telehealth, telemedicine, video-conferencing, or telephonic methods to engage with the individual to provide these services, to the extent this flexibility is permitted by and does not conflict with other law or obligation of the provider in:

(i) §301.327 of this title (relating to Access to Mental Health Community Services);

(ii) §301.351 of this title (relating to Crisis Services);

(iii) §301.353 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization);

(iv) §301.357 of this title (relating to Additional Standards of Care Specific to Mental Health Community Services for Children and Adolescents);

(v) §301.359 of this title (relating to Telemedicine Services);

(vi) §306.207 of this chapter (relating to Post Discharge or Absence from Trial Placement: Contact and Implementation of the Recovery or Treatment Plan);

(vii) §306.263 of this chapter (relating to MH Case Management Services Standards);

(viii) §306.275 of this chapter (relating to Documenting MH Case Management Services);

(ix) §306.277 of this chapter (relating to Medicaid Reimbursement);

(x) §306.305 of this chapter (relating to Definitions);

(xi) §306.323 of this chapter (relating to Documentation Requirements);

(xii) §306.327 of this chapter (relating to Medicaid Reimbursement);

(xiii) §307.53 of this title (relating to Eligibility Criteria and HCBS-AMH Assessment);

(xiv) 25 TAC §415.10 (relating to Medication Monitoring); and

(xv) 25 TAC §415.261 (relating to Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency); or

(B) in a specific physical space or on site may provide virtual platforms, such as telephone or videoconferencing in 25 TAC §414.554 (relating to Responsibilities of Local Authorities, Community Centers, and Contractors);

(2) Section 307.5 of this title (relating to Eligibility Criteria) that require a child or adolescent participating in the Youth Empowerment Services (YES) Waiver Program to reside with their legally authorized representative to receive services may reside with another responsible adult. Providers must ensure the alternate residency complies with any applicable requirements related to participation in the YES Waiver Program. The flexibility allowed under this subsection IS NOT IN EFFECT unless and until the Centers for Medicare & Medicaid Services approves HHSC's request for activation of Appendix-K;

(3) Rules under Title 25, Part 1 and Title 26, Part 1 of the TAC that require staff training:

(A) through face-to-face or in-person contact; or

(B) in a specific physical space or on site; and

(4) Rules under Title 25, Part 1 and Title 26, Part 1 of the TAC where HHSC may issue guidance to extend timeframe flexibilities:

(A) no longer than 120 days for compliance with staff training requirements based on training availability and feasibility during, or resulting from, a declared disaster; and

(B) to the extent an individual's or staff member's health or safety are not compromised by the flexibilities for training requirements provided in:

(i) §306.83 of this chapter (relating to Staff Training); and

(ii) §301.331 of this title (relating to Competency and Credentialing).

(c) Providers that avail themselves of the flexibilities allowed under subsection (b) of this section, must comply with:

(1) all guidance on the application of the rules during the declaration of disaster that is published by HHSC on its website or in another communication format HHSC determines appropriate; and

(2) all policy guidance applicable to the rules identified in subsection (b) of this section issued by HHSC's Medicaid Services Department.

(d) Providers must ensure any method of contact complies with all applicable requirements related to security and privacy of information.

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

Filed with the Office of the Secretary of State on July 19, 2021.  
TRD-202102760



## CHAPTER 742. MINIMUM STANDARDS FOR LISTED FAMILY HOMES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §742.401, concerning What are the notification requirements; and new §742.806, concerning What are the requirements if my home chooses to maintain and administer unassigned epinephrine auto-injectors, in Title 26, Texas Administrative Code (TAC), Chapter 742, Minimum Standards for Listed Family Homes.

### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 1849 and H.B. 4260, 86th Legislature, Regular Session, 2019. H.B. 1849 added §42.067 to Texas Human Resources Code, to allow a licensed child-care center to administer and store unassigned epinephrine auto-injectors, provided the child-care center meets certain requirements when an unassigned epinephrine auto-injector has been used on a child.

H.B. 4260 added §773.0145 to Texas Health and Safety Code. This statute allows the Texas Department of State Health Services (DSHS) to designate in rule an entity that would benefit from the possession and use of unassigned epinephrine auto-injectors, so that the entity could then adopt a policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors. This statute also includes some specific requirements that an entity must follow and requires DSHS to adopt rules regarding an entity's maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities). These rules allow certain youth facilities, including listed family homes, to voluntarily adopt policies relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. The amended and new rules in this proposal further support the rules adopted on behalf of DSHS by allowing a listed family home to voluntarily adopt unassigned epinephrine auto-injector policies, provided the listed family home follows the rules adopted on behalf of DSHS.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to the title of Subchapter D updates the title to clarify the content included in the subchapter.

The proposed amendment to §742.401 (1) adds a requirement for a listed family home to notify the child's parent immediately after ensuring the safety of the child if the child had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector; and (2) renumbers the rule accordingly.

Proposed new §742.806 requires a listed family home that chooses to maintain and administer unassigned epinephrine auto-injectors for use when a child in care has an emergency

anaphylaxis reaction to adopt and implement a written policy that complies with the requirements in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and in Texas Health and Safety Code §773.0145.

### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new rule;
- (6) the proposed rules will expand an existing rule;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

There is no expected adverse economic effect on small businesses, micro-businesses, or rural communities because purchase and provision of the auto-injectors is voluntary and not required by the proposal.

### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

### PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be that a child-care operation will be able to safely administer, on an emergency basis, a lifesaving epinephrine auto-injector to a child who is suffering from an anaphylaxis reaction, if the child-care operation elects to maintain unassigned epinephrine auto-injectors and follows the required procedures.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rules because the proposal does not impose any additional costs or fees on persons required to comply with these rules. Purchase and pro-

vision of the auto-injectors is voluntary and not required by the proposal.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to Aimee.Belden@hhs.texas.gov.

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CCRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R027" in the subject line.

### SUBCHAPTER D. NOTIFICATIONS AND [NOTIFICATION OF] LIABILITY INSURANCE REQUIREMENTS

#### 26 TAC §742.401

##### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§742.401. *What are the notification requirements?*

(a) A caregiver must notify the Department of Family and Protective Services immediately at 1-800-252-5400 if:

- (1) There is any suspected abuse, neglect, or exploitation;
- (2) A child dies while in your care; or
- (3) A child was forgotten in a vehicle or wandered away from your home or care unsupervised.

(b) You must notify Licensing immediately if you become aware that a household member, caregiver, or child in care contracts an illness deemed notifiable by the Texas Department of State Health Services.

(c) After you ensure the safety of the child, you must notify the parent immediately if the child:

(1) Is injured and the injury requires medical treatment by a health-care professional or hospitalization;

(2) Shows signs or symptoms of an illness that requires hospitalization; [ø]

(3) Has had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector; or

(4) [~~3~~] Was forgotten in a vehicle or wandered away from your home or care unsupervised.

(d) You must notify the parent of a child of less serious injuries when the parent picks the child up from the home. Less serious injuries include, minor cuts, scratches, and bites from other children requiring first aid treatment by caregivers.

(e) You must notify the parent of each child attending the home in writing within 48 hours after you become aware that a household member, caregiver, or child in care contracts an illness deemed notifiable by the Texas Department of State Health Services; or

(f) You must notify Licensing in writing within 15 days of:

- (1) Relocating your listed family home; or
- (2) Closing the home.

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

Filed with the Office of the Secretary of State on July 16, 2021.

TRD-202102734

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: August 29, 2021

For further information, please call: (512) 438-3269



### SUBCHAPTER H. HEALTH AND SAFETY PRACTICES

#### 26 TAC §742.806

##### STATUTORY AUTHORITY

The amended section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new rule affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§742.806. *What are the requirements if my home chooses to maintain and administer unassigned epinephrine auto-injectors?*

If your home maintains and administers unassigned epinephrine auto-injectors to use when a child in care has an emergency anaphylaxis reaction, you must adopt and implement a written policy that complies with the unassigned epinephrine auto-injector requirements set by the Texas Department of State Health Services, as specified in 25 TAC

Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and Texas Health and Safety Code §773.0145.

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

Filed with the Office of the Secretary of State on July 16, 2021.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: August 29, 2021

For further information, please call: (512) 438-3269



## CHAPTER 743. MINIMUM STANDARDS FOR SHELTER CARE

### SUBCHAPTER D. SAFETY PRACTICES

#### 26 TAC §743.301

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §743.301, concerning What are the requirements if my operation chooses to maintain and administer unassigned epinephrine auto-injectors, in Title 26, Texas Administrative Code (TAC), Chapter 743, Minimum Standards for Shelter Care, new Subchapter D, Safety Practices.

#### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 1849 and H.B. 4260, 86th Legislature, Regular Session, 2019. H.B. 1849 added §42.067 to Texas Human Resources Code, to allow a licensed child-care center to administer and store unassigned epinephrine auto-injectors, provided the child-care center meets certain requirements when an unassigned epinephrine auto-injector has been used on a child.

H.B. 4260 added §773.0145 to Texas Health and Safety Code. This statute allows the Texas Department of State Health Services (DSHS) to adopt rules to designate in rule an entity that would benefit from the possession and use of unassigned epinephrine auto-injectors, so that the entity could then adopt a policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors. This statute also includes some specific requirements that an entity must follow and requires DSHS to adopt rules regarding an entity's maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities). These rules allow certain youth facilities, including temporary shelter care operations, to voluntarily adopt policies relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. The new rule in this proposal further supports the rules adopted on behalf of DSHS by allowing a temporary shelter care operation to voluntarily adopt unassigned epinephrine auto-injector policies, provided the operation follows the rules adopted on behalf of DSHS.

#### SECTION-BY-SECTION SUMMARY

Proposed new §743.301 requires an operation that chooses to maintain and administer unassigned epinephrine auto-injectors for use when a child in care has an emergency anaphylaxis reaction to (1) adopt and implement a written policy that complies with the requirements in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and in Texas Health and Safety Code §773.0145; and (2) notify the child's parent immediately after ensuring the safety of the child if the child had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector.

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will create a new rule;
- (6) the proposed rule will not expand an existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rules; and
- (8) the proposed rule will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

There is no expected adverse economic effect on small businesses, micro-businesses, or rural communities because purchase and provision of the auto-injectors is voluntary and not required by the proposal.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule (1) is necessary to protect the health, safety, and welfare of the residents of Texas; (2) does not impose a cost on regulated persons; and (3) is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect, the public benefit will be that a child-care operation will be able to safely administer, on an emergency basis, a lifesaving epinephrine auto-injector to a child who is suffering from an anaphylaxis reaction, if the child-care operation elects to maintain unassigned epinephrine auto-injectors and follows the required procedures.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons required to comply with the proposed rule because the proposal does not impose any additional costs or fees on persons required to comply with this rule. Purchase and provision of the auto-injectors is voluntary and not required by the proposal.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to [Aimee.Belden@hhs.texas.gov](mailto:Aimee.Belden@hhs.texas.gov).

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCRRules@hhs.texas.gov](mailto:CCRRules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R027" in the subject line.

#### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new rule affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§743.301. What are the requirements if my operation chooses to maintain and administer unassigned epinephrine auto-injectors?*

If your operation maintains and administers unassigned epinephrine auto-injectors to use when a child in care has an emergency anaphylaxis reaction, you must:

(1) Adopt and implement a written policy that complies with the unassigned epinephrine auto-injector requirements set by the Texas Department of State Health Services, as specified in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and Texas Health and Safety Code §773.0145; and

(2) Notify the child's parent, immediately after ensuring the safety of the child, if the child has had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector.

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

Filed with the Office of the Secretary of State on July 16, 2021.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: August 29, 2021

For further information, please call: (512) 438-3269



## CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §744.307, concerning What emergency or medical situations must I notify parents about; §744.501, concerning What written operational policies must I have; and §744.701, concerning What written records must I keep of accidents and incidents that occur at my operation, in Title 26, Texas Administrative Code (TAC), Chapter 744, Minimum Standards for School-Age and Before or After-School Programs.

### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 1849 and H.B. 4260, 86th Legislature, Regular Session, 2019. H.B. 1849 added §42.067 to Texas Human Resources Code, to allow a licensed child-care center to administer and store unassigned epinephrine auto-injectors, provided the child-care center meets certain requirements when an unassigned epinephrine auto-injector has been used on a child.

H.B. 4260 added §773.0145 to Texas Health and Safety Code. This statute allows child-care facilities, as defined in Texas Human Resources Code §42.002, and other entities to adopt a policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors. This statute also includes specific requirements that an entity must follow and requires the Department of State Health Services (DSHS) to adopt rules regarding an entity's maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities). Consistent with Health and Safety Code §773.0145, these rules allow certain youth facilities, including child-care facilities, to voluntarily adopt policies relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. The amended rules in this proposal further support the rules adopted on behalf of DSHS by allowing a child-care facility to voluntarily adopt unassigned epinephrine auto-injector policies, provided the child-care facility follows the rules adopted on behalf of DSHS.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §744.307 (1) adds a requirement for a child-care operation to notify the child's parent immedi-



ately after ensuring the safety of the child if the child had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector; and (2) renumbers the rule accordingly.

The proposed amendment to §744.501 adds a requirement for a child-care operation that chooses to maintain and administer unassigned epinephrine auto-injectors to develop written operational policies that comply with the requirements in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and Texas Health and Safety Code §773.0145, for maintenance, administration, and disposal of unassigned epinephrine auto-injectors for use when a child in care has an emergency anaphylaxis reaction.

The proposed amendment to §744.701 (1) adds a requirement for a child-care operation to use the Licensing Incident/Illness Report Form, or a similar form, to document an incident where a child in care had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector; and (2) renumbers the rule accordingly.

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

There is no expected adverse economic effect on small businesses, micro-businesses, or rural communities because purchase and provision of the auto-injectors is voluntary and not required by the proposal.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be that a child-care operation will be able to safely administer, on an emergency basis, a lifesaving epinephrine auto-injector to a child who is suffering from an anaphylaxis reaction, if the child-care operation elects to maintain unassigned epinephrine auto-injectors and follows the required procedures.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rules because the proposal does not impose any additional costs or fees on persons required to comply with these rules. Purchase and provision of the auto-injectors is voluntary and not required by the proposal.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to [Aimee.Belden@hhs.texas.gov](mailto:Aimee.Belden@hhs.texas.gov).

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCRRules@hhs.texas.gov](mailto:CCRRules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R027" in the subject line.

#### SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

#### DIVISION 2. REQUIRED NOTIFICATIONS

#### 26 TAC §744.307

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§744.307. *What emergency or medical situations must I notify parents about?*

(a) You must notify the parent of a child immediately if there is an allegation that the child has been abused, neglected, or exploited, as defined in Texas Family Code §261.001, while in your care.

(b) After you ensure the safety of the child, you must notify the parent of the child immediately after the child:

(1) Is injured and the injury requires medical treatment by a health-care professional or hospitalization;

(2) Shows signs or symptoms of an illness that requires hospitalization;

(3) Has had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector;

(4) [(3)] Has been involved in any situation that placed the child at risk. For example, a caregiver forgetting the child in an operation vehicle or on the playground or failing to prevent the child from wandering away from the operation unsupervised; or

(5) [(4)] Has been involved in any situation that renders the operation unsafe, such as a fire, flood, or damage to the operation as a result of severe weather.

(c) You must notify the parent of less serious injuries when the parent picks the child up from the operation. Less serious injuries include minor cuts, scratches, and contusions requiring first-aid treatment by employees.

(d) You must provide written notice to the parent of each child attending the operation within 48 hours of becoming aware that a child in your care or an employee has contracted a communicable disease deemed notifiable by the Department of State Health Services, as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).

(e) You must provide written notice to the parent of each child in a group within 48 hours when there is an outbreak of lice or other infestation in the group. You must either post this notice in a prominent and publicly accessible place where parents can easily view it or send an individual note to each parent.

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

Filed with the Office of the Secretary of State on July 16, 2021.

TRD-202102737

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: August 29, 2021

For further information, please call: (512) 438-3269



## DIVISION 4. OPERATIONAL POLICIES

### 26 TAC §744.501

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory

functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§744.501. *What written operational policies must I have?*

You must develop written operational policies and procedures that at a minimum address each of the following:

(1) Hours, days, and months of operation;

(2) Procedures for the release of children;

(3) Illness and exclusion criteria;

(4) Procedures for dispensing medication or a statement that medication is not dispensed;

(5) Procedures for handling medical emergencies;

(6) Procedures for parental notifications;

(7) Discipline and guidance that is consistent with Subchapter G of this chapter (relating to Discipline and Guidance). A copy of Subchapter G may be used for your discipline and guidance policy, unless you use disciplinary and training measures specific to a skills-based program, as specified in §744.2109 of this chapter (relating to May I use disciplinary measures that are fundamental to teaching a skill, talent, ability, expertise, or proficiency?);

(8) Suspension and expulsion of children;

(9) Meals and food service practices;

(10) Immunization requirements for children, including tuberculosis screening and testing if required by your regional Texas Department of State Health Services or local health authority;

(11) Enrollment procedures, including how and when parents will be notified of policy changes;

(12) Transportation, if applicable;

(13) Water activities, if applicable;

(14) Field trips, if applicable;

(15) Animals, if applicable;

(16) Procedures for providing and applying, as needed, insect repellent and sunscreen, including what types will be used, if applicable;

(17) Procedures for parents to review and discuss with the director any questions or concerns about the policies and procedures of the operation;

(18) Procedures for parents to visit the operation at any time during your hours of operation to observe their child, program activities, the building, the premises, and equipment without having to secure prior approval;

(19) Procedures for parents to participate in the operation's activities;

(20) Procedures for parents to review a copy of the operation's most recent Licensing inspection report and how the parent may access the minimum standards online;

(21) Instructions on how a parent may contact the local Licensing office, access the Texas Abuse and Neglect Hotline, and access the HHSC website;

- (22) Emergency preparedness plan;
- (23) Procedures for conducting health checks, if applicable; ~~and~~
- (24) Information on vaccine-preventable diseases for employees, unless your operation is in the home of the permit holder, the director, or a caregiver. The policy must address the requirements outlined in §744.2581 of this chapter (relating to What must a policy for protecting children from vaccine-preventable diseases include?); ~~and~~ ~~[-]~~

(25) If your operation maintains and administers unassigned epinephrine auto-injectors to use when a child in care has an emergency anaphylaxis reaction, policies for maintenance, administration, and disposal of unassigned epinephrine auto-injectors that comply with the unassigned epinephrine auto-injector requirements set by the Texas Department of State Health Services, as specified in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and Texas Health and Safety Code §773.0145.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



## SUBCHAPTER C. RECORD KEEPING

### DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS

#### 26 TAC §744.701

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§744.701. What written records must I keep of accidents and incidents that occur at my operation?*

You must record the following information on the Licensing *Incident/Illness Report* Form 7239 or another form that contains at least the same information:

- (1) An injury to a child in care that required medical treatment by a health-care professional or hospitalization;
- (2) An illness that required the hospitalization of a child in care;

(3) An incident where a child in care had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector;

(4) ~~[(3)]~~ An incident of a child in care or employee contracting a communicable disease deemed notifiable by the Texas Department of State Health Services as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases); and

(5) ~~[(4)]~~ Any other situation that placed a child at risk, such as forgetting a child in an operation's vehicle or not preventing a child from wandering away from the operation unsupervised.

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

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## CHAPTER 745. LICENSING

### SUBCHAPTER D. APPLICATION PROCESS

#### DIVISION 11. EMPLOYER-BASED CHILD CARE

#### 26 TAC §745.469

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §745.469, concerning What are the requirements if my operation chooses to maintain and administer unassigned epinephrine auto-injectors, in Title 26, Texas Administrative Code, Chapter 745, Licensing, Subchapter D, Application Process, Division 11, Employer-Based Child Care.

##### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 1849 and H.B. 4260, 86th Legislature, Regular Session, 2019. H.B. 1849 added §42.067 to Texas Human Resources Code, to allow a licensed child-care center to administer and store unassigned epinephrine auto-injectors, provided the child-care center meets certain requirements when an unassigned epinephrine auto-injector has been used on a child.

H.B. 4260 added §773.0145 to Texas Health and Safety Code. This statute allows the Texas Department of State Health Services (DSHS) to designate in rule an entity that would benefit from the possession and use of unassigned epinephrine auto-injectors, so that the entity could then adopt a policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors. This statute also includes specific requirements that an entity must follow and requires DSHS to adopt rules regarding an entity's maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities).

These rules allow certain youth facilities, including employer-based child-care facilities, to voluntarily adopt policies relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. The new rule in this proposal further supports the rules adopted on behalf of DSHS by allowing an employer-based child-care facility to voluntarily adopt unassigned epinephrine auto-injector policies, provided the facility follows the rules adopted on behalf of DSHS.

#### SECTION-BY-SECTION SUMMARY

Proposed new §745.469 requires a facility that chooses to maintain and administer unassigned epinephrine auto-injectors for use when a child in care has an emergency anaphylaxis reaction to (1) adopt and implement a written policy that complies with the requirements in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and in Texas Health and Safety Code §773.0145; and (2) notify the child's parent immediately after ensuring the safety of the child if the child had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector.

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will create a new rule;
- (6) the proposed rule will not expand an existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rules; and
- (8) the proposed rule will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

There is no expected adverse economic effect on small businesses, micro-businesses, or rural communities because purchase and provision of the auto-injectors is voluntary and not required by the proposal.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule (1) is necessary to protect the health, safety, and welfare of the residents of Texas; (2) does not impose a cost on regulated persons; and (3) is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect, the public benefit will be that a child-care operation will be able to safely administer, on an emergency basis, a lifesaving epinephrine auto-injector to a child who is suffering from an anaphylaxis reaction, if the child-care operation elects to maintain unassigned epinephrine auto-injectors and follows the required procedures.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons required to comply with the proposed rule because the proposal does not impose any additional costs or fees on persons required to comply with this rule. Purchase and provision of the auto-injectors is voluntary and not required by the proposal.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to [Aimee.Belden@hhs.texas.gov](mailto:Aimee.Belden@hhs.texas.gov).

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCRRules@hhs.texas.gov](mailto:CCRRules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R027" in the subject line.

#### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new section affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§745.469. What are the requirements if my operation chooses to maintain and administer unassigned epinephrine auto-injectors?

If your operation maintains and administers unassigned epinephrine auto-injectors to use when a child in care has an emergency anaphylaxis reaction, you must:

- (1) Adopt and implement a written policy that complies with the unassigned epinephrine auto-injector requirements set by the Texas Department of State Health Services, as specified in 25 TAC

Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and Texas Health and Safety Code §773.0145; and

(2) Notify the child's parent, immediately after ensuring the safety of the child, if the child has had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



## CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §746.307, concerning What emergency or medical situations must I notify parents about; §746.501, concerning What written operational policies must I have; §746.701, concerning What written records must I keep of accidents and incidents that occur at my child-care center; and §746.801, concerning What records must I keep at my child-care center, in Title 26, Texas Administrative Code, Chapter 746, Minimum Standards for Child-Care Centers.

### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 1849 and H.B. 4260, 86th Legislature, Regular Session, 2019. H.B. 1849 added §42.067 to Texas Human Resources Code, to allow a licensed child-care center to administer and store unassigned epinephrine auto-injectors, provided the child-care center meets certain requirements when an unassigned epinephrine auto-injector has been used on a child, as well as requirements related to storage, training, and notification.

H.B. 4260 added §773.0145 to Texas Health and Safety Code. This statute allows child-care facilities, as defined in Texas Human Resources Code §42.002, and other entities to adopt a policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors. This statute also includes specific requirements that an entity must follow and requires the Texas Department of State Health Services (DSHS) to adopt rules regarding an entity's maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities). Consistent with Health and Safety Code §773.0145, these rules allow certain youth facilities, including child-care facilities, to voluntarily adopt policies relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. The rules adopted on behalf of DSHS also generally address the re-

quirements listed in Texas Human Resources Code §42.067. The amended rules in this proposal further support the rules adopted on behalf of DSHS by allowing a child-care facility to voluntarily adopt unassigned epinephrine auto-injector policies, provided the child-care facility follows the rules adopted on behalf of DSHS.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §746.307 (1) adds a requirement for a child-care center to notify the child's parent immediately after ensuring the safety of the child if the child had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector; and (2) renumbers the rule accordingly.

The proposed amendment to §746.501 adds a requirement for a child-care center that chooses to maintain and administer unassigned epinephrine auto-injectors to develop written operational policies that comply with the requirements in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and in Texas Health and Safety Code §773.0145, for maintenance, administration, and disposal of unassigned epinephrine auto-injectors for use when a child in care has an emergency anaphylaxis reaction.

The proposed amendment to §746.701 (1) adds a requirement for a child-care center to use the Licensing Incident/Illness Report Form or a similar form to document an incident where a child in care had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector; and (2) renumbers the rule accordingly.

The proposed amendment to §746.801 adds a requirement for a child-care center that administers and maintains unassigned epinephrine auto-injectors to maintain and make available to HHSC Child Care Regulation, upon request, a copy of each completed DSHS Epinephrine Auto-Injectors Reporting Form.

### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

There is no expected adverse economic effect on small businesses, micro-businesses, or rural communities because purchase and provision of the auto-injectors is voluntary and not required by the proposal.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules (1) are necessary to protect the health, safety, and welfare of the residents of Texas; (2) do not impose a cost on regulated persons; and (3) are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be that a child-care operation will be able to safely administer, on an emergency basis, a lifesaving epinephrine auto-injector to a child who is suffering from an anaphylaxis reaction, if the child-care operation elects to maintain unassigned epinephrine auto-injectors and follows the required procedures.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rules because the proposal does not impose any additional costs or fees on persons required to comply with these rules. Purchase and provision of the auto-injectors is voluntary and not required by the proposal.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to [Aimee.Belden@hhs.texas.gov](mailto:Aimee.Belden@hhs.texas.gov).

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCRRules@hhs.texas.gov](mailto:CCRRules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R027" in the subject line.

## SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

### DIVISION 2. REQUIRED NOTIFICATION

## 26 TAC §746.307

### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.307. *What emergency or medical situations must I notify parents about?*

(a) You must notify the parent of a child immediately if there is an allegation that the child has been abused, neglected, or exploited, as defined in Texas Family Code §261.001, while in your care.

(b) After you ensure the safety of the child, you must notify the parent of the child immediately after the child:

(1) Is injured and the injury requires medical treatment by a health-care professional or hospitalization;

(2) Shows signs or symptoms of an illness that requires hospitalization;

(3) Has had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector;

(4) [(3)] Has been involved in any situation that placed the child at risk. For example, a caregiver forgetting the child in a center vehicle or failing to prevent the child from wandering away from the child-care center unsupervised; or

(5) [(4)] Has been involved in any situation that renders the child-care center unsafe, such as a fire, flood, or damage to the child-care center as a result of severe weather.

(c) You must notify the parent of less serious injuries when the parent picks the child up from the child-care center. Less serious injuries include minor cuts, scratches, and bites from other children requiring first-aid treatment by employees.

(d) You must provide written notice to the parent of each child attending the child-care center within 48 hours of becoming aware that a child in your care or an employee has contracted a communicable disease deemed notifiable by the Texas Department of State Health Services, as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases).

(e) You must provide written notice to the parent of each child in a group within 48 hours when there is an outbreak of lice or other infestation in the group. You must either post this notice in a prominent and publicly accessible place where parents can easily view it or send an individual note to each parent.

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

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## DIVISION 4. OPERATIONAL POLICIES

### 26 TAC §746.501

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§746.501. What written operational policies must I have?*

(a) You must develop written operational policies and procedures that at a minimum address each of the following:

- (1) Hours, days, and months of operation;
- (2) Procedures for the release of children;
- (3) Illness and exclusion criteria;
- (4) Procedures for dispensing medication or a statement that medication is not dispensed;
- (5) Procedures for handling medical emergencies;
- (6) Procedures for parental notifications;
- (7) Discipline and guidance that is consistent with Subchapter L of this chapter (relating to Discipline and Guidance). A copy of Subchapter L may be used for your discipline and guidance policy;
- (8) Suspension and expulsion of children;
- (9) Safe sleep policy for infants from birth through 12 months old that is consistent with the rules in Subchapter H of this chapter (relating to Basic Requirements for Infants) that relate to sleep requirements and restrictions, including sleep positioning, and crib requirements and restrictions, including mattresses, bedding, blankets, toys, and restrictive devices;
- (10) Meals and food service practices;
- (11) Immunization requirements for children, including tuberculosis screening and testing if required by your regional Texas Department of State Health Services or local health authority;
- (12) Hearing and vision screening requirements;
- (13) Enrollment procedures, including how and when parents will be notified of policy changes;
- (14) Transportation, if applicable;
- (15) Water activities, if applicable;
- (16) Field trips, if applicable;
- (17) Animals, if applicable;

(18) Promotion of indoor and outdoor physical activity that is consistent with Subchapter F of this chapter (relating to Developmental Activities and Activity Plan); your policies must include:

- (A) The benefits of physical activity and outdoor play;
- (B) The duration of physical activity at your operation, both indoor and outdoor;
- (C) The type of physical activity (structured and unstructured) that children may engage in at your operation;
- (D) Each setting in which your physical activity program will take place;
- (E) The recommended clothing and footwear that will allow a child to participate freely and safely in physical activities; and
- (F) A plan to ensure physical activity occurs on days when extreme weather conditions prohibit or limit outdoor play.

(19) Procedures for providing and applying, as needed, insect repellent and sunscreen, including what types will be used, if applicable;

(20) Procedures for parents to review and discuss with the child-care center director any questions or concerns about the policies and procedures of the child-care center;

(21) Procedures for parents to participate in the child-care center's operation and activities;

(22) Procedures for parents to review a copy of the child-care center's most recent Licensing inspection report and how the parent may access the minimum standards online;

(23) Instructions on how a parent may contact the local Licensing office, access the Texas Abuse and Neglect Hotline, and access the HHSC website;

(24) Your emergency preparedness plan;

(25) Your provisions to provide a comfortable place with an adult sized seat in your center or within a classroom that enables a mother to breastfeed her child. In addition, your policies must inform parents that they have the right to breastfeed or provide breast milk for their child while in care;

(26) Preventing and responding to abuse and neglect of children, including:

(A) Required annual training for employees;

(B) Methods for increasing employee and parent awareness of issues regarding child abuse and neglect, including warning signs that a child may be a victim of abuse or neglect and factors indicating a child is at risk for abuse or neglect;

(C) Methods for increasing employee and parent awareness of prevention techniques for child abuse and neglect;

(D) Strategies for coordination between the center and appropriate community organizations; and

(E) Actions that the parent of a child who is a victim of abuse or neglect should take to obtain assistance and intervention, including procedures for reporting child abuse or neglect;

(27) Procedures for conducting health checks, if applicable; ~~and~~

(28) Information on vaccine-preventable diseases for employees, unless your center is in the home of the permit holder. The policy must address the requirements outlined in §746.3611 of this

chapter (relating to What must a policy for protecting children from vaccine-preventable diseases include?); and [-]

(29) If your operation maintains and administers unassigned epinephrine auto-injectors to use when a child in care has an emergency anaphylaxis reaction, policies for maintenance, administration, and disposal of unassigned epinephrine auto-injectors that comply with the unassigned epinephrine auto-injector requirements set by the Texas Department of State Health Services, as specified in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and in Texas Health and Safety Code §773.0145.

(b) You must also inform the parents that:

(1) They may visit the child-care center at any time during your hours of operation to observe their child, the program activities, the building, the premises, and the equipment without having to secure prior approval; and

(2) Under the Texas Penal Code any area within 1,000 feet of a child-care center is a gang-free zone, where criminal offenses related to organized criminal activity are subject to a harsher penalty. You may inform the parents by:

(A) Providing this information in the operational policies;

(B) Distributing the information in writing to the parents; or

(C) Informing the parents verbally as part of an individual or group parent orientation.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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## SUBCHAPTER C. RECORD KEEPING

### DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS

#### 26 TAC §746.701

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.701. *What written records must I keep of accidents and incidents that occur at my child-care center?*

You must record the following information on the Licensing *Incident/Illness Report* Form 7239 or another form that contains at least the same information:

(1) An injury to a child in care that required medical treatment by a health-care professional or hospitalization;

(2) An illness that required the hospitalization of a child in care;

(3) An incident where a child in care had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector;

(4) [(3)] An incident of a child in care or employee contracting a communicable disease deemed notifiable by the Texas Department of State Health Services, as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases); and

(5) [(4)] Any other situation that placed a child at risk, such as forgetting a child in a center vehicle or not preventing a child from wandering away from the child-care center unsupervised.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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### DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE CHILD-CARE CENTER

#### 26 TAC §746.801

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§746.801. *What records must I keep at my child-care center?*

You must maintain and make the following records available for our review upon request, during hours of operation. Paragraphs (14), (15), and (16) of this section are optional, but if provided will allow Licensing to avoid duplicating the evaluation of standards that have been evaluated by another state agency within the past year:

(1) Children's records, as specified in Division 1 of this subchapter (relating to Records of Children);



(2) Infant feeding instructions, as required in §746.2421 of this chapter (relating to What written feeding instructions must I obtain for an infant not ready for table food?), if applicable;

(3) Personnel and training records according to Division 4 of this subchapter (relating to Personnel Records);

(4) Licensing *Child-Care Center Director's Certificate*;

(5) Attendance records or time sheets listing all days and hours worked for each employee;

(6) Proof of current liability insurance coverage or, if applicable, that you have provided written notice to the parent of each child that you do not carry the insurance;

(7) Medication records, if applicable;

(8) Playground maintenance checklists;

(9) Pet vaccination records, if applicable;

(10) Safety documentation for emergency drills, fire extinguishers, and smoke detectors;

(11) Most recent fire inspection report, including any written approval from the fire marshal to provide care above or below ground level, if applicable;

(12) Most recent sanitation inspection report;

(13) Most recent gas inspection report, if applicable;

(14) Most recent Texas Department of State Health Services immunization compliance review form, if applicable;

(15) Most recent Texas Department of Agriculture Child and Adult Care Food Program report, if applicable;

(16) Most recent local workforce board Child-Care Services Contractor inspection report, if applicable;

(17) Record of pest extermination, if applicable;

(18) Most recent Licensing form certifying that you have reviewed each of the bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe children's products in use or accessible to children in the child-care center;

(19) A daily tracking system for when a child's care begins and ends, as specified in §746.631 of this subchapter (relating to Must I have a system for signing children in and out of my care?);

(20) Documentation for all full-size and non-full-size cribs, as specified in §746.2409(a)(9) of this chapter (relating to What specific safety requirements must my cribs meet?);

(21) Documentation for vehicles, as specified in §746.5627 of this chapter (relating to What documentation must I keep at the child-care center for each vehicle used to transport children in care?), if applicable; ~~and~~

(22) Proof that you have notified parents in writing of deficiencies in safe sleeping and abuse, neglect, or exploitation, as specified in §746.309 of this chapter (relating to What are the notification requirements when Licensing finds my center deficient in a standard related to safe sleeping or the abuse, neglect, or exploitation of a child?) and §746.311 of this chapter (relating to How must I notify parents of a safe sleeping deficiency or an abuse, neglect, or exploitation deficiency?); ~~and~~ [-]

(23) A copy of each completed Texas Department of State Health Services Epinephrine Auto-Injectors Reporting Form used to report the administration of an unassigned epinephrine auto-injector, if

your operation administers and maintains unassigned epinephrine auto-injectors.

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

Filed with the Office of the Secretary of State on July 16, 2021.

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Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: August 29, 2021

For further information, please call: (512) 438-3269



## CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §747.305, concerning What emergency and medical situations must I notify parents about; §747.501, concerning What written operational policies must I have; and §747.701, concerning What written records must I keep of accidents and incidents that occur at my child-care home; and the repeal of §747.2107, concerning Am I required to have a written activity plan, in Title 26, Texas Administrative Code, Chapter 747, Minimum Standards for Child-Care Homes.

### BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 1849 and H.B. 4260, 86th Legislature, Regular Session, 2019. H.B. 1849 added §42.067 to Texas Human Resources Code, to allow a licensed child-care center to administer and store unassigned epinephrine auto-injectors, provided the child-care center meets certain requirements when an unassigned epinephrine auto-injector has been used on a child.

H.B. 4260 added §773.014 to Texas Health and Safety Code. This statute allows child-care facilities, as defined in Texas Human Resources Code §42.002, and other entities to adopt a policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors. This statute also includes specific requirements that an entity must follow and requires the Texas Department of State Health Services (DSHS) to adopt rules regarding an entity's maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities). Consistent with Texas Health and Safety Code §773.0145, these rules allow certain youth facilities, including child-care facilities, to voluntarily adopt policies relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. The amended rules in this proposal further support the rules adopted on behalf of DSHS by allowing a child-care facility to voluntarily adopt unassigned epinephrine auto-injector policies, provided the child-care facility follows the rules adopted on behalf of DSHS.

This proposal also updates the implementation of Senate Bill (S.B.) 952, 86th Legislature, Regular Session, 2019, which

added Subsections 42.042(e-3), (e-4), and (e-5) to the Texas Human Resources Code (HRC). New subsection 42.042(e-3)(1) requires HHSC Child Care Regulation (CCR) to align the minimum standards for child-care centers and registered child-care homes with standards for physical activity and screen time in Caring for Our Children (CFOC), 4th edition. CCR extended these requirements to licensed child-care homes in Chapter 747 and adopted rules in March 2021 that incorporated the physical activity and screen time requirements outlined by CFOC. The rules added a new requirement for licensed and registered child-care homes to maintain a written activity plan that includes the physical activity components of the CFOC. This proposal clarifies that requirement by repealing a contradictory rule that allows licensed and registered child-care homes the option of having a written activity plan.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §747.305 (1) adds a requirement for a child-care home to notify the child's parent immediately after ensuring the safety of the child if the child had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector; and (2) renumbers the rule accordingly.

The proposed amendment to §747.501 adds a requirement for a child-care home that chooses to maintain and administer unassigned epinephrine auto-injectors to develop written operational policies that comply with the requirements set by DSHS in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and in Texas Health and Safety Code §773.0145, for the maintenance, administration, and disposal of unassigned epinephrine auto-injectors for use when a child in care has an emergency anaphylaxis reaction.

