

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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID)

1 TAC §355.456

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.456, concerning Reimbursement Methodology, without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 359). The rule text will not be republished.

BACKGROUND AND JUSTIFICATION

This rule establishes the reimbursement methodology for the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) program, administered by the Department of Aging and Disability Services (DADS).

Article II of House Bill 1, 84th Legislature, Regular Session, 2015, appropriated funds for an add-on payment to ICF/IID facilities that are providing services to individuals with high medical needs to reside in a non-state operated facility. Currently, eligibility for the high medical needs beds and add-on payment is limited to individuals who have lived in a State Supported Living Center (SSLC) for at least six months prior to referral to a non-state operated facility; have a level of need (LON) that includes a medical LON increase but not a LON of pervasive plus; and have a Resource Utilization Group (RUG-III) classification in the major RUG-III classification groups of Extensive Services, Rehabilitation, Special Care, or Clinically Complex. DADS began this initiative with 24 ICF/IID beds and four providers in January 2015. As of this date, one six-bed provider is no longer participating, leaving 18 ICF/IID beds approved in this initiative for Fiscal Year 2015. The appropriations funded add-on payments for 150 ICF/IID beds, including the original 18 ICF/IID beds, for the 2016-17 biennium. It was anticipated the ICF/IID beds for FY 2016 would be filled due to the SSLC closures, but no SSLCs closed. Consequently, the demand for moving these SSLC residents has decreased. At the same time, the option of an ICF/IID add-on rate might be useful for similar individuals with IDD residing in nursing facilities who are wanting to move to a community setting. This amended rule expands the eligibility criteria to include not only individuals from a SSLC but also

individuals who are living in a Medicaid-certified nursing facility prior to referral to a non-state operated facility. This additional criterion allows more flexibility to utilize the appropriated funds while also serving individuals identified through the PASRR process.

HHSC, under its authority and responsibility to administer and implement rates, is amending this rule to add this new eligibility criterion for the high medical needs beds and add-on payment.

COMMENTS

The 30-day comment period ended February 8, 2016. During this period, HHSC did not receive any comments regarding the proposed amendment to this rule.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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 May 4, 2016.

TRD-201602164

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Effective date: May 24, 2016

Proposal publication date: January 8, 2016

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.5

The State Board of Education (SBOE) adopts an amendment to §74.5, concerning curriculum requirements. The amendment

is adopted without changes to the proposed text as published in the March 4, 2016 issue of the *Texas Register* (41 TexReg 1635) and will not be republished. The section clarifies requirements relating to the academic achievement record and high school diploma. The adopted amendment updates the rule to align with recent legislative changes.

REASONED JUSTIFICATION. The 83rd Texas Legislature, Regular Session, 2013, passed House Bill (HB) 5, amending the Texas Education Code (TEC), §28.025, to change the high school graduation programs from the minimum, recommended, and advanced high school programs to one foundation high school program with endorsements to increase flexibility in graduation requirements for students. In April 2014, the SBOE gave final approval for proposed revisions to 19 TAC Chapter 74, Subchapter A, to align with the requirements of HB 5, including changes to the required content for the academic achievement records/transcripts and diplomas.

The 84th Texas Legislature, Regular Session, 2015, passed HB 181, amending the TEC, §28.025(c-1), (c-5), and (e-1), to remove the requirement that school districts and charter schools identify endorsements and performance acknowledgments on high school diplomas. Districts must still include this information on high school academic achievement records/transcripts.

The adopted amendment to 19 TAC Chapter 74, Curriculum Requirements, Subchapter A, Required Curriculum, §74.5, Academic Achievement Record (Transcript) and High School Diploma, aligns the rule for the academic achievement records with the requirements of HB 181. The adopted amendment includes a change to the section title to remove reference to the high school diploma.

The amendment to 19 TAC §74.5 was approved by the SBOE for first reading and filing authorization at its January 29, 2016 meeting and for second reading and final adoption at its April 8, 2016 meeting.

In accordance with the TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2016-2017 school year. The earlier effective date will align rules for the academic achievement records with the requirements of HB 181.

SUMMARY OF COMMENTS AND RESPONSES. No public comments were received on the proposal.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §7.102(c)(4), which requires the SBOE to establish curriculum and graduation requirements, and the TEC, §28.025(e-1), as amended by HB 181, 84th Texas Legislature, Regular Session, 2015, which requires the SBOE to adopt rules as necessary to administer the requirement that a school district clearly indicate a distinguished level of achievement, an endorsement, and a performance acknowledgment on the transcript of a student who satisfies the applicable requirements.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §7.102(c)(4) and §28.025, as amended by HB 181, 84th Texas Legislature, Regular Session, 2015.

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 May 4, 2016.

TRD-201602170

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Effective date: May 24, 2016

Proposal publication date: March 4, 2016

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CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS SUBCHAPTER D. OTHER TECHNOLOGY APPLICATIONS COURSES

19 TAC §126.65

The State Board of Education (SBOE) adopts new §126.65, concerning Texas essential knowledge and skills (TEKS) for technology applications. The new section is adopted without changes to the proposed text as published in the March 4, 2016 issue of the *Texas Register* (41 TexReg 1636) and will not be republished. The adopted rule action adds a new Advanced Placement (AP) computer science course as an option for a student to use to earn credit toward high school graduation requirements. The effective date of the new section is August 22, 2016.

REASONED JUSTIFICATION. A member of the SBOE requested consideration of this rule action in anticipation of the launch of the new AP Computer Science Principles course in the 2016-2017 school year.

The text of adopted new 19 TAC §126.65 aligns with the SBOE's authority to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under §28.002 and is modeled after other rules adopted for AP courses.

New 19 TAC §126.65 was approved by the SBOE for first reading and filing authorization at its January 29, 2016 meeting and for second reading and final adoption at its April 8, 2016 meeting.

SUMMARY OF COMMENTS AND RESPONSES. Following is a summary of the public comments received and the corresponding responses regarding proposed new 19 TAC §126.65.

Comment. One administrator expressed disagreement with the classification of AP Computer Science Principles and AP Computer Science A as technology applications courses. The commenter stated that because of the existing alignment to other Project Lead the Way career and technical education (CTE) innovative courses such as Computer Science and Software Engineering it seems that the proposed new AP Computer Science Principles course would be better classified as a CTE course in the Science, Technology, Engineering, and Math Career Cluster.

Response. The SBOE disagrees and has determined that the course is appropriately included as a technology applications course with the other computer science courses.

Comment. One administrator stated that the proposed AP Computer Science Principles course will have a positive impact on students pursuing computer science as a career or a major in post-secondary education.

Response. The SBOE agrees and took action to adopt the proposed new course with an effective date of August 22, 2016.

Comment. One community member asked if the proposed AP Computer Science Principles course could be used to satisfy a languages other than English graduation requirement.

Response. This comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002, which identifies the subjects of the required curriculum and requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025, which requires the SBOE by rule to determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

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 May 4, 2016.