The proposed amendment to §747.701 (1) updates the rule title for consistency with other chapters; (2) adds a requirement for a child-care home to use the Licensing Incident/Illness Report Form or a similar form to document an incident where a child in care had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector; and (3) renumbers the rule accordingly.

The proposed repeal of §747.2107 deletes the rule as no longer necessary, because child-care homes are now required to have a written activity plan.

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will not create a new rule;

(6) the proposed rules will expand existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

#### SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

There is no expected adverse economic effect on small businesses, micro-businesses, or rural communities because purchase and provision of the auto-injectors is voluntary and not required by the proposal.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be that a child-care operation will be able to safely administer, on an emergency basis, a lifesaving epinephrine auto-injector to a child who is suffering from an anaphylaxis reaction, if the child-care operation elects to maintain unassigned epinephrine auto-injectors and follow the required procedures.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons required to comply with the proposed rules because the proposal does not impose any additional costs or fees on persons required to comply with these rules. Purchase and provision of the auto-injectors is voluntary and not required by the proposal.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to [Aimee.Belden@hhs.texas.gov](mailto:Aimee.Belden@hhs.texas.gov).

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCRRules@hhs.texas.gov](mailto:CCRRules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing com-

ments, please indicate "Comments on Proposed Rule 20R027" in the subject line.

## SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

### DIVISION 2. REQUIRED NOTIFICATIONS

#### 26 TAC §747.305

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§747.305. What emergency and medical situations must I notify parents about?*

(a) You must notify the parent of a child immediately if there is an allegation that the child has been abused, neglected, or exploited, as defined in Texas Family Code §261.001, while in your care.

(b) After you ensure the safety of the child, you must notify the parent of the child immediately after the child:

(1) Is injured and the injury requires medical treatment by a health-care professional;

(2) Shows signs or symptoms of an illness that requires hospitalization;

(3) Has had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector;

(4) [(3)] Has been involved in any situation that placed the child at risk. For example, forgetting the child in a vehicle or failing to prevent the child from wandering away from your child-care home unsupervised; or

(5) [(4)] Has been involved in any situation that renders the child-care home unsafe, such as a fire, flood, or damage to the child-care home as a result of severe weather.

(c) You must notify the parent of less serious injuries when the parent picks the child up from your child-care home. Less serious injuries include minor cuts, scratches, and bites from other children requiring first-aid treatment by caregivers.

(d) You must provide written notice to the parent of each child attending the child-care home within 48 hours when any child in your care, a caregiver, or a household member has contracted a communicable disease deemed notifiable by the Texas Department of State Health Services as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Disease).

(e) You must provide written notice to the parent of each child attending the child-care home within 48 hours when there is an outbreak of lice or other infestation in the child-care home.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



### DIVISION 4. OPERATIONAL POLICIES

#### 26 TAC §747.501

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§747.501. What written operational policies must I have?*

You must develop written operational policies and procedures that at a minimum address each of the following:

(1) Procedure for the release of children;

(2) Illness and exclusion criteria;

(3) Procedures for dispensing medication, or a statement that medication is not dispensed;

(4) Procedures for handling medical emergencies;

(5) Discipline and guidance policy that is consistent with Subchapter L of this title (relating to Discipline and Guidance). A copy of Subchapter L may be used for your discipline and guidance policy;

(6) Safe sleep policy for infants from birth through 12 months old that is consistent with the rules in Subchapter H of this chapter (relating to Basic Requirements for Infants) that relate to sleep requirements and restrictions, including sleep positioning, and crib requirements and restrictions, including mattresses, bedding, blankets, toys, and restrictive devices;

(7) Animals, if applicable;

(8) Promotion of indoor and outdoor physical activity that is consistent with Subchapter F of this chapter (relating to Developmental Activities and Activity Plan). Your policies must include:

(A) The duration of physical activity at your home, both indoor and outdoor;

(B) The recommended clothing and footwear that will allow a child to participate freely and safely in physical activities; and

(C) A plan to ensure physical activity occurs on days when extreme weather conditions prohibit or limit outdoor time.

(9) Procedures for parents to visit the child-care home any time during your hours of operation to observe their child, program activities, the home, the premises, and equipment without having to secure prior approval;

(10) Procedures for parents to review a copy of the child-care home's most recent Licensing inspection report and how the parent may access the minimum standards online;

(11) Instructions on how a parent may contact the local Licensing office, access the Texas Abuse and Neglect Hotline, and access the HHSC website;

(12) Your emergency preparedness plan;

(13) Procedures for conducting health checks, if applicable; [and]

(14) Information on vaccine-preventable diseases for employees, if your licensed child-care home is not located in your own residence. The policy must address the requirements outlined in §747.3411 of this chapter (relating to What must a policy for protecting children from vaccine-preventable diseases include?); and [-]

(15) If your home maintains and administers unassigned epinephrine auto-injectors to use when a child in care has an emergency anaphylaxis reaction, policies for maintenance, administration, and disposal of unassigned epinephrine auto-injectors that comply with the unassigned epinephrine auto-injector requirements set by the Texas Department of State Health Services, as specified in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and in Texas Health and Safety Code §773.0145.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



## SUBCHAPTER C. RECORD KEEPING

### DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS

#### 26 TAC §747.701

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§747.701. What written records must I keep of accidents and incidents [injuries] that occur at my child-care home?*

You must record the following information on the Licensing *Incident/Illness Report* Form 7239 or another form that contains at least the same information:

(1) An injury to a child in care that required medical treatment by a health-care professional or hospitalization;

(2) An illness that required the hospitalization of a child in care;

(3) An incident where a child in care had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector;

(4) [(3)] An incident of a child in care or caregiver contracting a communicable disease deemed notifiable by the Texas Department of State Health Services as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases); and

(5) [(4)] Any other situation that placed a child at risk, such as forgetting a child in a vehicle or not preventing a child from wandering away from the child-care home.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



## SUBCHAPTER F. DEVELOPMENTAL ACTIVITIES AND ACTIVITY PLAN

### 26 TAC §747.2107

##### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

*§747.2107. Am I required to have a written activity plan?*

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

Filed with the Office of the Secretary of State on July 16, 2021.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269



CHAPTER 748. MINIMUM STANDARDS FOR  
GENERAL RESIDENTIAL OPERATIONS  
SUBCHAPTER L. MEDICATION  
DIVISION 8. UNASSIGNED EPINEPHRINE  
AUTO-INJECTORS

26 TAC §748.2271

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §748.2271, concerning What are the requirements if my operation chooses to maintain and administer unassigned epinephrine auto-injectors, in Title 26, Texas Administrative Code, Chapter 748, Minimum Standards for General Residential Operations, Subchapter L, Medication, new Division 8, Unassigned Epinephrine Auto-Injectors.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 1849 and H.B. 4260, 86th Legislature, Regular Session, 2019. H.B. 1849 added §42.067 to Texas Human Resources Code, to allow a licensed child-care center to administer and store unassigned epinephrine auto-injectors, provided the child-care center meets certain requirements when an unassigned epinephrine auto-injector has been used on a child.

H.B. 4260 added §773.0145 to Texas Health and Safety Code. This statute allows child-care facilities, as defined in Texas Human Resources Code §42.002, and other entities to adopt a policy regarding the maintenance, administration, and disposal of unassigned epinephrine auto-injectors. This statute also includes specific requirements that an entity must follow and requires the Texas Department of State Health Services (DSHS) to adopt rules regarding an entity's maintenance, administration, and disposal of unassigned epinephrine auto-injectors.

In February 2021, the Executive Commissioner of HHSC, on behalf of DSHS, adopted the rules required by Texas Health and Safety Code §773.0145 in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities). Consistent with Texas Health and Safety Code §773.0145, these rules allow certain youth facilities, including child-care facilities, to voluntarily adopt policies relating to maintenance, administration, and disposal of unassigned epinephrine auto-injectors. The new rule in this proposal further supports the rules adopted on behalf of DSHS by allowing a child-care facility to voluntarily adopt unassigned epinephrine auto-injector policies, provided the child-care facility follows the rules adopted on behalf of DSHS.

SECTION-BY-SECTION SUMMARY

Proposed new §748.2271 requires an operation that chooses to maintain and administer unassigned epinephrine auto-injectors for use when a child in care has an emergency anaphylaxis reaction to (1) adopt and implement a written policy that complies with the requirements in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and in Texas Health and Safety Code §773.0145; (2) notify the child's parent immediately after ensuring the safety of the child if the child had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector; and (3) maintain proof that the operation has notified the child's parent as required.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will create a new rule;
- (6) the proposed rule will not expand an existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rules; and
- (8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

There is no expected adverse economic effect on small businesses, micro-businesses, or rural communities because purchase and provision of the auto-injectors is voluntary and not required by the proposal.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule (1) is necessary to protect the health, safety, and welfare of the residents of Texas; (2) does not impose a cost on regulated persons; and (3) is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rule is in effect, the public benefit will be that a child-care operation will be able to safely administer, on an emergency basis, a lifesaving epinephrine auto-injector to a child who is suffering from an anaphylaxis reaction, if the child-care operation elects to maintain unassigned epinephrine auto-injectors and follows required procedures.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons required to comply with the proposed rule because the proposal does not impose any additional costs or fees on persons required to comply with this rule. Purchase and provision of the auto-injectors is voluntary and not required by the proposal.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

## PUBLIC COMMENT

Questions about the content of this proposal may be directed by email to [Aimee.Belden@hhs.texas.gov](mailto:Aimee.Belden@hhs.texas.gov).

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCRRules@hhs.texas.gov](mailto:CCRRules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R27" in the subject line.

## STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, Texas Human Resources Code §42.042(a) requires HHSC to adopt rules to carry out the requirements of Texas Human Resources Code Chapter 42.

The new section affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§748.2271. What are the requirements if my operation chooses to maintain and administer unassigned epinephrine auto-injectors?

If your operation maintains and administers unassigned epinephrine auto-injectors to use when a child in care has an emergency anaphylaxis reaction, you must:

(1) Adopt and implement a written policy that complies with the unassigned epinephrine auto-injector requirements set by the Texas Department of State Health Services, as specified in 25 TAC Chapter 40, Subchapter C (relating to Epinephrine Auto-Injector Policies in Youth Facilities) and Texas Health and Safety Code §773.0145;

(2) Notify the child's parent, immediately after ensuring the safety of the child, if the child has had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector; and

(3) Maintain and make available for review, upon our request, proof that you have notified the child's parent of an incident where the child in care had an emergency anaphylaxis reaction that required administration of an unassigned epinephrine auto-injector.

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

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-3269

## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 332. COMPOSTING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§332.2 - 332.4, 332.6, 332.8, 332.22, 332.23, 332.32, 332.33 332.35 - 332.37, 332.41 - 332.45, 332.47, 332.61, 332.71, 332.72, and 332.75.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to amend existing rules for an applicant of a compost Notice of Intent (NOI) to clarify who should be listed as a landowner that receives notice of the planned facility. These proposed rules would provide clarity on the phrase of adjacent landowner for compost NOIs and remove other vague mailing requirements. Currently, §332.22(b) uses the phrase "affected landowners" when discussing mailing notice of the planned facility and this creates confusion and ambiguity on which landowners should be listed by the applicant.

This rulemaking would incorporate applicability, fees, and reporting requirements from 30 TAC Chapter 330, Subchapter P, into sections for registered and permitted compost facilities.

Additional clarifications and corrections to obsolete references and typographical errors throughout Chapter 332 are included to ensure clarity, readability, and provide overall effectiveness of these rules.

Section by Section Discussion

*Subchapter A: General Information*

§332.2, *Definitions*

The commission proposes amending §332.2 to revise definitions that need clarification, remove obsolete links, or update grammar to ensure clarity, readability, and provide overall effectiveness of these rules.

The commission proposes adding missing commas to §332.2(6), (9), (10), (19), (26), (27), (28), (31), (33), (47), (54), (56), (58), (59), and (64).

The commission proposes replacing the word "which" with "that" in §332.2(6), (13), (14), (15), (22), (27), (29), (32), (37), (48), and (58) and replacing the word "which" with "when" in §332.2(25).

The commission proposes amending §332.2(11), (17), and (40), to update the name of this agency or to replace the abbreviation "TNRCC" with "agency." The commission also proposes amending §332.2(17) to replace a gendered term with a non-gendered term.

The commission proposes deleting a space in §332.2(12) between the words "top" and "soil."

The commission proposes amending §332.2(15), (29), and (53), to correct incorrect citations and clarify wording.

The commission proposes revising §332.2(18) to clarify the exact boundary where a compost facility is located.

The commission proposes revising the last sentence of §332.2(33) to expand the list of what does not constitute as mulch.

Finally, the commission proposes revising §332.2(48) to delete the word "Protection" from the name Resource Conservation and Recovery Act.

### *§332.3, Applicability*

The commission proposes amending §332.3(d) by revising the last sentence to clarify that operations under §332.3(d)(1) and (3) are subject to the requirements of an NOI recycling facility.

### *§332.4, General Requirements*

The commission proposes amending §332.4(2) to replace the obsolete citation of §330.2 with §330.3. The commission proposes to delete the words "relating to" in the introductory paragraph of §332.4, and §332.4(1) and (2) in certain instances relating to the title to bring it up to *Texas Register* standards.

### *§332.6, Compost and Mulch Operations Located at Municipal Solid Waste Facilities*

The commission proposes amending §332.6(a) by updating the obsolete citation title from "Municipal Solid Waste Class 1 Modifications" to the current name "Municipal Solid Waste Permit and Registration Modifications." The commission also proposes adding a comma to §332.6(a).

### *§332.8, Air Quality Requirements*

The commission proposes deleting a superfluous comma in §332.8(a)(4) and replacing the word "which" with "that" in §332.8(a)(1) - (3), (a)(6) and (7), (b)(4), (c), (c)(5), (d)(5), (e)(5) and (6). The commission also proposes eliminating a superfluous comma and adding the words "and that" to §332.8(a)(2). Finally, the commission proposes replacing the word "insure" with "ensure" in §332.8(c)(3), (d)(2), and (e)(2).

### *Subchapter B: Operations Requiring A Notification*

#### *§332.22, Notification*

The commission proposes amending §332.22(a) by revising the agency name and previous compost form with "and submitting forms provided by the executive director." The commission also proposes amending §332.22(b) by deleting the words "adjacent" and "affected" and replacing them with "adjoining property" to remove any ambiguity surrounding the mailing requirements for notification tier composting facilities.

#### *§332.23, Operational Requirements*

The commission proposes amending §332.23(2)(A) and (B) to replace "Centigrade" with "Celsius." The commission also proposes replacing "CFR" with "Code of Federal Regulations" in paragraph (3).

### *Subchapter C: Operations Requiring a Registration*

#### *§332.32, Certification by Engineer, Approval by Land Owner, and Inspection*

The commission proposes revising the title of §332.32 by replacing "Land Owner" with "Landowner." The commission proposes amending §332.32(a) by replacing the obsolete term "reg-

istered professional engineer" with "licensed professional engineer" and replacing "Texas-registered" with "Texas-licensed." The commission proposes reworking the compound sentence at end of §332.32(a) and splitting the sentence to read more cohesively. Finally, the commission also proposes replacing a reference to "TNRCC" in §332.32(c) with "agency" to update the change in agency name.

#### *§332.33, Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production*

The commission proposes to replace the colon in §332.33(a) with a period as that section does not become a list. The commission proposes replacing references to "TNRCC" in §332.33(a)(1) with "agency" to update the change in agency name. The commission also proposes revising §332.33(a)(1) to eliminate references to a specific form and replacing it with a generalized requirement for the applicant to submit a necessary part of their application. For §332.33(a)(3) and (4), the commission proposes copying and adding reporting and fee requirements already found in 30 TAC Chapter 330, Subchapter P (Fees and Reporting) for municipal solid waste facilities that are required for composting facilities. The commission proposes replacing and reorganizing §332.33(a)(3) by dividing the reports required by the commission into Final Products and Received Materials. The final product would have semiannual and annual reports, with report language copied from the previous §332.33(a)(3) and (a)(4). The received materials would have the same requirements as the reports in the proposed §332.43(2)(B). The commission also proposes adding §332.33(a)(4), which would add fee language - including fee rates, measurement options, fee calculation, due date, payment method, penalties, and exemptions - copied exactly from Chapter 330, Subchapter P that are relevant to compost facilities. Next, the commission proposes revising §332.33(b)(3) by replacing gendered terms with non-gendered terms. Finally, the commission proposes eliminating a superfluous comma in §332.33(b)(4).

#### *§332.35, Registration Application Processing*

The commission proposes eliminating a superfluous comma in §332.35(b)(2) and adding a missing comma in §332.35(c). The commission also proposes revising §332.35(c) by replacing gendered terms with non-gendered terms.

#### *§332.36, Location Standards*

The commission proposes revising §332.36(6) by deleting the space between "set" and "back." The commission proposes revising §332.36(7) to correct for an obsolete citation. Information regarding the Edwards Aquifer recharge zone is now in 30 TAC Chapter 213.

#### *§332.37, Operational Requirements*

The commission proposes amending §332.37(2) to correct a spacing typo in  $1 \times 10^{-7}$ . The commission proposes revising §332.37(10) by defining CERCLA as "Comprehensive Environmental Response, Compensation, and Liability Act of 1980." The commission proposes amending §332.37(11)(A) to correct the incorrect citation of "§332.72(d)(2)(A) and (D)" to "§332.72(d)(2)(A) and (C)." The commission also proposes replacing the word "which" with "that" in §332.37(11)(B). Finally, in §332.37(12), the commission proposes amending the name and training requirements of a certified compost operator to a licensed municipal solid waste supervisor with specialized compost training because of the changes in the municipal solid

waste licensing rules in 30 TAC Chapter 30, Subchapter F first adopted in 2001.

#### *Subchapter D: Operations Requiring A Permit*

##### *§332.41, Definition, Requirements, and Application Processing for a Permit Facility*

The commission proposes modifying the current title of §332.41 to "Requirements, and Application Processing for a Permitted Facility." The commission proposes deleting the first sentence of §332.41(a) as this section does not supply definitions for the chapter. The commission also proposes amending §332.41(c) to correct an internal contradiction. Section 332.41(c) states that all permit applications are subject to the notice requirements in Chapter 39, Subchapters H and I; however, §39.403 states that compost permit applications are exempt from requirements in Chapter 39, Subchapters H - M. Finally, the commission proposes revising §332.41(c) to accurately correct the title of 30 TAC Chapter 55 as "Requests for Reconsideration and Contested Case Hearings; Public Comment."

##### *§332.42, Certification by Engineer, Ownership or Control of Land, and Inspection*

The commission proposes replacing the obsolete term "registered professional engineer" in §332.42(a) with "licensed professional engineer" and replacing "Texas-registered" with "Texas-licensed." The commission proposes reworking the compound sentence at end of §332.42(a) and splitting the sentence to read more cohesively. The commission also proposes replacing "TNRCC" in §332.42(c) with "agency" to update the change in agency name.

##### *§332.43, Required Forms, Applications, and Reports*

The commission proposes revising §332.43(1) to eliminate references to a specific form and "TNRCC" and replace it with a generalized requirement for the applicant to submit a permit application. Additionally, for §332.43(2) and (3), the commission proposes copying and adding reporting and fee requirements already found in Chapter 330, Subchapter P for Municipal Solid Waste Facilities that are required for composting facilities. The commission proposes replacing and reorganizing §332.43(2) by dividing the reports required by the commission into Final Products and Received Materials. The final product would have monthly and annual reports with language copied from the previous §332.43(2) and (3) and would be integrated into the proposed §332.43(2)(A)(i) and (ii). The received materials would be broken down into quarterly and annual reports. These reports would include the amount of source-separated material processed to compost or mulch product, and the annual reports would include a summary of the quarterly totals and yearly total and year-end status of the facility. The commission proposes §332.43(2)(B)(viii) to add electronic mailing options. Finally, the commission proposes §332.43(3), which would add fee language - including fee rates, measurement options, fee calculation, due date, payment method, penalties, and exemptions - copied exactly from Chapter 330, Subchapter P that are relevant to compost facilities.

##### *§332.44, Location Standards*

The commission proposes revising §332.44(6) by deleting the space between "set" and "back." The commission proposes revising §332.44(7) to correct for an obsolete citation. Information regarding the Edwards Aquifer recharge zone is now in 30 TAC Chapter 213.

##### *§332.45, Operational Requirements*

The commission proposes revising §332.45(1) by defining NPDES as "National Pollutant Discharge Elimination System." The commission proposes replacing the word "insure" with "ensure" in §332.45(3). The commission proposes eliminating superfluous commas found in §332.45(4) and (6) and adding a missing comma to §332.45(7). The commission also proposes revising §332.45(10) by defining CFR as "Code of Federal Regulations." The commission proposes replacing the word "which" with "that" in §332.45(11) and replacing references to "TNRCC" in §332.45(12) with "agency" to update the change in agency name. Finally, in §332.45(12), the commission proposes amending the name and training requirements of a certified compost operator to a licensed municipal solid waste supervisor with specialized compost training because of the changes in the municipal solid waste licensing rules in 30 TAC Chapter 30, Subchapter F, first adopted in 2001.

##### *§332.47, Permit Application Preparation*

The commission proposes amending §332.47 by revising the opening paragraph to eliminate references to "Compost Form Number 3" and replacing it with a generalized requirement to submit the permit application form provided by the commission. The commission also proposes amending the opening paragraph of §332.47 to correct the obsolete citation of "22 TAC §131.166" to "22 TAC §137.33." The commission proposes to amend implied subsection (a) of §332.47 to delete language requiring an applicant to submit the site develop plan as a bound document in a three-ring binder. The commission proposes replacing the word "which" with "that" in §332.47(6)(A)(v)(I) and (C)(i). The commission proposes deleting the abbreviation "DHT" in §332.47(6)(A)(iv)(II) as it is no longer a relevant term in this chapter and retaining the abbreviation for USGS. The commission proposes to abbreviate "United States Geological Survey" in §332.47(6)(A)(iv)(II) as it has been previously defined in the sentence. The commission proposes to revise §332.47(6)(B)(i)(I) by adding the specific institution where the Geologic Atlas of Texas can be obtained. Additionally, the commission proposes amending §332.47(6)(C)(i) and (6)(C)(ii)(II)(-b-) to fix spacing and subscripting typos. The commission proposes replacing "MSL" with "measured in Mean Sea Level (MSL)" in §332.47(6)(C)(ii)(II)(-b-) and (-c-). Finally, the commission proposes replacing the obsolete term "registered professional engineer" throughout §332.47 with "licensed professional engineer."

#### *Subchapter F: Household Hazardous Waste Collection*

##### *§332.61, General Requirements and Applicability*

The commission proposes revising §332.61(c) to correct the title of 30 TAC Chapter 335, Subchapter N from "Household Materials Which Could Be Classified as Hazardous Waste" to "Household Hazardous Wastes."

#### *Subchapter G: End-Product Standards*

##### *§332.71, Sampling and Analysis Requirements for Final Product*

The commission proposes eliminating a superfluous comma in §332.71(a), replacing the word "which" with "that" in §332.71(b), (g), and (g)(2), eliminating a space between "which" and "ever" in §332.71(b)(6), and adding a missing comma in §332.71(c), (g)(1), and (j)(1)(B). The commission proposes updating the name "Quality Assurance Program Plan" in §332.71(b)(6) to "Quality Assurance Project Plan." The commission proposes defining "PCBs" in §332.71(b)(6) as "Polychlorinated



biphenyls." The commission also proposes replacing references to "TNRCC" and "Texas Natural Resource Conservation Commission" throughout §332.71 with "agency" to update the change in agency name. Finally, the commission proposes eliminating leftover html-related code in §332.71(d)(1)(C)(i) and (ii), so only the plain language chemical names remain in the rule.

#### §332.72, *Final Product Grades*

The commission proposes replacing references to "TNRCC" or "Texas Natural Resource Conservation Commission" in §332.72(c) with "agency" to update the change in agency name. The commission proposes updating the name "Quality Assurance Program Plan" in §332.72(c) to "Quality Assurance Project Plan." The commission also proposes replacing the word "which" with "that" in §332.72(d)(1)(C), (2)(B), and (C), (e), and (f). Finally, the commission proposes adding a comma to §332.72(d)(2)(D).

#### §332.75, *Out of State Production*

The commission proposes revising §332.75 to correct the reference to the title of §332.74 (Compost Labelling Requirements).

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

Jené Bearse, Analyst in the Budget and Planning Division, has 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 the administration or enforcement of the proposed rules.

#### Public Benefits and Costs

Ms. Bearse determined that the public benefit anticipated for the first five years the proposed rules would be in effect would be improved readability and clarification of who must be notified for notification tier compost facilities. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

#### 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 the proposed rules 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 the proposed rules would be in effect. The amendments 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 rules 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 rules 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 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, elimination of current employee positions, nor would it 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 does the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact the state's economy positively or negatively.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the action would not be subject to Texas Government Code, §2001.0025, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule with the specific intent of protecting the environment or reducing risks to human health from environmental exposure and one that may adversely affect the economy, a sector in the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state in a material way.

The proposed rulemaking would not meet the statutory definition of a "Major environmental rule," because it is not the specific intent of the rulemaking to protect the environment or reduce risks to human health from environmental exposure. Instead, the primary purpose of the proposed rulemaking is to amend rules for clarity and to correct obsolete references and typographical errors throughout Chapter 332. These changes are not anticipated to adversely affect 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 in a material way, since none of the proposed changes are substantive.

The proposed rulemaking action also does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. As previously mentioned, since the proposed changes are solely intended to amend Chapter 332 for clarity and accuracy, no substantive changes to any obligations under Chapter 332 would be made. Accordingly, the proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, or a requirement of a delegation agreement. Finally, these changes would be adopted in accordance with specific state laws that direct the agency to establish standards and guidelines for composting facilities and would not be adopted solely under the general powers of the agency.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. 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 this proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 would not apply.

Under Texas Government Code, §2007.002(5), a taking means: (A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to correct obsolete references and typographical errors throughout Chapter 332 and to amend it for clarity. The proposed rulemaking would not affect a landowner's rights in private real property, because this rulemaking would not burden, restrict, or limit the owner's right to property, nor would it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor would they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules would not be subject to the Texas Coastal Management Program.

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 2:00 p.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/join/19%3ameeting\\_M-2U0NTZhOWEtYzM1Ni00YmY0LWJjYjktYjJlODQ3M2U2YjJl-%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%22Is-BroadcastMeeting%22%3atrue%7d](https://teams.microsoft.com/join/19%3ameeting_M-2U0NTZhOWEtYzM1Ni00YmY0LWJjYjktYjJlODQ3M2U2YjJl-%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%22Is-BroadcastMeeting%22%3atrue%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 (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 2021-006-332-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/proposal\\_adapt.html](https://www.tceq.texas.gov/rules/proposal_adapt.html). For further information, please contact Adam Schnuriger, Waste Permits Division, (512) 239-0526.

## SUBCHAPTER A. GENERAL INFORMATION

### 30 TAC §§332.2 - 332.4, 332.6, 332.8

#### Statutory Authority

The amendments are proposed under the authority of Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers, duties and responsibilities; Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; THSC, §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities; and THSC, §361.013, which provides the commission with the authority to charge fees for solid waste disposal and transportation.

The proposed amendments implement THSC, Chapter 361.

§332.2. *Definitions.*

The following words and terms, when used in this chapter [subchapter], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agricultural materials--Litter, manure, bedding, feed material, vegetative material, and dead animal carcasses from agricultural operations.

(2) Agricultural operations--Operations involved in the production of agricultural materials.

(3) Air contaminant--Particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor or any combination thereof produced by processes other than natural. Water vapor shall not be considered an air contaminant.

(4) All-weather roads--A roadway that has been designed to withstand the maximum load imposed by vehicles entering and exiting the facility during all types of weather conditions.

(5) Anaerobic composting--The controlled biological decomposition of organic materials through microbial activity which occurs in the absence of free oxygen. Anaerobic composting does not include the stockpiling of organic materials.

(6) Backyard operations--The composting, land application, and mulching of non-industrial organic material, such as grass clippings, leaves, brush, clean wood material, or vegetative food material, generated by a homeowner, tenant of a single or multi-family residential or apartment complex, or a commercial or institutional complex where the composting, land application, or mulching occurs on the dwelling property and the final product is utilized on the same property. Backyard operations include [~~includes~~] neighborhood composting demonstration sites that [~~which~~] generate less than 50 cubic yards of final product per year.

(7) Batch (or Sampling batch)--The lot of produced compost represented by one analytical sample (3,000 cubic yards or 5,000 cubic yards depending on facility type).

(8) Beneficial reuse--Any agricultural, horticultural, reclamation, or similar use of compost as a soil amendment, mulch, or component of a medium for plant growth, when used in accordance with generally accepted practice and where applicable is in compliance with the final product standards established by this chapter. Simply offering a product for use does not constitute beneficial reuse. Beneficial reuse does not include placement in a disposal facility, use as daily cover in a disposal facility, or utilization for energy recovery.

(9) Bulking Agent--An ingredient in a mixture of composting materials included to improve structure and porosity (which improve convective air flow and reduce settling and compaction) and/or to lower moisture content. Bulking agents may include, but are not limited to: compost, straw, wood chips, saw dust, or shredded brush.

(10) Clean wood material--Wood or wood materials, including stumps, roots, or vegetation with intact rootball, sawdust, pallets, and manufacturing rejects. Clean wood material does not include wood that has been treated, coated or painted by materials such as, but not limited to, paints, varnishes, wood preservatives, or other chemical products. Clean wood material also does not include demolition material, where the material is contaminated by materials such as, but not limited to, paint or other chemicals, glass, electrical wiring, metal, and sheetrock.

(11) Commission--The Texas Commission on Environmental Quality [The Texas Natural Resource Conservation Commission and its successors].

(12) Compost--The stabilized product of the decomposition process that is used or distributed for use as a soil amendment, artificial topsoil [~~top soil~~], growing medium amendment, or other similar uses.

(13) Composting or functionally aerobic composting--The controlled, biological decomposition of organic materials through microbial activity that [~~which~~] occurs in the presence of free oxygen. Composting or functionally aerobic composting does not include the stockpiling of organic materials.

(14) Cured compost (CC)--A highly stabilized product that [~~which~~] results from exposing mature compost to a prolonged period of humification and mineralization.

(15) Dairy material--Products that [~~which~~] have a Standard of Identity defined in 21 Code of Federal Regulations Part 131 [~~the Code of Federal Regulations, Title 21 §131~~].

(16) Distribute--To sell, offer for sale, expose for sale, consign for sale, barter, exchange, transfer possession or title, or otherwise supply.

(17) Executive director--The Executive Director of the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission] or their [~~his~~] duly authorized representative.

(18) Facility--All structures, other appurtenances, and improvements within the property boundaries of the land on which a permit, registration, or notification tier operation is located that is used for receiving and storage of organic materials and processing them into useable final products.

(19) Feedstock--Any material used for land application or as a basis for the manufacture of compost, mulch, or other useable final product.

(20) Final Product--Composted material meeting testing requirements of §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product) and awaiting distribution or disposal.

(21) Fish feedstocks--Fish, shellfish, or seafood and by-products of these materials whether raw, processed, or cooked. Fish feedstocks does not include oils and/or greases that are derived from these same materials.

(22) Foreign matter--Inorganic and organic constituents that [~~which~~] are not readily decomposed, including metals, glass, plastics, and rubber, but not including sand, dirt, and other similar materials.

(23) Grab sample--A single sample collected from one identifiable location.

(24) Grease--See the definition of Oil in this section.

(25) Hours of operation--Those hours when [~~which~~] the facility is open to receive feedstock, incorporate feedstock into the process, retrieve product from the process, and/or ship product.

(26) Land application--The spreading of yard trimmings, manure, clean wood material, and/or vegetative food materials onto the surface of the land or the incorporation of these materials within three feet of the surface.

(27) Leachate--Liquid that [~~which~~] has come in contact with or percolated through materials being stockpiled, processed, or awaiting removal and that [~~which~~] has extracted, dissolved, or suspended materials. Leachate also includes condensate from gases resulting from the composting process.

(28) Manure--Animal excreta and residual materials that have been used for bedding, sanitary, or feeding purposes for such animals.

(29) Mature compost--Mature compost is the stabilized product of composting that [which] has achieved the appropriate level of pathogen reduction (see definitions of "PFRP" and "PSRP" in this section) [(i.e., PFRP or PSRP)] and is beneficial to plant growth, and meets the requirements of Table 2 of §332.72 of this title (relating to Final Product Grades).

(30) Maturity--A measure of the lack of biological activity in freshly aerated materials, resulting from the decomposition of the incoming feedstock during the active composting period.

(31) Meat feedstocks--Meat and meat by-products whether raw, processed, or cooked including whole animal carcasses, poultry, and eggs. Meat feedstocks does not include oils and/or greases that are derived from these same materials.

(32) Mixed municipal solid waste--Garbage, refuse, and other solid waste from residential, commercial, industrial non-hazardous, and community activities that [which] is generated and collected in aggregate.

(33) Mulch--Ground, coarse, woody yard trimmings, and clean wood material. Mulch is normally used around plants and trees to retain moisture and suppress weed growth, and it is intended for use on top of soil or other growing media rather than being incorporated into the soil or growing media. Mulch does not include wood from trees or other plants that have [has] been systemically killed using herbicides.

(34) Municipal sewage sludge--Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screening generated during preliminary treatment of domestic sewage in a treatment works.

(35) Nuisance--Nuisances as set forth in the Texas Health and Safety Code, Chapter 341, the Texas Water Code, Chapter 26, and §101.4 of this title (relating to Nuisance).

(36) Oil--Any material rendered from vegetative material, dairy material, and meat and fish feedstocks[.] that is soluble in trichlorotrifluoroethane. It includes other material extracted by the solvent from an acidified sample and not volatilized during the test. Oil and greases do not include grease trap waste.

(37) One hundred-year floodplain--Any land area that [which] is subject to a 1.0% or greater chance of flooding in any given year from any source.

(38) Operator--The person(s) responsible for operating the facility or part of a facility.

(39) [(40)] Quality Assurance Program Plan (QAPP)--A QAQC plan prepared by the agency [TNRCC] that may be substituted for the QAQC plan.

(40) [(39)] Quality Assurance/Quality Control (QAQC) plan--A written plan to describe standard operating procedures used to sample, prepare, store, and test final product; and as well as report test results. The plan outlines quality assurance criteria, as well as quality control procedures, needed to meet the operational specifications of this chapter.

(41) Paper--A material made from plant fibers (such as, but not limited to, wood pulp, rice hulls, and kenaf). The sludge byproduct resulting from the production of paper may be approved as a feedstock pursuant to §332.33(b) of this title (relating to Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production).

(42) Permit--A written document issued by the commission that, by its conditions, may authorize the owner or operator to construct, install, modify, or operate a facility or operation in accordance with specific limitations.

(43) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(44) PFRP--The process to further reduce pathogens as described in 40 Code of Federal Regulations Part 503, Appendix B.

(45) [(46)] Positively-sorted organic material--Positively-sorted organic material includes materials such as, but not limited to, yard trimmings, clean wood materials, manure, vegetative material, paper, and meat and fish feedstocks that are sorted or pulled out as targeted compostable organic materials from mixed municipal solid waste prior to the initiation of processing.

(46) [(47)] Processing--Actions that are taken to land apply feedstocks or convert feedstock materials into finished compost, mulch, or a useable final product. Processing does not include the stockpiling of materials.

(47) [(45)] PSRP--The process to significantly reduce pathogens as described in 40 Code of Federal Regulations Part 503, Appendix B.

(48) Recyclable material--For purposes of this chapter, a recyclable material is a material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that [which] may otherwise be produced from raw or virgin materials. Recyclable material is not solid waste unless the material is deemed to be hazardous solid waste by the administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery [Protection] Act. If, however, recyclable materials may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(49) Recycling--A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Recycling includes the composting process if the compost material is put to beneficial reuse as defined in this section.

(50) Residence--A single-family or multi-family dwelling.

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

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

(53) Semi-mature compost (SMC)--Organic matter that has been through the thermophilic stage and achieved the appropriate level of pathogen reduction (see definitions of "PFRP" and "PSRP" in this section) [(i.e., PFRP or PSRP)]. It has undergone partial decom-

position but it is not yet stabilized into mature compost. Semi-mature compost shall not be packaged, as uncontrolled microbial transformations will occur.

(54) Solid waste--Garbage; rubbish; refuse; sludge from a wastewater 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 from community and institutional activities.

(55) Source-separated--Set apart from waste after use or consumption by the user or consumer.

(56) Source-separated organic material--Organic materials from residential, commercial, industrial, and other community activities[.] that at the point of generation have been separated, collected, and transported separately from non-organic materials, or transported in the same vehicle as non-organic materials but in separate compartments. Source-separated organic material may include materials such as, but not limited to, yard trimmings, clean wood materials, manure, vegetative material, and paper. Yard trimmings and clean wood material collected with whitegoods, as in brush and bulky item collections, will be considered source-separated organic materials for the purposes of these rules.

(57) Stockpile--A collection of materials that is either awaiting processing or removal.

(58) Unauthorized material--Material that [which] is not authorized to be processed in a particular type of composting, mulching, or land application facility.

(59) [(60)] Vector--An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

(60) [(59)] Vegetative material--Fruit, vegetable, or grain material whether raw, processed, liquid, solid, or cooked. Vegetative material does not include oils and/or greases that are derived from these same materials.

(61) Voucher--Provides the same information as required on a label to persons receiving compost distributed in bulk.

(62) [(63)] Wet weight--The weight of the material as used, not a weight that has been adjusted by subtracting the weight of water within the feedstock.

(63) [(62)] Wetlands--Those areas defined as wetlands in the Texas Water Code, Chapter 26.

(64) White goods--Discarded large household appliances such as refrigerators, stoves, washing machines, or dishwashers.

(65) Yard trimmings--Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. Yard trimmings does not include stumps, roots, or shrubs with intact root balls.

### §332.3. *Applicability.*

(a) Permit required. The following compost operations are subject to the general requirements found in §332.4 of this title (relating to General Requirements), and the requirements set forth in Subchapters D - G of this chapter (relating to Operations Requiring a Permit; Source-Separated Recycling; Household Hazardous Waste Collection; and End-Product Standards), and the air quality requirements in §332.8 of this title (relating to Air Quality Requirements). These operations

are required to obtain a permit from the commission under Chapters 305 and 281 of this title (relating to Consolidated Permits; and Applications Processing):

(1) operations that compost mixed municipal solid waste;

(2) operations that add any amount of mixed municipal solid waste as a feedstock in the composting process; and

(3) operations that commercially compost grease trap waste on or after September 1, 2003. Grease trap waste is material collected in and from an interceptor in the sanitary sewer service line of a commercial, institutional, or industrial food service or processing establishment, including the solids resulting from de-watering processes.

(A) All proposed operations that compost any amount of grease trap waste must apply for a permit and must have a permit prior to operating.

(B) Existing facilities that are composting grease trap waste under a current registration can continue to operate as authorized by that registration if:

(i) the person holding the registration submits an application for a permit under Subchapter D of this chapter not later than the 30th day after receiving notice from the commission of the requirement to submit an application under Texas Health and Safety Code, §361.428(d); and

(ii) the commission declares the application administratively complete on or before June 1, 2004.

(b) Registration required. The following compost operations are subject to the requirements found in §332.4 of this title, the requirements set forth in Subchapters C and G of this chapter (relating to Operations Requiring a Registration; and End-Product Standards), and the air quality requirements in §332.8 of this title:

(1) operations that compost municipal sewage sludge, except those facilities that compost municipal sewage sludge with mixed municipal solid waste;

(2) operations that compost positively-sorted organic materials from the municipal solid waste stream;

(3) operations that compost source-separated organic materials not exempted under subsection (d) of this section;

(4) operations that compost disposable diapers or paper products soiled by human excreta;

(5) operations that compost the sludge byproduct generated from the production of paper if the executive director determines that the feedstock is appropriate under §332.33 of this title (relating to Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production); and

(6) operations that incorporate any of the materials set forth in paragraphs (1) - (5) of this subsection with source-separated yard trimmings, clean wood material, vegetative material, paper, manure, meat, fish, dairy, oil, grease materials, or dead animal carcasses.

(c) Operations requiring notification. The following operations are subject to all requirements set forth in Subchapter B of this chapter (relating to Operations Requiring a Notification), the general requirements found in §332.4 of this title, and the air quality requirements in §332.8 of this title:

(1) operations that compost any source-separated meat, fish, dead animal carcasses, oils, greases, or dairy materials; and

(2) operations that incorporate any of the materials set forth in paragraph (1) of this subsection with source-separated yard trimmings, clean wood material, vegetative material, paper, or manure.

(d) Operations exempt from facility notification, registration, and permit requirements. The following operations are subject to the general requirements found in §332.4 of this title, the air quality requirements in §332.8 of this title, and are exempt from notification, registration, and permit requirements found in Subchapters B - D of this chapter. Operations under paragraphs (1) and (3) of this subsection are subject to the requirements of a Notice of Intent to Recycle [an exempt recycling facility] under §328.4 and §328.5 of this title (relating to Limitations on Storage of Recyclable Materials; and Reporting and Recordkeeping Requirements):

(1) operations that compost only materials listed in subparagraphs (A) and (B) of this paragraph:

(A) source-separated yard trimmings, clean wood material, vegetative material, paper, and manure;

(B) source-separated industrial materials listed in §332.4(10) of this title excluding those items listed in §332.4(10)(A), (F) - (H), and (J) of this title;

(2) agricultural operations that generate and compost agricultural materials on-site;

(3) mulching operations;

(4) land application of yard trimmings, clean wood materials, vegetative materials, and manure at rates below or equal to agronomic rates as determined by the Texas Agricultural Extension Service;

(5) application of paper that is applied to land for use as an erosion control or a soil amendment; and

(6) on-site composting of industrial solid waste at a facility that is in compliance with §335.2 of this title (relating to Permit Required) and §335.6 of this title (relating to Notification Requirements).

#### §332.4. General Requirements.

All composting facilities and backyard operations shall comply with all of the following general requirements. Violations of these requirements are subject to enforcement by the commission and may result in the assessment of civil or administrative penalties pursuant to Texas Water Code, Chapter 7 ([relating to] Enforcement).

(1) Compliance with Texas Water Code. The activities that are subject to this chapter shall be conducted in a manner that prevents the discharge of material to or the pollution of surface water or groundwater in accordance with the provisions of the Texas Water Code, Chapter 26 ([relating to] Water Quality Control).

(2) Nuisance conditions. The composting, mulching, and land application of material shall be conducted in a sanitary manner that shall prevent the creation of nuisance conditions as defined in §330.3 [§330.2] of this title (relating to Definitions) and as prohibited by the Texas Health and Safety Code, Chapters 341 and 382 ([relating to] Minimum Standards of Sanitation and Health Protection Measures; and Clean Air Act), the Texas Water Code, Chapter 26 ([relating to] Water Quality Control), §101.4 of this title (relating to Nuisance), and any other applicable regulations or statutes.

(3) Discharge to surface water or groundwater. The discharge of material to or the pollution of surface water or groundwater as a result of the beneficial use or reuse and recycling of material is prohibited.

(4) Compliance with federal laws. Facility operations shall be conducted in accordance with all applicable federal laws and regulations.

(5) Compliance with state laws. Facility operations shall be conducted in accordance with all applicable laws and regulations of the State of Texas.

(6) Facility operations. Facility operations shall not be conducted in a manner which causes endangerment of human health and welfare, or the environment.

(7) Operations on a municipal solid waste landfill unit. No composting activities shall be conducted within the permitted boundaries of a municipal solid waste landfill without prior approval by the executive director as required by §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications).

(8) Operational requirement. Operations shall be conducted in such a manner to ensure that no unauthorized or prohibited materials are processed at the facility. All unauthorized or prohibited materials received by the facility shall be disposed of at an authorized facility in a timely manner.

(9) Leachate. Leachate from landfills and mixed municipal solid waste composting operations shall not be used on any composting process, except mixed municipal solid waste composting, and shall not be added after the designation of an end-product grade unless the product is reanalyzed to determine end-product quality.

(10) Nonhazardous industrial solid waste. This chapter applies to the composting, mulching, and land application of only the following nonhazardous industrial solid waste when the composting occurs on property that does not qualify for the exemption from the requirement of an industrial solid waste permit pursuant to §335.2(d) of this title (relating to Permit Required):

(A) dead animal carcasses;

(B) clean wood material;

(C) vegetative material;

(D) paper;

(E) manure (including paunch manure);

(F) meat feedstocks;

(G) fish feedstocks;

(H) dairy material feedstocks;

(I) yard trimmings; and

(J) oils and greases.

(11) Industrial and hazardous waste. Any of the materials listed in paragraph (10) of this section that are not managed in accordance with the requirements of this chapter, all hazardous wastes, and any nonhazardous industrial solid wastes not listed in paragraph (10) of this section shall be managed in accordance with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(12) Chemicals of concern. The operator of a compost facility shall address the release of a chemical of concern from a compost facility to any environmental media under the requirements of Chapter 350 of this title (relating to Texas Risk Reduction Program) to perform the corrective action.

#### §332.6. Compost and Mulch Operations Located at Municipal Solid Waste Facilities.

(a) Facilities that compost or mulch materials considered to be exempt, notification, or registered facilities in §332.3 of this title (relating to Applicability) may be located at municipal solid waste permitted facilities. The owner shall prepare and submit a modification request in accordance with the provisions of §305.70 of this title (relating to Municipal Solid Waste Permit and Registration [Class 4] Modifications) unless the municipal solid waste facility permit authorizes compost or mulch operations. If the municipal solid waste facility permit authorizes compost operations, the compost operation shall be conducted in accordance with the facility permit.

(b) Facilities considered to be permitted facilities in §332.3 of this title (relating to Applicability) may be located at municipal solid waste permitted facilities. The owner shall prepare and submit an application for a major permit amendment in accordance with the provisions of §305.62 of this title (relating to Amendment) and shall submit the information required by §332.47 of this title (relating to Permit Application Preparation) and shall fully comply with the provisions of §332.41 of this title (relating to Permit Required).

#### §332.8. Air Quality Requirements.

##### (a) General requirements.

(1) Any composting or mulching operation that [which] has existing authority under the Texas Clean Air Act does not have to meet the air quality criteria of this subchapter. Under Texas Clean Air Act, §382.051, any new composting or mulching operation that [which] meets all of the applicable requirements of this subchapter is entitled to an air quality standard permit authorization under this subchapter in lieu of the requirement to obtain an air quality permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(2) Those composting or mulching operations that [which] would otherwise be required to obtain air quality authorization under Chapter 116 of this title and that [which] cannot satisfy all of the requirements of this subchapter, shall apply for and obtain air quality authorization under Chapter 116 of this title in addition to any notification, registration, or permit required in this subchapter.

(3) Any composting or mulching operation authorized under this chapter that [which] is a new major source or any modification that [which] constitutes a major modification under nonattainment review or prevention of significant deterioration review as amended by the Federal Clean Air Act amendments of 1990, and regulations promulgation thereunder, is subject to the requirements of Chapter 116 of this title, in addition to any notification, registration, or permit required in this chapter.

(4) Composting facilities that do not wish to comply with the requirements of this section<sup>[5]</sup> are required to apply for and obtain air quality authorization under Chapter 116 of this title. Once a person has applied for and obtained air quality authorization under Chapter 116 of this title, the person is exempt from the air quality requirements of this chapter.

(5) No person may concurrently hold an air quality permit issued under Chapter 116 of this title and an air quality standard permit authorized under this chapter for composting or mulching operations at the same site.

(6) Composting or mulching operations that [which] have authorization under this chapter shall comply with the general requirements in §332.4 of this title (relating to General Requirements), and subsections (b), (c), (d), or (e) of this section.

(7) The operator of a composting or mulching operation operating under an air quality standard permit shall maintain on file at

all times and make immediately available documentation that [which] shows compliance with this section.

(b) Exempt operations. Composting and mulching operations that are considered exempt operations under §332.3(d) of this title (relating to Applicability) and that meet the following requirements are entitled to an air quality standard permit.

(1) If the total volume of materials to be mulched and/or composted, including in-process and processed materials, at any time is greater than 2,000 cubic yards, the setback distance from all property boundaries to the edge of the area receiving, processing, or storing feedstock or finished product must be at least 50 feet.

(2) All permanent in-plant roads and vehicle work areas shall be watered, treated with dust-suppressant chemicals, or paved and cleaned as necessary to achieve maximum control of dust emissions. Vehicular speeds on non-paved roads shall not exceed ten miles per hour.

(3) Except for initial start-up and shut-down, the receiving chamber on all grinders shall be adequately filled prior to commencement of grinding and remain filled during grinding operations to minimize emissions from the receiving chamber or grinding operations shall occur inside an enclosed structure. In addition, all grinders not enclosed inside a building shall be equipped with low-velocity fog nozzles spaced to create a continuous fog curtain or the operator shall have portable watering equipment available during the grinding operation. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(4) All conveyors that [which] off-load materials from grinders at a point that [which] is not enclosed inside a building shall have available a water or mechanical dust suppression system. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(5) If there are any changes to the composting or mulching operation that would reclassify it from an exempt operation to a notification, registration, or permit facility as authorized under §332.3 of this title, the operation shall obtain an air quality standard permit for a notification, registered, or permitted composting operation.

(c) Notification operations. Composting operations required to notify under §332.3(c) of this title that [which] meet the following requirements are entitled to an air quality standard permit.

(1) The setback distance from all property boundaries to the edge of the area receiving, processing, or storing feedstock or finished product must be at least 50 feet.

(2) All permanent in-plant roads and vehicle work areas shall be watered, treated with dust-suppressant chemicals, or paved and cleaned as necessary to achieve maximum control of dust emissions. Vehicular speeds on non-paved roads shall not exceed ten miles per hour.

(3) Prior to receiving any material with a high odor potential such as, but not limited to, dairy material feedstocks, meat, fish, and oil and grease feedstocks, the operator shall ensure [insure] that there is an adequate volume of bulking material to blend with/cover the material, and shall begin processing the material in a manner that prevents nuisances.

(4) Except for initial start-up and shut-down, the receiving chamber on all grinders shall be adequately filled prior to commencement of grinding and remain filled during grinding operations to minimize emissions from the receiving chamber or grinding operations shall occur inside an enclosed structure. In addition, all grinders not enclosed inside a building shall be equipped with low-velocity fog

nozzles spaced to create a continuous fog curtain or the operator shall have portable watering equipment available during the grinding operation. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(5) All conveyors that [which] off-load materials from grinders at a point that [which] is not enclosed inside a building shall have available a water or mechanical dust suppression system. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(6) If there are any changes to the composting or mulching operation that would reclassify it from a notification operation to a registration or permit operation as authorized under §332.3 of this title, the operation shall obtain an air quality standard permit for a registered or permitted composting operation.

(d) Registered operations. Composting operations required to obtain a registration under §332.3(b) of this title that meet the following requirements are entitled to an air quality standard permit.

(1) All permanent in-plant roads and vehicle work areas shall be watered, treated with dust-suppressant chemicals, or paved and cleaned as necessary to achieve maximum control of dust emissions. Vehicular speeds on non-paved roads shall not exceed ten miles per hour.

(2) Prior to receiving any material with a high odor potential such as, but not limited to, dairy material feedstocks, sewage sludge, meat, fish, and oil and grease feedstocks, the operator shall ensure [insure] that there is an adequate volume of bulking material to blend with or cover the material, and shall begin processing the material in a manner that prevents nuisances.

(3) All material shall be conveyed mechanically, or if conveyed pneumatically, the conveying air shall be vented to the atmosphere through a fabric filter(s) having a maximum filtering velocity of 4.0 ft/min with mechanical cleaning or 7.0 ft/min with air cleaning.

(4) Except for initial start-up and shut-down, the receiving chamber on all grinders shall be adequately filled prior to commencement of grinding and remain filled during grinding operations to minimize emissions from the receiving chamber or grinding operations shall occur inside an enclosed structure. In addition, all grinders not enclosed inside a building shall be equipped with low-velocity fog nozzles spaced to create a continuous fog curtain or the operator shall have portable watering equipment available during the grinding operation. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(5) All conveyors that [which] off-load materials from grinders at a point that [which] is not enclosed inside a building shall have available a water or mechanical dust suppression system. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(6) If there are any changes to the composting or mulching operation that would reclassify it from a registration operation to a permit operation as authorized under §332.3 of this title, the operation shall obtain an air quality standard permit for a permitted composting operation.

(e) Permit operations. Composting operations required to obtain a permit under §332.3(a) of this title that meet the following requirements are entitled to an air quality standard permit.

(1) All permanent in-plant roads and vehicle work areas shall be watered, treated with dust-suppressant chemicals, or paved and cleaned as necessary to achieve maximum control of dust emissions.

Vehicular speeds on non-paved roads shall not exceed ten miles per hour.

(2) Prior to receiving any material with a high odor potential such as, but not limited to, dairy material feedstocks, sewage sludge, meat, fish, oil and grease feedstocks, grease trap waste, and municipal solid waste, the operator shall ensure [insure] that there is an adequate volume of bulking material to blend with or cover the material, and shall begin processing the material in a manner that prevents nuisances.

(3) All material shall be conveyed mechanically, or if conveyed pneumatically, the conveying air shall be vented to the atmosphere through a fabric filter(s) having a maximum filtering velocity of 4.0 ft/min with mechanical cleaning or 7.0 ft/min with air cleaning.

(4) Except for initial start-up and shut-down, the receiving chamber on all grinders shall be adequately filled prior to commencement of grinding and remain filled during grinding operations to minimize emissions from the receiving chamber or grinding operations shall occur inside an enclosed structure. In addition, all grinders not enclosed inside a building shall be equipped with low-velocity fog nozzles spaced to create a continuous fog curtain or the operator shall have portable watering equipment available during the grinding operation. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(5) All conveyors that [which] off-load materials from grinders at a point that [which] is not enclosed inside a building shall have available a water or mechanical dust suppression system. These controls shall be utilized as necessary for maximum control of dust when stockpiling ground material.

(6) All activities that [which] could result in increased odor emissions such as turning of compost piles shall be conducted in a manner that does not create nuisance conditions or shall only be conducted inside a building maintained under negative pressure and controlled with a chemical oxidation scrubbing system or bio filter system.

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

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For further information, please call: (512) 239-2678



## SUBCHAPTER B. OPERATIONS REQUIRING A NOTIFICATION

### 30 TAC §332.22, §332.23

#### Statutory Authority

The amendments are proposed under the authority of Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers, duties and responsibilities; Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; THSC, §361.428, which provides



the commission with the authority to adopt rules establishing standards and guidelines for composting facilities; and THSC, §361.013, which provides the commission with the authority to charge fees for solid waste disposal and transportation.

The proposed amendments implement THSC, Chapter 361.

§332.22. *Notification.*

(a) The operator shall notify the executive director in writing of the existence of the facility 30 days prior to construction by completing and submitting forms provided by the executive director [TNRCC Compost Form Number 1, "Notice of Intent to Operate a Compost Facility," available from the commission].

(b) The applicant shall include a list of [adjacent and] landowners with adjoining property and their addresses. Upon receipt of the notification, the chief clerk shall mail notice of the planned facility to the [affected] landowners with adjoining property. The chief clerk shall also mail notice to other affected landowners as directed by the executive director.

§332.23. *Operational Requirements.*

Operation of the facility shall comply with all of the following operational requirements.

(1) Aerobic composting required. The facility shall utilize functionally aerobic composting methods, although an anaerobic composting phase may be utilized in the early stages of processing, if it is followed by a period of functionally aerobic composting.

(2) Pathogen reduction. One of the following protocols shall be used to reduce pathogens during composting:

(A) Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the composting materials shall be maintained at 55 degrees Celsius [Centigrade] or higher for three days; or

(B) Using the windrow composting method, the temperature of the composting materials shall be maintained at 55 degrees Celsius [Centigrade] or higher for 15 days or longer. During the period when the composting materials are maintained at 55 degrees Celsius [Centigrade] or higher, there shall be a minimum of five turnings of the windrow.

(3) Prohibited substances. Fungicides, herbicides, insecticides or other pesticides that contain constituents listed in 40 Code of Federal Regulations [CFR] Part 261, Appendix VIII-Hazardous Constituents or on the Hazardous Substance List as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) shall not be applied to or incorporated into feedstocks, in-process materials or processed materials.

(4) The operator of a compost facility shall address the release of a chemical of concern from a compost facility to any environmental media under the requirements of Chapter 350 of this title (relating to Texas Risk Reduction Program) to perform the corrective action.

(5) The facility shall be subject to the requirements of §328.4 of this title (relating to Limitations on Storage of Recyclable Materials) and §328.5 of this title (relating to Reporting and Record-keeping Requirements).

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

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SUBCHAPTER C. OPERATIONS REQUIRING  
A REGISTRATION

30 TAC §§332.32, 332.33, 332.35 - 332.37

Statutory Authority

The amendments are proposed under the authority of Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers, duties and responsibilities; Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; THSC, §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities; and THSC, §361.013, which provides the commission with the authority to charge fees for solid waste disposal and transportation.

The proposed amendments implement THSC, Chapter 361.

§332.32. *Certification by Engineer, Approval by Landowner [Land Owner], and Inspection.*

(a) Certification by licensed [registered] professional engineer. The operator shall obtain certification by a Texas-Licensed [Texas-Registered] Professional Engineer that the facility has been constructed as designed and is in general compliance with the regulations prior to accepting any feedstock at the facility that requires registration [and maintaining that certification on-site for inspection by the commission]. The operator shall maintain that certification on-site for inspection by the commission.

(b) Ownership or control of property. The facility shall be located on property owned by the operator or the operator shall establish, using an affidavit form provided by the commission, signed by the owner and notarized, that the owner is aware of and consents to the operation prior to any receipt of feedstock or processing activities. A copy of the affidavit shall be kept on-site at all times.

(c) Inspection of facility. Prior to the initial acceptance of any feedstocks, the facility shall be inspected by the agency [TNRCC] to determine compliance with the registration.

§332.33. *Required Forms, Applications, Reports, and Request to Use the Sludge Byproduct of Paper Production.*

(a) The operator of the compost facility shall submit the following. [;]

(1) Registration application form [TNRCC Form Number 2]. The operator shall submit a registration application form [TNRCC Form Number 2, "Notice of Intent to Apply for a Compost Facility Registration or Permit,"] available from the executive director. [commission; and]

(2) Registration application. The registration application described in §332.34 of this title (relating to Registration Application).

(3) Reports.

(A) Final products.

(i) Semiannual reports. Facilities requiring registration must submit reports on final product testing to the executive director in compliance with §332.71(j)(1) of this title (relating to Sampling and Analysis Requirements for Final Product) on a semiannual basis.

(ii) Annual reports. The operator shall submit annual written reports. These reports shall at a minimum include input and output quantities, a description of the end-product distribution, and all results of any required laboratory testing. A copy of the annual report shall be kept on-site for a period of five years.

(B) Received materials. All registered facility operators shall follow the same reporting requirements for received materials as established in §332.43(2)(B) of this title (relating to Required Forms, Applications, and Reports).

~~[(3) Annual report. The operator shall submit annual written reports. These reports shall at a minimum include input and output quantities, a description of the end-product distribution, and all results of any required laboratory testing. A copy of the annual report shall be kept on-site for a period of five years.]~~

(4) Fees. Registered compost facilities shall follow the same fee requirements as permitted compost facilities established in §332.43(3) of this title.

~~[(4) Final product testing report. Facilities requiring registration must submit reports on final product testing to the executive director in compliance with §332.71(j)(1) of this title (relating to Sampling and Analysis Requirements for Final Product) on a semiannual basis.]~~

(b) In order to use the sludge byproduct of paper production as a composting feedstock, the operator must first receive permission from the executive director.

(1) The operator shall submit a request to the executive director to use the sludge byproduct as a feedstock. The request may also be submitted with a registration application.

(2) At a minimum, the request shall present all of the following:

(A) identification of the source of the sludge byproduct;

(B) a general description of the process that produces the sludge byproduct including the use of any elemental chlorine [~~ehorine~~] bleaches used in the process;

(C) analytical results that identify concentrations for polychlorinated dibenzo-p-dioxins (CCDs) and polychlorinated dibenzofurans (CDFs); and

(D) a demonstration that the final product will not be harmful to human health or the environment.

(3) The executive director [~~or his designee~~] shall, after review of the request, determine approval or denial of [~~if he will approve or deny~~] the request.

(4) An operator that receives approval from the executive director to include the sludge byproduct of paper production as a composting feedstock[~~;~~] shall submit a new request to the executive director in accordance with this subsection if a significant change, such as a new source for the feedstock, is planned.

#### §332.35. *Registration Application Processing.*

(a) An application shall be submitted to the executive director. When an application is administratively complete, the executive director shall assign the application an identification number.

(b) Public Notice.

(1) When an application is administratively complete the chief clerk shall mail notice to adjacent landowners. The chief clerk also shall mail notice to other affected landowners as directed by the executive director.

(2) When an application is technically complete the chief clerk shall mail notice to adjacent landowners. The chief clerk shall also mail notice to other affected landowners as directed by the executive director. The applicant shall publish notice in the county in which the facility is located[~~;~~] and in adjacent counties. The published notice shall be published once a week for three weeks. The applicant should attempt to obtain publication in a Sunday edition of a newspaper. The notice shall explain the method for submitting a motion for reconsideration.

(3) Notice issued under paragraphs (1) or (2) of this subsection shall contain the following information:

(A) the identifying number given the application by the executive director;

(B) the type of registration sought under the application;

(C) the name and address of the applicant(s);

(D) the date on which the application was submitted; and

(E) a brief summary of the information included in the application.

(c) The executive director [~~or his designee~~] shall, after review of any application for registration of a compost facility, determine approval or denial of [~~if he will approve or deny~~] an application in whole or in part. The executive director shall base the [~~his~~] decision on whether the application meets the requirements of this subchapter and the requirements of §332.4 of this title (relating to General Requirements).

(d) At the same time that the executive director's decision is mailed to the applicant, a copy or copies of this decision shall also be mailed to all adjacent and affected landowners, residents, and businesses.

(e) The applicant or a person affected by the executive director's final approval of an application may file with the chief clerk a motion to overturn, under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

#### §332.36. *Location Standards.*

Facilities shall meet all of the following locational criteria.

(1) One hundred-year [~~One hundred year~~] floodplain. The facility shall be located outside of the 100-year floodplain unless the applicant can demonstrate that the facility is designed and will operate to prevent washout during a 100-year storm event, or obtains a Conditional Letter of Map Amendment (CLOMA) from the Federal Emergency Management Administration (FEMA) Administrator.

(2) Drainage. The facility shall not significantly alter existing drainage patterns.

(3) Wetlands. The facility shall not be located in wetlands.

(4) Water wells. The facility shall be located at least 500 feet from all public water wells and at least 150 feet from private water wells.

(5) Surface water. The facility shall be located at least 100 feet from creeks, rivers, intermittent streams, lakes, bayous, bays, estuaries, or other surface waters in the state.

(6) Setback [Set back] distance from facility boundary. The setback [set back] distance from the facility boundary to the areas for receiving, processing, or storing feedstock or final product shall be at least 50 feet.

(7) Edwards Aquifer recharge zone. If located over the Recharge Zone of the Edwards Aquifer, a facility is subject to Chapter 213 [~~343~~] of this title (relating to Edwards Aquifer). The Edwards Aquifer Recharge Zone is specifically that area delineated on maps in the office of the executive director.

§332.37. Operational Requirements.

The operation of the facility must comply with all of the following operational requirements.

(1) Protection of surface water. The facility must be constructed, maintained, and operated to manage run-on and run-off during a 25-year, 24-hour rainfall event and must prevent discharge into waters in the state of feedstock material, including, but not limited to, in-process and/or processed materials. Any waters coming into contact with feedstock, in-process, and processed materials must be considered leachate. Leachate must be contained in retention facilities until reapplied on piles of feedstock, in-process, or unprocessed materials. The retention facilities must be lined and the liner must be constructed in compliance with paragraph (2) of this section. Leachate may be treated and processed at an authorized facility or as authorized by a Texas Pollutant Discharge Elimination System permit. The use of leachate in any processing must be conducted in a manner that does not contaminate the final product.

(2) Protection of groundwater. The facility must be designed, constructed, maintained, and operated to protect groundwater. Facilities that compost municipal sewage sludge, disposable diapers, and/or the sludge byproduct of paper mill production must install and maintain a liner system complying with the provisions of subparagraph (A), (B), or (C) of this paragraph. The liner system must be provided where receiving, mixing, composting, post-processing, screening, or storage areas would be in contact with the ground or in areas where leachate, contaminated materials, contaminated product, or contaminated water is stored or retained. The application must demonstrate the facility is designed to prevent contamination or degradation of the groundwater. For the purposes of these sections, protection of the groundwater includes the protection of perched water or shallow surface infiltration. The lined surface must be covered with a material designed to withstand normal traffic from the composting operations. At a minimum, the lined surface must consist of soil, synthetic, or an alternative material that is equivalent to two feet of compacted clay with a hydraulic conductivity of  $1 \times 10^{-7}$  [~~4 × 10<sup>-2</sup>~~] centimeters per second or less.

(A) Soil liners shall have more than 30% passing a number 200 sieve, have a liquid limit greater than 30%, and a plasticity index greater than 15.

(B) Synthetic liners shall be a membrane with a minimum thickness of 20 mils.

(C) Alternative designs shall utilize an impermeable liner (such as concrete).

(3) Unauthorized and prohibited materials. The operator shall operate the facility in a manner that will preclude the entry of any unauthorized or prohibited materials from entering the composting process.

(4) Access. Access to the facility shall be controlled to prevent unauthorized disposal of unauthorized or prohibited material and scavenging. The facility shall be completely fenced with a gate that is locked when the facility is closed.

(5) Nuisance conditions. The facility shall be sited and operated in such a manner as to prevent the potential of nuisance conditions and fire hazards. Where nuisance conditions or fire hazards exist, the operator will immediately take action to abate such nuisances.

(6) Aerobic composting required. The facility shall utilize functionally aerobic composting methods, although an anaerobic composting phase may be utilized in the early stages of processing, if it is followed by a period of functionally aerobic composting.

(7) Site sign. The facility shall have a sign at the entrance indicating the type of facility, the registration number, hours of operation, and the allowable feedstocks.

(8) Access road. The facility access road shall be an all-weather road.

(9) Authorization required for significant changes. The operator shall obtain written permission from the commission before changing the processing method or other significant changes to the original registration application.

(10) Prohibited substances. Fungicides, herbicides, insecticides, or other pesticides that contain constituents listed in 40 Code of Federal Regulations Part 261, Appendix VIII-Hazardous Constituents or on the Hazardous Substance List as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA] shall not be applied to or incorporated into feedstocks, in-process materials, or processed materials.

(11) End-product standards.

(A) Facilities that compost municipal sewage sludge. For facilities that compost only municipal sewage sludge or compost municipal sewage sludge with any source-separated materials, the operator shall comply with the provisions of Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation) and shall not exceed the foreign matter criteria contained in §332.72(d)(2)(A) and (C) [(D)] of this title (relating to Final Product Grades).

(B) All other registered facilities. The operator shall meet compost testing requirements set forth in §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product), final product grades set forth in §332.72 of this title, and label all materials that [which] are sold or distributed as set forth in §332.74 of this title (relating to Compost Labelling Requirements).

(12) Licensed municipal solid waste facility supervisor. The operator shall employ at least one licensed municipal solid waste supervisor who has completed a TCEQ-recognized or approved specialized compost training course. Supervisors of existing facilities who do not already hold a municipal solid waste facility supervisor license must obtain a license. A licensed municipal solid waste facility supervisor who has completed a TCEQ-recognized or approved specialized compost training course shall be on-site during the hours of operation.

[(12) Certified operator. The operator shall employ at least one TCEQ-certified compost operator within six months from the adoption of this rule, the initiation of operations at the compost facility, or the establishment of the compost certification program, whichever occurs later, and a TCEQ-certified compost operator shall routinely be available on-site during the hours of operation.]

(13) Chemical release. The operator of a compost facility shall address the release of a chemical of concern from a compost facility to any environmental media under the requirements of Chapter 350 of this title (relating to Texas Risk Reduction Program) to perform the corrective action.

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

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2678



## SUBCHAPTER D. OPERATIONS REQUIRING A PERMIT

### 30 TAC §§332.41 - 332.45, 332.47

#### Statutory Authority

The amendments are proposed under the authority of Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers, duties and responsibilities; Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; THSC, §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities; and THSC, §361.013, which provides the commission with the authority to charge fees for solid waste disposal and transportation.

The proposed amendments implement THSC, Chapter 361.

§332.41. [~~Definition.~~] *Requirements*[-] and *Application Processing for a Permit Facility*.

(a) [~~Definition of permitted facilities.~~] The following operations are subject to the requirements of this subchapter:

(1) operations that compost mixed municipal solid waste not in accordance with §332.31 of this title (relating to Definition of and Requirements for Registered Facilities);

(2) operations that add any amount of mixed municipal solid waste as a feedstock in the composting process; and

(3) operations that commercially compost grease trap waste.

(b) Requirements for permitted facilities. The operations listed in subsection (a) of this section are subject to the general requirements found in §332.4 of this title (relating to General Requirements), and the requirements set forth in this subchapter, the requirements set forth in Subchapters E - G of this chapter (relating to Source-Separated Recycling; Household Hazardous Waste Collection; and End-Product Standards), and the air quality requirements set forth in §332.8 of this title (relating to Air Quality Requirements).

(c) Processing of application for a permitted facility. All permit applications are subject to the standards and requirements as set forth in Chapter 39, Subchapters H and I of this title (relating to Public Notice); Chapter 50, Subchapters E - G of this title (relating to Action on Applications and Other Authorizations); and Chapter 55, Subchapters D - F of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment [~~Notice~~]). The requirements of

this subsection supersede any inconsistent provisions in Chapter 39, Subchapter H of this title.

§332.42. *Certification by Engineer; Ownership or Control of Land, and Inspection.*

(a) Certification by licensed [~~registered~~] professional engineer. The operator shall obtain certification by a Texas-Licensed [~~Texas-Registered~~] Professional Engineer that the facility has been constructed as designed and in general compliance with the regulations prior to accepting any feedstock at the facility that requires a permit [~~and maintaining that certification on-site available for inspection by the commission~~]. The operator shall maintain that certification on-site for inspection by the commission.

(b) Ownership or control of property. The facility shall be located on property owned by the operator or the operator shall establish, using an affidavit form provided by the commission, signed by the owner and notarized, that the owner is aware of and consents to the operation prior to any receipt of feedstock or processing activities. A copy of the affidavit shall be kept on-site at all times.

(c) Inspection of facility. Prior to the initial acceptance of any feedstocks, the facility shall be inspected by the agency [~~TNRCC~~] to determine compliance with the permit.

§332.43. *Required Forms, Applications, and Reports.*

The operator shall submit all of the following.

(1) Permit application form [~~TNRCC Compost Form Number 2~~]. The operator shall submit [~~TNRCC Compost Form Number 2, "Notice of Intent to Apply for a Compost Facility Registration or Permit," and~~] a permit application, available from the executive director, and prepared in accordance with the requirements of §332.47 of this title (relating to Permit Application Preparation).

(2) Reports.

(A) Final products.

(i) Monthly reports. Facilities requiring permit must submit reports on final product testing to the executive director in compliance with §332.71(j)(1) of this title (relating to Sampling and Analysis Requirements for Final Product) on a monthly basis.

(ii) Annual reports. The operator shall submit annual written reports. These reports shall at a minimum include input and output quantities, a description of the end-product distribution, and all results of any required laboratory testing. A copy of the annual report shall be kept on-site for a period of five years.

(B) Received materials. All permitted facility operators are required to submit reports to the executive director covering the types and amounts of waste processed at the facility.

(i) Quarterly reports. Each processing facility shall report to the executive director the information requested on the report form for the reporting period, including the amount of source-separated material processed to compost or mulch product.

(ii) Annual reports. Each processing facility shall report to the executive director a summary of the quarterly totals and yearly total, as well as the year-end status of the facility.

(iii) Report form. The report shall be on a form furnished by the executive director or reproduced from a form furnished by the executive director or by an electronic form or format furnished by the executive director.

(iv) Report information. In addition to a statement of the amount of waste received for processing, the report shall contain

other information requested on the form, including the facility operator's name, address, and phone number; the permit number; the permit application number; the facility type, size, and capacity; and other information the executive director may request.

(v) Reporting units. The amount of waste received for processing shall be reported in tons or in cubic yards as received (compacted or uncompacted) at the gate. If accounting of the waste is recorded in cubic yards, then separate accounting must be made for waste that comes to the facility in open vehicles or without compaction, and waste that comes to the facility in compactor vehicles. If scales are not utilized and accounting of the waste received is in cubic yards, gallons, or drums then those volumetric units may be converted to tons for reporting purposes, using the conversion factors set forth in subclauses (I) and (II) of this clause.

(I) General weight to volume conversion factors:

(-a-) one ton = 2,000 pounds;

(-b-) one gallon = 7.5 pounds (grease trap

waste);

(-c-) one gallon = 8.5 pounds (wastewater treatment plant sludge or septage);

(-d-) one gallon = 9.0 pounds (grit trap

waste); and

(-e-) one drum = 55 gallons.

(II) Volume to weight conversion factors for waste in transport vehicles:

(-a-) one cubic yard = 400 pounds (no compaction);

(-b-) one cubic yard = 666.66 pounds

(medium compaction); and

(-c-) one cubic yard = 800 pounds (heavy

compaction).

(vi) Use of population equivalent. In determining the amount of waste processed for disposal at a processing facility serving less than 5,000 people, the operator may use the number of tons calculated or derived from the population served by the facility in lieu of maintaining records of the waste deposited at the facility. The amount of waste shall be calculated on the basis of one ton per person per year. The report shall document the population served by the facility and reflect any changes since the previous report.

(vii) Report due date. The required quarterly received materials report shall be submitted to the executive director not later than 20 days following the end of the fiscal quarter for which the report is applicable. The fiscal year begins on September 1 and concludes on August 31.

(viii) Method of submission. The required report shall be delivered or mailed to the agency to the return address designated by the executive director in the billing statement distributed quarterly or shall be submitted electronically to the agency.

(ix) Penalties. Failure of the facility or process operator to submit the required report by the due date shall be sufficient cause for the commission to revoke the permit and authorization to process waste. The commission may assess interest penalties for late payment of fees and may also assess penalties in accordance with Texas Water Code, §7.051 (Administrative Penalty) or take any other action authorized by law to secure compliance.

{(2) Annual report. The operator shall submit annual written reports. These reports shall at a minimum include input and output quantities, a description of the end-product distribution, and all results of any required laboratory testing. A copy of the annual report shall be kept on-site for a period of five years.}

(3) Fees. Each operator of a facility that processes Municipal Solid Waste is required to pay a fee to the agency for all waste received for processing. Source-separated material processed at a composting or mulch processing facility, including a composting or mulch processing facility located at a permitted landfill, is exempt from the fee requirements set forth and described in this section. The agency will credit any fee payment due under this section for any material received and processed to compost or mulch product at the facility. Any compost or mulch product that is produced at a composting or mulch processing facility that is used in the operation of the facility or is disposed of in a landfill or used as landfill daily cover is not exempt from the fee.

(A) Fee rates.

(i) Tons. For waste reported in tons, the fee rate is \$0.47 per ton received.

(ii) Cubic yards (compacted). For waste reported in compacted cubic yards, the fee rate is \$0.15 per cubic yard received.

(iii) Cubic yards (uncompacted). For waste reported in uncompacted cubic yards, the fee rate is \$0.095 cent per cubic yard received.

(iv) If a facility operator chooses to report the amount of waste received utilizing the population equivalent method authorized in paragraph (2)(B)(vi) of this section, the fee shall be calculated by the executive director at an amount equal to \$0.47 per ton.

(B) Measurement options. The volume or weight reported on the quarterly received materials report must be consistent throughout the report, and it must be consistent with the total amount of the waste received by a processing facility at the gate (measured in tons or cubic yards, or determined by the population equivalent method specified in paragraph (2)(B)(vi) of this section). The weight or volume of the waste received for processing shall be determined prior to processing of the waste. The recommended method for measuring and reporting waste received at the gate is in tons. The operator must accurately measure and report the number of tons or cubic yards of waste received.