TRD-201602171

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Effective date: August 22, 2016

Proposal publication date: March 4, 2016

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**CHAPTER 127. TEXAS ESSENTIAL
KNOWLEDGE AND SKILLS FOR CAREER
DEVELOPMENT
SUBCHAPTER B. HIGH SCHOOL
19 TAC §127.16**

The State Board of Education (SBOE) adopts new §127.16, concerning Texas essential knowledge and skills (TEKS) for career development. The new section is adopted without changes to the proposed text as published in the March 4, 2016 issue of the *Texas Register* (41 TexReg 1637) and will not be republished. The adoption adds TEKS for a new career preparation course to allow students to earn up to a total of three credits each in Career Preparation I and Career Preparation II. The effective date of the new section is August 28, 2017.

REASONED JUSTIFICATION. In April 2015, the SBOE requested that staff prepare TEKS for a new, second-level practicum course for each proposed practicum in 19 TAC Chapter 130. The one-credit extended practicum courses may be combined with the associated practicum course in order to

allow a student to master additional knowledge and skills and earn up to three credits.

The extended practicum courses were given final approval at the September 2015 SBOE meeting. During the public comment period, a comment was received expressing concern that the two career preparation courses in 19 TAC Chapter 127 did not have a similar third-credit option. As a result, the SBOE requested that staff prepare TEKS for an extended Career Preparation course for action at a future meeting. This extended career preparation course will provide districts with added flexibility to offer a capstone course in career development that will best prepare students for postsecondary success.

New 19 TAC §127.16 was approved by the SBOE for first reading and filing authorization at its January 29, 2016 meeting and for second reading and final adoption at its April 8, 2016 meeting.

SUMMARY OF COMMENTS AND RESPONSES. No public comments were received on the proposal.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002, which identifies the subjects of the required curriculum and requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025, which requires the SBOE by rule to determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102, 28.002, and 28.025.

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 May 4, 2016.

TRD-201602172

Cristina De La Fuente-Valadez

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Effective date: August 28, 2017

Proposal publication date: March 4, 2016

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**CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S
RULES**

19 TAC §129.1025

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning student attendance. The amendment is adopted with changes to the proposed text as published in the February 5, 2016 issue of the *Texas Register* (41 TexReg 907). The section adopts by reference the annual student attendance accounting handbook. The handbook provides student attendance accounting rules for school districts and charter schools.

The amendment adopts by reference the *2015-2016 Student Attendance Accounting Handbook*, dated May 2016.

REASONED JUSTIFICATION. The TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The adopted amendment to 19 TAC §129.1025 adopts by reference the student attendance accounting handbook dated May 2016 for the 2015-2016 school year.

Significant changes to the *2015-2016 Student Attendance Accounting Handbook* from the *2014-2015 Student Attendance Accounting Handbook*, and additional changes made since publication of the proposed handbook are addressed as applicable in the following.

Section 3

The term "district students" was replaced with "early college high school students and students taking dual credit courses" in the section on waivers related to students taking dual credit courses at institutions of higher education with calendars beginning before the fourth Monday in August.

An update was made to the section regarding a student's entitlement to attend school in a particular school district while in the Department of Family and Protective Services conservatorship.

The age for allowing a district to withdraw a student was updated from 18 to 19. Additionally, updates were made to the age for compulsory attendance because of changes to the compulsory attendance age.

In the section relating to requirements for a student to be considered present for FSP purposes, updates were made regarding activities under a service plan under the Texas Family Code, Chapter 263, Subchapter B.

A recommendation was added for districts and charter schools to consider building into the calendar an additional 840 minutes, which is equivalent to two days, in the event of school closures due to bad weather or safety issues to allow flexibility, in accordance with HB 2610.

In response to public comment, the *2015-2016 Student Attendance Accounting Handbook*, dated May 2016, was modified at adoption in §3.8.1, which refers to the length of the school day for open-enrollment charter schools, to remove the requirement that an open-enrollment charter school's school day be at least 420 minutes each day, including intermission and recesses.

Also in response to public comment, §3.8 of the *2015-2016 Student Attendance Accounting Handbook*, dated May 2016, that refers to calendars for open-enrollment charter schools

was modified at adoption to remove the requirement that an open-enrollment charter school's calendar offer at least 75,600 minutes of instruction, including intermissions and recesses. Corresponding changes were made at adoption in §3.8.2, relating to makeup days and waivers.

Section 5

The requirement for a practicum course to include classroom instruction to average one class period each day for every school week was removed.

The title of the career and technical education (CTE) Problems and Solutions subsection was updated to remove the phrase "Formerly CTE Independent Study."

Section 7

The subsection on prekindergarten eligibility based on a student being limited English proficient was updated to allow districts to begin the preregistration process after April 1 of each year.

Section 11

The eligibility requirements, document requirements, and limitations for dual credit courses were updated in the subsection regarding student eligibility for dual credit courses because HB 505 required the restriction to be removed for high school juniors and seniors.

Updates were made to the requirements for students in the Optional Flexible School Day Program to generate full-day funding for attendance. Based on HB 2660, full-day is now considered four hours instead of six hours for funding purposes.

Throughout the Handbook

References to school days were converted to minutes in accordance with HB 2610, 84th Texas Legislature, 2015.

References to the Prekindergarten Early Start Grant Program were removed.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began February 5, 2016, and ended March 7, 2016. Following is a summary of public comments received on the proposal and corresponding agency responses.

LENGTH OF SCHOOL DAY

Comment: The Texas Association of School Boards, the Texas Charter Schools Association (TCSA), Pasadena Independent School District (ISD), Slidell ISD, Spring Branch ISD, and Responsive Education Solutions commented on §3.8.1 in the 2015-2016 proposed Student Attendance Accounting Handbook (SAAH) that states that, "A school day must be at least 420 minutes each day, including intermissions and recesses. School districts and open-enrollment charter schools are subject to this requirement." The commenters stated that there is no provision in the TEC related to the requirement in the SAAH that specifically applies to open-enrollment charter schools. Since open-enrollment charter schools are subject to the TEC requirements only when specifically stated, the commenters requested that the statement referring to open-enrollment charter schools in §3.8.1 of the 2015-2016 proposed SAAH and other documented sources be removed before final adoption.

Agency Response: The agency agrees that there is no provision in the TEC related to the length of school day that specifically applies to open-enrollment charter schools. Section 3.8.1 in the 2015-2016 SAAH, which refers to the length of the school day for

open-enrollment charter schools, has been modified to remove the requirement that an open-enrollment charter school's school day be at least 420 minutes each day, including intermission and recesses. However, any school district or open-enrollment charter school that fails to provide at least 75,600 minutes of instruction, including approved waivers, will experience a reduction in its Foundation School Program (FSP) funding because the computation of average daily attendance (ADA) is based on the 75,600-minute school year.

Comment: San Antonio ISD commented on the length of the school day being seven hours (420 minutes) and recommended a proposal for a school day to be at least 240 minutes each day, including intermissions and recesses.

Agency Response: The agency disagrees that the length of the school day be at least 240 minutes each day, including intermissions and recesses for school districts. The TEC, §25.082(a), applies specifically to school districts and states that, "A school day shall be at least seven hours each day, including intermissions and recesses." Therefore, the requirement that a school district's length of the school day be at least 420 minutes (or seven hours) will remain in place.