(C) Fee calculation. The fee shall be calculated by the executive director using information obtained from the quarterly received materials report. The total tonnage or cubic yards reported to the executive director in the quarterly received materials report shall be derived from gate tickets (weight or volume) or invoices, except in the case of operators who are authorized to report utilizing the population equivalent method in paragraph (2)(B)(vi) of this section, and records of recycled materials or any other information deemed relevant by the executive director. A billing statement will be generated quarterly by the executive director and forwarded to the applicable permittee or a designated representative.

(D) Fee due date. All solid waste fees shall be due within 30 days of the date the payment is requested.

(E) Method of payment. The required fee shall be submitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality and delivered or mailed to the return address designated by the executive director in the billing statement distributed quarterly.

(F) Penalties. Failure of the facility or process operator to submit the required fee payment by the due date shall be sufficient cause for the commission to revoke the permit and authorization to process waste. The commission may assess interest penalties for late payment of fees and may also assess penalties in accordance with

Texas Water Code, §7.051, or take any other action authorized by law to secure compliance.

(G) Exemptions. A fee will not be charged on solid waste resulting from a public entity's effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

[(3) Final product testing report. Facilities requiring registration must submit reports on final product testing to the executive director in compliance with §332.71(j)(1) of this title (relating to Sampling and Analysis Requirements for Final Product) on a monthly basis.]

(4) Engineer's appointment. An engineer's appointment which consists of a letter from the applicant to the Executive Director identifying the engineer responsible for the submission of the plan, specifications, and any other technical data to be evaluated by the commission regarding the project.

#### §332.44. Location Standards.

Facilities shall meet all of the following locational criteria.

(1) One hundred-year [One hundred year] floodplain. The facility shall be located outside of the 100-year floodplain unless the applicant can demonstrate that the facility is designed and will operate to prevent washout during a 100-year storm event, or obtains a Conditional Letter of Map Amendment (CLOMA) from the Federal Emergency Management Administration (FEMA) Administrator.

(2) Drainage. The facility shall not significantly alter existing drainage patterns.

(3) Wetlands. The facility shall not be located in wetlands.

(4) Water wells. The facility shall be located at least 500 feet from all public water wells and at least 150 feet from private water wells.

(5) Surface water. The facility shall be located at least 100 feet from creeks, rivers, intermittent streams, lakes, bayous, bays, estuaries, or other surface waters in the state.

(6) Setback [Set baek] distance from facility boundary. The setback [set baek] distance from the facility boundary to the areas for receiving, processing, or storing feedstock or final product shall be at least 50 feet.

(7) Edwards Aquifer Recharge Zone. If located over the Recharge Zone of the Edwards Aquifer, a facility is subject to Chapter 213 [313] of this title (relating to Edwards Aquifer). The Edwards Aquifer Recharge Zone is specifically that area delineated on maps in the office of the executive director.

#### §332.45. Operational Requirements.

The operation of the facility shall comply with all of the following operational requirements.

(1) Protection of surface water. The facility shall be constructed, maintained, and operated to manage run-on and run-off during a 25-year, 24-hour rainfall event and shall prevent discharge into waters in the state of feedstock material, including but not limited to, in-process and/or processed materials. Any waters coming into contact with feedstock, in-process, and processed materials shall be considered leachate. Leachate shall be contained in retention facilities until it is reapplied on piles of feedstock, in-process, or unprocessed materials, or it is disposed or treated. The retention facilities shall be lined and the liner shall be constructed in compliance with §332.47(6)(C) of this title

(relating to Permit Application Preparation). Leachate may be treated and processed at an authorized facility or as authorized by a National Pollutant Discharge Elimination System [an NPDES] permit. The use of leachate in any processing shall be conducted in a manner that does not contaminate the final product.

(2) Protection of groundwater. The facility shall be constructed, maintained, and operated to protect groundwater. As a minimum, groundwater protection shall be in accordance with the provisions of §332.47(6)(C) of this title.

(3) Unauthorized and prohibited materials. Delivery of unauthorized or prohibited materials shall be prevented. As a minimum there shall be one employee on-site at all times inspecting each delivery of feedstock to ensure [insure] there is no unauthorized or prohibited material incorporated into the feedstock.

(4) Access. Access to the facility shall be controlled to prevent unauthorized disposal of unauthorized and prohibited materials[;] and scavenging. The facility shall be completely fenced with a gate that is locked when the facility is closed.

(5) Nuisance conditions. The facility shall be sited and operated in such a manner as to prevent the potential of nuisance conditions and fire hazards. Where nuisance conditions or fire hazards exist, the operator will immediately take action to abate such nuisances.

(6) Aerobic composting required. The facility shall utilize functionally aerobic composting methods, although an anaerobic composting phase may be utilized in the early stages of processing[;] if it is followed by a period of functionally aerobic composting.

(7) Site sign. The facility shall have a sign at the entrance indicating the type of facility, the permit number, hours of operation, and the allowable feedstocks.

(8) Access road. The facility access road shall be an all-weather road.

(9) Amendment required for significant changes. The operator shall submit and obtain a permit amendment from the commission in compliance with Chapter 305 of this title (relating to Consolidated Permits) before changing the processing method or other significant changes to the original permit application.

(10) Prohibited substances. Fungicides, herbicides, insecticides, or other pesticides that contain constituents listed in 40 Code of Federal Regulations [CFR] Part 261, Appendix VIII-Hazardous Constituents or on the Hazardous Substance List as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) shall not be applied to or incorporated into feedstocks, in-process materials, or processed materials.

(11) End-product standards. The operator shall meet compost testing requirements set forth in §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product), final product grades set forth in §332.72 of this title (relating to Final Product Grades), and label all materials that [which] are sold or distributed as set forth in §332.74 of this title (relating to Final Product Labelling Requirements).

(12) Licensed municipal solid waste facility supervisor. The operator shall employ at least one licensed municipal solid waste supervisor who has completed a TCEQ-recognized or approved specialized compost training course. Supervisors of existing facilities who do not already hold a municipal solid waste facility supervisor license must obtain a license. A licensed municipal solid waste facility supervisor who has completed a TCEQ-recognized or approved specialized compost training course shall be on-site during the hours of operation.

~~[(12) Certified compost operator. The operator shall employ at least one TNRCC-certified compost operator within six months from the adoption of this title, or the initiation of operations at the facility, or the establishment of the compost certification program whichever occurs later and a TNRCC-certified compost operator shall routinely be on-site during the hours of operation.]~~

(13) The operator of a compost facility shall address the release of a chemical of concern from a compost facility to any environmental media under the requirements of Chapter 350 of this title (relating to Texas Risk Reduction Program) to perform the corrective action.

*§332.47. Permit Application Preparation.*

To assist the commission in evaluating the technical merits of a compost facility, an applicant subject to this chapter shall submit a site development plan to the commission along with a compost permit application form provided by the executive director [~~Compost Form Number 3~~]. The site development plan must be sealed by a Texas-licensed [~~registered~~] professional engineer in accordance with the provisions of 22 TAC §137.33 [~~§131.166~~] (relating to Engineers' Seals). [~~If the site development plan is submitted in a three-ring binder or in a format that allows the removal or insertion of individual pages, it will not be considered a bound document.~~] The site development plan must contain all of the following information.

(1) Title page. A title page shall show the name of the project, the county (and city if applicable) in which the proposed project is located, the name of the applicant, the name of the engineer, the date the application was prepared, and the latest date the application was revised.

(2) Table of contents. A table of contents shall be included [~~]~~ which lists the main sections of the plan, any requested variances, and [~~includes~~] page numbers.

(3) Engineer's appointment. The site development plan shall contain an engineer's appointment, which consists of a letter from the applicant to the executive director identifying the consulting engineering firm responsible for the submission of the plan, specifications, and any other technical data to be evaluated by the commission regarding the project.

(4) Land use. To assist the executive director in evaluating the impact of the facility on the surrounding area, the applicant shall provide the following:

(A) a description of the zoning at the facility and within one mile of the facility. If the facility requires approval as a nonconforming use or a special use permit from the local government having jurisdiction, a copy of such approval shall be submitted with the application;

(B) a description of the character of the surrounding land uses within one mile of the proposed facility;

(C) proximity to residences and other uses (e.g., schools, churches, cemeteries, historic structures, historic sites, archaeologically significant sites, sites having exceptional aesthetic quality, parks, recreational sites, recreational facilities, licensed day care centers, etc.). Give the approximate number of residences and business establishments within one mile of the proposed facility including the distances and directions to the nearest residences and businesses;

(D) a discussion that shows the facility is compatible with the surrounding land uses; and

(E) a constructed land use map showing the land use, zoning, residences, businesses, schools, churches, cemeteries, historic

structures, historic sites, archaeologically significant sites, sites having exceptional aesthetic quality, licensed day care centers, parks, recreational sites and recreational facilities within one mile of the facility, and wells within 500 feet of the facility.

(5) Access. To assist the executive director in evaluating the impact of the facility on the surrounding roadway system, the applicant shall provide the following:

(A) data on the roadways[~~]~~ within one mile of the facility[~~]~~ used to access the facility. The data shall include dimensions, surfacing, general condition, capacity, and load limits;

(B) data on the volume of vehicular traffic on access roads within one mile of the proposed facility. The applicant shall include both existing and projected traffic during the life of the facility (for projected include both traffic generated by the facility and anticipated increase without the facility);

(C) an analysis of the impact the facility will have on the area roadway system, including a discussion on any mitigating measures (turning lanes, roadway improvements, intersection improvements, etc.) proposed with the project; and

(D) an access roadway map showing all area roadways within a mile of the facility. The data and analysis required in subparagraphs (A) - (C) of this paragraph shall be keyed to this map.

(6) Facility development. To assist the executive director in evaluating the impact of the facility on the environment, the applicant shall provide the following.

(A) Surface water protection plan. The surface water protection plan shall be prepared by a licensed [~~registered~~] professional engineer. At a minimum, the applicant shall provide all of the following:

(i) a design for a run-on control system capable of preventing flow onto the facility during the peak discharge from at least a 25-year, 24-hour rainfall event;

(ii) a design for a runoff management system to collect and control at least the peak discharge from the facility generated by a 25-year, 24-hour rainfall event;

(iii) a design for a contaminated water collection system to collect and contain all leachate. If the design uses leachate for any processing, the applicant shall clearly demonstrate that such use will not result in contamination of the final product; and

(iv) drainage calculations as follows.

(I) Calculations for areas of 200 acres or less shall follow the rational method as specified in the Texas Department of Transportation Bridge Division Hydraulic Manual.

(II) Calculations for discharges from areas greater than 200 acres shall be computed by using United States Geological Survey (USGS) [~~USGS/DHT~~] hydraulic equations compiled by the USGS [~~United States Geological Survey~~] and the Texas Department of Transportation Bridge Division Hydraulic Manual, the HEC-1 and HEC-2 computer programs developed through the Hydrologic Engineering Center of the United States Army Corps of Engineers, or an equivalent or better method approved by the executive director.

(III) Calculations for sizing containment facilities for leachate shall be determined by a mass balance based on the facility's proposed leachate disposal method.

(IV) Temporary and permanent erosion control measures shall be discussed;

(v) drainage maps and drainage plans shall be provided as follows:

(I) an off-site topographic drainage map showing all areas that [which] contribute to the facility's run-on. The map shall delineate the drainage basins and sub-basins, show the direction of flow, time of concentration, basin area, rainfall intensity, and flow rate. This map shall also show all creeks, rivers, intermittent streams, lakes, bayous, bays, estuaries, arroyos, and other surface waters in the state;

(II) a pre-construction on-site drainage map. The map shall delineate the drainage basins and sub-basins, show the direction of flow, time of concentration, basin area, rainfall intensity and flow rate;

(III) a post-construction on-site drainage map. The map shall delineate the drainage basins and sub-basins, show the direction of flow, time of concentration, basin area, rainfall intensity, and flow rate;

(IV) a drainage facilities map. The map shall show all proposed drainage facilities (ditches, ponds, piping, inlets, outfalls, structures, etc.) and design parameters (velocities, cross-section areas, grades, flowline elevations, etc.). Complete cross-sections of all ditches and ponds shall be included;

(V) a profile drawing. The drawing shall include profiles of all ditches and pipes. Profiles shall include top of bank, flowline, hydraulic grade, and existing groundline. Ditches and swells shall have a minimum of one foot of freeboard;

(VI) a floodplain and wetlands map. The map shall show the location and lateral extent of all floodplains and wetlands on the site and on lands within 500 feet of the site; and

(VII) an erosion control map which indicates placement of erosion control features on the site.

(B) Geologic/hydrogeologic report. The geologic/hydrogeologic report shall be prepared by an engineer or qualified geologist/hydrogeologist. The applicant shall include discussion and information on all of the following:

(i) a description of the regional geology of the area. This section shall include:

(I) a geologic map of the region with text describing the stratigraphy and lithology of the map units. An appropriate section of a published map series such as the Geologic Atlas of Texas prepared by the University of Texas at Austin's Bureau of Economic Geology is acceptable;

(II) a description of the generalized stratigraphic column in the facility area from the base of the lowermost aquifer capable of providing usable groundwater, or from a depth of 1,000 feet, whichever is less, to the land surface. The geologic age, lithology, variation in lithology, thickness, depth geometry, hydraulic conductivity, and depositional history of each geologic unit should be described based upon available geologic information;

(ii) a description of the geologic processes active in the vicinity of the facility. This description shall include an identification of any faults and/or subsidence in the area of the facility;

(iii) a description of the regional aquifers in the vicinity of the facility based upon published and open-file sources. The section shall provide:

(I) aquifer names and their association with geologic units described in clause (i) of this subparagraph;

(II) a description of the composition of the aquifer(s);

(III) a description of the hydraulic properties of the aquifer(s);

(IV) identification of areas of recharge to the aquifers within five miles of the site; and

(V) the present use of groundwater withdrawn from aquifers in the vicinity of the facility;

(iv) subsurface investigation report. This report shall describe all borings drilled on site to test soils and characterize groundwater and shall include a site map drawn to scale showing the surveyed locations and elevations of the boring. Boring logs shall include a detailed description of materials encountered including any discontinuities such as fractures, fissures, slickensides, lenses, or seams. Each boring shall be presented in the form of a log that contains, at a minimum, the boring number; surface elevation and location coordinates; and a columnar section with text showing the elevation of all contacts between soil and rock layers description of each layer using the Unified Soil Classification, color, degree of compaction, and moisture content. A key explaining the symbols used on the boring logs and the classification terminology for soil type, consistency, and structure shall be provided.

(I) A sufficient number of borings shall be performed to establish subsurface stratigraphy and to determine geotechnical properties of the soils and rocks beneath the facility. The number of borings necessary can only be determined after the general characteristics of a site are analyzed and will vary depending on the heterogeneity of subsurface materials. The minimum number of borings required for a site shall be three for sites of five acres or less, and for sites larger than five acres the required number of borings shall be three borings plus one boring for each additional five acres or fraction thereof. The boring plan shall be approved by the executive director prior to performing the bores.

(II) Borings shall be sufficiently deep to allow identification of the uppermost aquifer and underlying hydraulically interconnected aquifers. Boring shall penetrate the uppermost aquifer and all deeper hydraulically interconnected aquifers and be deep enough to identify the aquiclude at the lower boundary. All the borings shall be at least 30 feet deeper than the elevation of the deepest excavation on site and in no case shall be less than 30 feet below the lowest elevation on site. If no aquifers exist within 50 feet of the elevation of the deepest excavation, at least one test bore shall be drilled to the top of the first perennial aquifer beneath the site. In areas where it can be demonstrated that the uppermost aquifer is more than 300 feet below the deepest excavation, the applicant shall provide the demonstration to the executive director and the executive director shall have the authority to waive the requirement for the deep bore.

(III) All borings shall be conducted in accordance with established field exploration methods.

(IV) Installation, abandonment, and plugging of the boring shall be in accordance with the rules of the commission.

(V) The applicant shall prepare cross-sections utilizing the information from the boring and depicting the generalized strata at the facility.

(VI) The report shall contain a summary of the investigator's interpretations of the subsurface stratigraphy based upon the field investigation;

(v) groundwater investigation report. This report shall establish and present the groundwater flow characteristics at the



site which shall include groundwater elevation, gradient, and direction of flow. The flow characteristics and most likely pathway(s) for pollutant migration shall be discussed in a narrative format and shown graphically on a piezometric contour map. The groundwater data shall be collected from piezometers installed at the site. The minimum number of piezometers required for the site shall be three for sites of five acres or less, for sites greater than five acres the total number of piezometer required shall be three piezometer plus one piezometer for each additional five acres or fraction thereof.

(C) Groundwater protection plan. The application shall demonstrate that the facility is designed so as not to contaminate the groundwater and so as to protect the existing groundwater quality from degradation. For the purposes of these sections, protection of the groundwater includes the protection of perched water or shallow surface infiltration. As a minimum, groundwater protection shall consist of all of the following.

(i) Liner system. All feedstock receiving, mixing, composting, post-processing, screening, and storage areas shall be located on a surface that [which] is adequately lined to control seepage. The lined surface shall be covered with a material designed to withstand normal traffic from the composting operations. At a minimum, the lined surface shall consist of soil, synthetic, or an alternative material that is equivalent to two feet of compacted clay with a hydraulic conductivity of  $1 \times 10^{-7}$  [ $1 \times 10^{-2}$ ] centimeters per second or less.

(I) Soil liners shall have more than 30% passing a number 200 sieve, have a liquid limit greater than 30%, and a plasticity index greater than 15.

(II) Synthetic liners shall be a membrane with a minimum thickness of 20 mils.

(III) Alternative designs shall utilize an impermeable liner (such as concrete).

(ii) Groundwater monitor system. The groundwater monitoring system shall be designed and installed such that the system will reasonably assure detection of any contamination of the groundwater before it migrates beyond the boundaries of the site. The monitoring system shall be designed based upon the information obtained in the "Groundwater investigation report" required by subparagraph (B)(v) of this paragraph.

(I) Details of monitor well construction and placement of monitor wells shall be shown on the site plan.

(II) A groundwater sampling program shall provide four background groundwater samples of all monitor wells within 24 months from the date of the issuance of the permit. The background levels shall be established from samples collected from each well at least once during each of the four calendar quarters: January - March; April - June; July - September; and October - December. Samples from any monitor well shall not be collected for at least 45 days following collection of a previous sample, unless a replacement sample is necessary. At least one sample per well shall be collected and submitted to a laboratory for analysis within 60 days of permit issuance for existing or previously registered operations, or prior to accepting any material for processing at a new facility. Background samples shall be analyzed for the parameters as follows:

(-a-) heavy metals, arsenic, copper, mercury, barium, iron, selenium, cadmium, lead, chromium, and zinc;

(-b-) other parameters: calcium, magnesium, sodium, carbonate, bicarbonate, sulphate, fluoride, nitrate (as N), total dissolved solids, phenolphthalein alkalinity as  $\text{CaCO}_3$ , alkalinity as  $\text{CaCO}_3$ , hardness as  $\text{CaCO}_3$ , [ $\text{CaCO}_3$ ], alkalinity as  $\text{CaCO}_3$ , hardness as  $\text{CaCO}_3$ ] pH, specific conductance, anion-cation balance, groundwater

elevation (measured in Mean Sea Level (MSL)) [(MSL)], and total organic carbon (TOC) (four replicates/sample); and

(-c-) after background values have been determined, the following indicators shall be measured at a minimum of 12-month intervals: TOC (four replicates), iron, manganese, pH, chloride, groundwater elevation (measured in MSL) [(MSL)], and total dissolved solids. After completion of the analysis, an original and two copies shall be sent to the executive director and a copy shall be maintained on site.

(-d-) The executive director may waive the requirement to monitor for any of the constituents listed in items (-a) - (-c) of this subclause in a permit, if it can be documented that these constituents are not reasonably expected to be in or derived from the bulking or feedstock materials. A change to the monitoring requirements may be incorporated into a permit when issued or as a modification under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications).

(-e-) The executive director may establish an alternative list of constituents for a permit, if the alternative constituents provide a reliable indication of a release to the groundwater. The executive director may also add inorganic or organic constituents to those to be tested if they are reasonably expected to be in or derived from the bulking or feedstock materials. A change to the monitoring requirements may be incorporated into a permit when issued or as a modification under §305.70 of this title.

(D) Facility plan and facility layout. The facility plan and facility layout must be prepared by a licensed [registered] professional engineer. All proposed facilities, structures, and improvements must be clearly shown and annotated on this drawing. The plan must be drawn to standard engineering scale. Any necessary details or sections must be included. As a minimum, the plan must show property boundaries, fencing, internal roadways, tipping area, processing area, post-processing area, facility office, sanitary facilities, potable water facilities, storage areas, etc. If phasing is proposed for the facility, a separate facility plan for each phase is required.

(E) Process description. The process description shall be composed of a descriptive narrative along with a process diagram. The process description shall include all of the following.

(i) Feedstock identification. The applicant shall prepare a list of the materials intended for processing along with the anticipated volume to be processed. This section shall also contain an estimate of the daily quantity of material to be processed at the facility along with a description of the proposed process of screening for unauthorized materials.

(ii) Tipping process. Indicate what happens to the feedstock material from the point it enters the gate. Indicate how the material is handled in the tipping area, how long it remains in the tipping area, what equipment is used, how the material is evacuated from the tipping area, at what interval the tipping area is cleaned, and the process used to clean the tipping area.

(iii) Process. Indicate what happens to the material as it leaves the tipping area. Indicate how the material is incorporated into the process and what process or processes are used until it goes to the post-processing area. The narrative shall include water addition, processing rates, equipment, energy and mass balance calculations, and process monitoring method.

(iv) Post-processing. Provide a complete narrative on the post-processing, including post-processing times, identification and segregation of product, storage of product, quality assurance, and quality control.

(v) Product distribution. Provide a complete narrative on product distribution to include items such as: end product quantities, qualities, intended use, packaging, labeling, loading, and tracking bulk material.

(vi) Process diagram. Present a process diagram that displays graphically the narrative generated in response to clauses (i) - (v) of this subparagraph.

(7) Site operating plan. This document is to provide guidance from the design engineer to site management and operating personnel in sufficient detail to enable them to conduct day-to-day operations in a manner consistent with the engineer's design. As a minimum, the site operating plan shall include specific guidance or instructions on [the] all of the following:

(A) the minimum number of personnel and their functions to be provided by the site operator in order to have adequate capability to conduct the operation in conformance with the design and operational standards;

(B) the minimum number and operational capacity of each type of equipment to be provided by the site operator in order to have adequate capability to conduct the operation in conformance with the design and operational standards;

(C) security, site access control, traffic control, and safety;

(D) control of dumping within designated areas[;] and screening for unprocessable or unauthorized material;

(E) fire prevention and control plan that shall comply with provisions of the local fire code, provision for fire-fighting equipment, and special training requirements for fire-fighting personnel;

(F) control of windblown material;

(G) vector control;

(H) quality assurance and quality control. As a minimum, the applicant shall provide testing and assurance in accordance with the provisions of §332.71 of this title (relating to Sampling and Analysis Requirements for Final Product);

(I) control of airborne emissions;

(J) minimizing odors;

(K) equipment failures and alternative disposal and storage plans in the event of equipment failure; and

(L) a description of the intended final use of materials.

(8) Legal description of the facility. The applicant shall submit an official metes and bounds description[;] and plat of the proposed facility. The description and plat shall be prepared and sealed by a registered surveyor.

(9) Financial assurance. The applicant shall prepare a closure plan acceptable to the executive director and provide evidence of financial assurance to the commission for the cost of closure. The closure plan, at a minimum, shall include evacuation of all material on site (feedstock, in process, and processed) to an authorized facility and disinfection of all leachate handling facilities, tipping area, processing area, and post-processing area and shall be based on the worst case closure scenario for the facility, including the assumption that all storage and processing areas are filled to capacity. Financial assurance mechanisms must be established and maintained in accordance with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities). These mechanisms shall be prepared on forms approved by the executive director and shall be submitted to the com-

mission 60 days prior to the receiving of any materials for processing, or within 60 days of a permit being issued for facilities operating under an existing registration.

(10) Source-separated recycling and household hazardous waste collection. The applicant shall submit a plan to comply with the requirements of Subchapters E and F of this chapter (relating to Source-Separated Recycling; and Household Hazardous Waste Collection).

(11) Landowner list. The applicant shall include a list of landowners, residents, and businesses within 1/2 mile of the facility boundaries along with an appropriately scaled map locating property owned by the landowners.

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

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2678



## SUBCHAPTER F. HOUSEHOLD HAZARDOUS WASTE COLLECTION

### 30 TAC §332.61

#### Statutory Authority

The amendment is proposed under the authority of Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers, duties and responsibilities; Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; THSC, §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities; and THSC, §361.013, which provides the commission with the authority to charge fees for solid waste disposal and transportation.

The proposed amendment implements THSC, Chapter 361.

§332.61. *General Requirements and Applicability.*

(a) A compost permittee shall not accept mixed municipal solid waste from a governmental entity until the commission determines that residents in that service area have reasonable access to household hazardous waste collection programs.

(b) Materials collected or accepted pursuant to this subchapter shall not be placed into the mixed municipal solid waste composting or mixed waste handling operations at a mixed municipal solid waste composting facility, but may be processed separately at such a facility for recycling.

(c) Any person who intends to conduct a collection event or intends to operate a permanent collection center shall comply with the requirements of Chapter 335, Subchapter N of this title (relating to Household ~~Materials Which Could Be Classified as~~ Hazardous ~~Wastes~~ ~~[Waste]~~).

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

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## SUBCHAPTER G. END-PRODUCT STANDARDS

### 30 TAC §§332.71, 332.72, 332.75

#### Statutory Authority

The amendments are proposed under the authority of Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers, duties and responsibilities; Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under THSC, Chapter 361; THSC, §361.428, which provides the commission with the authority to adopt rules establishing standards and guidelines for composting facilities; and THSC, §361.013, which provides the commission with the authority to charge fees for solid waste disposal and transportation.

The proposed amendments implement THSC, Chapter 361.

#### §332.71. *Sampling and Analysis Requirements for Final Product.*

(a) Applicability. Facilities that receive a registration or permit under this chapter<sup>[,]</sup> are required to test final product in accordance with this section. Final product derived from municipal sewage sludge at registered facilities is not subject to the requirements of this section<sup>[,]</sup> but must comply with the requirements of Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation).

(b) Analytical methods. Facilities that <sup>[which]</sup> use analytical methods to characterize their final product must use methods described in the following publications.

(1) Chemical and physical analysis shall utilize:

(A) *"Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods"* (SW-846);

(B) *"Methods for Chemical Analysis of Water and Wastes"* (EPA-600); or

(C) *"Recommended Test Methods for the Examination of Composts and Composting"* (Compost Council, 1995).

(2) Analysis of pathogens shall utilize *"Standard Methods for the Examination of Water and Wastewater"* (Water Pollution Control Federation, latest edition).

(3) Analysis for foreign matter shall utilize *"Recommended Test Methods for the Examination of Composts and Composting"* (Composting Council, 1995).

(4) Analysis for salinity and pH shall utilize NCR (North Central Regional) Method 14 for Saturated Media Extract (SME) Method contained in *"Recommended Test Procedure for Greenhouse*

*Growth Media"*, North Central Regional Publication Number 221 (Revised), and *"Recommended Chemical Soil Test Procedures"*, Bulletin Number 49 (Revised), October 1988, pages 34-37.

(5) Analysis of total, fixed and volatile solids shall utilize Method 2540 G (Total, Fixed, and Volatile Solids in Solid and Semi-solid Samples) as described in *"Standard Methods for the Examination of Water and Wastewater"* (Water Pollution Control Federation, latest edition).

(6) Analysis for maturity shall utilize the reduction of organic matter (ROM) calculation method, as described in the agency <sup>[a TNRCC]</sup> *"Quality Assurance Project Plan"* [TNRCC *"Quality Assurance Program Plan"*] (QAPP) or an agency [a TNRCC] approved Quality Assurance/Quality Control (QAQC) plan during the first 18 months of a facility's operation. Reduction in organic matter is calculated by measuring the volatile solids content at two points in the composting process: when compost feedstocks are initially mixed and when the compost is sampled for end-product testing for total metals and Polychlorinated biphenyls (PCBs) [PCBs]. For purposes of compost maturity analysis, the effect of the addition and removal of volatile solids and fixed solids to the compost shall be included in the ROM calculation procedure. After the completion of the maturity testing protocol described in subsection (d) of this section, ~~[or]~~ the facility QAQC plan, or 18 months, whichever <sup>[which ever]</sup> comes first, the method recommended in the protocol and approved by the agency [TNRCC] shall be utilized.

(c) Sample collection. Sample collection, preservation, and analysis shall assure valid and representative results pursuant to an Agency-approved QAQC plan.

(d) Maturity Testing Protocol.

(1) A maturity testing protocol shall be described in the facility QAQC. The protocol shall consist of the ROM method or a comparison of the interim ROM method to a minimum of three test methods with one test method selected from each of subparagraphs (A), (B), and (C) of this paragraph, together with any method in subparagraph (D) of this paragraph.

(A) Chemical analyses:

- (i) carbon/nitrogen ratio;
- (ii) water soluble ions;
- (iii) water soluble organic matter;
- (iv) cation exchange capacity;
- (v) electrical conductivity;
- (vi) crude fiber analysis;
- (vii) humification analysis; or
- (viii) ratios of the above measurements.

(B) Physical analyses.

- (i) Dewar self-heating; or
- (ii) color.

(C) Respiration analyses:

- (i) CO<sub>2</sub>; or
- (ii) O<sub>2</sub>.

(D) Other test methods proposed in the facility QAQC plan and approved by the agency [TNRCC].

(2) The test methods used in the maturity test protocol shall be based on methodologies published in peer reviewed scientific jour-

nals, the publication entitled, *"Recommended Test Methods for the Examination of Composts and Composting"* (Compost Council, 1995), or other methods as approved by the agency [TNRCC].

(3) The completed maturity testing protocol shall lead to a recommended maturity testing method(s) capable of classifying compost into maturity grades described in §332.72 of this title (relating to Final Product Grades) and identifying materials which are stable but not mature. The maturity test protocol shall address seasonal variations in compost feedstock and shall be completed within 18 months of the start of a new compost feedstock mixture.

(4) The results of the protocol and recommendations shall be submitted to the agency [TNRCC] for review and approval. The basis of the agency [TNRCC] review and approval shall be the demonstration that the recommended method adequately classifies compost into maturity classes. The purpose of the agency [TNRCC] review and approval is not intended to provide detailed guidance to end users about the agricultural and horticultural compost uses.

(5) The compost maturity protocol does not need to be repeated unless a significantly new compost feedstock recipe is utilized.

(e) Documentation.

(1) Owners or operators of permitted or registered facilities shall record and maintain all of the following information regarding their activities of operation for three years after the final product is shipped off site or upon site closure:

(A) batch numbers identifying the final product sampling batch;

(B) the quantities, types, and sources of feedstocks received and the dates received;

(C) the quantity and final product grade assigned described in §332.72 of this title;

(D) the date of sampling; and

(E) all analytical data used to characterize the final product, including laboratory quality assurance/quality control data.

(2) The following records shall be maintained on-site permanently or until site closure:

(A) sampling plan and procedures;

(B) training and certification records of staff; and

(C) maturity protocol test results.

(3) Records shall be available for inspection by agency [TNRCC] representatives during normal business hours.

(4) The executive director may at any time request by registered or certified mail that a generator submit copies of all documentation listed in paragraph (1) of this subsection for auditing the final product grade. Documentation requested under this section shall be submitted within ten working days of receipt of the request.

(f) Sampling Frequencies.

(1) Registered facilities. For those facilities which are required to register, all final product on-site must be sampled and assigned a final product grade set forth in §332.72 of this title (relating to Final Product Grades) at a minimum rate of one sample for every 5,000 cubic yard batch of final product or annually, whichever is more frequent. Each sample will be a composite of nine grab samples as discussed in subsection (g) of this section.

(2) Permitted facilities. For facilities requiring a permit, all final product on-site must be sampled and assigned a final product grade

set forth in §332.72 of this title at a minimum rate of one sample for every 3,000 cubic yard batch of final product or monthly, whichever is more frequent. Each sample will be a composite of nine grab samples as discussed in subsection (g) of this section.

(3) Alternative testing frequency. One year after the initiation of final product testing in accordance with this section, an operator of a registered or permitted facility may submit to the executive director a request for an alternative testing frequency. The request shall include a minimum of 12 consecutive months of final product test results for the parameters set forth in subsection (h) of this section. The executive director will review the request and determine if an alternative frequency is appropriate.

(g) Sampling Requirements. For facilities subject to sampling and analysis, the operator shall utilize the protocol in the agency [TNRCC] QAPP or an agency [a TNRCC] approved facility QAQC plan shall be followed. The executive director may at any time request that split samples be provided to an agency representative. Specific sampling requirements that [which] must be satisfied include:

(1) Sampling from stockpiles. One third of the grab samples shall be taken from the base of the stockpile (at least 12 inches into the pile at ground level), one third from the exposed surface, and one third from a depth of two feet from the exposed surface of the stockpile.

(2) Sampling from conveyors. Sampling times shall be selected randomly at frequencies that [which] provide the same number of subsamples per volume of finished product as is required in subsection (d) of this section.

(A) If samples are taken from a conveyor belt, the belt shall be stopped at that time. Sampling shall be done along the entire width and depth of the belt.

(B) If samples are taken as the material falls from the end of a conveyor, the conveyor does not need to be stopped. Free-falling samples need to be taken to minimize the bias created as larger particles segregate or heavier particles sink to the bottom as the belt moves. In order to minimize sampling bias, the sample container shall be moved in the shape of a "D" under the falling product to be sampled. The flat portion of the "D" shall be perpendicular to the beltline. The circular portion of the "D" shall be accomplished to return the sampling container to the starting point in a manner so that no product to be sampled is included.

(h) Analytical Requirements. Final product subject to the sampling requirements of this section will be tested for all of the following parameters. The executive director may at any time request that additional parameters be tested. These parameters are intended to address public health and environmental protection.

(1) Total metals[<sub>7</sub>] to include:

(A) Arsenic;

(B) Cadmium;

(C) Chromium;

(D) Copper;

(E) Lead;

(F) Mercury;

(G) Molybdenum;

(H) Nickel;

(I) Selenium; and

(J) Zinc.

(2) Maturity/Stability by reduction in organic matter on an interim basis and by approved method of maturity/stability analysis after the completion of the maturity/stability method protocol as described in subsections (b) and (d) of this section.

(3) Weight percent of foreign matter, dry weight basis.

(4) pH by the saturated media extract method.

(5) Salinity by the saturated media extract electrical conductivity method.

(6) Pathogens:

(A) salmonella; and

(B) fecal coliform.

(7) Polychlorinated-biphenyls (PCBs)--required only for permitted facilities.

(i) Data Precision and Accuracy. Analytical data quality shall be established by EPA standard laboratory practices to ensure precision and accuracy.

(j) Reporting Requirements.

(1) Facilities requiring registration must report the following information to the executive director on a semiannual basis for each sampling batch of final product. Facilities requiring a permit must report similarly but on a monthly basis. Reports must include, but may not be limited to, all of the following information:

(A) batch numbers identifying the final product sampling batch;

(B) the quantities, types, and sources of feedstocks received and the dates received;

(C) the quantity of final product and final product standard code assigned;

(D) the final product grade or permit number of the disposal facility receiving the final product if it is not Grade 1 or Grade 2 Compost as established in §332.72 of this title (relating to Final Product Grades);

(E) all analytical results used to characterize the final product including laboratory quality assurance/quality control data and chain-of-custody documentation; and

(F) the date of sampling.

(2) Reports must be submitted to the executive director within two months after the reporting period ends.

#### §332.72. Final Product Grades.

(a) Applicability. Facilities that receive a registration or permit under this chapter are required to test final product in accordance with this section. Final product derived from municipal sewage sludge at registered facilities is not subject to the requirements of this section, but it must comply with the requirements of Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation).

(b) Grades. Compost material that has undergone the composting process and is ready for distribution shall be considered final product, and shall be classified with one of the following grade names:

(1) Grade 1 Compost;

(2) Grade 2 Compost;

(3) Waste Grade Compost.

(c) Final product testing. Final product shall be regularly tested pursuant to §332.71 of this title (relating to Sampling and

Analysis Requirements for Final Product) to determine the product's grade. Testing of final product and interpretation of test results shall be conducted in accordance with the agency's [Texas Natural Resource Conservation Commission's] current Quality Assurance Project Plan [Quality Assurance Program Plan], or, in the case of facilities with agency [TNRCC] permits or registrations, the Quality Assurance Quality Control Plan specified in the facility's permit.

(d) Final product classification. Final product shall be classified according to the following classification system.

(1) Grade 1 Compost. To be considered Grade 1 Compost, the final product must meet all of the following criteria:

(A) Shall contain no foreign matter of a size or shape that can cause human or animal injury;

(B) Shall not exceed all Maximum Allowable Concentrations for Grade 1 Compost in Table 1 of this section; Figure 1: 30 TAC §332.72(d)(1)(B) (No change.)

(C) Shall not contain foreign matter in quantities that [which] cumulatively are greater than 1.5% dry weight on a 4mm screen;

(D) Shall meet the requirements of cured compost as described in Table 2 of this section; Figure 2: 30 TAC §332.72(d)(1)(D) (No change.)

(E) Shall meet the requirements for pathogen reduction for Grade 1 Compost as described in Table 3 of this section; and Figure: 30 TAC §332.72(d)(1)(E) (No change.)

(F) Shall meet the requirements for salinity and pH for Grade 1 Compost as described in Table 3 of this section.

(2) Grade 2 Compost:

(A) Shall contain no foreign matter of a size or shape that can cause human or animal injury;

(B) Shall not exceed all Maximum Allowable Concentrations for Grade 2 Compost in Table 1 of this section at a compost organic matter content that [which] is equivalent to a mature compost when maturity is determined by reduction in organic matter during the interim period or a maturity test that [which] is part of an approved maturity test protocol;

(C) Shall not contain foreign matter in quantities that [which] cumulatively are greater than 1.5% dry weight on a 4mm screen;

(D) Shall meet the requirements of semi-mature compost, mature compost, or cured compost as described in Table 2 of this section;

(E) Shall meet the requirements for pathogen reduction for Grade 2 Compost as described in Table 3 of this section; and

(F) Shall meet the requirements for salinity and pH for Grade 2 Compost as described in Table 3 of this section.