SCHOOL CALENDAR

Comment: The TCSA commented that the requirement for an open-enrollment charter school's calendar to provide for at least 75,600 minutes of instruction, including intermissions and recesses, inappropriately attached the TEC, §25.081, calendar requirements to open-enrollment charter schools and should be removed. The TCSA also requested that the proposed §3.8 of the SAAH be revised to clarify that a charter school is free to create a school calendar with less than 75,600 minutes without requesting a waiver.

Comment: Responsive Education Solutions recommended that references made to open-enrollment charter schools in §3.8 of the SAAH be amended to remove any application of the TEC, §25.081, to open-enrollment charter schools. Responsive Education Solutions stated that, "the proposed rule in §3.8 of the SAAH is not directly supported by law and therefore, the calendar requirements in TEC, §25.081, of the TEC should not apply to an open-enrollment charter school." Responsive Education Solutions also stated that, "according to TEC Section 12.103(b), an open-enrollment charter school is subject to TEC provisions and rules adopted under the TEC only to the extent the applicability of a provision or rule is specifically provided for in statute."

Agency Response: The agency agrees that there is no provision in the TEC that requires that a charter school create a calendar that offers at least 75,600 minutes of instruction, including intermission and recess. Therefore, §3.8 of the 2015-2016 SAAH that refers to calendars for open-enrollment charter schools has been modified to remove the requirement that an open-enrollment charter school's calendar offer at least 75,600 minutes of instruction, including intermissions and recesses. The section will also clarify that any school district or open-enrollment charter school that fails to provide at least 75,600 minutes of instruction, including approved waivers, will experience a reduction in its FSP funding because the computation of ADA is based on the 75,600-minute school year. In addition, though the TEA does not require districts or charter schools to apply for waivers, the TEA encourages districts or charter schools to apply for available waivers to assist with calendar planning.

EARLY RELEASE DAY WAIVERS

Comment: Comal ISD recommended that the TEA offer eight early-release day waivers instead of six to provide more flexibility to districts and to support collaboration, professional development, and communication. Comal ISD also commented that early-release days are an integral part of instructional planning for teacher training and an investment in students' success.

Agency Response: The agency disagrees that early release day waivers should be increased in number from six to eight. In addition to the six early release day waivers, the agency also offers waivers for staff development and other general waivers to assist districts and charter schools with professional development and instructional planning.

OTHER COMMENTS

Comment: A district representative from Leander ISD requested clarification regarding whether or not §3.8.2.6 and §11.3.1.2 in the SAAH that pertain to a district's application for a waiver for students taking dual credit courses at an institution of higher education (IHE) with a calendar of fewer than 75,600 minutes, including intermissions and recesses, and reporting dual credit attendance. The commenter asked whether an application for these students is still a requirement, and if so, when should this type of waiver be requested.

The commenter also requested that rules be adopted to allow a campus that has been approved for a low attendance waiver to receive minutes equal to the schedule for the day applied. The commenter suggested that, "For example, if an elementary campus has received a low attendance waiver by the TEA and would have been providing daily instruction for 435 minutes on such day the campus shall earn 435 minutes for the approved low attendance waiver."

Further, the commenter requested clarification on §3.6.2 in the SAAH that refers to the district selecting an official attendance-taking time. The commenter recommended that the section be revised to clearly define the official snapshot time and a determination of what circumstances allow for the snapshot time to be changed.

Lastly, the commenter requested specifics on how the proportionate deduction in state funding will be calculated based on the response to a question in the HB 2610 FAQ posted on the TEA website.

Agency Response: The agency provides the following clarification: §3.8.2.6, Waivers Related to Students Taking Dual Credit Courses at Institutions of Higher Education (IHEs) with Calendars of Fewer than 75,600 Minutes, and §11.3.1.2, Reporting Dual Credit Attendance in the Public Education Management System (PEIMS) when the Higher Education Calendar is Shorter than the School District Calendar, are still applicable. The waiver request should be submitted for students taking dual credit courses through an institution of higher education whose calendar is shorter than the district's calendar. The students' attendance should be reported in PEIMS with a different track to reflect the shorter calendar. Reporting the student with a separate track will prevent a reduction in state funding.

The agency disagrees with comments regarding low attendance waivers and maintains language as published as proposed. In accordance with SAAH, §3.8.2.3, if a district requests a low attendance waiver, the low attendance waiver granted by TEA will exclude the day(s) from the ADA and FSP funding calculations. Also, any days for which a district or charter school was granted

a low attendance waiver will be included in the calculation of whether the district met the requirement of 75,600 minutes.

The agency disagrees with the comment on the official snapshot time and maintains language as published as proposed. The SAAH, §3.6.2, provides a definition and an example of an official snapshot time. This section also states that a campus may select an official attendance-taking time that is not during the second or fifth hour of the day if the local school board has adopted a district policy allowing for recording absences in an alternative hour, or if the superintendent has established documented procedures allowing for recording absences in an alternative hour after having been delegated authority to do so by the board.

The comment regarding funding is outside of the scope of proposed rulemaking. However, the TEA will provide specifics on how the proportionate deduction in state funding will be calculated in the next revised HB 2610 FAQ.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §25.081, as amended by House Bill (HB) 2610, 84th Texas Legislature, 2015, which authorizes that each school year each school district and charter school provides for at least 75,600 minutes of instruction, including intermissions and recesses, for students. In addition, the commissioner may approve the instruction of students for fewer than 75,600 minutes if a calamity causes the school closing; TEC, §25.0812, as added by HB 2610, 84th Texas Legislature, 2015, which requires that school districts and charter schools may not schedule the last day of school for students before May 15; TEC, §30A.153, which requires the commissioner to adopt rules for the implementation of Foundation School Program (FSP) funding for the state virtual school network, including rules regarding attendance accounting; and TEC, §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the FSP.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§25.081, as amended by House Bill (HB) 2610, 84th Texas Legislature, 2015; 25.0812, as added by HB 2610, 84th Texas Legislature, 2015; 30A.153; and 42.004.

§129.1025. *Adoption by Reference: Student Attendance Accounting Handbook.*

(a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, §42.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.

(b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2015-2016 are described in the official Texas Education Agency (TEA) publication *2015-2016 Student Attendance Accounting Handbook*, dated May 2016, which is adopted by this reference as the agency's official rule. A copy of the *2015-2016 Student Attendance Accounting Handbook*, dated May 2016, is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner

will amend the *2015-2016 Student Attendance Accounting Handbook*, dated May 2016, and this subsection adopting it by reference, as needed.

(c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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 May 4, 2016.

TRD-201602166

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Texas Education Agency

Effective date: May 24, 2016

Proposal publication date: February 5, 2016

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19 TAC §129.1031

The Texas Education Agency (TEA) adopts new §129.1031, concerning reporting off-campus programs. The new section is adopted without changes to the proposed text as published in the February 5, 2016 issue of the *Texas Register* (41 TexReg 908) and will not be republished. The adopted new section reflects changes in statute made by House Bill (HB) 2812, 84th Texas Legislature, 2015.

REASONED JUSTIFICATION. HB 2812, 84th Texas Legislature, 2015, amended the Texas Education Code (TEC), §42.005, and added the TEC, §42.0052, to allow time spent in an approved off-campus instructional program to count toward minutes required to determine average daily attendance.

The attendance accounting rules allow students who are participating in a dual credit program to count time spent in the dual credit course toward average daily attendance. Adopted new 19 TAC §129.1031, Reporting Off-Campus Programs, allows time spent in an off-campus instructional program offered by an accredited institution of higher education to count toward average daily attendance, even if the student is not earning dual credit for participation in the program. The intent of the law, as expressed when the bill was amended on the senate floor, was to allow students to earn state funding if they are taking a college course similar to a dual credit course even if that course is not earning high school credit. Consequently, the requirements of the adopted new section are similar to those for dual credit courses, except that students do not have to earn high school credit to be counted for state funding purposes.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began February 5, 2016, and ended March 7, 2016. No public comments were received.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §42.005(h), which states that the time students spend in an off-campus instructional program approved under the TEC, §42.0052, shall be counted as part of the minimum number of instructional hours needed for a student to be considered a full-time student in average daily attendance under the TEC, Chapter 42; the TEC, §42.0052(a), which grants the commissioner the authority to approve off-campus instruc-

tional programs provided by an entity other than a school district or open-enrollment charter school as a program in which participation by a student of a school district or charter school may be counted for the purpose of determining average daily attendance under the TEC, §42.005(h); the TEC, §42.0052(b), which grants the commissioner the authority to adopt rules regarding verification and reporting procedures concerning time spent by students participating in these off-campus instructional arrangements; and the TEC, §12.106(c), which provides for open-enrollment charter schools to receive funding and authorizes the commissioner to adopt rules to provide and account for state funding of open-enrollment charter schools under certain conditions through the TEC, Chapter 42.

CROSS REFERENCE TO STATUTE. The new section implements the TEC, §42.005(h) and §42.0052, as added by HB 2812, 84th Texas Legislature, 2015, and §12.106(c).

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 May 4, 2016.

TRD-201602167

Cristina De La Fuente-Valadez
Director, Rulemaking

Texas Education Agency

Effective date: May 24, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.2

The Texas Board of Physical Therapy Examiners adopts amendments to §329.2, Licensure by Examination, without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2082).

The amendment to 22 TAC §329.2 will enable an applicant for licensure by examination who has reached the 6-time lifetime limit or has 2 very low scores on the National Physical Therapy Examination (NPTE) a means of requesting that the Board appeal on their behalf to the Federation of State Boards of Physical Therapy (FSBPT).

No comments were received regarding the proposed changes.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 May 3, 2016.

TRD-201602108

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: May 23, 2016

Proposal publication date: March 18, 2016

For further information, please call: (512) 305-6900



PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.63

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.63, Approval of Instructors of Qualifying Courses, in Chapter 535, General Provisions, without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1335).

The amendments clarify qualifications needed to become an approved instructor of a TREC approved adult instructor training course. This amendment was recommended by the Commission's Education Standards Advisory Committee.

The reasoned justification for the amendments is increased standards for instructors to improve quality of education of applicants for real estate licenses.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendments.

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 May 3, 2016.

TRD-201602092

Kerri Lewis

General Counsel

Texas Real Estate Commission

Effective date: May 23, 2016

Proposal publication date: February 26, 2016

For further information, please call: (512) 936-3092



22 TAC §535.64

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.64, Content Requirements for Qualifying Real Estate Courses, in Chapter 535, General Provisions, without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1336).

The amendments provide consistency and better quality in Property Management qualifying courses and are recommended by the Commission's Education Standards Advisory Committee.

The reason justification for the amendments is greater clarity in course requirements to improve the quality of education for applicants for real estate licenses.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendments.

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 May 3, 2016.

TRD-201602093

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Effective date: May 23, 2016

Proposal publication date: February 26, 2016

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SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §535.73

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.73, Approval of Continuing Education Courses, in Chapter 535, General Provisions, without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1337).

The amendments are adopted to correct the language so that it will not be misinterpreted. The statute and the intention of the Commission was to limit the daily presentation to 10 hours, not limit the length of the entire course.

The reason justification for the amendments is greater clarity in the rule.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics

for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

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 May 3, 2016.

TRD-201602095

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Texas Real Estate Commission

Effective date: May 23, 2016

Proposal publication date: February 26, 2016

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 10. ELIGIBILITY AND FORMS

28 TAC §5.4906, §5.4907

The Texas Department of Insurance adopts the repeal of 28 TAC §5.4906 and §5.4907, which concern the certificate of compliance approval program and the certificate of compliance transition program for the Texas Windstorm Insurance Association (association), respectively. Subsequent legislation has rendered these sections obsolete. The repeal is adopted without changes to the proposal published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 916).

REASONED JUSTIFICATION. The repeal is necessary to remove outdated sections from the TAC.

The association is the residual insurer of last resort for windstorm and hail insurance in the designated catastrophe area along the Texas coast. The association provides windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market. Insurance Code §2210.251 requires that structures constructed, altered, remodeled, enlarged, or repaired or to which additions are made after January 1, 1988, be inspected and approved by TDI for compliance with the association's plan of operation to be eligible for coverage through the association. The commissioner of insurance has adopted various windstorm building codes for the association's plan of operation.

Repealed 28 TAC §5.4906 and §5.4907 referred to programs through which structures could gain TDI approval without being inspected or complying with the applicable windstorm building code, under certain statutory exceptions. At the time §5.4906 was adopted, Insurance Code §2210.251(f) and §2210.258 provided that a residential structure insured by the association as

of September 1, 2009, could continue coverage through the association, provided that any construction, alteration, remodeling, enlargements, repairs, or additions begun on or after June 19, 2009, complied with the applicable windstorm building code. Section 5.4906 applies to residential structures insured by the association under policies issued in accordance with approval process regulations that TDI initiated on April 12, 2006, and that continued to be eligible for that coverage on September 1, 2009. The section stated that the declination and flood insurance requirements in the Insurance Code and the association's underwriting requirements apply to structures in the certificate of compliance approval program.

Section 5.4907 was also adopted under the authority of Insurance Code §2210.251 and §2210.258. Section 5.4907 described the certificate of compliance transition program, which provided that between September 1, 2009, and August 31, 2011, residential structures could be covered through the association without complying with the applicable windstorm building code. Under the program, the association could provide coverage to noncompliant residential structures for which private market windstorm and hail insurance coverage had been discontinued within the 12 months before the date of the application to the association; that had not been constructed, altered, remodeled, enlarged, repaired, or added to since June 19, 2009; and that met other requirements.