(3) Waste Grade Compost:

(A) Exceeds any one of the Maximum Allowable Concentrations for Grade 2 final product in Table 1 of this section; and

(B) Does not meet the other requirements of Grade 1 or Grade 2 Compost.

(c) Maturity adjustment. Compost that [which] is semi-mature or mature shall have the metal concentrations adjusted to reflect the metal concentration that [which] would occur if the compost met the

criteria for a cured compost as described in Table 2, "Maturity and Stability Standards."

(f) Waste grade final product. Any material that [which] does not meet the final product standards shall be appropriately disposed at a permitted municipal solid waste facility.

§332.75. *Out of State Production.*

Any compost produced outside of the State of Texas, which is distributed within Texas, shall be labelled pursuant to §332.74 of this title (relating to Compost [~~Final Product~~] Labelling Requirements).

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

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## CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

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 non-hazardous 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 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 Genera-

tor 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 "non-hazardous" 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)(l) 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 Bearse, 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. Bearse 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 de-

termination 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\\_M-Tg1NzUyNmYtODFkZS00YjgyLTg1NmYtZjVkJnJg0MTJlNGM0%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%22Is-BroadcastMeeting%22%3a%22true%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_M-Tg1NzUyNmYtODFkZS00YjgyLTg1NmYtZjVkJnJg0MTJlNGM0%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%22Is-BroadcastMeeting%22%3a%22true%7d)

Persons who have special communication or other accommodation needs who are planning to attend the hearing should con-

tact 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 2021-006-332-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/proposal\\_adopt.html](https://www.tceq.texas.gov/rules/proposal_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

**30 TAC §§335.1, 335.2, 335.6, 335.9 - 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 pur-

pose 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 (CESQG) 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, "CESQG", 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 Asso-

ciation 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 situa-

tions 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 man-

ifest, 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) [(407)] 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) [(408)] 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) [(409)] 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) [(410)] Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

(116) [(411)] 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) [(412)] 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) [(413)] 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) [(414)] 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) [(415)] Off-site--Property which cannot be characterized as on-site.

(122) [(416)] 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) [(417)] 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) [(418)] 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) [(419)] Operator--The person responsible for the overall operation of a facility.

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

(127) [(421)] 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) [(422)] PCBs or polychlorinated biphenyl compounds--Compounds subject to 40 Code of Federal Regulations Part 761.

(129) [(423)] Permit--A written permit issued by the commission which, by its conditions, may authorize the permittee to con-

struct, 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 non-compliance 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) [(435)] 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) [(436)] 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) [(437)] Pyrolysis facility--A manufacturing facility that receives, separates, stores, and converts post-use polymers using pyrolysis.

(144) [(438)] 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) [(439)] 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) [(440)] 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) [(441)] Regional administrator--The regional administrator for the United States Environmental Protection Agency region in which the facility is located, or his designee.

(148) [(442)] 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) [(443)] Remediation--The act of eliminating or reducing the concentration of contaminants in contaminated media.

(150) [(444)] 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) [(445)] 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) [(446)] 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) [(447)] 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) [(448)] Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

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

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

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

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

(159) [(453)] 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) [(454)] 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)]

(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) [(455)] 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) [(456)] 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) [(457)] 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) [(458)] 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) [(459)] 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) [(460)] 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) [(461)] 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) [(462)] 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) [(463)] 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) [(464)] Tank system--A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(171) [(465)] 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) [(466)] 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) [(467)] Thermostat--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(174) [(468)] 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 op-

erated 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) [(469)] 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) [(470)] 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) [(474)] Transporter--Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(178) [(472)] 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) [(473)] 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) [(474)] Treatment zone--A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(181) [(475)] 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) [(476)] 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) [(477)] 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) [(478)] 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) [(479)] 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) [(480)] 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) [(484)] 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) [(482)] Universal waste transporter--Has the definition adopted under 40 Code of Federal Regulations §273.9.

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

(190) [(484)] 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) [(485)] 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) [(486)] 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 ti-

tle (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) [(487)] 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) [(488)] 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) [(489)] 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) [(490)] Wipe--A woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

(198) [(491)] 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 Water 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:

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

(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;

(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(e)(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 generator 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 E 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 re-processed.

(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)].

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

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Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2678



### 30 TAC §§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.*

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

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

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

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## SUBCHAPTER B. HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS

### 30 TAC §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); [ø]

(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; [ø]

(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).

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

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## SUBCHAPTER C. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

### 30 TAC §§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)."

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

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2678



**30 TAC §§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.*

§335.62. *Hazardous Waste Determination and Waste Classification.*

§335.63. *EPA Identification Numbers.*

§335.65. *Packaging.*

§335.66. *Labeling.*

§335.67. *Marking.*

§335.68. *Placarding.*

§335.69. *Accumulation Time.*

§335.70. *Recordkeeping.*

§335.71. *Biennial Reporting.*

§335.73. *Additional Reporting.*

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

§335.75. *Notification Requirements for Interstate Shipments.*

§335.76. *Additional Requirements Applicable to international Shipments.*

§335.77. *Farmers.*

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

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

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

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**SUBCHAPTER D. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE**

**30 TAC §§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 I Waste; and Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I 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.

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

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SUBCHAPTER E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §335.112

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission 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.

~~[(e) A copy of 40 CFR Part 265 is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.]~~

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

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## SUBCHAPTER F. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

### 30 TAC §335.152

#### Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commis-



sion 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.]~~

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

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## SUBCHAPTER H. STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES DIVISION 2. HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

### 30 TAC §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.

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

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For further information, please call: (512) 239-2678



### DIVISION 3. RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY

#### 30 TAC §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).

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

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## DIVISION 4. SPENT LEAD-ACID BATTERIES BEING RECLAIMED

### 30 TAC §335.251

#### Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission 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 §335.504 [; 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.

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

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## DIVISION 5. UNIVERSAL WASTE RULE

### 30 TAC §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 Admin-

istrative 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) [(44)] 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) [(45)] 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) [(46)] 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)."

ipal 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 rule-making 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.

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

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## DIVISION 6. MILITARY MUNITIONS

### 30 TAC §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.)

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## SUBCHAPTER O. LAND DISPOSAL RESTRICTIONS

### 30 TAC §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)."

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## SUBCHAPTER Q. POLLUTION PREVENTION: SOURCE REDUCTION AND WASTE MINIMIZATION

### 30 TAC §§335.471, 335.474, 371.477

#### 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 house-keeping, 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.}~~

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For further information, please call: (512) 239-2678



## SUBCHAPTER R. WASTE CLASSIFICATION

**30 TAC §§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(e) 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 follow-

ing 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.)

(2) Table 2.  
Figure: 30 TAC §335.521(a)(2)  
~~[Figure: 30 TAC §335.521(a)(2)]~~

(3) Table 3.  
Figure: 30 TAC §335.521(a)(3) (No change.)

(b) Appendix 2.  
Figure: 30 TAC §335.521(b)  
~~[Figure: 30 TAC §335.521(b)]~~

(c) Appendix 3.  
Figure: 30 TAC §335.521(c)  
~~[Figure: 30 TAC §335.521(e)]~~



(d) Appendix 4.

Figure: 30 TAC §335.521(d) (No change.)

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

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## SUBCHAPTER T. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF COMMERCIAL INDUSTRIAL NONHAZARDOUS WASTE LANDFILL FACILITIES

### 30 TAC §335.590

#### Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission 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 Ponded Water);
- (21) §330.175 of this title (relating to Visual Screening of Deposited Waste);
- (22) §330.207 of this title (relating to Contaminated Water Management);
- (23) the owner or operator shall have and follow procedures for the suppression and control of dust; and
- (24) the owner or operator shall ensure that each commercial industrial nonhazardous waste landfill unit meets the requirements of subparagraphs (A) - (F) of this paragraph.

#### (A) Design criteria.

(i) Landfill cells shall be designed and constructed in accordance with subclause (I) or (II) of this clause, and shall also be constructed in accordance with subclause (III) of this clause.

(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

(vi) a dike certification report is submitted with Attachment 10 of Part III of the permit application. The certification shall be in the following form:

Figure: 30 TAC §335.590(24)(F)(vi) (No change.)

(vii) a commercial industrial nonhazardous waste landfill is not subject to the requirements of clauses (ii) - (v) of this subparagraph provided that the owner or operator submits a demonstration that the standards of clause (i) of this subparagraph can be met without meeting the requirements of clauses (ii) - (v) of this subparagraph, the demonstration is approved in writing by the executive director, and the owner or operator enters the approval into the facility operating record.

(25) Hazardous waste 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.

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

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## SUBCHAPTER U. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARD PERMIT

### 30 TAC §335.602

#### Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission 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).

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

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For further information, please call: (512) 239-2678



## SUBCHAPTER V. STANDARDS FOR RECLAMATION OF HAZARDOUS SECONDARY MATERIALS

### 30 TAC §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 di-

rector 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.

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

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For further information, please call: (512) 239-2678



## SUBCHAPTER W. MANAGEMENT STANDARDS FOR HAZARDOUS WASTE PHARMACEUTICALS

**30 TAC §§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 Stan-

dards 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 para-

graph 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 non-hazardous 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 poten-

tially 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.

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

Filed with the Office of the Secretary of State on July 16, 2021.  
TRD-202102733



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

##### SUBCHAPTER F. COOPERATION WITH THE TEXAS ANIMAL HEALTH COMMISSION

###### 37 TAC §4.81

The Texas Department of Public Safety (the department) proposes new §4.81, concerning Cooperation with the Texas Animal Health Commission Regarding Enforcement of Entry Requirements. The new rule satisfies the requirements of Texas Agricultural Code, §161.051 which directs the department and the Texas Animal Health Commission to adopt a memorandum of understanding that includes provisions under which officers of the department check for health papers and permits when a livestock vehicle is stopped for other reasons in the regular course of the officers' duties.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of this rule will be a clearer understanding of the memorandum of understanding between the department and the Texas Animal Health Commission regarding the enforcement of entry requirements for livestock vehicles and the maximum efficiency of the Motor Carrier Safety Assistance Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, *et seq.*, and Texas Transportation Code, Chapter 644, will hold a public hearing on Wednesday, August 11, 2021, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.81 regarding Cooperation with the Texas Animal Health Commission Regarding Enforcement of Entry Requirements, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference and Texas Agriculture Code, §161.051 which authorizes the department adopt a joint memorandum of understanding with the agricultural commission that includes provisions to check for health papers and permits when a livestock vehicle is stopped for other reasons in the regular course of an officer's duties.

Texas Transportation Code, §644.051 and Texas Agriculture Code, §161.051 are affected by this proposal.

§4.81. Cooperation with the Texas Animal Health Commission Regarding Enforcement of Entry Requirements.

(a) As provided under Texas Agricultural Code, §161.051 the department will cooperate with the Texas Animal Health Commission regarding enforcement of entry requirements by reporting potential problems to the commission and providing assistance to the commission when requested.

(b) The Texas Animal Health Commission guidelines are located in 4 TAC §59.4 (relating to Cooperation with the Texas Department of Public Safety Regarding Enforcement of Entry Requirements).

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

Filed with the Office of the Secretary of State on July 14, 2021.

TRD-202102675

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: August 29, 2021

For further information, please call: (512) 424-5848



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **CHAPTER 5. PROVIDER CLINICAL RESPONSIBILITIES--INTELLECTUAL DISABILITY SERVICES**

##### **SUBCHAPTER D. DIAGNOSTIC ASSESSMENT**

###### **40 TAC §§5.151, 5.153 - 5.158, 5.161**

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §§531.0201 and 531.02011. Texas Government Code §531.0055 requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system. Rules of the former DADS codified in Title 40, Part 1 of the Texas Administrative Code (TAC) are being repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Therefore, the Executive Commissioner of HHSC proposes the repeal of 40 TAC Part 1, Chapter 5 Provider Clinical Responsibilities--Intellectual Disability Services, Subchapter D Diagnostic Assessment, in its entirety, including §5.151 concerning Purpose, §5.153 concerning Definitions, §5.154 concerning Use of Information from a Diagnostic Assessment, §5.155 concerning Determination of Intellectual Disability (DID), §5.156 concerning Review and Endorsement of a DID, §5.157 concerning Autism Spectrum Disorder (ASD), §5.158 concerning Related Condition

(RC), and §5.161 concerning Certified Authorized Provider. HHSC proposes new 26 TAC Part 1, Chapter 304, Diagnostic Assessment, elsewhere in this issue of the *Texas Register*.

#### **BACKGROUND AND PURPOSE**

The purpose of the proposal is to repeal 40 TAC Chapter 5, Subchapter D, Diagnostic Assessment. The new rules planned in 26 TAC Chapter 304 are substantially similar to the rules proposed for repeal.

#### **SECTION-BY-SECTION SUMMARY**

The proposed repeal of 40 TAC §§5.151, 5.153 - 5.158, and 5.161 allows new rules to be proposed in Title 26, Chapter 304.

#### **FISCAL NOTE**

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the proposed repeal will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

#### **GOVERNMENT GROWTH IMPACT STATEMENT**

HHSC has determined that during the first five years that the proposed repeal will be in effect:

- (1) the proposed repeal will not create or eliminate a government program;
- (2) the proposed repeal will not affect the number of employee positions;
- (3) the proposed repeal will not require an increase or decrease in future legislative appropriations;
- (4) the proposed repeal will not affect fees paid to the agency;
- (5) the proposed repeal will not create a new rule;
- (6) the proposed repeal will repeal an existing rule;
- (7) the proposed repeal will not change the number of individuals subject to the rule; and
- (8) the proposed repeal will not affect the state's economy.

#### **SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS**

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed repealed rules do not require a change to current business practices of small businesses or micro-businesses. No rural communities contract with HHSC in any program or service affected by the proposed repealed rules.

#### **LOCAL EMPLOYMENT IMPACT**

The proposed repeal will not affect a local economy.

#### **COSTS TO REGULATED PERSONS**

Texas Government Code, §2001.0045 does not apply to these rules because the proposed repeal does not impose a cost on regulated persons.

#### **PUBLIC BENEFIT AND COSTS**

Sonja Gaines, Deputy Executive Commissioner, Intellectual and Developmental Disability and Behavioral Health Services, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit will be the consolidation of all HHSC rules in new Title 26, Part 1 of the TAC.

Trey Wood has also determined that for the first five years the proposed repeal is in effect, there are no anticipated economic costs to persons who are required to comply. The proposed repeal does not require a change to current business practices.

#### TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposed repeal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code §2007.043.

#### PUBLIC COMMENT

Written comments on the proposed repeal may be submitted to HHSC IDD Services, Lisa Habbit, Mail Code 354, P.O. Box 149030, Austin, Texas 78714-9030, or by email to [IDDServicePolicyandRules@hhs.texas.gov](mailto:IDDServicePolicyandRules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R124" in the subject line.

#### STATUTORY AUTHORITY

The proposed repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision

of services by the health and human services agencies and Texas Government Code Chapter 531, Subchapter A-1, which provides for the consolidation of the health and human services system.

The repeals implement Texas Government Code §531.0055.

§5.151. *Purpose.*

§5.153. *Definitions.*

§5.154. *Use of Information from a Diagnostic Assessment.*

§5.155. *Determination of Intellectual Disability (DID).*

§5.156. *Review and Endorsement of a DID.*

§5.157. *Autism Spectrum Disorder (ASD).*

§5.158. *Related Condition (RC).*

§5.161. *Certified Authorized Provider.*

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

Filed with the Office of the Secretary of State on July 19, 2021.

TRD-202102753

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 29, 2021

For further information, please call: (512) 438-5018



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 10. DEPARTMENT OF INFORMATION RESOURCES

#### CHAPTER 215. STATEWIDE TECHNOLOGY CENTERS

The Texas Department of Information Resources (department) adopts amendments to 1 Texas Administrative Code Chapter 215, concerning Statewide Technology Centers. Sections 215.1 - 215.4, 215.10 - 215.12, and 215.30 - 215.32 in subchapters (A) - (C) are adopted without changes to the proposal as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1807) and will not be republished. In addition, the department adopts two new subchapters, Subchapter D, §§215.40 - 215.43, and Subchapter E, §§215.50 - 215.53. Sections 215.41 - 215.43 and §§215.51 - 215.53 are adopted without changes to the proposal as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1807) and will not be republished.

The amendments to 1 Texas Administrative Code §215.13 and §215.33, concerning Statewide Technology Centers, are adopted with nonsubstantive changes to the proposal as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1807) in response to comments received from the public. Amendments to 1 Texas Administrative Code §215.40 and §215.50 are adopted with changes to conform the rules to Texas Administrative Code structure. These rules will be republished.

The adopted rules apply to both state agencies and institutions of higher education.

The department approves the correction of references to the Texas Administrative Code and Texas Government Code to be in compliance with legal grammatical standards in §§215.1 - 215.4, 215.10 - 215.13, and 215.30 - 215.33

The department approves the amendment of the title of Chapter 215 from "Statewide Technology Centers for Data and Disaster Recovery Services" to "Statewide Technology Centers." This change reflects the development of the Application Services Center in addition to the Data Center Services already provided for by 1 Texas Administrative Code Chapter 215.

In §215.2, the department approves the amendment of the rule title to "Applicable Terms and Technologies for Statewide Technology Centers" and removing the phrase "for Data and Disaster Recovery Services."

In §215.2, the department approves the addition of the following definitions because of new or revised content in Chapter 215: "Application Services Center;" "Application Services Customer;" and "Software-as-a-Service."

The department approves the following existing definition amendments. "Cloud Computing Services" is revised to incorporate by reference the National Institute of Standards and Technology definition or other widely accepted industry standard as determined by the department. The definition of "Data Center Services" is further refined and fully defined, eradicating an internal reference to another definition. "Technology Service Group" is amended to "Technology Solution Services Group" as the workgroup name has been changed. "Statewide Technology Centers" is amended to incorporate by reference the definition found in Texas Government Code Chapter 2054.

In §215.10, for state agencies and local governments, and §215.30, for institutions of higher education, the department approves the removal of outdated references to department job titles to which relevant information was reported at one time and directs customers to contact a designated department representative. The department also approves the removal of language authorizing the submission of project work or service changes by phone. In §215.30, the department approves the amendment of its reference to the Information Technology Council for Higher Education to ITCHE to align the reference with §215.2 and the clarification of when institutions of higher education must receive approval from ITCHE prior to obtaining services from the department.

In §215.11 and §215.12, for state agencies and local governments, and §215.31 and §215.32, for institutions of higher education, the department approves the amendment of the rule titles to extract "Statewide Technology Center" from the named title as these sections only apply to DCS Services. Pursuant to the adoption revision of the definition for Statewide Technology Center found in §215.2, Statewide Technology Center now encompasses all centers described by 1 Texas Administrative Code Chapter 215, rather than the DCS Services discussed by Subchapters B and C.

In §215.12, for state agencies and local governments, and §215.32, for institutions of higher education, the department approves the amendment of the types of required audit documentation reflecting current required audit standards. In §215.12, the department further approves the proposed language regarding processes for technology standards exceptions to direct customers to the appropriate service management manual where the comprehensive process for such exception may be found.

In §215.13, for state agencies and local governments, and §215.33, for institutions of higher education, the department approves amending the Data Center Services provided to clarify services offered and the support and management services related those services. In §215.13, due to the changes the department proposes to clarify the list of Data Center Services, the department also approves the removal of language autho-

ricing customers to not seek exceptions for certain services and proposal that designated Data Center Services customers who are requesting exemption from all or part of Data Center Services shall seek such exemption regardless of the services from which they are seeking to be exempt.

The department also approves the creation of two new subchapters, Subchapters D and E, concerning the new Application Services Center, created in furtherance of Texas Government Code Chapter 2054, Subchapter L, including §2054.378. These subchapters provide the necessary rules to address the short-term solution provided by the department's emergency rule amendments to 1 Texas Administrative Code §215.13 and §215.33, effective February 2, 2021 (46 TexReg 989) and renewed through July 31, 2021 (46 TexReg 3223).

As required by Texas Government Code Chapter 2054 when creating a new statewide technology center, the department has received the approval from state leadership necessary to create the Application Services Center.

The department adopts the new Subchapter D, Application Services Center for State Agencies and Local Governments, and approves the following new sections: §215.40, Receipt of Services, which provides that customers may participate in the Application Services Center, requires participating customers sign the appropriate contract with the department in accordance with state law, and establishes the appropriate processes for the provision of new or additional services under the Application Services Center as well as how the Center will provide cost estimates and notices for such services; §215.41, Application Services Center Billing, which provides details on billing and payment procedures; §215.42, Application Services Center User Responsibilities, requiring Application Services Center customers to provide proper contact information, ensure compliance with applicable laws and policies, support efforts for financial, operational, and technical planning, provide proper audit notification, participate in the governance process, and comply with statutory and program-specific security requirements; §215.43, Application Services Center Services, which highlights the services available through the Data Center for state agencies and local government, generally.

The department adopts the new Subchapter E, Application Services Center for Institutions of Higher Education, and approves the following new sections: §215.50, Receipt of Services, clarifying how institutions of higher education may establish services and how to request additional services; §215.51, Application Services Center Billing, providing details on billing and payment procedures for institutions of higher education; §215.52, Application Services Center User Responsibilities, requiring Application Services Center customers from institutions of higher education provide proper contact information, ensure compliance with applicable laws and policies, support efforts for financial, operational, and technical planning; provide proper audit notification; participate in the governance process, and comply with statutory and program-specific security requirements; and §215.53, Application Services Center Services, which highlights the services available through the Data Center for institutions of higher education, generally.

The department received two comments from a customer state agency regarding the proposed amendments. First, the customer state agency commented that, in §215.13 and §215.33, the word "all" used to clarify "support and management services related to" Data Center Services could be misinterpreted as a replacement of all support and management services performed

by a state agency or institution of higher education's internal information technology division. The department has incorporated this nonsubstantive change by removing the word "all" in 1 Texas Administrative Code §215.13(a)(11) and §215.33(11).

The second comment identified the potential need for a delayed effective date and requested the creation of rule language permitting such a holdover period. The department declined to incorporate this change.

The changes to the chapter apply to institutions of higher education. The assessment of the impact of the adopted changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with Texas Government Code §2054.121(c). ITCHE determined that there was no impact upon institutions of higher education as a result of the amendment.

## SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS

### 1 TAC §§215.1 - 215.4

These amendments are adopted pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; and Texas Government Code §2054.379, which authorizes the department to adopt rules related to Statewide Technology Centers.

The department is authorized to establish an effective date for an adopted rule that is less than the statutory effective date of twenty days from filing with the Secretary of State if such measure is necessary because of imminent peril to public health, safety, or welfare. Tex. Gov't Code §2001.036(a)(2). The department has found that such necessity exists here. The amendments adopted herein reflect a permanent rulemaking solution to the emergency rulemaking measures adopted by the department to address governmental entity needs for software applications, including software-as-a-service products, to be available through department programs to address the needs of the public during the COVID-19 pandemic. The pandemic emergency continues to necessitate the availability of these services to address the needs of the public; adhering to the standard statutory 20-day effective date would result in a lapse in these necessary services between the emergency rulemaking measure's expiration date and the effective date of the amendments adopted herein. As such, the department accordingly finds that an imminent peril to the public health, safety, or welfare of the state requires an expedited effective date of August 1, 2021, for the adoption of these amendments.

No other code, article, or statute is affected by this proposal.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 15, 2021.

TRD-202102688

Kate Fite

General Counsel

Department of Information Resources

Effective date: August 1, 2021

Proposal publication date: March 26, 2021

For further information, please call: (512) 475-4552

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**SUBCHAPTER B. DATA CENTER SERVICES  
FOR STATE AGENCIES AND LOCAL  
GOVERNMENT**

**1 TAC §§215.10 - 215.13**

These amendments are adopted pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; and Texas Government Code §2054.379, which authorizes the department to adopt rules related to Statewide Technology Centers.

The department is authorized to establish an effective date for an adopted rule that is less than the statutory effective date of twenty days from filing with the Secretary of State if such measure is necessary because of imminent peril to public health, safety, or welfare. Tex. Gov't Code §2001.036(a)(2). The department has found that such necessity exists here. The amendments adopted herein reflect a permanent rulemaking solution to the emergency rulemaking measures adopted by the department to address governmental entity needs for software applications, including software-as-a-service products, to be available through department programs to address the needs of the public during the COVID-19 pandemic. The pandemic emergency continues to necessitate the availability of these services to address the needs of the public; adhering to the standard statutory 20-day effective date would result in a lapse in these necessary services between the emergency rulemaking measure's expiration date and the effective date of the amendments adopted herein. As such, the department accordingly finds that an imminent peril to the public health, safety, or welfare of the state requires an expedited effective date of August 1, 2021, for the adoption of these amendments.

No other code, article, or statute is affected by this proposal.

§215.13. *Data Center Services.*

(a) DCS services include the following services within the State's private and public cloud environment and approved remote locations:

- (1) Mainframe services
- (2) Server services
- (3) Hosting and management of telecommunication hardware for emergency services
- (4) Storage services
- (5) Bulk Print and mail services
- (6) Network services for DCS managed environments
- (7) Disaster Recovery services
- (8) Security Services for DCS managed environments
- (9) Application portfolio management
- (10) Cloud computing services, not including software-as-a-service products
- (11) Support and management services related to the above described services.

(b) Unless an exemption has been requested and approved by the department pursuant to 1 Texas Administrative Code

§215.10(a)(1)(B), designated DCS Customers shall not procure the services specified in this section outside the DCS program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 15, 2021.

TRD-202102689

Kate Fite

General Counsel

Department of Information Resources

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For further information, please call: (512) 475-4552

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**SUBCHAPTER C. DATA CENTER SERVICES  
FOR INSTITUTIONS OF HIGHER EDUCATION**

**1 TAC §§215.30 - 215.33**

These amendments are adopted pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; and Texas Government Code §2054.379, which authorizes the department to adopt rules related to Statewide Technology Centers.

The department is authorized to establish an effective date for an adopted rule that is less than the statutory effective date of twenty days from filing with the Secretary of State if such measure is necessary because of imminent peril to public health, safety, or welfare. Tex. Gov't Code §2001.036(a)(2). The department has found that such necessity exists here. The amendments adopted herein reflect a permanent rulemaking solution to the emergency rulemaking measures adopted by the department to address governmental entity needs for software applications, including software-as-a-service products, to be available through department programs to address the needs of the public during the COVID-19 pandemic. The pandemic emergency continues to necessitate the availability of these services to address the needs of the public; adhering to the standard statutory 20-day effective date would result in a lapse in these necessary services between the emergency rulemaking measure's expiration date and the effective date of the amendments adopted herein. As such, the department accordingly finds that an imminent peril to the public health, safety, or welfare of the state requires an expedited effective date of August 1, 2021, for the adoption of these amendments.

No other code, article, or statute is affected by this proposal.

§215.33. *Data Center Services.*

DCS services include the following services within the State's private and public cloud environment and approved remote locations:

- (1) Mainframe services
- (2) Server services
- (3) Hosting and management of telecommunication hardware for emergency services
- (4) Storage services
- (5) Bulk Print and mail services

- (6) Network services for DCS managed environments
- (7) Disaster Recovery services
- (8) Security Services for DCS managed environments
- (9) Application Portfolio Management
- (10) Cloud computing services, not including software-as-a-service products
- (11) Support and management services related to the above-described services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 15, 2021.

TRD-202102691

Kate Fite

General Counsel

Department of Information Resources

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Proposal publication date: March 26, 2021

For further information, please call: (512) 475-4552



## SUBCHAPTER D. APPLICATION SERVICES CENTER FOR STATE AGENCIES AND LOCAL GOVERNMENT

### 1 TAC §§215.40 - 215.44

These new rules are adopted pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; and Texas Government Code §2054.379, which authorizes the department to adopt rules related to Statewide Technology Centers.

The department is authorized to establish an effective date for an adopted rule that is less than the statutory effective date of twenty days from filing with the Secretary of State if such measure is necessary because of imminent peril to public health, safety, or welfare. Tex. Gov't Code §2001.036(a)(2). The department has found that such necessity exists here. The amendments adopted herein reflect a permanent rulemaking solution to the emergency rulemaking measures adopted by the department to address governmental entity needs for software applications, including software-as-a-service products, to be available through department programs to address the needs of the public during the COVID-19 pandemic. The pandemic emergency continues to necessitate the availability of these services to address the needs of the public; adhering to the standard statutory 20-day effective date would result in a lapse in these necessary services between the emergency rulemaking measure's expiration date and the effective date of the amendments adopted herein. As such, the department accordingly finds that an imminent peril to the public health, safety, or welfare of the state requires an expedited effective date of August 1, 2021, for the adoption of these amendments.

No other code, article, or statute is affected by this proposal.

§215.40. *Receipt of Services.*

- (a) Eligible Application Services Center Customers.

(1) State Agencies. In accordance with Texas Government Code Chapter 771, each participating state agency shall execute an Interagency Contract with the department defining the services to be provided prior to the start of services.

(2) Local Government Entity. In accordance with Chapter 791, each participating local government shall execute an Interlocal Contract with the department defining the services to be provided prior to the start of services.

(b) Request for Services.

(1) For prospective Application Services Center Customers initiating service:

(A) Prior to providing services, a request for new services shall be submitted via a formal written request addressed to the designated DIR representative.

(B) Upon receipt of any such request to initiate service, a cost estimate will be provided by the Application Services Center to the prospective DCS Customer.

(2) An existing Application Services Center Customer requesting additional services offered under this rule shall follow the policies and procedures established for all Application Services Center Customers documented in the applicable Service Management Manual.

(A) Upon receipt of any such request for additional services, the Application Services Center Program will provide a cost estimate to the Application Services Center Customer.

(B) Along with the cost estimate, a formal notice from the Application Services Center Program to the Application Services Center Customer shall include:

- (i) The scope of the services to be provided; and
- (ii) The implementation schedule.

(C) An Application Services Center Customer seeking to obtain project work or other service changes shall submit a request via the online Service Catalog.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 15, 2021.

TRD-202102692

Kate Fite

General Counsel

Department of Information Resources

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Proposal publication date: March 26, 2021

For further information, please call: (512) 475-4552



## SUBCHAPTER E. APPLICATION SERVICES CENTER FOR INSTITUTIONS OF HIGHER EDUCATION

### 1 TAC §§215.50 - 215.53

These new rules are adopted pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; and Texas Government Code



§2054.379, which authorizes the department to adopt rules related to Statewide Technology Centers.

The department is authorized to establish an effective date for an adopted rule that is less than the statutory effective date of twenty days from filing with the Secretary of State if such measure is necessary because of imminent peril to public health, safety, or welfare. Tex. Gov't Code §2001.036(a)(2). The department has found that such necessity exists here. The amendments adopted herein reflect a permanent rulemaking solution to the emergency rulemaking measures adopted by the department to address governmental entity needs for software applications, including software-as-a-service products, to be available through department programs to address the needs of the public during the COVID-19 pandemic. The pandemic emergency continues to necessitate the availability of these services to address the needs of the public; adhering to the standard statutory 20-day effective date would result in a lapse in these necessary services between the emergency rulemaking measure's expiration date and the effective date of the amendments adopted herein. As such, the department accordingly finds that an imminent peril to the public health, safety, or welfare of the state requires an expedited effective date of August 1, 2021, for the adoption of these amendments.

No other code, article, or statute is affected by this proposal.

§215.50. *Receipt of Services.*

(a) Eligible Application Services Center Customers.

(1) In accordance with Texas Government Code §2054.377, participation by an institution of higher education in the Application Services Center requires approval by ITCHE.

(2) In accordance with Texas Government Code Chapter 771, each participating institution of higher education shall execute an Interagency Contract with the department defining the services to be provided prior to the start of services.

(b) Request for Services.

(1) For prospective higher education Application Services Center Customers initiating service:

(A) Prior to providing services, a request for new services shall be submitted via a formal written request addressed to the designated DIR representative. The written request shall, at a minimum, include the written approval from ITCHE, the estimated compute volume, and service requirements.

(B) Upon receipt of any such request to initiate service, a cost estimate will be provided by the Application Services Center to the prospective DCS Customer.

(2) After being established as an Application Services Center Customer, an institution of higher education requesting additional services offered under this rule shall follow the policies and procedures established for all Application Services Center Customers documented in the applicable Service Management Manual. Institutions of higher education shall also include approval from ITCHE with any request for additional services.

(A) Upon receipt of any such request for additional services, the Application Services Center Program will provide a cost estimate to the Application Services Center Customer.

(B) Along with the cost estimate, a formal notice from the Application Services Center Program to the Application Services Center Customer shall include:

(i) The scope of the services to be provided; and

(ii) The implementation schedule.

(C) An Application Services Center Customer seeking to obtain project work or other service changes shall submit a request via the online Service Catalog.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 15, 2021.

TRD-202102693

Kate Fite

General Counsel

Department of Information Resources

Effective date: August 1, 2021

Proposal publication date: March 26, 2021

For further information, please call: (512) 475-4552

## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 520. PROVISIONS FOR THE FIFTH-YEAR ACCOUNTING STUDENTS SCHOLARSHIP PROGRAM

##### 22 TAC §520.6

The Texas State Board of Public Accountancy adopts an amendment to §520.6, concerning Allocations, without changes to the proposed text as published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3361). The rule will not be republished.

The amendment to §520.6 deleted the reference to the Fifth Year Accounting Student Scholarship Advisory Committee. During the last session of the legislature, the Fifth Year Accounting Student Scholarship Advisory Committee provision in the Texas Public Accountancy Act was repealed.

No comments were received regarding adoption of the amendment.

##### Statutory Authority

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 15, 2021.

TRD-202102694

J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date:  
Proposal publication date: May 28, 2021  
For further information, please call: (512) 305-7842



## 22 TAC §520.9

The Texas State Board of Public Accountancy adopts the repeal of §520.9, concerning Advisory Committee, without changes to the proposed text as published in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3362). The repeal will not be republished.

The repeal will delete the provision for the Fifth Year Accounting Student Scholarship Advisory Committee. During the last session of the legislature, the Fifth Year Accounting Student Scholarship Advisory Committee provision in the Texas Public Accountancy Act was repealed.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 15, 2021.

TRD-202102695  
J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
Effective date: August 4, 2021  
Proposal publication date: May 28, 2021  
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## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 228. RETAIL FOOD ESTABLISHMENTS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the repeal of §§228.1, 228.2, 228.31 - 228.45, 228.61 - 228.83, 228.101 - 228.125, 228.141 - 228.154, 228.171 - 228.186, 228.201 - 228.213, 228.221 - 228.225, 228.241 - 228.257, and 228.271 - 228.278, and new §§228.1, 228.2, 228.31, 228.32, 228.61 - 228.64, 228.141 - 228.143, 228.171, 228.172, 228.211, 228.221 - 228.225, and 228.241 - 228.246, concerning Retail Food Establishments.

New §§228.2 and §228.31 are adopted with changes to the proposed text as published in the April 2, 2021, issue of the *Texas Register* (46 TexReg 2170). These rules will be republished. The repeal of §§228.1, 228.2, 228.31 - 228.45, 228.61 - 228.83, 228.101 - 228.125, 228.141 - 228.154, 228.171 - 228.186, 228.201 - 228.213, 228.221 - 228.225, 228.241 - 228.257, and 228.271 - 228.278, and new §§228.1, 228.32, 228.61 - 228.64, 228.141 - 228.143, 228.171, 228.172, 228.211, 228.221 - 228.225, and 228.241 - 228.246 are adopted without changes to the proposed text and will not be republished.

#### BACKGROUND AND JUSTIFICATION

The rules update the requirements for retail food establishments. Texas Health and Safety Code, Chapter 437, Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors, §437.0056 authorizes the Executive Commissioner of HHSC to adopt rules and minimum standards for food safety and the regulation of food service establishments, retail food stores, mobile food units, and roadside food vendors.

The rules address the requirements in Senate Bill (S.B.) 476, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code, Chapter 437, by adding §437.025, Requirements for Dogs in Outdoor Dining Areas; Municipal Pre-emption.

S.B. 476 allows, but does not require, a food service establishment to permit a customer to be accompanied by a dog in an outdoor dining area. S.B. 476 also establishes requirements for the food establishment to allow pet dogs in outdoor dining areas, such as the establishment posting a sign in a conspicuous location stating that dogs are permitted; the customer and dog access from the exterior of the establishment; and the dog not entering the interior of the establishment. S.B. 476 requires the customer to keep the dog on a leash and control the dog. It also requires that the dog not be allowed on a seat, table, countertop, or similar surface. S.B. 476 requires that in the area, the establishment does not prepare food or permit open food other than food that is being served to a customer.

The rules include adoption by reference of the current U.S. Food and Drug Administration (FDA) 2017 Food Code. The rules include requiring the person in charge to be a Certified Food Protection Manager, and the emergency operational plans for continued operation. The rules update cooking time/temperature parameters for intact and non-intact meat and poultry. Further, the rules add employee health signage and edit and correct rule language identified by DSHS staff and stakeholders.

#### COMMENTS

The 31-day comment period ended May 3, 2021.

During this period, DSHS received comments regarding the proposed rules from six commenters, including the International Association of Plumbing and Mechanical Officials, Harris County Environmental Public Health Division, City of Pearland Code Enforcement/Health Department, the Farm and Ranch Freedom Alliance, and an individual. A summary of comments relating to the rules and DSHS's responses follows:

Comment: A commenter questioned the reasoning for DSHS's adoption by reference of the FDA Food Code rather than the current transcription into the Texas Administrative Code.

Response: DSHS does not agree that transcription of the Food Code into the Texas Administrative Code should be continued

and believes that transcription would, instead, lead to inefficient rule adoptions in the future. DSHS declines to revise the rule.

Comment: A commenter expressed concern that the adoption by reference of the FDA Food Code, with a separate Texas food establishment rule for Texas-specific rules, requires a burdensome need to move between two rule sets and places a hardship on small regulated entities that have limited access to the internet. The commenter requested that DSHS provide a single, easy-to-read, and easy-to-access document for guidance on the rules.

Response: DSHS will provide additional guidance documents to aid regulatory and industry stakeholders in the understanding of the rules. DSHS does not agree that a rule change is necessary at this time and declines to revise the rule.

Comment: A commenter asked how much notification will be given to the regulated industry to meet the new standards and who will notify them.

Response: In addition to posting the proposed rules in the *Texas Register*, DSHS posted the draft rules for informal comment, posted Question-and-Answer responses to informal comments and questions on the program website. DSHS held stakeholder meetings with industry and regulatory stakeholders for the presentation of the rules. DSHS will continue to provide training as requested to deliver the new rules to all stakeholders and residents of Texas. The rules will be in effect sometime in the late summer of 2021. Nevertheless, notification and enforcement of new rules and standards in any jurisdiction is at the discretion of the regulatory authority for that jurisdiction. DSHS does not agree that a rule change is necessary at this time and declines to revise the rule.

Comment: A commenter suggested the inclusion of the Uniform Plumbing Code in the definition of "plumbing code" at §228.2(21).

Response: DSHS agrees with the commenter and has accordingly revised the rule.

Comment: Three commenters objected that the proposed language in §228.31(b) may conflict with the new requirement that the person in charge be a certified food protection manager and present during all hours of operation.

Response: DSHS agrees with the commenters and has accordingly revised §228.31(b). In addition, and in relation to a related verbal question to the program, DSHS has added §228.31(c) to clarify situations when the presence of a certified food protection manager would not be required.

Comment: A commenter objected to the proposed language at §228.62(b) requiring chicken eggs received by a retail food establishment to be graded eggs. The commenter stated that the grading requirement is a marketing issue that has no bearing on food safety or egg quality. The commenter further stated that grading requirements are burdensome to farmers, particularly since there is little regulatory oversight of grading.

Response: DSHS disagrees with the commenter and declines to change the rule. The Texas food establishment rule requirements for the receipt and use only of graded chicken eggs in a retail food establishment is in accordance with the requirements contained in the FDA Food Code §3-202.13 Eggs.

Comment: A commenter asked if DSHS will send information regarding how to meet U.S. Food and Drug Administration Vol-

untary National Retail Food Regulatory Program Standards, as required for the competence of field staff in §228.45.

Response: FDA and DSHS currently provide information on the Voluntary National Retail Food Regulatory Program Standards. DSHS does not agree that a rule change is necessary at this time and declines to revise the rule.

Comment: A commenter suggested the addition of the words "permitting, or registering" after the word "licensing" at §228.223(a)(2).

Response: DSHS disagrees with the commenter and declines to revise the rule. The word "licensing" sufficiently conveys the desired meaning.

An editorial change adds the word "bison" to §228.2(18) to match the Texas Health and Safety Code, §433.003(11).

## SUBCHAPTER A. GENERAL PROVISIONS

### 25 TAC §228.1, §228.2

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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### 25 TAC §228.1, §228.2

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

#### §228.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Accredited program--Food manager certification program that has been evaluated and listed by the department and conforms to standards set by the department in §229.172 of this title (relating to Accreditation of Certified Food Management Programs).

(2) Adulterated food--A food deemed to be adulterated as specified in the Texas Health and Safety Code, §431.081.

(3) Bed and breakfast extended--An establishment with more than seven rooms for rent or an establishment that provides food service other than breakfast to overnight guests.

(4) Bed and breakfast food establishment--A bed and breakfast that provides food service to customers in addition to its overnight guests.

(5) Bed and breakfast limited--An establishment that has seven or fewer rooms for rent, serves breakfast to overnight guests, and is not a retail food establishment.

(6) Central preparation facility--An approved and permitted facility or space where food is prepared, stored, and packaged.

(7) Code of Federal Regulations (CFR)--Citations to the CFR refer sequentially to the Title, Part, and Section numbers, such as 40 CFR 180.194 refers to Title 40, Part 180, Section 194.

(8) Common carrier--An individual or business that advertises to the public that it is available for hire to transport people or property, including food, in exchange for a fee.

(9) Cottage food production operation--An individual, operating out of the individual's home, who:

(A) produces at the individual's home:

(i) a baked good that is not a time and temperature control for safety food (TCS food), as defined in §229.661(b)(13) of this title (relating to Cottage Food Production Operations);

(ii) candy;

(iii) coated and uncoated nuts;

(iv) unroasted nut butters;

(v) fruit butters;

(vi) a canned jam or jelly;

(vii) a fruit pie;

(viii) dehydrated fruit or vegetables, including dried

beans;

(ix) popcorn and popcorn snacks;

(x) cereal, including granola;

(xi) dry mix;

(xii) vinegar;

(xiii) pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less;

(xiv) mustard;

(xv) roasted coffee or dry tea;

(xvi) a dried herb or dried-herb mix;

(xvii) plant-based acidified canned goods;

(xviii) fermented vegetable products, including products that are refrigerated to preserve quality;

(xix) frozen raw and uncut fruit or vegetables; or

(xx) any other food that is not a TCS food, as defined in §229.661(b)(13) of this title.

(B) has an annual gross income of \$50,000 or less from the sale of food described by subparagraph (A) of this paragraph;

(C) sells foods produced under subparagraph (A) of this paragraph only directly to consumers; and

(D) delivers products to the consumer at the point of sale or another location designated by the consumer.

(10) Department--The Texas Department of State Health Services.

(11) Drinking water--Traditionally known as "potable water" and that meets the standards set forth in 30 TAC Chapter 290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Drinking water includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "non-drinking water."

(12) Event--A unique public gathering at which food products are served and for which an appropriate regulatory authority grants permission, whether by permit, license, or another official written document.

(13) Exotic animal--Member of a species of game animals not indigenous to this state, including axis deer, nilgai antelope, red sheep, or other cloven-hoofed ruminant animals.

(14) Food establishment--

(A) A food establishment is an operation that:

(i) stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption, such as a restaurant, retail food store, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending machine location, self-service food market, conveyance used to transport people, institution, or food bank; and

(ii) relinquishes possession of food to a consumer directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation, such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises regardless if there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not TCS foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant, including one that is located on the premises of a food establishment;

(iv) a cottage food production operation;

(v) a bed and breakfast limited as defined in this section; or

(vi) a private home that receives catered or home-delivered food.

(15) Game animals--Wild animals that are indigenous to this state and not amenable to the Texas Meat and Poultry Inspection Act, Texas Health and Safety Code, Chapter 433, for which the hunter must obtain a hunting license from the Texas Parks and Wildlife Department before hunting animals, such as white-tailed deer, mule deer, pronghorn antelope, and big horn sheep.

(16) General use pesticide--A pesticide that is not classified by the United States Environmental Protection Agency for restricted use as specified in 40 CFR §152.175 or is not limited to use by or under the direct supervision of a certified applicator licensed by the Texas Department of Agriculture or by the Texas Structural Pest Control Service as applicable.

(17) Group residence--A private or public housing corporation or institutional facility that provides living quarters and meals. The term includes a domicile for unrelated persons, such as a retirement home, correctional facility, or a long-term care facility.

(18) Livestock--Cattle, bison, sheep, swine, goats, horses, mules, other equine, poultry, domesticated rabbits, exotic animals, or domesticated game birds.

(19) Mobile food unit (MFU)--A vehicle-mounted, self or otherwise propelled, self-contained food service operation designed to be readily movable (including catering trucks, trailers, push carts, and roadside vendors) and used to store, prepare, display, serve or sell food. An MFU must completely retain its mobility at all times. An MFU does not include a stand or a booth. A roadside food vendor is classified as an MFU.

(20) Outfitter operation--Any operation, such as trail rides, bus tours, harbor cruises, or river raft trips, in which food is offered to patrons and which operates out of a central preparation location or food establishment.

(21) Plumbing Code--The International Plumbing Code, as amended, including appendices C, E, F, and G, published by the International Code Council as amended by 16 TAC §70.101 (relating to Amendments to Mandatory Building Code), the Uniform Plumbing Code, as amended, including appendices required by the regulatory authority, as published by the International Association of Plumbing and Mechanical Officials as referenced in Occupations Code, Title 8, Chapter 1301, §255 (relating to Adoption of Plumbing Codes), or a Plumbing Code adopted by a local regulatory authority, whichever is more stringent.

(22) Private water system--A drinking water system that is not connected to a public water system and not regulated by the Texas Commission on Environmental Quality.

(23) Public water system--A drinking water system that complies with 30 TAC §§290.101 - 290.122 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(24) Pushcart--A non-self-propelled MFU limited to serving foods requiring a limited amount of preparation as authorized by the regulatory authority and readily movable by one or two persons. A pushcart is classified as an MFU. A pushcart does not include non-self-propelled units owned and operated within a retail food store. This type of MFU requires the support of a central preparation facility.

(25) Regulatory authority--The department, the local (municipality, county, or public health district), federal enforcement body, or authorized representative having jurisdiction over the food establishment.

(26) Roadside food vendor--A person who operates a mobile retail food store from a temporary location adjacent to a public road or highway. Food is not prepared or processed by a roadside food vendor. A roadside food vendor is classified as an MFU.

(27) Safe material--An article manufactured from or composed of materials that may not reasonably be expected to result either directly or indirectly in the article becoming a component of or otherwise affecting the characteristics of any food. An additive that is used as specified in the Texas Health and Safety Code, Chapter 431, or other materials that are not additives and that are used in conformity with applicable regulations of the U.S. Food and Drug Administration.

(28) Self-service food market--A market that is unstaffed and offers prepackaged non-TCS food and prepackaged refrigerated or frozen TCS food that is stored in equipment that complies with §228.225 of this chapter (relating to Self-Service Food Market).

(29) Service animal--A canine that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual or other mental disability as specified in Texas Health and Safety Code, §437.023.

(30) Vending machine location--The room, enclosure, space, or area where one or more vending machines are installed and operated and that includes the storage areas and areas on the premises that are used to service and maintain the vending machines. This does not include self-service food markets.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. MANAGEMENT AND PERSONNEL

### 25 TAC §§228.31 - 228.45

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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**25 TAC §§228.31, §228.32**

**STATUTORY AUTHORITY**

The new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

*§228.31. Certified Food Protection Manager and Food Handler Requirements.*

(a) The original food manager certificate shall be posted in the food establishment in a location that is conspicuous to consumers.

(b) Except as specified in subsection (c) of this section, a certified food protection manager shall be present at the food establishment during all hours of operation as required in Food Code, §2-101.11 and §2-102.12.

(c) Food establishments deemed by the regulatory authority to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of food preparation, such as but not limited to:

(1) establishments that handle only prepackaged food and do not package food;

(2) establishments that do not prepare or handle exposed Time/Temperature Control for Safety (TCS); or

(3) temporary food establishments are exempt from the requirements in subsection (b) of this section.

(d) All food employees, except for the certified food protection manager, shall successfully complete an accredited food handler training course, within 30 days of employment. This requirement does not apply to temporary food establishments.

(e) The food establishment shall maintain on premises a certificate of completion of the food handler training course for each food employee.

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**SUBCHAPTER C. FOOD**

**25 TAC §§228.61 - 228.83**

**STATUTORY AUTHORITY**

The repeals are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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**25 TAC §§228.61 - 228.64**

**STATUTORY AUTHORITY**

The new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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**SUBCHAPTER D. EQUIPMENT, UTENSILS,  
AND LINENS**

**25 TAC §§228.101 - 228.125**

**STATUTORY AUTHORITY**

The repeals are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas

Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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## SUBCHAPTER E. WATER, PLUMBING, AND WASTE

### 25 TAC §§228.141 - 228.154

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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### 25 TAC §§228.141 - 228.143

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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## SUBCHAPTER F. PHYSICAL FACILITIES

### 25 TAC §§228.171 - 228.186

#### STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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### 25 TAC §§228.171, §228.172

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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◆ ◆ ◆  
**SUBCHAPTER G. POISONOUS OR TOXIC MATERIALS**

**25 TAC §§228.201 - 228.213**

**STATUTORY AUTHORITY**

The repeals are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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◆ ◆ ◆  
**25 TAC §228.211**

**STATUTORY AUTHORITY**

The new section is authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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◆ ◆ ◆  
**SUBCHAPTER H. REQUIREMENTS APPLICABLE TO CERTAIN ESTABLISHMENTS**

**25 TAC §§228.221 - 228.225**

**STATUTORY AUTHORITY**

The repeals are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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◆ ◆ ◆  
**25 TAC §§228.221 - 228.225**

**STATUTORY AUTHORITY**

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◆ ◆ ◆  
**SUBCHAPTER I. COMPLIANCE**

**25 TAC §§228.241 - 228.257**

**STATUTORY AUTHORITY**



The repeals are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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## 25 TAC §§228.241 - 228.246

### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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## SUBCHAPTER J. PRIVATE WATER SYSTEMS

### 25 TAC §§228.271 - 228.278

#### STATUTORY AUTHORITY

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## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 556. NURSE AIDES

##### 26 TAC §§556.2, 556.3, 556.6, 556.9

The Texas Health and Human Services Commission (HHSC) adopts amendments to §556.2, concerning Definitions; §556.3, concerning Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements; §556.6, concerning Competency Evaluation Requirements; and §556.9, concerning Nurse Aide Registry and Renewal; in Title 26, Part 1, Chapter 556, Nurse Aides.

The amendments to §§556.2, 556.3, 556.6, and 556.9 are adopted with changes to the proposed text as published in the March 12, 2021, issue of the *Texas Register* (46 TexReg 1597). These rules will be republished.

#### BACKGROUND AND JUSTIFICATION

A NATCEP is a program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a nursing facility. Currently, all NATCEP training is provided in a classroom and clinical setting. The purpose of the adopted rules is to allow a NATCEP provider to offer certain components of required training online.

The rules respond to a critical shortage in trained nurse aides in nursing homes. External stakeholders, such as Texas Health Care Association and Leading Age, requested that HHSC allow NATCEP providers to offer online training opportunities for portions of the NATCEP classroom curriculum. This option is intended to increase the number of nurse aides qualified for employment in a nursing facility.

Due to the challenges presented by the COVID-19 pandemic and the need for greater awareness and emphasis on infection control, the adopted rules increase the number of hours of infection control training a NATCEP must provide and require all nurse aides to complete a course in infection control each year.

The rules implement legislative amendments to Texas Administrative Code §556.3(e)(3) to provide that HHSC does not approve a NATCEP offered by or in a facility if, within the previous two years, the facility has been assessed a civil money penalty of not less than \$5,000, as adjusted annually for inflation under 45 Code of Federal Regulations (CFR), Part 102, for deficiencies in nursing facility standards. This change was made to link

the dollar amount referenced in the rule to the amount specified by the Centers for Medicare and Medicaid Services, as adjusted annually for inflation.

#### COMMENTS

The 31-day comment period ended April 12, 2021. During this period, HHSC did not receive any comments regarding the proposed rules.

HHSC amended §556.2 to improve clarity and consistency; the definition for NATCEP was moved to define the term as spelled out, instead of by acronym, and the definitions were renumbered accordingly.

HHSC amended proposed §556.3 to improve clarity with minor editorial changes to improve punctuation and remove repeated words, change "trainees" to "the trainee," and specify Texas for the Department of State Health Services and Board of Nursing; and to clarify the requirement in §556.3(e)(3), that HHSC will not approve a NATCEP offered by or in a facility if, within the previous two years, the facility has been assessed a civil money penalty of not less than \$5,000 under 45 CFR Part 102 for deficiencies in nursing facility standards. The amendment ties the dollar amount referenced in this subsection to the dollar amount found in 45 CFR Part 102, which is adjusted annually for inflation.

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; §53.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that is a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code, Chapter 250, which requires HHSC to maintain a Nurse Aide Registry.

#### §556.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

- (1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.
- (2) Act--The Social Security Act, codified at United States Code, Title 42, Chapter 7.
- (3) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.
- (4) Active status--The designation given to a nurse aide listed on the NAR who is eligible to work in a nursing facility.
- (5) Armed forces of the United States--The Army, Navy, Air Force, Space Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.
- (6) Classroom training--The teaching of curriculum components through in-person instruction taught in a physical classroom location, which may include skills practice, or through online instruction taught in a virtual classroom location.

(7) Clinical training--The teaching of hands-on care of residents in a nursing facility under the required level of supervision of a licensed nurse, which may include skills practice prior to performing the skills through hands-on care of a resident. The clinical training provides the opportunity for a trainee to learn to apply the classroom training to the care of residents with the assistance and required level of supervision of the instructor.

(8) Competency evaluation--A written or oral examination and a skills demonstration administered by a skills examiner to test the competency of a trainee.

(9) Competency evaluation application--An HHSC form used to request HHSC approval to take a competency evaluation.

(10) Curriculum--The publication titled Texas Curriculum for Nurse Aides in Long Term Care Facilities developed by HHSC.

(11) Direct supervision--Observation of a trainee performing skills in a NATCEP.

(12) Employee misconduct registry (EMR)--The registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(13) Facility--A nursing facility that participates in Medicaid, a skilled nursing facility that participates in Medicare, or a nursing facility that participates in both Medicaid and Medicare.

(14) Facility-based NATCEP--A NATCEP offered by or in a facility.

(15) General supervision--Guidance and ultimate responsibility for another person in the performance of certain acts.

(16) HHSC--The Texas Health and Human Services Commission or its designee.

(17) Infection control--Principles and practices that prevent or stop the spread of infections in the facility setting.

(18) Informal Review (IR)--An opportunity for a nurse aide to dispute a finding of misconduct by providing testimony and supporting documentation to an impartial HHSC staff person.

(19) Licensed health professional--A person licensed to practice healthcare in the state of Texas including:

- (A) a physician;
  - (B) a physician assistant;
  - (C) a physical, speech, or occupational therapist;
  - (D) a physical or occupational therapy assistant;
  - (E) a registered nurse;
  - (F) a licensed vocational nurse; or
  - (G) a licensed social worker.
- (20) Licensed nurse--A registered nurse or licensed vocational nurse.
- (21) Licensed vocational nurse (LVN)--An individual licensed by the Texas Board of Nursing to practice as a licensed vocational nurse.
- (22) Military service member--A person who is on active duty.
- (23) Military spouse--A person who is married to a military service member.

(24) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(25) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

(26) Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(27) Non-facility-based NATCEP--A NATCEP not offered by or in a facility.

(28) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity. This term does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

(29) Nurse Aide Registry (NAR)--A listing of nurse aides, maintained by HHSC, that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect, or misappropriation of resident property.

(30) Nurse aide training and competency evaluation program (NATCEP)--A program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a facility.

(31) Nurse aide training and competency evaluation program (NATCEP) application--A HHSC form used to request HHSC initial approval to offer a NATCEP, to renew approval to offer a NATCEP, or to request HHSC approval of changed information in an approved NATCEP application.

(32) Nursing services--Services provided by nursing personnel that include, but are not limited to:

(A) promotion and maintenance of health;

(B) prevention of illness and disability;

(C) management of health care during acute and chronic phases of illness;

(D) guidance and counseling of individuals and families; and

(E) referral to other health care providers and community resources when appropriate.

(33) Performance record--An evaluation of a trainee's performance of major duties and skills taught by a NATCEP.

(34) Person--A corporation, organization, partnership, association, natural person, or any other legal entity that can function legally.

(35) Personal protective equipment (PPE)--Specialized clothing or equipment, worn by an employee for protection against infectious materials.

(36) Program director--An individual who is approved by HHSC and meets the requirements in §556.5(a) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(37) Program instructor--An individual who is approved by HHSC to conduct the training in a NATCEP and who meets the requirements in §556.5(b) of this chapter.

(38) Resident--An individual accepted for care or residing in a facility.

(39) Registered nurse (RN)--An individual licensed by the Texas Board of Nursing to practice professional nursing.

(40) Skills examiner--An individual who is approved by HHSC and meets the requirements in §556.5(d) of this chapter.

(41) Trainee--An individual who is enrolled in and attending, but has not completed, a NATCEP.

*§556.3. Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements.*

(a) To train nurse aides, a facility must apply for and obtain approval from HHSC to offer a NATCEP or the facility must contract with another entity offering a NATCEP.

(b) A person that wants to offer a NATCEP must file a complete NATCEP application with HHSC.

(c) A person applying to offer a NATCEP must submit a separate NATCEP application for each location from which training is delivered or administered.

(d) A NATCEP application must identify one or more facilities that the NATCEP uses as a clinical site.

(e) HHSC does not approve a NATCEP offered by or in a facility if, within the previous two years, the facility:

(1) has operated under a waiver concerning the services of a registered nurse under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i) - (ii) of the Act;

(2) has been subjected to an extended or partially extended survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) has been assessed a civil money penalty of not less than \$5,000 as adjusted annually under 45 CFR part 102 for deficiencies in nursing facility standards, as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) has been subjected to denial of payment under Title XVIII or Title XIX of the Act;

(5) has operated under state-appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Act; or

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2) of the Act.

(f) A facility that is prohibited from offering a NATCEP under subsection (e) of this section must contract with a person who has not been employed by the facility or by the facility's owner to offer NATCEP in accordance with §1819(f)(2) and §1919(f)(2) of the Act if:

(1) the NATCEP is offered to employees of the facility that is prohibited from training nurse aides under subsection (e) of this section;

(2) the NATCEP is offered in, but not by, the prohibited facility;

(3) there is no other NATCEP offered within a reasonable distance from the facility; and

(4) an adequate environment exists for operating a NATCEP in the facility.

(g) A person who wants to contract with a facility in accordance with subsection (f) of this section must submit a completed application to HHSC in accordance with §556.4 of this chapter (relating to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited facility in the application. HHSC may withdraw the application within two years of approving it if HHSC determines that the facility is no longer prohibited from offering a NATCEP.

(h) A NATCEP must provide at least 100 hours of training to a trainee. The 100 hours must include:

- (1) 60 hours of classroom training; and
- (2) 40 hours of clinical training with at least one program instructor for every 10 trainees.

(i) A NATCEP that provides online training must:

(1) maintain records in accordance with subsection (q) of this section and otherwise comply with this chapter;

(2) adopt, implement, and enforce a policy and procedures for establishing that a trainee who registers in an online training is the same trainee who participates in and completes the course. This policy and associated procedures must describe the procedures the NATCEP uses to:

- (A) verify a trainee's identity;
- (B) ensure protection of a trainee's privacy and personal information; and
- (C) document the hours completed by each trainee; and

(3) verify on the NATCEP application that the online course has the security features required under paragraph (2) of this subsection.

(j) A NATCEP must teach the curriculum established by HHSC and described in the Code of Federal Regulations, Title 42, §483.152. The NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

- (1) communication and interpersonal skills;
- (2) infection control;
- (3) safety and emergency procedures, including the Heimlich maneuver;
- (4) promoting a resident's independence;
- (5) respecting a resident's rights;
- (6) basic nursing skills, including:
  - (A) taking and recording vital signs;
  - (B) measuring and recording height and weight;
  - (C) caring for a resident's environment;
  - (D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and
  - (E) caring for a resident when death is imminent;
- (7) personal care skills, including:
  - (A) bathing;
  - (B) grooming, including mouth care;
  - (C) dressing;
  - (D) toileting;

(E) assisting with eating and hydration;

(F) proper feeding techniques;

(G) skin care; and

(H) transfers, positioning, and turning;

(8) mental health and social service needs, including:

(A) modifying the aide's behavior in response to a resident's behavior;

(B) awareness of developmental tasks associated with the aging process;

(C) how to respond to a resident's behavior;

(D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(E) using a resident's family as a source of emotional support;

(9) care of cognitively impaired residents, including:

(A) techniques for addressing the unique needs and behaviors of a resident with a dementia disorder including Alzheimer's disease;

(B) communicating with a cognitively impaired resident;

(C) understanding the behavior of a cognitively impaired resident;

(D) appropriate responses to the behavior of a cognitively impaired resident; and

(E) methods of reducing the effects of cognitive impairments;

(10) basic restorative services, including:

(A) training a resident in self care according to the resident's abilities;

(B) use of assistive devices in transferring, ambulation, eating, and dressing;

(C) maintenance of range of motion;

(D) proper turning and positioning in bed and chair;

(E) bowel and bladder training; and

(F) care and use of prosthetic and orthotic devices; and

(11) a resident's rights, including:

(A) providing privacy and maintenance of confidentiality;

(B) promoting the resident's right to make personal choices to accommodate their needs;

(C) giving assistance in resolving grievances and disputes;

(D) providing needed assistance in getting to and participating in resident, family, group, and other activities;

(E) maintaining care and security of the resident's personal possessions;

(F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and

(G) avoiding the need for restraints in accordance with current professional standards.

(k) A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval. The program director and program instructor must meet the requirements of §556.5(a) and (b) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(l) A NATCEP must teach eight hours of infection control that includes the proper use of personal protective equipment (PPE) before a trainee has any direct contact with a resident.

(m) A NATCEP must verify that a trainee:

- (1) is not listed on the NAR in revoked status;
- (2) is not listed as unemployable on the EMR; and

(3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC) §250.006(a) or convicted of a criminal offense listed in THSC §250.006(b) within the five years immediately before participating in the NATCEP.

(n) A NATCEP must ensure that a trainee:

(1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;

(2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(3) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor; and

(5) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(o) A NATCEP must submit a NATCEP application to HHSC if the information in an approved NATCEP application changes. A NATCEP may not continue training or start new training until HHSC approves the change. HHSC conducts a review of the NATCEP information if HHSC determines the changes are substantive.

(p) A NATCEP must use an HHSC performance record to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the employer, if applicable, will receive a copy of the performance record.

(q) A NATCEP must maintain records for each session of classroom training, whether offered in person or online, and of clinical training, and must make these records available to HHSC or its designees at any reasonable time.

(1) The classroom and clinical training records must include:

(A) dates and times of all classroom and clinical training;

(B) the full name and social security number of each trainee;

(C) a record of the date and time of each classroom and clinical training session a trainee attends;

(D) a final course grade that indicates pass or fail for each trainee; and

(E) a physical or electronic sign-in record for each classroom and clinical training session. An electronic sign-in must include a form of identity verification for the trainee conducted in compliance with the requirements of subsection (i)(2) of this section.

(2) A NATCEP must provide to HHSC, on the NATCEP application, the physical address where all records are maintained and must notify HHSC of any change in the address provided.

(r) A facility must not charge a nurse aide for any portion of the NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins a NATCEP.

(s) HHSC reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a facility within 12 months after completing the NATCEP.

(t) HHSC must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(u) HHSC approval of a NATCEP only applies to the required curriculum and hours. HHSC does not approve additional content or hours.

(v) A new employee or trainee orientation given by a facility to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(w) A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease.

#### §556.6. Competency Evaluation Requirements.

(a) Only HHSC, or an entity HHSC approves, may provide a competency evaluation, which must be administered by a skills examiner at an approved evaluation site.

(b) A trainee is eligible to take a competency evaluation if the trainee has successfully completed the training portion of a NATCEP, as determined by the program director, or is eligible under §556.11 of this chapter (relating to Waiver, Reciprocity, and Exemption Requirements).

(c) If a trainee cannot take a competency evaluation at the NATCEP location where the trainee received training, the trainee may take a competency evaluation at another location approved to offer the evaluation.

(d) An eligible trainee must obtain from the program director a signed competency evaluation application and a certificate or letter of completion of training. The trainee must arrange to take the competency evaluation at an approved location and must follow the instructions on the competency evaluation application.

(e) A NATCEP must:

(1) promptly, after one of its trainees successfully completes the NATCEP training, approve the trainee to take a competency evaluation;

(2) provide the trainee with information regarding scheduling a competency evaluation; and

(3) ensure that the trainee accurately completes the competency evaluation applications.

(f) A trainee must:

(1) take a competency evaluation within 24 months after completing the training portion of a NATCEP;

(2) verify the arrangements for a competency evaluation;

(3) complete a competency evaluation application and submit the application in accordance with application instructions;

(4) request another competency evaluation if the trainee fails a competency evaluation; and

(5) meet any other procedural requirements specified by HHSC or its designated skills examiner.

(g) A competency evaluation must consist of:

(1) a skills demonstration that requires the trainee to demonstrate five randomly selected skills drawn from a pool of skills that are generally performed by nurse aides, including all personal care skills listed in the curriculum; and

(2) a written or oral examination, which includes 60 scored multiple choice questions selected from a pool of test items that address each course requirement in the curriculum. Written examination questions must be printed in a test booklet with a separate answer sheet. An oral examination must be a recorded presentation read from a prepared text in a neutral manner that includes questions to test reading comprehension.

(h) A trainee with a disability, including a trainee with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the competency evaluation under the Americans with Disabilities Act.

(i) To successfully complete the competency evaluation, a trainee must achieve a score HHSC designates as a passing score on:

(1) the skills demonstration; and

(2) the written or oral examination.

(j) A trainee who fails the skills demonstration or the written or oral examination may retake the competency evaluation twice.

(1) A trainee must be advised of the areas of the competency evaluation that the trainee did not pass.

(2) If a trainee fails a competency evaluation three times, the trainee must complete the training portion of a NATCEP before taking a competency evaluation again.

(k) HHSC informs a trainee before taking a competency evaluation that HHSC records successful completion of the competency evaluation on the NAR.

(l) HHSC records successful completion of the competency evaluation on the NAR within 30 days after the date the trainee passes the competency evaluation.

(m) A facility must not offer or serve as a competency evaluation site if the facility is prohibited from offering a NATCEP under the provisions of §556.3(e) of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(n) A trainee may not be charged for any portion of a competency evaluation if the trainee is employed by or has received an offer of employment from a facility on the date the trainee takes the competency evaluation.

(o) HHSC reimburses a nurse aide for a portion of the costs incurred by the individual to take a competency evaluation if the individual is employed as a nurse aide by, or has received an offer of employment from, a facility within 12 months after taking the competency evaluation.

§556.9. *Nurse Aide Registry and Renewal.*

(a) To be listed on the NAR as having active status, a nurse aide must successfully complete a NATCEP, as described in §556.6(i) of this chapter (relating to Competency Evaluation Requirements).

(b) HHSC does not charge a fee to list a nurse aide on the NAR or to renew the nurse aide's listing of active status on the NAR.

(c) A nurse aide listed on the NAR must inform HHSC of the nurse aide's current address and telephone number.

(d) A listing of active status on the NAR expires 24 months after the nurse aide is listed on the NAR or 24 months after the last date of verified employment as a nurse aide, whichever is earlier. To renew active status on the NAR, the following requirements must be met:

(1) A facility must submit a HHSC Employment Verification form to HHSC that documents that the nurse aide has performed paid nursing or nursing-related services at the facility during the preceding year.

(2) A nurse aide must submit a HHSC Employment Verification form to HHSC to document that the nurse aide has performed paid nursing or nursing-related services, if documentation is not submitted in accordance with paragraph (1) of this subsection by the facility or facilities where the nurse aide was employed.

(3) A nurse aide must complete an HHSC course in infection control and proper use of PPE every year.

(4) A nurse aide must complete at least 24 hours of in-service education every two years. The in-service education must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease. The in-service education must be provided by:

(A) a facility;

(B) an approved NATCEP;

(C) HHSC; or

(D) a healthcare entity, other than a facility, licensed or certified by HHSC, the Texas Department of State Health Services, or the Texas Board of Nursing.

(5) No more than 12 hours of the in-service education required by paragraph (4) of this subsection may be provided by an entity described in paragraph (4)(D) of this subsection.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 19, 2021.

TRD-202102779

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: August 8, 2021

Proposal publication date: March 12, 2021

For further information, please call: (512) 438-3161



**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 5. TEXAS BOARD OF PARDONS AND PAROLES**

**CHAPTER 143. EXECUTIVE CLEMENCY**

**SUBCHAPTER D. REPRIEVE FROM EXECUTION**

**37 TAC §143.43**

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 143, Subchapter D, §143.43, concerning procedure in capital reprieve cases. The rule is adopted without changes to the proposed text as published in the April 30, 2021, issue of the *Texas Register* (46 TexReg 2888). The text of the rule will not be republished.

The amendments are adopted to delete the number of copies of an application and supporting documents that must be provided by an applicant seeking a reprieve and authorize the Presiding Officer to make that determination.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and Code of Criminal Procedure, Article 48.01. Both Article 4, Section 11, Texas Constitution and Article 48.01, Code of Criminal Procedure, authorize the Board to make clemency recommendations to the Governor.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2021.

TRD-202102702

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Effective date: August 5, 2021

Proposal publication date: April 30, 2021

For further information, please call: (512) 406-5478

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**SUBCHAPTER E. COMMUTATION OF SENTENCE**

**37 TAC §143.57**

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 143, Subchapter D, §143.57, concerning commutation of sentence. The rule is adopted without changes to the proposed text as published in the April 30, 2021, issue of the *Texas Register* (46 TexReg 2889). The text of the rule will not be republished.

The amendments are adopted to delete the number of copies of an application and supporting documents that must be provided by an applicant seeking a reprieve and authorize the Presiding Officer to make that determination.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under the Texas Constitution, Article 4, Section 11, and Code of Criminal Procedure, Article 48.01. Both Article 4, Section 11, Texas Constitution and Article 48.01, Code of Criminal Procedure, authorize the Board to make clemency recommendations to the Governor.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 406-5478





# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

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## Adopted Rule Reviews

Texas Department of Licensing and Regulation

### Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review to consider for re-adoption, revision, or repeal the rule chapters listed below, in their entirety, under Title 16, Part 4, of the Texas Administrative Code (TAC). This review was conducted in accordance with Texas Government Code §2001.039.

#### Education and Examination

Chapter 59, Continuing Education Requirements

#### Procedural

Chapter 60, Procedural Rules of the Commission and the Department

#### Building and Mechanical

Chapter 70, Industrialized Housing and Buildings

Chapter 73, Electricians

#### Business and Consumer Safety

Chapter 72, Professional Employer Organization

#### Public Comments

A combined Notice of Intent to Review for all of the chapters listed above was published in the April 16, 2021, issue of the *Texas Register* (46 TexReg 2589). The public comment period closed on May 17, 2021.

### Chapter 59, Continuing Education Requirements

The Department received 22 public comments in response to the Notice of Intent to Review for this rule chapter. Among the commenters are the Texas Towing & Storage Association, the Independent Electrical Contractors of Texas, the Texas Groundwater Association, the Accessibility Professionals Association, and 18 individuals commenting on their own behalf or on behalf of their business.

Of the comments that were received, six comments were supportive of the rules and nine comments were unsupportive of the rules. Two of the six supportive comments encourage re-adoption and one of the nine unsupportive comments recommends that the Electrician continuing education program be discontinued. These 15 comments provided critiques or recommendations regarding the amount of continuing education required, continuing education course content, and the value of continuing education as currently provided. The Department has taken the supportive and unsupportive comments into consideration as part of this review.

These same 15 comments also suggested amendments to the rules. The unsupportive comments addressed the content of the courses being redundant, irrelevant, or lacking in value. The supportive comments recommended improvements to administrative processes and methods of providing continuing education. The Department will take these comments under consideration for a possible future rulemaking because any amendments must be made using the standard rulemaking process.

Finally, seven comments were unrelated to the rules under review. These comments were directed to the appropriate division for consideration, and the Department will not take any further rulemaking action as result of these comments.

### Chapter 60, Procedural Rules of the Commission and the Department

The Department received six public comments in response to the Notice of Intent to Review for this rule chapter. Of the comments that were received, one comment was in support of re-adoption of the rules. The Department has taken this comment into consideration as part of this review. Three comments requested amendments to the rules related to persons with criminal histories obtaining licenses and complaint resolution timeframes. The Department will take these comments under consideration for a possible future rulemaking because any amendments must be made using the standard rulemaking process. Two comments were unrelated to the rules under review. These comments were directed to the appropriate division for consideration, and the Department will not take any further rulemaking action as result of these comments.

### Chapter 70, Industrialized Housing and Buildings

The Department did not receive any public comments in response to the Notice of Intent to Review for this rule chapter.

### Chapter 72, Professional Employer Organization

The Department received one public comment in response to the Notice of Intent to Review for this rule chapter. The National Association of Professional Employer Organizations commented in support of the rules and recommended re-adoption without changes. The Department has taken this comment into consideration as part of this review.

### Chapter 73, Electricians

The Department received 11 public comments in response to the Notice of Intent to Review for this rule chapter. Of the comments that were received, one comment was in support of re-adoption of the rules. The Department has taken this comment into consideration as part of this review. Two comments requested amendments to the rules related to allowing members of the International Brotherhood of Electrical Workers to be granted an electrical license without the need for application. One commenter requested an amendment allowing license applicants

to use hours spent in educational courses to fulfill licensing requirements. The Department will take these comments under consideration for a possible future rulemaking because any amendments must be made using the standard rulemaking process. Seven comments were unrelated to the rules under review. These comments were directed to the appropriate division for consideration, and the Department will not take any further rulemaking action as result of these comments.

#### Department Review

The Department has reviewed each of the rule chapters listed above and has determined that the reasons for adopting or readopting the rules in these chapters continue to exist. The rules are still essential in implementing the enabling statute of the Commission and the Department, other statutes applicable to state agencies, and the statutes for each of the affected programs. The rules provide details that are not found in these statutes but are necessary for the operations and functions of the Commission and the Department and for implementation and operation of the programs.

The Department may propose amendments in the future to update, clarify, or supplement the existing rules. Any proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment before final adoption by the Texas Commission of Licensing and Regulation, the Department's governing body, and in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

#### Commission Action

At its meeting on July 3, 2021, the Commission readopted the following rule chapters, in their entirety and in their current form: 16 TAC, Chapter 59, Continuing Education Requirements; Chapter 60, Procedural Rules of the Commission and the Department; Chapter 70, Industrialized Housing and Buildings; Chapter 72, Professional Employer Organization; and Chapter 73, Electricians. This concludes the review of these rule chapters in accordance with Texas Government Code §2001.039.

TRD-202102687

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Filed: July 15, 2021



Texas Parks and Wildlife Department

Title 31, Part 2

#### ADOPTION OF COMPLETED RULE REVIEW

The Texas Parks and Wildlife Department adopts the review of 31 TAC Part 2 (Chapters 51, 52, 53, 55, 57, 58, 59, 60, 61, 65, and 69). The review was conducted pursuant to Government Code, §2001.039. For each rule being retained, the department finds that the reasons for initially adopting the rule continue to exist and readopts the rule.