HB 3, 82nd Legislature, First Called Session (2011) and SB 1702, 83rd Legislature, Regular Session (2013) rendered §5.4906 and §5.4907 obsolete. HB 3 established the alternative certification program, which made noncompliant residential structures eligible for association coverage as long as at least one qualifying structural building component had been inspected and that it complied with the applicable building code standards. SB 1702 repealed the alternative certification program but enabled noncompliant residential structures insured in the private market on or after June 19, 2009, to obtain insurance through the association, even if they had been constructed, altered, remodeled, enlarged, repaired, or added to on or after that date. The provisions of SB 1702 would have expired on December 31, 2015, but SB 498, 84th Legislature, Regular Session (2015) extended the provisions indefinitely.

In the absence of §5.4906 and §5.4907, noncompliant residential structures that became eligible for association coverage under former versions of Insurance Code §2210.251(f) and §2210.258 are still eligible. Policyholders will continue to pay a premium surcharge of 15 percent for each noncompliant residential structure under Insurance Code §2210.259(a).

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY. The repeal is adopted under Insurance Code §2210.008 and §36.001. Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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 May 9, 2016.

TRD-201602241
Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: May 29, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 676-6584

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 326. MEDICAL WASTE MANAGEMENT

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§326.1, 326.3, 326.5, 326.7, 326.17, 326.19, 326.21, 326.23, 326.31, 326.37, 326.39, 326.41, 326.43, 326.53, 326.55, 326.61, 326.63, 326.65, 326.67, 326.69, 326.71, 326.73, 326.75, 326.77, 326.85, 326.87, and 326.89.

Sections 326.1, 326.3, 326.5, 326.19, 326.21, 326.37, 326.39, 326.41, 326.43, 326.53, 326.55, 326.61, 326.63, 326.69, 326.71, 326.73 and 326.75 are adopted *with changes* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9507), and therefore will be republished. Sections 326.7, 326.17, 326.23, 326.31, 326.65, 326.67, 326.77, 326.85, 326.87, and 326.89 are adopted *without changes* to the proposed text and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 2244, passed by the 84th Texas Legislature, 2015, amended Texas Health and Safety Code (THSC), Chapter 361 by adding THSC, §361.0905 (Regulation of Medical Waste) requiring the commission to adopt regulations under a new chapter specific for the handling, transportation, storage, and disposal of medical waste. The adopted rulemaking primarily involves extracting or replicating the rules related to medical waste from 30 TAC Chapter 330 (Municipal Solid Waste), and moving them to adopted new Chapter 326. HB 2244 was effective immediately on June 10, 2015. The legislation also states that the commission must adopt any rules required to implement HB 2244 by June 1, 2016.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning Chapter 330 and 30 TAC Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste).

Section by Section Discussion

Subchapter A: General Information

§326.1, *Purpose and Applicability*

Adopted new Chapter 326 addresses the handling, storage, disposal, and transportation of medical waste. Adopted new §326.1 establishes that the adopted regulations in Chapter 326 are based primarily on the stated purpose of THSC, Chapter 361 and are under the authority of the commission. Permits and registrations issued by the commission and its predecessors, that existed before Chapter 326 becomes effective remain valid

for the later of two years from the effective date of this chapter, or until a final decision is made on a timely application for an existing authorization to comply with Chapter 326. The adopted rule is revised to clarify that permits and registrations would remain effective until the later of two years or until a timely decision is made on a timely application. The adopted rule is revised to clarify that registrations by rule would remain effective until they are renewed under this chapter. The existing Chapter 330 rules governing medical waste, which are repealed in a corresponding rulemaking, remain in effect and applicable to existing and pending permits, registrations, and registrations by rule, obtained under those rules. Applications received within two years of the effective date of Chapter 326 for an existing permit or registration to comply with or transition to Chapter 326 will not be subject to the standard procedures for processing applications, including any requirements for notice and public participation. Authorizations, other than permits, registrations, and registrations by rule, that existed before Chapter 326 became effective, remain valid and are subject to these rules when they become effective. These authorizations include exemptions and notifications.

Applications pending before the effective date of Chapter 326 are subject to review under the existing Chapter 330 rules. Permits and registrations issued under the existing Chapter 330 rules must be updated by filing a new application, which is not subject to public notice, within two years of the effective date of Chapter 326 to comply with the provisions of Chapter 326. The executive director is authorized to extend this deadline based on an authorized entity making a request supported by good cause. Existing permits or registrations terminate if a timely application to update is not filed. Existing permits or registrations remain in effect until a final determination is made on a timely filed application.

Adopted §326.1(a)(3) is revised to clarify that requests to modify buffer zones or operating hours under this chapter will be processed as modifications that do not require notice.

The sealed and signed pages of the existing application can be incorporated into the new submittal as long as the owner and/or operator provides a statement that the application is revised to only replace references to Chapter 330 with Chapter 326 along with minor corrections. However, the commission continues to require new engineering seals and signatures for submittals for substantive changes to a facility design or operation.

§326.3, *Definitions*

Adopted new §326.3 defines terms in Chapter 326. Additionally, this section provides that in addition to defined terms, the undefined words, terms, and abbreviations, when used in this chapter, are defined in Texas Department of State Health Services (DSHS) rules in 25 TAC §1.132 and §133.2 (Definitions). When the definitions found in 25 TAC §1.132 are changed, such changes will prevail over the definitions found in §326.3. On-site is defined to include medical waste managed on property that is owned or effectively controlled by one entity and that is within 75 miles of the point of generation or generated at an affiliated facility. The proposed definitions for non-hazardous pharmaceutical and trace chemotherapy waste are not adopted, and the remaining definitions are renumbered accordingly.

In response to comments, §326.3(42), "Putrescible waste" definition was modified to be specific to regulated medical waste.

In response to comments, §326.3(53)(B), "Storage" definition for post-collection transporter was modified to extend the storage

time to 72 hours to accommodate long distance routes and multiple pickup locations prior to treatment or disposal.

§326.5, *General Prohibitions*

Adopted new §326.5 establishes that a person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of medical waste, or the use or operation of a solid waste facility to store, process, or dispose of solid waste in violation of the THSC, or any regulations, rules, permit, license, order of the commission, or in such a manner that causes the discharge or imminent threat of discharge, the creation and maintenance of a nuisance, or the endangerment of the human health and welfare or the environment. The proposed clause referencing THSC, §361.092 has been deleted because it is addressed under the provisions Chapter 330 for landfills.

§326.7, *Other Authorizations*

Adopted new §326.7 specifies that owners or operators of medical waste facilities should obtain appropriate authorizations for the prevention or abatement of air or water pollution, and all other permits or approvals that may be required by local, state, and federal agencies.

Subchapter B: Packaging, Labeling and Shipping Requirements

§326.17, *Identification*

Adopted new §326.17 establishes that prior to packaging, labeling and shipping, health care-related facilities must identify and segregate medical waste from ordinary rubbish and garbage produced within or by the facilities. Should other municipal solid waste be combined with medical waste, the combined waste will be considered to be medical waste.

§326.19, *Packaging*

Adopted new §326.19 specifies that the generator is responsible for ensuring that medical waste is packaged in accordance with applicable requirements under the United States Department of Transportation, 49 CFR §173.134 and 49 CFR §173.196 which address infectious substances. 49 CFR Subtitle B, Chapter 1, Subchapter C specifically regulates infectious substances to abate future outbreaks of infectious disease. The reference 49 CFR §173.196 was added to further clarify infectious substances packaging.