Notice of Intent to Review for Chapters 51, 52, 55, 60, and 61 was published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 5015). No comment was received regarding the review. Rule action resulting from the review was proposed in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6704 - 6709, 6711, 6712) and adopted in the February 5, 2021, issue of the *Texas Register* (46 TexReg 930, 931) and the March 12, 2021, issue of the *Texas Register* (46 TexReg 1657 - 1659). The Texas Parks and Wildlife Commission re-adopted existing rules in the affected chapters as required by Government Code, §2001.039, in a duly noticed meeting on November 10, 2020.

Notice of Intent to Review for Chapters 53, 59, and 69 was published in the October 2, 2020, issue of the *Texas Register* (45 TexReg 7045). No comment was received regarding the review. Rule action resulting from the review was proposed in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9168 - 9170) and adopted in the March 19, 2021, issue of the *Texas Register* (46 TexReg 1744, 1745). The Texas Parks and Wildlife Commission re-adopted existing rules in those chapters as required by Government Code, §2001.039, in a duly noticed meeting on January 21, 2021.

Notice of Intent to Review for Chapters 57, 58, and 65 was published in the December 18, 2020, issue of the *Texas Register* (45 TexReg 9253). No comment was received regarding the review. Rule action resulting from the review was proposed in the February 19, 2021, issue of the *Texas Register* (46 TexReg 1226, 1230) and adopted in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4169, 4171). The Texas Parks and Wildlife Commission re-adopted existing rules in those chapters as required by Government Code, §2001.039, in a duly noticed meeting on March 25, 2021.

This notice in the *Texas Register* concludes the review of agency rules as required under Government Code, §2001.039.

TRD-202102788

James Murphy

General Counsel

Texas Parks and Wildlife Department

Filed: July 20, 2021



# TABLES &

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# GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 30 TAC §335.1(160)(D)(iv)  
 [Figure: 30 TAC §335.1(154)(D)(iv)]

TABLE 1

	Use Constituting Disposal S.W. Def. (D)(i)	Energy Recovery/Fuel S.W. Def. (D)(ii)	Reclamation S.W. Def. (D)(iii) <sup>2</sup>	Speculative Accumulation S.W. Def. (D)(iv)
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.

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-triazinetrione
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-trione
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-trione
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

Figure: 30 TAC §335.521(b)  
[Figure: 30 TAC §335.521(b)]

Appendix 2  
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/>]

Figure: 30 TAC §335.521(c)  
 [Figure: 30 TAC §335.521(c)]

Appendix 3.

FORM CODES	
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Code	Waste description
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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.



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *Harris County, Texas and the State of Texas, acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. Aloysius Ikwuezunma*, Cause No. 2018-56157, in the 295th Judicial District, Harris County, Texas.

Nature of the Suit: Defendant Aloysius Ikwuezunma owns and operates a salvage yard located at 5607 Charrin Drive, Houston, Harris County, Texas 77032 (the "Site"). Harris County initiated suit alleging that Ikwuezunma failed to properly operate the Site by securing the appropriate permits and illegally stored and disposed of waste at the Site. Specifically, investigators observed several vehicles stored at the Site in varying conditions, numerous rimless tires, and several dark stains on the soil beneath the car parts. Investigators also determined that water and soil samples from the Site contained hydrocarbons. The State of Texas, on behalf of the TCEQ, joined the suit as a necessary and indispensable party.

Proposed Agreed Judgment: The proposed Agreed Final Judgment assesses against Defendant civil penalties in the amount of \$47,000 (with \$20,000 deferred should Defendant comply with the terms of the settlement) to be equally divided between Harris County and the State, penalties in the amount of \$5,000 to Harris County for violations of Harris County Floodplain Regulations, and attorney's fees in the amount of \$8,000 to the State. Additionally, the settlement requires Defendant to cease all operations at the Site until the Site is properly remediated, obtain the required permits, and provide documentation to Harris County and the State confirming compliance with all provisions of the AFJ.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Tyler J. Ryska, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548 (MC-066), Austin, Texas 78711-2548, phone (512) 475-4156, facsimile (512) 320-0911, or email: Tyler.Ryska@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202102795

Austin Kinghorn  
General Counsel  
Office of the Attorney General  
Filed: July 20, 2021

## Brazos Valley Council of Governments

### Public Notice - Request for Proposal for Independent Financial Monitoring Services

The Workforce Solutions Brazos Valley Board (WSBVB) is soliciting quotes for a contractor with Texas Workforce Commission program knowledge to provide financial monitoring services for the Brazos Valley Workforce Board. The successful contractor will conduct financial monitoring to ensure the fiscal integrity of workforce programs. The successful contractor will review fiscal performance, assess compliance with applicable laws and regulations, and identify successful methods and practices that serve to enhance the fiscal integrity of workforce programs. The contract obtained through this procurement shall be a cost-reimbursement contract. The actual contract amount for monitoring is dependent on monitoring services needed throughout the year. Interested parties can obtain a copy of the Financial Monitoring Services RFP by downloading it at [www.bvjobs.org](http://www.bvjobs.org) or by request to Barbara Clemmons via email at [bclemmons@bvcog.org](mailto:bclemmons@bvcog.org).

The purpose of the RFP is to solicit quotes for workforce financial program monitoring and the primary consideration in selecting a vendor will be their ability to provide financial program monitoring, as specified in the RFP.

**The deadline for submitting responses to the request for proposal will be 4:00 p.m. CST on Friday, August 20, 2021.**

Bidders will have the opportunity to ask questions during the bidder's conference call, which is scheduled for Thursday, July 29, 2021, at 10:30 a.m. CST. Attendance on the bidder's conference call is not mandatory. All answers to questions from the bidder's conference call will be posted at [www.bvjobs.org](http://www.bvjobs.org) by the close of business on Friday, August 5, 2021.

Deadline for Questions: The Bidder's Conference Call will be held on **Thursday, July 29, 2021, at 10:30 a.m. CST. The call-in number is (979) 595-2802. If Bidders cannot attend the bidder's conference call on Thursday, July 29, 2021, at 10:30 a.m. CST, they can submit their questions in writing concerning this RFP to Barbara Clemmons at [bclemmons@bvcog.org](mailto:bclemmons@bvcog.org) no later than Friday, July 30, 2021, 5:00 p.m. CST. Answers to all questions received will be posted to [www.bvjobs.org](http://www.bvjobs.org) no later than Friday, August 6, 2021, at 5:00 p.m. CST.**

Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

Deaf, hard-of-hearing or speech-impaired customers may contact: Relay Texas: (800) 735-2989 (TTY) and 711 (Voice).

TRD-202102812

◆ ◆ ◆  
**Office of Consumer Credit Commission**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/26/21 - 08/01/21 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/26/21 - 08/01/21 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/21 - 08/31/21 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/21 - 08/31/21 is 5.00% for commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-202102791

Leslie L. Pettijohn  
Commissioner

Office of Consumer Credit Commissioner  
Filed: July 20, 2021

◆ ◆ ◆  
**Office of Court Administration**

**Public Notice of Court Costs and Fees 2021**

Government Code, §51.607, requires the Office of Court Administration of the Texas Judicial System to publish a list of all court costs and fees imposed or changed during the most recent regular session of the Legislature. The following is a listing of court costs and fees that were amended, repealed, or added by the 87th Texas Legislature:

**Senate Bill 41**

SB 41 is effective January 1, 2022. It consolidates various civil filing fees, repeals various court fees and costs, and makes conforming changes across several codes.

**State Consolidated Civil Filing Fee:**

*Civil, Probate, Guardianship and Mental Health Cases filed in District, Statutory County, Statutory Probate, or County Court* - The bill adds Section 133.151 to the Local Government Code to create a \$137 state consolidated filing fee to be charged in a district court, statutory county court, statutory probate court, or county court upon the filing of any civil, probate, guardianship, or mental health case. The bill creates a \$45 filing fee to be charged in the aforementioned courts upon the filing of any action other than an original action subject to the \$137 fee, including an appeal and any counterclaim, cross-action, intervention, contempt action, adverse probate action, interpleader, motion for new trial, or third-party action.

*Civil Cases or Actions filed in Justice Court* - The bill adds Section 133.151 to the Local Government Code to create a \$21 state consoli-

dated filing fee to be charged in justice court upon the filing of any civil case or action other than an original action for the civil case, including on an appeal and any counterclaim, a cross-action, an intervention, a contempt action, an adverse probate action, an interpleader, a motion for new trial, or a third-party action.

**Local Consolidated Civil Filing Fees:**

*Civil Cases filed in District, Statutory County, and County Courts* - The bill adds Section 135.101 to the Local Government Code to create a \$213 local consolidated filing fee to be charged in a district court, statutory county court, statutory probate court, or county court upon the filing of any civil case, except a probate, guardianship, or mental health case, and a \$35 local consolidated filing fee to be charged in the aforementioned courts upon the filing of any action other than an original action subject to the \$213 fee, including an appeal and any counterclaim, cross-action, intervention, contempt action, interpleader, motion for new trial, or third-party action. The bill allocates the fees to certain designated accounts in the local treasury.

*Probate, Guardianship, and Mental Health Cases filed in Statutory County, Statutory Probate, or County Courts* - The bill adds Section 135.102 to the Local Government Code to create a \$223 local civil filing fee to be charged in a statutory county court, statutory probate court, or county court upon the filing of any probate, guardianship, or mental health case, and a \$75 local civil filing fee to be charged in the aforementioned courts upon the filing of any action - other than an original action subject to the \$223 fee - in which the movant or applicant filing the intervention pleading seeks any affirmative relief, including an adverse probate action, contest, or suit in a probate court, other than the filing of a claim against an estate. The bill allocates the fees to certain designated accounts in the local treasury.

*Civil Cases or Actions filed in Justice Court* - The bill adds Section 135.103 to the Local Government Code to create a local consolidated filing fee of \$33 on any civil case in a justice court and on any action other than an original action for a civil case, including an appeal and any counterclaim, cross-action, intervention, contempt action, interpleader, motion for new trial, or third-party action. The bill allocates the fees to certain designated accounts in the local treasury.

**Fee Modifications:**

The bill modifies the fee for several services performed by district clerks and county clerks, as follows: the fee for issuing an abstract of judgment by a county clerk is increased from \$5 to \$8 (Local Government Code §118.052(1)(B)(i)); the fee for issuing and recording the return for an execution, order of sale, writ (if no other fee is provided), or other process (if no other fee is provided) issued by a county clerk is increased from \$5 to \$8 (Local Government Code §118.052(1)(B)(ii)); the fee for approving and recording a bond by a district clerk is increased from \$4 to \$5 (Government Code §51.318(b)(6)); the fee for approving and recording a bond by a county clerk is increased from \$3 to \$5 (Local Government Code §118.052(2)(A)(ii)); the fee for issuing a subpoena by a county clerk is \$8 (Local Government Code §118.052(3)(A)); the fee for issuing a citation, notice, commission for deposition, execution, order, writ, process, or other instrument or paper authorized or required to be issued by a county clerk is increased from \$4 to \$8 (Local Government Code §118.052(3)(A)); the fee for a noncertified copy printed on paper or paper converted to an electronic format by a district clerk is \$1 for each page or part of a page or, if an electronic copy of an electronic document is issued, \$1 for each document up to 10 pages in length and \$0.10 for each page or part of a page thereafter (Government Code §51.318(b)(8)); the fee for a noncertified copy printed on paper or paper converted to an electronic format by a county clerk is \$1 for each page or part of a page or, if an electronic copy of an electronic document is issued, \$1 for each document up to 10



pages in length and \$0.10 for each page or part of a page thereafter (Local Government Code §118.052(3)(C)); the fee for searching the files or records to locate a cause when the docket number is not provided by a county clerk is \$5 (Local Government Code §118.052(3)(G)); the fee for preparing the clerk's record for appeal by a district clerk is \$1 for each page or part of a page (Government Code §51.318(b)(5)); the fee for preparing the clerk's record for appeal by a county clerk is \$1 for each page or part of a page (Local Government Code §118.052(3)(I)); and the fee for certified copy by a district clerk is increased from not to exceed \$1 to \$5 (Government Code §51.318(b)(7)).

#### **Deletions and Repeals:**

The bill deletes or repeals the following fees and costs: official court reporter's fees taxed in civil actions in Bexar County Courts at Law (Government Code §25.0172(u)); \$20 stenographer's fee taxed in civil, criminal, and probates cases in Hidalgo County (Government Code §25.1102(f)); \$3 court reporter's fee taxed in civil and probate cases in McLennan County Court at Law (Government Code §25.1572(h)); \$25 stenographer's fee taxed in civil and probate cases in the 1st Multicounty Court at Law (Government Code §25.2702(d)); the additional filing fee set by a commissioners court to establish a contingency fund to provide insurance coverage for the district clerk (Government Code §51.302(e)); \$30 electronic filing fee assessed by the clerk of a district court, county court, statutory county court, statutory probate court, or justice court (Government Code §51.851(b) and (c)); the additional \$28 filing fee for filing a petition for an order of nondisclosure (Government Code §411.0745(b)); the additional filing fee set by a commissioners court to establish a contingency fund to provide insurance coverage for the county clerk (Local Government Code §82.003(c)); various fees (original civil and all other action, probate original action, community survivors, small estates, declarations of heirship, mental health or chemical dependency services, additional special fee, adverse probate action, supplemental court-initiated guardianship fee, supplemental public probate administrator fee in counties with public probate administrator) charged by county clerk upon filing of civil or probate case (Local Government Code §118.052 (1)(A), (B) and §118.052 (2)(A), (C), (E), and (F)); the \$2 records technology and infrastructure collected by a county judge in a probate matter (Local Government Code §118.101(14)); the \$25 fee charged by a justice of the peace for services rendered before judgment (Local Government Code §118.121(1)); the law library fee of not more than \$5 (Local Government Code §323.023(a)); \$15 fee for filing an action under Chapter 12 of the Civil Practices and Remedies Code (liability Related to a Fraudulent Court Record or Fraudulent Lien or Claim Filed Against Real or Personal Property) and fee for notice of service of such action (Civil Practices and Remedies Code §12.005(a), (b)); \$3 interpreter fee for county courts at law (Civil Practices and Remedies Code §21.051); \$1.50 assessed as cost for a certified copy from the secretary of state of the record of trustees if the copy is used in a receivership proceedings (Civil Practices and Remedies Code §126.012); the alternative dispute resolution court costs assessed in civil cases in district, county, and justice courts (Civil Practices and Remedies Code §§152.004 and 152.005); various teen court reimbursement fees imposed by a juvenile court (Family Code §54.032(e), (g), and (h) and (Family Code §54.0325(g) and (h)); \$20 juvenile probation diversion fund fee (Family Code §54.0411); \$50 juvenile delinquency prevention or graffiti fee (Family Code §54.0461); fees in juvenile cases for offenses requiring DNA testing or involving alcohol or drugs (Family Code §§54.0462 and 54.047(f)); fee for residential care and other support for child placed with juvenile probation department (Family Code §54.06(a)); \$15 fee in suit requesting adoption of child (Family Code §108.006(b)); appellate judicial system fund fee assessed in certain counties (Government Code §§22.2021, 22.2031, 22.2041, 22.2051, 22.2061, 22.2071,

22.2081, 22.2091, 22.2101, 22.2121, 22.2131 and 22.2141); official court reporter's fee in a statutory county court in Galveston County (Government Code §25.0862(i)); official court reporter's fee in a county court at law in Parker County (Government Code §25.1862(l)); district court records archive fee of not more than \$10 (Government Code §51.305); various fees due at filing for services performed by district clerk (Government Code §51.317); \$15 and \$30 court reporter services fees (Government Code §§51.601(a) and (a-1)); jury fee (Government Code §51.604); additional filing fees for support of the judiciary in statutory county and probate courts and certain county courts (Government Code §§51.702, 51.703, and 51.704); additional filing fee for civil cases in Dallas County Civil Courts and for civil cases in Bexar, Hays, Rockwall, Travis, Hidalgo, Cameron, Willacy, and Starr counties (Government Code §§51.705, 51.706, 51.707, 51.708, 51.709, 51.710, 51.711, and 51.713); \$15 family protection fee (Government Code Subchapter M); \$5 judicial and court personnel training fee (Government Code Chapter 51 Subchapter N); cost for expense of preserving certain records (Government Code §54A.110(d)); \$1 fee as cost in case for report of divorce or annulment by district clerk (Health and Safety Code §194.002(e)); Collin County monthly support service fee assessed against persons paying child or spousal support through the district clerk (Human Resources Code §152.0492); certain fees for child support departments and collection in Harris, Johnson, Montague, Nueces, and Smith counties (Human Resources Code §§152.1074(f)); 152.1322, 152.1752, 152.1844, and 152.2183); \$25 adoption filing fee in a district court in Montague County (Human Resources Code §152.1752(d)); \$25 divorce and contempt fees in Orange County (Human Resources Code §152.1873); adoption filing fee for adoption investigation fund in Orange (\$25) and Wichita (\$100) counties (Human Resources Code §§152.1874 and 152.2496); \$5 records management and preservation fee collected by county clerk (Local Government Code §118.052(3)(G)); county records technology and infrastructure fee (Local Government Code §§118.069 and 118.102); basic civil legal services fee for indigents (Local Government Code §133.152 and 133.153); additional filing fee for support of judiciary in district, statutory county, and county courts (Local Government Code §133.154); \$5 court security fee authorized by commissioners courts (Local Government Code §291.008(a)); Webb County courthouse security fee (Local Government Code §291.009); \$20 filing fee for cases filed under Chapter 2308 of the Occupations Code (Texas Towing and Booting Act) (Occupations Code §2308.457); fee for court costs in eminent domain proceedings (Property Code §21.047(c)); and \$100 filing fee for hearing on nonpayment of toll (Transportation Code §372.107(c)).

Updated court costs and fees information will be available later this year on OCA's website at the following link: <https://www.tx-courts.gov/publications-training/publications/filing-fees-courts-costs/>.

#### **Senate Bill 1373**

SB 1373 is effective September 1, 2021. It amends Article 43.015(3), Code of Criminal Procedure, to define "cost" for purposes of Chapter 43 of the Code to include any fee, including a reimbursement fee, imposed on a defendant by the court; amends Article 45.004, Code of Criminal Procedure, to provide that unless the context clearly indicates otherwise, "costs" for purposes of Chapter 45 of the Code includes any fee, including a reimbursement fee, imposed on a defendant by the justice or judge; and amends Article 103.0081, Code of Criminal Procedure, to allow a trial court to designate as uncollectible a fine, reimbursement or other fee, or item of cost imposed in a criminal action or proceeding if the officer authorized to collect the fine, fee, or item of costs believes the defendant is deceased or serving a sentence for life or life without parole, or the fine, fee, or item of cost has been unpaid for at least 15 years.

## Senate Bill 1923

SB 1923 is effective September 1, 2021. It amends various codes to reclassify the following criminal court fines and fees as reimbursement fees: the \$7 processing fee deducted from the payment of a fine repaying a reward or part of a reward, as authorized under Article 42.152, Code of Criminal Procedure, and for which the bill now requires to be deposited in the general fund of the county; the fee amount established by the judge for residential aftercare required as part of a treatment plan, as authorized by Article 42A.303, Code of Criminal Procedure; the fine imposed under Section 31.127(f), Parks and Wildlife Code, when the court dismisses a charge of operating a vessel with an expired certificate of number; the fine imposed under Section 502.407(b), Transportation Code, when the court dismisses a charge of driving with an expired motor vehicle registration; the fine imposed under Section 502.473(d), Transportation Code, when the court dismisses a charge of operating a motor vehicle without displaying a motor vehicle registration; the fine imposed under Section 502.475(c), Transportation Code, when the court dismisses a charge of operating a motor vehicle with an altered or fictitious motor vehicle registration; the fine imposed under Section 504.943(d), Transportation Code, when the court dismisses a charge of operating a motor vehicle without displaying a license plate; the fine imposed under Section 504.945(d), Transportation Code, when the court dismisses a charge of operating a motor vehicle with the wrong license plate; the fine imposed under Section 521.026(b), Transportation Code, when the court dismisses a charge of driving with an expired driver's license; the fine imposed under Section 521.054(d), Transportation Code, when the court dismisses a charge of failing to notify DPS of an address, status, or name change; the fine imposed under Section 521.221, Transportation Code, when the court dismisses a charge of operating a motor vehicle in violation of a special restriction or endorsement; the fine imposed under Section 547.004(c), Transportation Code, when the court dismisses a charge of operating an unsafe motor vehicle; the fine imposed under Section 548.605(e), Transportation Code, when the court dismisses a charge of operating a motor vehicle without complying with inspection requirements as certified; and the fine imposed under Section 681.013(b), Transportation Code, when the court dismisses a charge of operating a motor vehicle displaying an expired disabled parking placard.

The bill amends Article 102.011(a), Code of Criminal Procedure, to clarify that the reimbursement fees imposed by the article are to defray the cost of the services provided in a case, if any, by a peace officer.

The bill adds Article 101.004 (Meaning of Conviction) to the Code of Criminal Procedure to clarify that a person is considered to have been "convicted" in a case for purposes of imposing a fine, cost, or fee under Title 2 of the Code if: a judgment, a sentence, or both a judgment and sentence are imposed on the person; the person receives community supervision, deferred adjudication, or deferred disposition; or the court defers final disposition of the case or imposition of the judgment and sentence.

The bill amends Section 51.607, Government Code, to provide that the effective date of a law imposing or changing the amount of a court cost or fee is the next January 1 following the effective date of the law, unless the law takes effect on or after the January 1 following the regular session of the legislature that passed the law.

The Office of Court Administration hereby certifies that legal counsel has reviewed this notice and concluded that it is within the agency's authority to publish.

TRD-202102815

Maria Elena Ramon  
General Counsel  
Office of Court Administration  
Filed: July 21, 2021

## Credit Union Department

### Application of Out of State Branch

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from KeyPoint Credit Union, Santa Clara, California to operate a Foreign (out of state) Branch Office to be located in the area of Austin, Texas.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202102803  
John J. Kolhoff  
Commissioner  
Credit Union Department  
Filed: July 21, 2021

### Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application for a change to the location of the principal place of business was received from InvesTex Credit Union, Humble Park, Texas. The credit union is proposing to change the location to 8404 FM 1960 Bypass Rd W, Humble, Texas, 77338.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202102802  
John J. Kolhoff  
Commissioner  
Credit Union Department  
Filed: July 21, 2021

### Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from FivePoint Credit Union, Nederland, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school along with business and local entities located within Montgomery County, Texas, to be eligible for membership in the credit union.

An application was received from MTCU, Midland, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school and businesses and other legal entities located in Andrews, Crane, Ector, Howard, Reagan and Upton Counties, Texas, to be eligible for membership in the credit union.

An application was received from Neighborhood Credit Union, Dallas, Texas, to expand its field of membership. The proposal would permit persons who work, reside, worship or attend school within Tarrant County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202102801  
John J. Kolhoff  
Commissioner  
Credit Union Department  
Filed: July 21, 2021



### Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

MemberSource Credit Union #1, Houston, Texas - See *Texas Register* dated May 28, 2021.

MemberSource Credit Union #2, Houston, Texas - See *Texas Register* dated May 28, 2021.

Merger or Consolidation - Approved

United Texas Credit Union (San Antonio) and First Class American Credit Union (Fort Worth) - See *Texas Register* issue dated December 25, 2020.

TRD-202102800  
John J. Kolhoff  
Commissioner  
Credit Union Department  
Filed: July 21, 2021



## Texas Council for Developmental Disabilities

Request for Stipend Applications: Increasing Community-based Access to Vaccines

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for organizations to increase the number of people who receive the COVID-19 vaccine. Groups that will be included in project activities are people with disabilities, including developmental disabilities, their families, friends, caregivers, and direct support professionals. Outcomes will be achieved through activities in any of the following areas:

- education about the importance of receiving a vaccine,
- helping with scheduling a vaccine appointment,
- arranging, and providing, accessible transportation,
- providing companion/personal support,
- identifying people unable to independently travel to a vaccination site, and
- providing technical assistance to local health departments on vaccine accessibility.

TCDD has available funding provided by the U.S. Department of Health and Human Services, Administration on Community Living, in partnership with the Centers for Diseases Control, for stipends up to \$15,000. Funding awarded for a project will be dependent on the results of a review process established by TCDD and on the availability of funds.

Additional information concerning this Request for Stipend Applications and TCDD is available at <https://tcdd.texas.gov/grants-rfps/funding-available-for-grants/>. All questions pertaining to this RFA should be directed in writing to TCDD via email at [apply@tcdd.texas.gov](mailto:apply@tcdd.texas.gov) or via telephone at (512) 437-5432.

Deadline: Applications will be accepted and reviewed weekly based on the availability of funds. No funding will be awarded after September 30, 2022.

TRD-202102817  
Beth Stalvey  
Executive Director  
Texas Council for Developmental Disabilities  
Filed: July 21, 2021



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 30, 2021**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **August 30, 2021**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Air Liquide Large Industries U.S. LP; DOCKET NUMBER: 2021-0159-AIR-E; IDENTIFIER: RN100233998; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: cogeneration plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 73110, Special Conditions Number 1, Federal Operating Permit Number O1735, General Terms and Conditions and Special Terms and Conditions Number 9, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$6,338; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Brook Ed Burnett; DOCKET NUMBER: 2021-0119-MLM-E; IDENTIFIER: RN111144366; LOCATION: Sweetwater, Nolan County; TYPE OF FACILITY: unauthorized municipal solid waste disposal site; RULES VIOLATED: 30 TAC §330.15(a) and (c) and TWC, §26.121(a), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: \$11,250; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2019-1138-AIR-E; IDENTIFIER: RN100209857; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 21101 and PSDTX1248, Special Conditions Number 1, Federal Operating Permit Number O1235, General Terms and Conditions and Special Terms and Conditions Number 23, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$28,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$11,250; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: City of Bynum; DOCKET NUMBER: 2020-1226-MWD-E; IDENTIFIER: RN101612943; LOCATION: Bynum, Hill County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011542002, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0011542002, Monitoring and Reporting Requirements Number 7.c, by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of noncompliance; 30 TAC §305.125(1) and (11)(B) and §319.7(a) and (c) and TPDES Permit Number WQ0011542002, Monitoring and Reporting Requirements Number 3.b, by failing to

maintain monitoring and reporting records at the facility and make them readily available for review by a TCEQ representative for a period of three years; 30 TAC §305.125(1) and (11)(C) and §319.7(a) and (c), and TPDES Permit Number WQ0011542002, Monitoring and Reporting Requirements Number 3.c, by failing to properly record monitoring activities during effluent sampling; 30 TAC §317.7(e), by failing to post signs stating, "Danger-Open Tanks-No Trespassing" securely to the fence, within visible sighting of each other, as well as on all gates; and 30 TAC §319.11, by failing to comply with recommended sampling and testing methods; PENALTY: \$7,425; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of China; DOCKET NUMBER: 2020-1119-MWD-E; IDENTIFIER: RN101721686; LOCATION: China, Jefferson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012104001, Monitoring and Reporting Requirements Number 7(c), by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of noncompliance; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0012104001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (11)(B) and §319.7(a) and (c), and TPDES Permit Number WQ0012104001, Monitoring and Reporting Requirements Number 3(b), by failing to maintain monitoring and reporting records at the facility and make them readily available for review by a TCEQ representative for a period of three years; 30 TAC §305.125(1) and 11(C) and §319.7(a) and (c), and TPDES Permit Number WQ0012104001, Monitoring and Reporting Requirements Number 3.c, by failing to maintain complete and accurate records of monitoring activities; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0012104001, Sludge Provisions, Section III.G, by failing to submit an annual sludge report to the TCEQ by September 30th of each year; PENALTY: \$18,037; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: City of Eden; DOCKET NUMBER: 2020-1609-MWD-E; IDENTIFIER: RN101920924; LOCATION: Eden, Concho County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010081001, Monitoring and Reporting Requirements Number 7.c, by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of noncompliance; 30 TAC §305.125(1) and (5), §319.6 and TPDES Permit Number WQ0010081001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010081001, Sludge Provisions, Section III.G, by failing to timely submit a complete annual sludge report to the TCEQ by September 30th of each year; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010081001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; and 30 TAC §317.4(a)(8), by failing to test the reduced-pressure backflow assembly annually; PENALTY: \$27,334; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$21,868; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL

OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(7) COMPANY: City of Hitchcock; DOCKET NUMBER: 2020-1019-WQ-E; IDENTIFIER: RN105477434; LOCATION: Hitchcock, Galveston County; TYPE OF FACILITY: small municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater under Texas Pollutant Discharge Elimination System General Permit for municipal separate storm sewer systems; PENALTY: \$6,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$5,000; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: City of Levelland; DOCKET NUMBER: 2020-1108-MLM-E; IDENTIFIER: RN101385839; LOCATION: Levelland, Hockley County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(c), by failing to review and update, as appropriate, the drought contingency plan at least every five years; 30 TAC §290.39(l)(5), by failing to meet the conditions for an issued exception; 30 TAC §290.42(e)(4)(C), by failing to provide forced air ventilation, which includes both high level and floor level screened and louvered vents, a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent, and a fan switch located outside, for enclosures containing more than one 150-pound cylinder of chlorine gas; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation and on an annual basis by a recognized backflow assembly tester and certified that they are operating within specifications; 30 TAC §290.46(f)(2) and (3)(A)(i)(II) and (B)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's water storage tanks annually; 30 TAC §290.46(s)(2)(D), by failing to properly verify the accuracy of the analyzers used to determine the effectiveness of chloramination in accordance with the manufacturer's recommendations every 90 days; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$11,311; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$9,050; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(9) COMPANY: City of Rhome; DOCKET NUMBER: 2021-0141-PWS-E; IDENTIFIER: RN101406874; LOCATION: Rhome, Wise County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine throughout the distribution system at all times; PENALTY: \$305; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Custom Blast Services, Incorporated fka Custom Pipe Coating, Incorporated; DOCKET NUMBER: 2021-0041-AIR-E; IDENTIFIER: RN100226679; LOCATION: Houston, Harris County; TYPE OF FACILITY: scrap metal company; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O1109, General Terms and Conditions and Special Terms and Con-

ditions Number 9, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Jimmy Joyce; DOCKET NUMBER: 2019-1411-PST-E; IDENTIFIER: RN101870483; LOCATION: Morton, Cochran County; TYPE OF FACILITY: out-of-service fuel station; RULES VIOLATED: 30 TAC §334.7(d)(3) and (e)(2), by failing to provide an amended registration for any change or additional information regarding the underground storage tank (UST) system within 30 days of the occurrence of the change or addition; 30 TAC §334.49(a)(2) and (c)(4)(C) and TWC, §26.3475(d), by failing to ensure that the corrosion protection system is operated and maintained in a manner that will provide continuous corrosion protection to all underground metal components of the UST system, and failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.54(b)(1), by failing to keep all vent lines open and functioning; and 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator, Class A, Class B, and Class C; PENALTY: \$9,351; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(12) COMPANY: Lion Elastomers LLC; DOCKET NUMBER: 2020-1313-AIR-E; IDENTIFIER: RN100224799; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: styrene-butadiene rubber manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(1) and (2), 116.115(b)(2)(E)(i) and (c), and 122.143(4), 40 Code of Federal Regulations §60.18(c)(3)(ii) and §63.11(b)(6)(ii), New Source Review Permit (NSR) Permit Number 9908, Special Conditions (SC) Numbers 16.A and 16.D, Federal Operating Permit (FOP) Number O1224, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A and 14, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain records containing the information and data sufficient to demonstrate compliance with the permit; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 9908, SC Number 1, FOP Number O1224, GTC and STC Number 14, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rate; and 30 TAC §116.115(c) and §122.143(4), NSR Number 9908, SC Number 1, FOP Number O1224, GTC and STC Number 14, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$29,250; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(13) COMPANY: New Punjab Ltd. Co dba Fuel Point; DOCKET NUMBER: 2021-0044-PST-E; IDENTIFIER: RN107267528; LOCATION: Groves, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(B) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: OCI Beaumont LLC; DOCKET NUMBER: 2020-1141-AIR-E; IDENTIFIER: RN102559291; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: chemical

manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review (NSR) Permit Numbers 901 and PSDTX1334, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1645, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 16, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rates; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 901, PSDTX1334, and GHGPSDTX50, Special Permit Conditions Number IV.A.2.g, FOP Number O1645, GTC and STC Number 16, and THSC, §382.085(b), by failing to control excess oxygen to less than 3.0%; PENALTY: \$67,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$27,150; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(15) COMPANY: Phillips 66 Company; DOCKET NUMBER: 2020-1530-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review (NSR) Permit Numbers 5920A and PSDTX103M4, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1626, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 29, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(J) and §122.143(4), FOP Number O1626, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; PENALTY: \$12,308; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Quail Creek Municipal Utility District; DOCKET NUMBER: 2021-0180-PWS-E; IDENTIFIER: RN101452068; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; and 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director for the January 1, 2018 - December 31, 2020, monitoring period; PENALTY: \$1,529; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(17) COMPANY: S&Z DIVERSIFIED HOLDINGS, LLC dba Center Street Automotive; DOCKET NUMBER: 2021-0081-PST-E; IDENTIFIER: RN101781334; LOCATION: Bonham, Fannin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(9)(A)(iii) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days, and failing to take appropriate steps to ensure that a statistical inventory reconciliation (SIR) analysis report is received from the vendor in no more than 15 calendar days following the last day of the 30-day period for which the SIR analysis is performed; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: SUBLIGHT ENTERPRISES, Incorporated; DOCKET NUMBER: 2020-1487-MWD-E; IDENTIFIER: RN101519056; LOCATION: Portland, San Patricio County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED:

30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011096001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$12,200; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(19) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2021-0018-PWS-E; IDENTIFIER: RN101206001; LOCATION: Cleburne, Johnson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(B)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection; PENALTY: \$787; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: VELVIN OIL COMPANY, INCORPORATED; DOCKET NUMBER: 2020-1391-WQ-E; IDENTIFIER: RN100530559; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: petroleum bulk station; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System General Permit Number TXG830468, Part III, Section A.1, by failing to comply with permitted effluent limitations; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202102783  
Charmaine Backens  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: July 20, 2021

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Enforcement Orders

An agreed order was adopted regarding Paradise Independent School District, Docket No. 2020-0203-MWD-E on July 20, 2021, assessing \$4,126 in administrative penalties with \$825 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jagruti inc dba Ranglers 5, Docket No. 2020-0501-PST-E on July 20, 2021, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gulf South Pipeline Company, LLC fka Gulf South Pipeline Company, LP, Docket No. 2020-1177-AIR-E on July 20, 2021, assessing \$5,250 in administrative penalties with \$1,050 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CANALES DRIVE-INN GROCERY, INC., Docket No. 2020-1194-PST-E on July 20, 2021, assessing \$6,000 in administrative penalties with \$1,200 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512)

239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pharith Ang dba Poplar Superette, Docket No. 2020-1233-PST-E on July 20, 2021, assessing \$3,163 in administrative penalties with \$632 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EAST TEXAS BRIDGE, INC., Docket No. 2020-1357-WQ-E on July 20, 2021, assessing \$6,875 in administrative penalties with \$1,375 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202102799

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 21, 2021



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 165591

**APPLICATION.** Redi-Mix LLC, 331 North Main Street, Euless, Texas 76039-3636 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 165591 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at Southeast corner of West Bonds Ranch Road and business 287 (North Saginaw Boulevard), Fort Worth, Tarrant County, Texas 76179. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.923611&lng=-97.410278&zoom=13&type=r>. This application was submitted to the TCEQ on June 22, 2021. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on July 9, 2021.

**PUBLIC COMMENT / PUBLIC HEARING.** Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/). Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal

comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

**The Public Hearing is to be held:**

**Thursday, August 26, 2021, at 6:00 p.m.**

Members of the public who would like to ask questions or provide comments during the hearing may access the hearing via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 553-114-067. It is recommended that you join the webinar and register for the public hearing at least 15 minutes before the hearing begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 at least one day prior to the hearing to register for the meeting and to obtain information for participating telephonically. Members of the public who wish to only listen to the hearing may call, toll free, (562) 247-8422 and enter access code 707-466-739.

Additional information will be available on the agency calendar of events at the following link: <https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

**RESPONSE TO COMMENTS.** A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

**CENTRAL/REGIONAL OFFICE.** The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

**INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.**

Further information may also be obtained from Redi-Mix, LLC, 331 North Main Street, Euless, Texas 76039-3636, or by calling Mrs. Melissa Fitts, Vice President, Westward Environmental, Inc. at (830) 249-8284.

Notice Issuance Date: July 15, 2021

TRD-202102705

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 16, 2021



Notice of Correction to Agreed Order Number 5

In the May 7, 2021, issue of the *Texas Register* (46 TexReg 3047), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 5, for City of Mart, Docket Number 2019-0338-MWD-E. The error is as submitted by the commission.

The reference to the Docket Number should be corrected to read: "2019-0338-MLM-E."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202102784

Charmaine Backens

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: July 20, 2021



## Notice of District Petition

Notice issued July 15, 2021

TCEQ Internal Control No. D-02052021-015; Waxahachie Creek Ranch LLC, a Texas limited liability company (Petitioner) filed a petition for creation of Ellis County Municipal Utility District FM 984 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 530.5733 acres located within Ellis County, Texas; and (3) all of the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Ennis, Texas (City), and no portion of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. Additionally, application material indicates the lienholder on property to be included in the proposed District consents to the District's creation. In accordance with Local Government Code §42.042 and TWC §54.016, the Petitioner submitted a petition to the City of Ennis, requesting the City's consent to the creation of the District, followed by a petition for the City to provide water and sewer services to the District. According to the petition, the Petitioner has not received any response from the City related to the Petition for Consent or the Petition for Service. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic, and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the proposed District is organized. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$57,775,000 (\$38,820,000 utilities plus \$18,955,000 roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202102751

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 16, 2021



Notice of Hearing on Martin Marietta Materials Southwest, LLC: SOAH Docket No. 582-21-2182; TCEQ Docket No. 2021-0054-AIR; Permit No. 41849

### APPLICATION.

Martin Marietta Materials Southwest, LLC, 1503 LBJ Freeway, Suite 400, Dallas, Texas 75234-6007, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to and renewal of Air Quality Permit Number 41849, which would authorize modification to a Rock Crushing Plant located at 5529 Highway 27, Center Point, Kerr County, Texas 78010. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-99.066111%2C29.956666&level=12>. For the exact location, refer to the application. This application was submitted to the TCEQ on August 16, 2019. The existing facility will emit the following contaminants: particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.



The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The permit application, executive director's preliminary decision, and draft permit is available for viewing and copying at the TCEQ central office, the TCEQ San Antonio regional office, and at Butt-Holdsworth Memorial Library, 505 Water Street, Kerrville, Kerr County. The facility's compliance file, if any exists, is available for public review at the TCEQ San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas.

#### CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

**10:00 a.m. - September 2, 2021**

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

**Meeting ID:** 161 018 7971

**Password:** TCEQ2182

or

To join the Zoom meeting via telephone:

(669) 254-5252 or (646) 828-7666

**Meeting ID:** 161 018 7971

**Password:** 34001372

**Visit the SOAH website for registration at: <http://www.soah.texas.gov/> or call SOAH at (512) 475-4993.**

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on April 6, 2021. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 116, Subchapters A, B and D; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

#### MAILING LIST.

You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

#### AGENCY CONTACTS AND INFORMATION.

Public comments and requests must be submitted either electronically at [www.tceq.texas.gov/agency/decisions/cc/comments.html](http://www.tceq.texas.gov/agency/decisions/cc/comments.html), or in writing to the Texas Commission on Environmental Quality, Office of

the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at [www.tceq.texas.gov](http://www.tceq.texas.gov).

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

#### INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at [www.tceq.texas.gov](http://www.tceq.texas.gov).

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Further information may also be obtained from Martin Marietta Materials Southwest, LLC at the address stated above or by calling Mrs. Leslie Mackay, Environmental Engineer at (210) 208-4067.

Issued: July 16, 2021

TRD-202102752

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 16, 2021



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 30, 2021**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 30, 2021**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Brighton Manor Apartments, L.P.; DOCKET NUMBER: 2020-0719-PWS-E; TCEQ ID NUMBER: 102698743; LOCATION: 195 Peach Street, Blanco, Blanco County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director (ED), and failing to provide public notification, and submit a copy of the public notification, accompanied with a signed Certificate of Delivery to the ED regarding the failure to collect lead and copper tap samples; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the ED by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery to the ED regarding the failure to submit Disinfection Level Quarterly Operating Reports (DLQORs) by the tenth day of the month following the end of each quarter and regarding the failure to timely report the results of radionuclides sampling; 30 TAC §290.117(n), by failing to comply with the additional sampling requirements as required by the ED to ensure that minimal levels of corrosion are maintained in the distribution system; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery to the ED regarding the failure to submit DLQORs by the tenth day of the month following the end of each quarter; and 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites(taps) that were tested, and failing to mail a copy of the customer notification of tap results to the ED along with a certification that the consumer notification was distributed in a manner consistent with TCEQ requirements; PENALTY: \$2,308; STAFF ATTORNEY: Ryan Rutledge, Litigation, MC 175, (512) 239-0630; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: Oscar Castro dba Guidry's Body Shop; DOCKET NUMBER: 2019-1723-PST-E; TCEQ ID NUMBER: 100694876; LOCATION: 2400 Gulfway Drive, Port Arthur, Jefferson County; TYPE OF FACILITY: out-of-service underground storage tank (UST) system and a towing and auto body repair shop; RULES VIOLATED: 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A - C; TWC, §26.3475(c)(1) and (d) and 30 TAC §334.50(a) and §334.54(c)(1) and (d)(2), by failing to provide a release detection method capable of detecting any release from a temporarily out-of-service UST system that has not been emptied of all regulated substances; TWC, §26.3475(d) and 30 TAC §334.49(a)(1) and §334.54(b)(3), by

failing to adequately protect a temporarily out-of-service UST system from corrosion; 30 TAC §334.54(b)(1), by failing to keep all vent lines open and functioning; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, locked, and/or otherwise-secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.7(d)(3) and (e)(2), by failing to provide written notice to the agency of any changes or additional information concerning the UST system within 30 days from the date of the occurrence or addition; PENALTY: \$6,679; STAFF ATTORNEY: John S. Mercurief II, Litigation, MC 175, (512) 239-6944; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202102786  
Charmaine Backens  
Deputy Director, Litigation  
Texas Commission on Environmental Quality  
Filed: July 20, 2021



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Carol Maderer: SOAH Docket No. 582-21-2664; TCEQ Docket No. 2020-0297-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - August 19, 2021**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed March 19, 2021 concerning assessing administrative penalties against and requiring certain actions of Carol Maderer, for violations in Polk County, Texas, of: 30 Texas Administrative Code §330.15 (a) and (c).

The hearing will allow Carol Maderer, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Carol Maderer, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Carol Maderer to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Carol Maderer, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 330; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission

on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Casey Kurnath, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: July 20, 2021

TRD-202102804

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 21, 2021



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of City of Moody: SOAH Docket No. 582-21-2663; TCEQ Docket No. 2020-0298-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - August 19, 2021**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed October 30, 2020, concerning assessing administrative penalties against and requiring certain actions of City of Moody, for violations in McLennan County, Texas, of: Texas Health & Safety Code §341.0315(c) and 30 Texas Administrative Code §§288.20(c), 290.45(b)(1)(D)(iv), 290.46(j)(1) and (m), and 290.119(b)(3).

The hearing will allow City of Moody, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether

a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford City of Moody, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of City of Moody to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** City of Moody, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Health & Safety Code ch. 341, Tex. Water Code ch. 11, and 30 Texas Administrative Code chs. 70, 288, and 290; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting John S. Mercurief II, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: July 20, 2021

TRD-202102805

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 21, 2021



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Ygriega

Environmental Services, LLC: SOAH Docket No. 582-21-2665; TCEQ Docket No. 2019-1579-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - August 19, 2021

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's First Amended Report and Petition mailed October 21, 2020, concerning assessing administrative penalties against and requiring certain actions of YGRIEGA ENVIRONMENTAL SERVICES, LLC, for violations in Hidalgo County, Texas, of: 40 C.F.R. §112.3; 30 Texas Administrative Code §§37.2011, 324.22(c), 328.24(e), and 328.28; and TCEQ Agreed Order Docket No. 2014-1887-MSW-E, Ordering Provisions Nos. 2.b.iv. and 2.b.vii.

The hearing will allow YGRIEGA ENVIRONMENTAL SERVICES, LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford YGRIEGA ENVIRONMENTAL SERVICES, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of YGRIEGA ENVIRONMENTAL SERVICES, LLC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's First Amended Report and Petition, attached hereto and incorporated herein for all purposes.** YGRIEGA ENVIRONMENTAL SERVICES, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and ch. 7, Tex. Health & Safety Code ch. 371, 40 C.F.R. pt. 112, and 30 Texas Administrative Code chs. 37, 70, 324, and 328; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Clayton Smith, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be**

**filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: July 20, 2021

TRD-202102806

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 21, 2021



### Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 332

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 332, Composting, §§332.2 - 332.4, 332.6, 332.8, 332.22, 332.23, 332.32, 332.33, 332.35 - 332.37, 332.41 - 332.45, 332.47, 332.61, 332.71, 332.72, and 332.75, under the requirements of Texas Health and Safety Code, §§361.024, 361.428, 361.029, and 361.429; and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would clarify and update existing notice language and requirements found in §332.22(b), add existing language that applies to composting from 30 TAC Chapter 330, Subchapter P, concerning Fees and Reporting, to Chapter 332, and make substantive and non-substantive revisions to bring the chapter more up to date with agency and program standards.

#### Virtual Public Hearing

The commission will hold a *virtual* public hearing on this proposal on August 23, 2021 at 2:00 p.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\\_M2U-0NTZhOWEtYzM1Ni00YmY0LWJjYjktYjJlODQ3M2U2YjJl%40t-head.v2/0?context=%7b%22id%22%3a%22871a83a4-a1ce-](https://teams.microsoft.com/l/meetup-join/19%3ameeting_M2U-0NTZhOWEtYzM1Ni00YmY0LWJjYjktYjJlODQ3M2U2YjJl%40t-head.v2/0?context=%7b%22id%22%3a%22871a83a4-a1ce-)

4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%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.

#### Written 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 2021-006-332-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 Adam Schnuriger, Waste Permits Division, (512) 239-0526.

TRD-202102706

Robert Martinez

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 16, 2021



#### Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 335

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, §§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, 33.503, 335.504, 335.510, 335.511, 335.513, 335.521, 335.590, 335.602, 335.702, and 335.703; repealed 30 TAC Chapter 335, §§335.6, 335.11, 335.14, 335.61 - 335.63, 335.65 - 335.71, and 335.73 - 335.79; and new 30 TAC Chapter 335, §§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, under the requirements of Texas Water Code, §§5.013, 5.102, and 5.103 and Texas Health and Safety Code, §§361.017, 361.024, 361.036, 361.078, and 361.119.

The proposed rulemaking would revise state industrial solid waste and hazardous waste management regulations to maintain equivalency with Resource Conservation and Recovery Act revisions promulgated by the United States Environmental Protection Agency, and to formalize the foundry sands exclusion.

#### Virtual Public 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\\_M-Tg1NzUyNmYtODFkZS00YjgyLTg1NmYtZjVkJjg0MTJl-NGM0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a-83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_M-Tg1NzUyNmYtODFkZS00YjgyLTg1NmYtZjVkJjg0MTJl-NGM0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a-83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%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 (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Written 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 2021-006-332-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.

TRD-202102713

Robert Martinez

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 16, 2021



#### Notice of Public Meeting for an Air Quality Permit: Proposed Permit Number 162941

**APPLICATION.** Max Midstream Texas LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 162941, which would authorize construction of the Seahawk Crude Condensate Terminal located at the following driving directions: 1.9 miles south of the State Highway 35 and Farm-to-Market 1593 intersection, at the Farm-to-Market 1593 and County Road 319 intersection, go south 0.15 mile to the site main gate entrance, Point Comfort, Calhoun County, Texas 77978. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This application was submitted to the TCEQ on October 6,

2020. The proposed facility will emit the following contaminants: carbon monoxide, hazardous air pollutants, hydrogen sulfide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

**PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below.** The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Tuesday, August 17, 2021 at 7:00 p.m.**

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 479-318-275. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access must call (512) 239-1201 **at least one day prior** to the meeting to register for the meeting and to obtain information for participating telephonically. Members of the public who wish to **only listen** to the meeting may call, toll free, (213) 929-4212 and enter access code 312-747-779.

Las personas que deseen escuchar o participar en la reunión en español pueden llamar al (844) 368-7161 e ingresar el código de acceso 904535#. Para obtener más información o asistencia, comuníquese con Jaime Fernández al (512) 239-2566.

Additional information will be available on the agency calendar of events at the following link:

<https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

**INFORMATION.** Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>.

If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov). *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Corpus Christi regional office, at the Calhoun County Library, 200 West Mahan Street, Port Lavaca, Calhoun County, Texas, and at <https://disorboconsult.box.com/v/MaxMidstreamPublicNotice>. The facility's compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas. Further information may also be obtained from Max Midstream Texas LLC at 3009 Post Oak Boulevard, Suite 1210, Houston, Texas 77056 or by calling Mr. Neal Nygaard, Chief Operating Officer at (713) 955-1221.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: July 20, 2021

TRD-202102793

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 20, 2021



**Notice of Public Meeting for TPDES Permit for Municipal Wastewater: Renewal of Permit No. WQ0010199001**

**APPLICATION.** City of Junction, 730 Main Street, Junction, Texas 76849, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010199001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day.

The facility is located approximately 0.4 mile northeast of the intersection of Farm-to-Market Road 2169 and Interstate Highway 10, Junction, in Kimble County, Texas 76849. The treated effluent is discharged directly to Llano River in Segment No. 1415 of the Colorado River Basin The designated uses for Segment No. 1415 are primary contact recreation, public water supply, and high aquatic life use. All determinations are preliminary and subject to additional review and/or revisions. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application. <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-99.741869%2C30.497867&level=12>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

**PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because of a legislator request.** The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Dis-

discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Tuesday, August 31, 2021 at 7:00 p.m.**

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 753-182-803. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 **at least one day** prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to **only listen** to the meeting may call, toll free, (914) 614-3221 and enter access code 611-860-999. Additional information will be available on the agency calendar of events at the following link:

<https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

**INFORMATION.** Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Junction City Hall, 730 Main Street, Junction, Texas. Further information may also be obtained from City of Junction at the address stated above or by calling Ms. Garvene Adams, City Secretary, at (325) 446-2622.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: July 20, 2021

TRD-202102794

Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: July 20, 2021



**Notice of Water Quality Application**

The following notices were issued on June 22, 2021, thru July 8, 2021.

The following notices do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

**INFORMATION SECTION**

SJWTX, Inc. has applied for a minor amendment to TCEQ permit No. WQ0014131001 to authorize the reduction of the daily average flow limit of 60,000 gallons per day via surface irrigation 15.25 acres of public access forest/grassland in the Final phase of the permit to 57,000 gallons per day via surface irrigation 14.49 acres of public access forest/grassland. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day via surface irrigation 15.25 acres of public access forest/grassland in the Interim phase and a daily average flow not to exceed 60,000 gallons per day via surface irrigation of 15.25 acres of public access forest/grassland in the Final phase. This permit will not authorize a discharge of pollutants into water in the state. The wastewater treatment facility and disposal site are located 400 Old Boerne Road, Bulverde, in Comal County, Texas 78163.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN 10 DAYS OF THE ISSUED DATE OF THE NOTICE.

**INFORMATION SECTION**

Waller County Road Improvement District No. 1 has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0014571001 to authorize increasing the daily average flow limit for Interim I phase from 75,000 gallons per day to 310,000 gallons per day and the daily average flow limit for the Interim II phase from 150,000 gallons per day to 500,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The facility is located at 30701 Miller Road, Brookshire, in Waller County, Texas 77423.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our website at [www.TCEQ.texas.gov](http://www.TCEQ.texas.gov). Si desea información en español, puede llamar al (800) 687-4040.

TRD-202102704  
Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: July 30, 2021



**Texas Health and Human Services Commission**

Public Notice - Texas Managed Care Quality Strategy

The Texas Health and Human Services Commission (HHSC) announces its intent to submit to the Centers for Medicare & Medicaid Services (CMS) an updated *Texas Managed Care Quality Strategy*.

**Proposed Update.** In accordance with 42 CFR §438.340, each State contracting with a Managed Care Organization (MCO) must draft and implement a written quality strategy for assessing and improving the quality of health care and services furnished by the MCO. The state must review and update the quality strategy as needed, but no less than once every three years. To comply with this requirement to update the strategy every three years, the strategy was updated and submitted to CMS in March 2021.

HHSC has identified the need for changes to the strategy that was submitted to CMS in March 2021. The changes to the strategy can be found on pages four through six. The revised Quality Strategy adds objectives associated with each of the Quality Goals in Table 1. The March 2021 version only listed goals.

HHSC submits this revision to support its responses to CMS's questions on several proposed directed payment programs for state fiscal year 2022.

**Copy of Proposed Update.** The proposed updated *Texas Managed Care Quality Strategy* is available on the HHSC website, which can be viewed at this link: <https://hhs.texas.gov/about-hhs/process-improvement/improving-services-texans/medicaid-chip-quality-efficiency-improvement/quality-strategy>. For reference, the current *Texas Managed Care Quality Strategy* (last edited and submitted to CMS in March 2021) is also available via that link.

**Public Comment Period.** The public will have an opportunity to comment on the proposed update until August 16, 2021.

Comments on the proposed update may be made by U.S. mail, overnight mail, special delivery mail, telephone, fax or email:

**U.S. Mail**

Texas Health and Human Services Commission  
Attention: Basundhara RayChaudhuri, Waiver Coordinator, Policy Development Support  
Mail Code H-600  
Winters Building  
701 West 51st Street  
Austin, TX 78751

**Overnight mail or special delivery mail**

Texas Health and Human Services Commission  
Attention: Basundhara RayChaudhuri,  
Mail Code H-600  
Winters Building  
701 West 51st Street  
Austin, TX 78751

**Telephone**

(512) 487-3318

**Fax**

Attention: Basundhara RayChaudhuri at (512) 206-3975

**Email**

TX\_Medicaid\_Waivers@hhsc.state.tx.us

TRD-202102797

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: July 20, 2021



**Public Notice: Texas State Plan Amendment for Event-based Rates for Potentially Preventable Readmissions**

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment, transmittal number 21-0012, to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2021.

The purpose of this amendment is to revise HHSC's potentially preventable events program for reimbursement reductions for eligible hospitals. With the revision, HHSC would no longer weight potentially preventable readmissions when calculating a hospital's performance in relation to statewide norms.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$208,702 for federal fiscal year (FFY) 2022, consisting of \$130,126 in federal funds and \$78,576 in state general revenue. For FFY 2023, the estimated additional annual expenditure is \$217,253, consisting of \$131,938 in federal funds and \$85,315 in state general revenue.

**Rate Hearing.** A public hearing was held on July 15, 2021, at 9:00 a.m. CST in a virtual setting based in Austin, Texas. Information about the proposed calculation change and the hearing can be found in the July 2, 2021, issue of the *Texas Register* at page 4047, which can be found at <http://www.sos.state.tx.us/texreg/index.html>.

**Copy of Proposed Amendments.** Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Holly R. Freed, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, TX 78711 or by e-mail at [Medicaid\\_Chip\\_SPA\\_Inquiries@hhsc.state.tx.us](mailto:Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us). Copies of the proposed amendment will be available for review at the local county offices of the Health and Human Services Commission.

**Written Comments.** Written comments regarding the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or e-mail.

**U.S. Mail, Overnight Mail, Special Delivery Mail, or Hand Delivery**

Health and Human Services Commission  
Value Based Initiatives, Mail Code H-250  
Dupont Building  
6330 East Hwy 290 Suite 100 Austin, Texas 78723

**Fax**

Attention: Value Based Initiatives at (512) 380-4380

**E-mail**

[MCD\\_PPR\\_PPC@hhsc.state.tx.us](mailto:MCD_PPR_PPC@hhsc.state.tx.us)

TRD-202102699





Public Notice - Texas State Plan for Medical Assistance  
Amendment Effective September 1, 2021

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is to be effective September 1, 2021.

The purpose of the amendment is to update the current Texas Medicaid State Plan by modifying the Medicaid inpatient reimbursement rate setting process, primarily for rural hospitals. The amendment ranges sections by hospital type to enhance clarity, consistency, and specificity. The proposed amendment also includes language related to a Medicaid managed care minimum fee schedule for all rural hospitals.

The proposed amendment is estimated to result in no foreseeable implications relating to costs or revenues.

**Copy of Proposed Amendment.** Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Holly Freed, State Plan Team Lead, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 428-1932; by facsimile at (512) 730-7472; or by e-mail at Medicaid\_Chip\_SPA\_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of the Texas Department of Aging and Disability Services).

**Written Comments.** Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or e-mail:

**U.S. Mail**

Texas Health and Human Services Commission  
**Attention:** Provider Finance Department, Mail Code H-400  
P.O. Box 149030  
Austin, Texas 78714-9030

**Overnight mail, special delivery mail, or hand delivery**

Texas Health and Human Services Commission  
**Attention:** Provider Finance Department, Mail Code H-400  
North Austin Center  
4601 W. Guadalupe  
Austin, Texas 78751  
Phone number for package delivery: (512) 730-7401

**Fax**

**Attention:** Provider Finance Department at (512) 730-7475

**E-mail**

PFD\_Hospitals@hhsc.state.tx.us  
TRD-202102787



**Texas Higher Education Coordinating Board**

Notice of Opportunity to Comment on Revision of State  
Long-range Master Plan for Higher Education

The Texas Higher Education Coordinating Board (THECB or Coordinating Board) staff is providing an opportunity for written public comment on a revision of the state long-range master plan for higher education.

TEC §61.051(a-1) allows THECB to develop or revise the state's long-range master plan for higher education. This plan must establish long-term, measurable goals and provide strategies for implementing those goals, assess the higher education needs of each region of the state, and take into account resources of private or independent institutions of higher education.

In 2015, the Coordinating Board adopted *60x30TX* ([www.60x30tx.com](http://www.60x30tx.com)), the current state strategic plan for higher education. The current strategic plan has the following four goals:

**--Overarching Goal: 60x30 Educated Population.** By 2030, at least 60 percent of Texans ages 25-34 will have a certificate or degree.

**--The Second Goal: Completion.** By 2030, at least 550,000 students in that year will complete a certificate, associate, bachelor's, or master's from an institution of higher education in Texas.

**--The Third Goal: Marketable Skills.** By 2030, all graduates from Texas public institutions of higher education will have completed programs with identified marketable skills.

**--The Fourth Goal: Student Debt.** By 2030, undergraduate student loan debt will not exceed 60 percent of first-year wages for graduates of Texas public institutions.

The Coordinating Board proposes to revise this existing plan to include an additional focus on the following four issue areas:

1. Leveraging and accelerating innovation to drive research, commercialization, and economic development. The challenges posed by COVID-19 have spurred and accelerated innovations globally. By prioritizing research, data, and technology, our institutions will drive discoveries and economic development opportunities that are crucial for the state's future prosperity.

2. Expanding focus to adult learners beyond 25-34-year-olds. Building a more adaptable workforce that can navigate current challenges and drive long-term economic growth requires a strategic emphasis on expanding opportunities for all Texans.

3. Prioritizing high-value credentials to align with workforce needs. Certain skills and credentials will be especially important to help displaced workers immediately return to work, and create a more resilient Texas workforce for the future.

4. Ensuring all Texans have equal access to tools and resources that promote educational attainment. The disproportionate impact of COVID-19 on Black, Hispanic, rural, and low-income Texans has magnified the importance of removing barriers to high-quality postsecondary education and training so all Texans can participate in, contribute to, and benefit from the Texas economy.

The Board intends to consider revisions to the Plan during its quarterly board meeting scheduled for October 21, 2021.

Written comments about the proposed changes must be sent to Melissa Henderson, Associate Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711, or via email to 60x30txrefresh@highered.texas.gov. Comments must be **received by 5:00 p.m., August 29, 2021**, to be considered.

TRD-202102690

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Filed: July 15, 2021



## Texas Department of Insurance

### Company Licensing

Application for Metropolitan Lloyds Insurance Company of Texas, a domestic Lloyds/reciprocal company, to change its name to Farmers Lloyds Insurance Company of Texas. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Amy Garcia, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202102807

James Person

General Counsel

Texas Department of Insurance

Filed: July 21, 2021



## Texas Lottery Commission

## Scratch Ticket Game Number 2341 "SPECIAL EDITION CROSSWORD"

### 1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2341 is "SPECIAL EDITION CROSSWORD". The play style is "crossword".

### 1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2341 shall be \$5.00 per Scratch Ticket.

### 1.2 Definitions in Scratch Ticket Game No. 2341.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, BLACKENED SQUARE SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100 and \$500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2341 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	

Z	
BLACKENED SQUARE SYMBOL	
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2341), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2341-0000001-001.

H. Pack - A Pack of the "SPECIAL EDITION CROSSWORD" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "SPECIAL EDITION CROSSWORD" Scratch Ticket Game No. 2341.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of

each Scratch Ticket. Each Scratch Ticket contains exactly one hundred ninety-seven (197) Play Symbols. A prize winner in the "SPECIAL EDITION CROSSWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose all of the YOUR 20 LETTERS Play Symbols. The player then scratches all the letters found in GAME 1 and GAME 2 that exactly match the YOUR 20 LETTERS Play Symbols. If the player has scratched at least 3 complete WORDS within a GAME, the player wins the prize found in the corresponding PRIZE LEGEND. WORDS revealed in one GAME cannot be combined with WORDS revealed in the other GAME. Each GAME is played separately. Only one prize paid per GAME. Only letters within the same GAME that are matched with the YOUR 20 LETTERS Play Symbols can be used to form a complete WORD. In each GAME, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 LETTERS Play Symbols to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. Words that are spelled from right to left or bottom to top are not eligible for a prize. A complete WORD must contain at least three (3) letters. GAME 1 can win by revealing 3 to 11 complete WORDS. GAME 2 can win by revealing 3 to 6 complete WORDS. BONUS WORD: The player must scratch all the letters in the BONUS WORD that exactly match the YOUR 20 LETTERS. If the player scratches a complete BONUS WORD, the player wins the BONUS WORD PRIZE. A completed BONUS WORD cannot be used to win in GAME 1 or GAME 2. Each GAME and the BONUS WORD are played separately. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly one hundred ninety-seven (197) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play

Symbol Caption. Crossword and Bingo style games do not typically have Play Symbol Captions;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly one hundred ninety-seven (197) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the one hundred ninety-seven (197) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the one hundred ninety-seven (197) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the

Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: There will be no correlation between any exposed data on a Ticket and its status as a winning or Non-Winning Ticket.

D. GENERAL: Each Ticket consists of a GAME 1 puzzle grid, a GAME 2 puzzle grid, a BONUS WORD puzzle grid, a BONUS WORD PRIZE play area and a YOUR 20 LETTERS play area.

E. GENERAL: Each Ticket in a Pack will have different GAMES (i.e., the GAME 1 puzzle grid and the GAME 2 puzzle grid will have different words and configurations of words).

F. GENERAL: A Ticket can only win one (1) time per GAME and BONUS WORD for a total of up to three (3) times per Ticket, as dictated by the prize structure.

G. GENERAL: The BONUS WORD Prize Symbols will only appear in the BONUS WORD PRIZE play area and will never appear in the BONUS WORD puzzle grid, GAME 1 puzzle grid, GAME 2 puzzle grid, or YOUR 20 LETTERS play area.

H. GAME 1 AND GAME 2: The GAME 1 puzzle grid will be formatted with at least one thousand (1,000) configurations and the GAME 2 puzzle grid will be formatted with at least five hundred and sixty (560) configurations (i.e., puzzle layouts not including words).

I. GAME 1 AND GAME 2: All GAME 1 puzzle grid configurations will be formatted within a grid that contains eleven (11) spaces (height) by eleven (11) spaces (width). All GAME 2 puzzle grid configurations will be formatted within a grid that contains seven (7) spaces (height) by seven (7) spaces (width).

J. GAME 1 AND GAME 2: No matching words on a Ticket.

K. GAME 1 AND GAME 2: No matching Play Symbols in the YOUR 20 LETTERS play area.

L. GAME 1 AND GAME 2: Each GAME 1 grid will contain the following: a) Four (4) 3 - letter words, b) Five (5) 4 - letter words, c) Three (3) 5 - letter words, d) Three (3) 6 - letter words, e) One (1) 7 - letter word, f) Two (2) 8 - letter words, g) One (1) 9 - letter word.

M. GAME 1 AND GAME 2: Each GAME 2 grid will contain the following: a) Two (2) 3 - letter words, b) Three (3) 4 - letter words, c) Two (2) 5 - letter words, d) Two (2) 6 - letter words.

N. GAME 1 AND GAME 2: There will be a minimum of three (3) vowels in the YOUR 20 LETTERS play area. Vowels are A, E, I, O and U.

O. GAME 1 AND GAME 2: All words will contain a minimum of three (3) letters.

P. GAME 1 AND GAME 2: Words will contain a maximum of nine (9) letters.

Q. GAME 1 AND GAME 2: All words used will be from Texas\_Bonus\_v3\_Jan2019.doc.

R. GAME 1 AND GAME 2: Words from Texas\_Prohibited\_v5\_30November2017.doc will not appear horizontally in the YOUR 20 LETTERS play area when read from left to right or right to left.

S. GAME 1 AND GAME 2: A player will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR 20 LETTERS play area that matches a word in the grid.

T. GAME 1 AND GAME 2: Each grid will have a maximum number of different grid formations with respect to other constraints. That is, for identically formatted grids (i.e., the same puzzle grid), all "approved words" will appear in every logical (i.e., 3 letter word = 3 letter space) position, with regards to limitations caused by the actual letters contained in each word (i.e., this will not place the word "ZOO" in a position that causes an intersection word to require the second letter to be "Z" when in fact, there are no approved words with a "Z" in the second letter position).

U. GAME 1 AND GAME 2: No consonant will appear more than nine (9) times in the GAME 1 grid.

V. GAME 1 AND GAME 2: No consonant will appear more than seven (7) times in the GAME 2 grid.

W. GAME 1 AND GAME 2: Each non-winning grid (GAME 1/GAME 2) will have two (2) completed words.

X. GAME 1 AND GAME 2: At least fifteen (15) of the YOUR 20 LETTERS Play Symbols will open at least one (1) letter in the GAME 1, GAME 2 and BONUS WORD play areas.

Y. GAME 1 AND GAME 2: The presence or absence of any letter in the YOUR 20 LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

Z. GAME 1 AND GAME 2: GAME 1 will not have more than eleven (11) words completed.

AA. GAME 1 AND GAME 2: GAME 2 will not have more than six (6) words completed.

BB. BONUS WORD: The BONUS WORD can be completed and won, as indicated by the prize structure.

CC. BONUS WORD: The BONUS WORD will contain exactly six (6) letters and will not match any word in either the GAME 1 or GAME 2 grids.

DD. BONUS WORD: The BONUS WORD will have at least two (2) letter play spots opened by the YOUR 20 LETTERS.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "SPECIAL EDITION CROSSWORD" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount

due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SPECIAL EDITION CROSSWORD" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SPECIAL EDITION CROSSWORD" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "SPECIAL EDITION CROSSWORD" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "SPECIAL EDITION CROSSWORD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2341. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2341 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	816,000	8.82
\$10.00	384,000	18.75
\$15.00	288,000	25.00
\$20.00	144,000	50.00
\$25.00	90,300	79.73
\$50.00	82,500	87.27
\$100	15,700	458.60
\$200	1,640	4,390.24
\$500	900	8,000.00
\$1,000	130	55,384.62
\$100,000	5	1,440,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.95. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2341 without advance notice, at which point no further

Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2341, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202102789  
Bob Biard  
General Counsel  
Texas Lottery Commission  
Filed: July 20, 2021



### Scratch Ticket Game Number 2342 "SUPER LOTERIA"

#### 1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2342 is "SUPER LOTERIA". The play style is "row/column/diagonal".

#### 1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2342 shall be \$5.00 per Scratch Ticket.

#### 1.2 Definitions in Scratch Ticket Game No. 2342.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: THE ARMADILLO SYMBOL, THE BAT SYMBOL, THE BLUEBONNET SYMBOL, THE BOAR SYMBOL, THE CACTUS SYMBOL, THE CHERRIES SYMBOL, THE CHILE PEPPER SYMBOL, THE CORN SYMBOL, THE COVERED WAGON SYMBOL, THE COWBOY SYMBOL, THE COWBOY HAT SYMBOL, THE FIRE SYMBOL, THE GUITAR SYMBOL, THE HEN SYMBOL, THE HORSE SYMBOL, THE HORSESHOE SYMBOL, THE JACKRABBIT SYMBOL, THE LIZARD SYMBOL, THE LONESTAR SYMBOL, THE MARACAS SYMBOL, THE MOCKINGBIRD SYMBOL, THE MOONRISE SYMBOL, THE MORTAR PESTLE SYMBOL, THE NEWSPAPER SYMBOL, THE OIL RIG SYMBOL, THE PECAN TREE SYMBOL, THE PIÑATA SYMBOL, THE RATTLESNAKE SYMBOL, THE ROADRUNNER SYMBOL, THE SADDLE SYMBOL, THE SHOES SYMBOL, THE SPEAR SYMBOL, THE SPUR SYMBOL, THE STRAWBERRY SYMBOL, THE SUNSET SYMBOL, THE WHEEL SYMBOL, THE WINDMILL SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$500, \$5,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 2342 - 1.2D

PLAY SYMBOL	CAPTION
THE ARMADILLO SYMBOL	THEARMADILLO
THE BAT SYMBOL	THE BAT
THE BLUEBONNET SYMBOL	THEBLUEBONNET
THE BOAR SYMBOL	THE BOAR
THE CACTUS SYMBOL	THE CACTUS
THE CHERRIES SYMBOL	THECHERRIES
THE CHILE PEPPER SYMBOL	THECHILEPEPPER
THE CORN SYMBOL	THE CORN
THE COVERED WAGON SYMBOL	THECOVEREDWAGON
THE COWBOY SYMBOL	THECOWBOY
THE COWBOY HAT SYMBOL	THECOWBOYHAT
THE FIRE SYMBOL	THE FIRE
THE GUITAR SYMBOL	THE GUITAR
THE HEN SYMBOL	THE HEN
THE HORSE SYMBOL	THE HORSE
THE HORSESHOE SYMBOL	THEHORSESHOE
THE JACKRABBIT SYMBOL	THEJACKRABBIT
THE LIZARD SYMBOL	THELIZARD
THE LONESTAR SYMBOL	THELONESTAR
THE MARACAS SYMBOL	THEMARACAS
THE MOCKINGBIRD SYMBOL	THEMOCKINGBIRD
THE MOONRISE SYMBOL	THEMOONRISE
THE MORTAR PESTLE SYMBOL	THEMORTARPESTLE
THE NEWSPAPER SYMBOL	THENEWSPAPER
THE OIL RIG SYMBOL	THEOILRIG

THE PECAN TREE SYMBOL	THEPECANTREE
THE PIÑATA SYMBOL	THE PIÑATA
THE RATTLESNAKE SYMBOL	THERATTLESNAKE
THE ROADRUNNER SYMBOL	THEROADRUNNER
THE SADDLE SYMBOL	THESADDLE
THE SHOES SYMBOL	THE SHOES
THE SPEAR SYMBOL	THE SPEAR
THE SPUR SYMBOL	THE SPUR
THE STRAWBERRY SYMBOL	THESTRAWBERRY
THE SUNSET SYMBOL	THE SUNSET
THE WHEEL SYMBOL	THE WHEEL
THE WINDMILL SYMBOL	THEWINDMILL
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$5,000	FVTH
\$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2342), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2342-0000001-001.

H. Pack - A Pack of the "SUPER LOTERIA" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "SUPER LOTERIA" Scratch Ticket Game No. 2342.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly fifty-two (52) Play Symbols. A prize winner in the "SUPER LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose Play Symbols as follows: PLAYBOARD: 1) The player completely scratches the CALLER'S CARD area to reveal 21 symbols. 2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. BONUS GAMES: The player scratches ONLY the symbols on the BONUS GAMES that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 4 symbols in the same GAME, the player wins the PRIZE for the GAME. TABLA DE JUEGO: 1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 21 símbolos. 2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa, horizontal, vertical o diagonal, el jugador gana el premio para esa línea. JUEGOS DE BONO: El jugador SOLAMENTE raspa los símbolos de los JUEGOS DE BONO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 4 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-two (52) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-two (52) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-two (52) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-two (52) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to six (6) times in accordance with the approved prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. PLAYBOARD/TABLA DE JUEGO: There will be no matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. PLAYBOARD/TABLA DE JUEGO: At least eight (8), but no more than twelve (12), CALLER'S CARD/CARTA DEL GRITÓN

Play Symbols will match a symbol on the PLAYBOARD/TABLA DE JUEGO play area on a Ticket.

E. PLAYBOARD/TABLA DE JUEGO: No matching Play Symbols are allowed on the PLAYBOARD/TABLA DE JUEGO play area.

F. BONUS GAMES/JUEGOS DE BONO: Every BONUS GAMES/JUEGOS DE BONO Grid will match at least one (1) Play Symbol to the CALLER'S CARD/CARTA DEL GRITÓN play area.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER LOTERIA" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUPER LOTERIA" Scratch Ticket Game prize of \$5,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER LOTERIA" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "SUPER LOTERIA" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "SUPER LOTERIA" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

### 3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 60,000,000 Scratch Tickets in Scratch Ticket Game No. 2342. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2342 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	7,200,000	8.33
\$10.00	6,000,000	10.00
\$15.00	800,000	75.00
\$20.00	800,000	75.00
\$50.00	800,000	75.00
\$100	250,500	239.52
\$200	41,000	1,463.41
\$500	6,000	10,000.00
\$5,000	150	400,000.00
\$100,000	30	2,000,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2342 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2342, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202102790  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 20, 2021



**South East Texas Regional Planning Commission**

Notice of Cancellation of Request for Proposal (RFP)

Household Hazardous Waste Collection, Transportation and Disposal  
 Effective date: July 15, 2021

Notice is hereby given that the South East Texas Regional Planning Commission hereby cancels and terminates the request for proposal described above as of the effective date. Accordingly, the South East Texas Regional Planning Commission will not be accepting proposals as set forth in the request for proposal. The South East Texas Regional Planning Commission apologizes for any inconvenience which this cancellation and termination may have caused. The South East Texas Regional Planning Commission expects to issue a replacement request for proposal in the near future.

PLEASE NOTE: Requests for additional information related to this NOTICE OF CANCELLATION of RFP should be directed to:

Bob Dickinson  
 Director, Transportation & Environmental Resources Division  
 (409) 899-8444 x 7520  
 (409) 729-6511

E-mail: [bdickinson@setrpc.org](mailto:bdickinson@setrpc.org)

TRD-202102798

Bob Dickinson

Director, Transportation & Environmental Resources Division

South East Texas Regional Planning Commission

Filed: July 21, 2021



## Texas Department of Transportation

### Public Notice - Photographic Traffic Signal Enforcement Systems: Municipal Reporting of Traffic Crashes

The Texas Department of Transportation (department) is requesting that each municipality subject to the requirements of Transportation Code §707.004(d) provide the required data to the department **no later than October 29, 2021**, in order for the department to meet the deadline for an annual report mandated by the Texas Legislature.

Pursuant to Section 7 of House Bill 1631, 86th Legislature, Regular Session, municipalities meeting certain criteria may continue to operate photographic traffic signal enforcement systems. Pursuant to Transportation Code §707.004(d), each such municipality must continue to compile and submit to the department annual reports after installation showing the number and type of crashes that have occurred at the intersection.

Those municipalities that do not meet the criteria contained in Section 7 of House Bill 1631, 86th Legislature, Regular Session can no longer implement or operate photographic traffic enforcement systems with respect to highways or streets under their jurisdiction.

The department is required by Transportation Code §707.004 to produce an annual report of the information submitted to the department by December 1 of each year.

The department has created a web page detailing municipal reporting requirements and to allow the required data to be submitted electronically at:

<http://www.txdot.gov/driver/laws/red-light.html>

For additional information, contact the Texas Department of Transportation, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483 or call (512) 416-3204.

TRD-202102686

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Filed: July 14, 2021



## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 46 (2021) is cited as follows: 46 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "46 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 46 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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