§326.21, *Labeling Containers Excluding Sharps*

Adopted new §326.21 requires that medical waste packages must be labeled appropriately and in accordance with applicable requirements under 49 CFR §173.134. This section also establishes that the generator is primarily responsible for labeling, but may receive transporter assistance.

Due to response to comments, the title for this section was modified from "Labeling" to "Labeling Containers Excluding Sharps." Sharps containers requirements for marking (labeling) sharps is addressed under §326.19(b).

§326.23, *Shipping*

Adopted new §326.23 provides general requirements and provisions for both generators and transporters to follow, such as recordkeeping and explains that shipments of untreated medical waste must be delivered only to facilities authorized to accept untreated medical waste. This section establishes maintenance of electronic waste shipping (manifest) documentation by generators and transporters in addition to hard copies. This section explains that treated medical waste shipments including sharps

or residuals of sharps must include a statement to the landfill that the shipment has been treated by an approved method in accordance with 25 TAC §1.136 (Approved Methods of Treatment and Disposition). This section also establishes that persons who transport untreated medical waste from Texas to other states or countries or from other states or countries to Texas, or persons that collect or transport waste in Texas but have their place of business in another state, must comply with all of the requirements for transporters.

Subchapter C: Exempt Medical Waste Operations

§326.31, Exempt Medical Waste Operations

Adopted new §326.31 establishes that facilities that generate and store on-site medical waste are exempt from medical waste authorizations under this chapter. These facilities are identified as small quantity generators (SQGs) and large quantity generators (LQGs). SQGs are facilities that generate up to 50 pounds of medical waste per month and LQG are facilities that generate more than 50 pounds per month. Exempt SQG Transporters generate and transport less than 50 pounds per month to an authorized medical waste storage or processing facility. In response to comments "of regulated medical waste" was added to distinguish small quantity and large quantity generators as it relates to medical waste management since similar terminology is used for hazardous waste generators as well.

Persons who transport medical waste within Texas when the transportation neither originates nor terminates in Texas will be exempt. Medical waste transported by the United States Postal Service in accordance with the Mailing Standards of the United States Postal Service, Domestic Mail Manual, as incorporated by reference in 39 CFR Part 111, will be considered exempt from medical waste authorizations under Chapter 326.

Subchapter D: Operations Requiring a Notification

§326.37, General Requirements

Adopted new §326.37 establishes the process for medical waste operations to notify the agency of certain operations. Adopted new §326.37(a) - (c) explains the requirements that are applicable to all notifiers and how to submit the written notification. There are three types of notifications that are adopted in this section.

In response to comments, §326.37(a) is revised to provide an electronic submittal option.

In making the previous revision, the commission recognized a potential ambiguity in the rule language. In an effort to address the potential ambiguity, the commission revised the rule language to clarify that the notification required by generators is to be made in writing, and that the request to be notified that may be submitted by local agencies must also be made in writing. These clarifying changes were made in §326.37(a) and (c).

The commission also revised the language in §326.37(a) and (c) to clarify that the notifications must be submitted 90 days prior to commencing the regulated activity.

§326.39, On-Site Treatment by Small Quantity Generators

Adopted new §326.39 requires that an SQG notify the executive director of the operation of an approved processing unit used only for the treatment of on-site generated medical waste, as defined in adopted §326.3(23). The adopted rule is revised to clarify that this is a one-time notification and that the notice is not

required to include the name and initials of the person performing treatment.

In response to comments, the name and initials of the person(s) performing the treatment in §326.39(a)(1) was replaced with contact information for the facility. The name and initials of the person(s) performing the treatment is needed for on-site recordkeeping. The commission has made the suggested change and also revised §326.39(b) and §326.41(b) to add the name and initials of the persons performing the treatment to those sections.

The commission also revised the rule language in §326.39(a) to clarify that notifications must be made in writing.

§326.41, On-Site Treatment by Large Quantity Generators

Adopted new §326.41(a) establishes that an LQG may treat their medical waste on-site. The adopted rule is revised to clarify that this is a one-time notification and that the notice is not required to include the name and initials of the person performing treatment. The commission also revised the rule language in §326.41(a) to clarify that notification must be made in writing. However, the notification requirements for LQGs are adopted to be more stringent than for SQGs; LQGs will need to maintain a written procedure for the operation and testing of any equipment used and for the preparation of any chemicals used in treatment. Adopted new §326.41(b)(3)(A) requires the owner or operator to demonstrate a minimum reduction of microorganisms by a four log ten reduction as defined by reference in 25 TAC §1.132. The adopted frequency of testing is based on the number of pounds generated per month for a facility.

In response to comments, the individual's name and initials performing the treatment is needed for on-site recordkeeping. Section 326.41(b) is also revised to add the individual's name and initials performing the treatment. Adopted new §326.41(b)(3)(B) allows an owner or operator to substitute the biological monitoring under §326.41(b)(3)(A) based on manufacturer compliance with the performance standards prescribed under 25 TAC §1.135 (Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities).

Adopted new §326.41(b)(3)(C) establishes that the owner or operator is responsible for following the manufacturer's instructions and maintaining quality control for single-use, disposable treatment units.

Adopted new §326.41(b)(3)(D) requires an owner or operator of a medical waste incinerator to comply with the requirements prescribed in 30 TAC §111.123 (Medical Waste Incinerators) in lieu of biological or parametric monitoring.

Adopted new §326.41(c)(1) and (2) establish that treated medical waste such as microbiological waste, blood, blood products, body fluids, laboratory specimens of blood and tissue, and animal bedding may be managed as routine municipal solid waste for the purposes of disposal in accordance with Chapter 330. The owner or operator will follow disposal requirements applicable to incinerator ash and label the waste as treated medical waste.

Adopted new §326.41(c)(3) establishes that treated carcasses and animal body parts designated as medical waste may be managed as routine municipal solid waste and be disposed of in a permitted landfill in accordance with Chapter 330.

Adopted new §326.41(c)(4) establishes that treated recognizable human body parts, tissues, fetuses, organs, and the product of human abortions, spontaneous or induced, will not be disposed of in a municipal solid waste landfill and must be managed in accordance with 25 TAC §1.136(a)(4).

Adopted new §326.41(c)(5) establishes how treated and unused sharps will be disposed of in a permitted landfill in accordance with Chapter 330.

§326.43, Medical Waste Collection and Transfer by Licensed Hospitals

Adopted new §326.43(a) establishes that a licensed hospital may provide a notification to the commission if the facility intends to function as a medical waste collection and transfer facility. Under this notification, the hospital may accept untreated medical waste from SQGs that transport medical waste they generated. The hospital must be located in an incorporated area with a population of less than 25,000 and in a county with a population of less than one million; or in an unincorporated area that is not within the extraterritorial jurisdiction of a city with a population of more than 25,000 or within a county with a population of more than one million.

Adopted new §326.43(b)(1) - (5) establish the items that the notification must address; such as the packaging, storage, transporting, and treatment requirements. Adopted §326.43(b)(2) is revised to remove the requirement to maintain refrigeration of waste that was refrigerated before collection.

At adoption, the commission revised the rule language in §326.41(b) to clarify that notification must be made in writing, and to clarify that the acknowledgments contemplated by this subsection are to be made in the hospital's written notification.

Subchapter E: Operations Requiring a Registration by Rule

§326.53, Transporters

Adopted new §326.53(a) establishes that a registration by rule is available to transporters and that they will provide information to the commission 60 days prior to beginning transportation operations. A form will be provided by the commission and adopted new §326.53(a)(1) - (5) details the contents of the form, such as the identification information for the applicant, and annual fees required for the commission as referenced under Chapter 326, Subchapter G (Fees and Reporting).

Adopted new §326.53(b)(1) - (5) establish that registrations by rule will expire after one year and specify that an operator should apply for a renewal in a timely fashion to ensure continuous authorization.

Adopted new §326.53(b)(6)(A) - (B) provide for the design requirements of the transportation unit and the cargo compartment of the transportation vehicle, including temperature and post-collection storage time. The identification markings for the cargo compartment(s) applies to the use of compartment while it contains medical waste. Adopted §326.53(b)(6)(B)(vi) is revised to remove the requirement to maintain refrigeration of waste that was refrigerated before collection. In response to the comments, whether sealed wood floors are impervious and nonporous, the commission considers that wood floors are not impervious and nonporous. In cases where wood floors have been modified, the applicant must demonstrate that the modification of the wood floor renders it impervious and nonporous.

Adopted new §326.53(b)(7) establishes that transportation units used to transport untreated medical waste will not be used to

transport any other material until the transportation unit has been cleaned and the cargo compartment disinfected. Recordkeeping will be required to document the date and the process used to clean and disinfect the transportation unit and records will be maintained for three years. The record will identify the transportation unit by motor vehicle identification number or license tag number. The owner of the transportation unit, if not the operator, will be notified in writing by the transporter that the transportation unit has been used to transport medical waste and when and how the transportation unit was disinfected.

Adopted new §326.53(b)(8) establishes that a transporter will be responsible for initiating and maintaining shipment records for each type of waste collected and deposited. This paragraph also details the information that must be documented on the shipping document. In response to comments, §326.53(b)(8)(G) is revised to add language to provide for future electronic documents.

Adopted new §326.53(b)(9) requires the transporter to provide the generator a signed manifest for each shipment at the time of collection of the waste and include information such as the name, address, telephone number, and registration number of the transporter, identify the generator, and list the total volume or weight of waste collected and date of collection. The transporter will also provide the generator with a written or electronic statement of the total weight or volume of the containers within 45 days.

Adopted new §326.53(b)(10) establishes that the transporter will provide documentation of each medical waste shipment from the point of collection through and including the unloading of the waste at a facility authorized to accept the waste. The original shipping document will accompany each shipment of untreated medical waste to its final destination and the transporter will be responsible for the proper collection and deposition of untreated medical waste accepted for transport. In response to comments, §326.53(b)(10) is revised to add language to provide for future electronic documents.

Adopted new §326.53(b)(11) - (13) establish that shipments of untreated medical waste will be deposited only at a facility that has been authorized by the commission to accept untreated medical waste. Untreated medical waste that is transported out of the state will be deposited at a facility that is authorized by the appropriate agency having jurisdiction over such waste. In response to comments, §326.53(b)(12) and (13) were revised to add "regulated garbage" since the "Animal and Plant Health Inspection Service (APHIS) regulated garbage" is the term used by APHIS to identify APHIS waste.

Adopted new §326.53(b)(14) establishes that the storage of medical waste will be in a secure manner and in a location that affords protection from theft, vandalism, inadvertent human or animal exposure, rain, water, and wind. The waste will be managed so as not to provide a breeding place or food for insects or rodents, and not generate noxious odors.

Adopted new §326.53(b)(15) establishes the items that the notification will address; such as the packaging, storage, and transporting requirements.

Adopted new §326.53(b)(16) allows for an exemption from some transportation requirements to persons who will transport medical waste within Texas when the transportation neither originates nor terminates in Texas.

Adopted new §326.53(b)(17) establishes that packages of untreated medical waste will not be transferred between transporta-

tion units unless the transfer occurs at and on the premises of a facility authorized as a transfer station, or as a treatment/processing facility that has been approved to function as a transfer station except as provided in §326.43.

Adopted new §326.53(b)(18) establishes that a medical waste shipment may be transferred to an operational transportation unit in the event of a transportation unit malfunction, and that the transporter will notify the executive director in writing, along with any local pollution control agency with jurisdiction that has requested to be notified, within five working days of the incident. When transferring to a unit not registered, the transporter will comply with §326.53(b)(6) and (7).

Adopted new §326.53(b)(19) establishes that a waste shipment may be transferred to an operating transportation unit in case of a traffic accident. Containers of waste that are damaged in the accident will be repackaged as soon as possible and the nearest regional office, along with any local pollution control agency with jurisdiction that have requested to be notified, will be notified of the incident no later than the end of the next working day after the accident.

Adopted new §326.53(b)(20) establishes that a copy of the registration by rule be maintained, as annotated by the executive director with an assigned registration by rule number, at their designated place of business and with each transportation unit used to transport untreated medical waste.

Adopted new §326.53(c) establishes that changes to the transporter registration be provided by letter to the executive director, and with any local pollution control agency with jurisdiction that have requested to be notified within 30 days of any change.

§326.55, Mobile Treatment Unit

Adopted new §326.55(a) establishes that a registration by rule is available for persons that treat medical waste in mobile treatment units on the site of generation, but that are not the generator of the waste. The mobile on-site treatment unit owner or operator will complete a registration by rule form provided by the commission and provide the required information at least 60 days before commencing operations.

Adopted new §326.55(a)(1) - (3) require the operator to provide identification information such as the applicant's name, address, and telephone number, and pay an annual registration fee based on the total weight of medical waste treated on-site under each registration by rule.

Adopted new §326.55(a)(4) and (5) require the owner or operator to describe the approved treatment method to be used, chemical preparations, the procedure to be utilized for routine performance testing/parameter monitoring, and routine performance testing conducted in accordance with §326.41(b)(3).

Adopted new §326.55(a)(6) - (9) establish that the owner or operator provide evidence of competency in the form of training certificates or description of work experience, a description of the management and disposal of process waters generated during treatment events, and a contingency plan to manage waste in the event of treatment failure or equipment breakdown. A cost estimate to remove, dispose, and disinfect equipment will be submitted to the commission and the corresponding financial assurance must be established in accordance with 30 TAC Chapter 37, Subchapter R (Financial Assurance for Municipal Solid Waste Facilities).

Adopted new §326.55(a)(10) requires the owner or operator to provide a description of each mobile on-site treatment unit. Adopted new §326.55(a)(11) explains how a registrant by rule submits the annual fee.

Adopted new §326.55(b)(1) - (5) establish other requirements, such as renewal, annual reporting and annual fee requirements.

Adopted new §326.55(b)(6) - (8) establish the requirements for the mobile on-site treatment units and associated cargo compartments and will prohibit the use of mobile treatment units to transport non-medical waste until the unit has been cleaned and disinfected. Records will be kept to document cleaning and disinfection dates, identification for each unit by motor vehicle identification number or license tag, and waste treatment information.

Adopted new §326.55(b)(9) - (14) require persons that apply for a registration by rule to maintain copies at their place of business and in each mobile on-site treatment unit. An owner or operator will provide the generator the documentation required in §326.55(b)(6)(A) and (B) and a statement that the medical waste was treated in accordance with 25 TAC §1.136 for the generator's record. Owners or operators of mobile treatment units will not transport medical waste unless they are a registered medical waste transporter.

Adopted new §326.55(c) requires the owner or operator to notify the executive director, by letter, of any changes to their registration within 30 days.

Subchapter F: Operations Requiring a Registration

§326.61, Applicability and General Information

Adopted new §326.61(a) and (b) establish that registrations will be required for facilities that store or process untreated medical waste that are received from off-site sources, and that no person may begin physical construction of a new medical waste management facility subject to this registration requirement without first having received a registration from the commission.

The terms "non-hazardous pharmaceutical waste" and "trace chemotherapy waste" were removed. A new sentence is added to indicate that the executive director may authorize these facilities to store and process other related waste.

Adopted new §326.61(c) establishes that a registration application is not subject to the opportunity for a contested case hearing.

Adopted new §326.61(d) - (g) establish that all aspects of the application and design requirements will be addressed even if only to show why requirements are not applicable to a particular site. The owner or operator will provide the executive director the information requested to address the application with sufficient completeness, accuracy, and clarity; and the executive director may return the application if the owner or operator fails to provide complete information as required by this chapter and the executive director.

Adopted new §326.61(h) establishes that municipal solid waste, which would be classified as medical waste if it were generated by health care-related facilities, will be managed as medical waste after it is accepted at a processing facility, excluding facilities operating as a transfer station only. This municipal solid waste will be subject to the same requirements as medical waste when it is accepted by a facility that is only a registered medical waste facility.

§326.63, Property Rights

Adopted new §326.63(a) and (b) require the owner or operator to acquire sufficient property interest to use the surface estate of the property including access routes and retain right of entry to the facility until the facility is properly closed. In response to comments, §326.63(b) is revised to replace the term "closure care period" with "closure activities" to clarify that reference to the closure was to address the period that would require closure activities not the post closure care period.

§326.65, Relationships with Other Governmental Entities

Adopted new §326.65(a) - (c) establish that municipalities and county governments may enforce and exercise the authority to require and issue licenses authorizing and governing the operation and maintenance of medical waste facilities under the conditions afforded by THSC, Chapters 361, 363, and 364.

§326.67, Relationship with County Licensing System

Adopted new §326.67(a) - (b) establish the licensing procedures for counties that may choose to exercise their licensing authority. Counties with regulations may promulgate regulations that are consistent with those established and approved by the commission. A county may not make regulations or issue licenses for medical waste management within the extraterritorial or territorial jurisdiction of incorporated areas. The commission will not require a registration for medical waste facilities that have obtained a license issued by a county. A county will offer an opportunity to request a public meeting and issue appropriate notifications in accordance with the procedures established in adopted §326.73.

Adopted new §326.67(c) and (d) provide for the contents of a license and the licensee's responsibilities. The license contents will include owner identification information, legal description of the land on which the facility is located, the terms of the license, and volume of waste to be managed. The licensee will need to operate in compliance with regulations of the commission and the county.

§326.69, Registration Application Formatting, Posting, Appointment and Fees

Adopted new §326.69(a) - (d) require that the owner or operator submit three copies of the application. In response to comments, §326.69(a) is revised to provide for electronic submittal option. The application will be prepared in accordance with the Texas Occupations Code, Chapter 1001, Texas Engineering Practice Act or returned if the application documents are not sealed properly. The subsections also describe the adopted formatting and drawing requirements.

Adopted new §326.69(e) requires that the owner or operator post an application that requires public notice, subsequent revisions, and supplements to the application on a publicly accessible internet website, and provide the commission with the Web address link for the application materials. The commission will post on its website the Web address link to the application and identify all owners and operators filing the application.

Adopted new §326.69(f) requires the owner or operator provide documentation that the person signing the application meets the requirements of 30 TAC §305.44(a) and (b) (Signatories to Applications).

Adopted new §326.69(g) requires a fee of \$150 for a registration, modification, or temporary authorization application.

§326.71, Registration Application Contents

Adopted new §326.71(a) requires the owner or operator to submit maps and drawings of the facility and surrounding areas with the required information for each map and drawing. The maps and drawings will include: a general location map, facility access and facility layout map or drawing, land-use map, published zoning map if available, land ownership map, and a metes and bounds drawing and description of the facility (registration) boundary. Information regarding likely impacts of the facility on cities, communities, property owners, or individuals by analyzing land use, zoning, and community-growth patterns will be included. Land ownership information will be provided for property owner(s) within 1/4 mile of the facility. Mineral interest ownership will not be required.

Adopted new §326.71(b) requires the applicant to provide a property owner affidavit that is signed by the owner. Property owner affidavit must include acknowledgment that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure of the facility and that the facility owner or operator and the State of Texas must have access to the property during the active life and after closure for the purpose of inspection and maintenance.

Adopted new §326.71(c) and (d) require the owner or operator to acknowledge that they will employ a licensed solid waste facility supervisor and to verify the owner's or operator's legal status as required by 30 TAC §281.5 (Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits).

Adopted new §326.71(e) requires transportation data on the availability and adequacy of roads that the owner or operator will use to access the site; the volume of vehicular traffic on access roads within one mile of the proposed facility during the expected life of the proposed facility; and the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility. The owner or operator will also submit documentation of coordination of all designs of adopted public roadway improvements and documentation of coordination with the Texas Department of Transportation for traffic and location restrictions.

Adopted new §326.71(f) establishes that the owner or operator include a certification statement to verify that the facility will be constructed, maintained, and operated to manage run-on and run-off during the peak discharge of a 25-year rainfall event and will obtain the appropriate Texas Pollutant Discharge Elimination System storm water permit or an individual wastewater permit if applicable. This subsection also establishes that the facility will be located outside of the 100-year floodplain unless the owner or operator demonstrates that the facility is designed and operated to prevent washout during a 100-year storm event. The facility also will not be allowed to locate in wetlands unless the owner or operator provides documentation to the extent required under federal Clean Water Act, §404 or applicable state wetlands laws.

Adopted new §326.71(g) requires the owner or operator submit documentation that the application was submitted for review to the applicable council of governments for compliance with regional solid waste plans and documentation that a review letter was requested from any local governments as appropriate for compliance with local solid waste plans.

Adopted new §326.71(h) requires a general description of the facility location and design. The owner or operator will provide

a description for access control including the use of fences or other means to protect the public from exposure to health and safety hazards, and to discourage unauthorized entry. This subsection establishes that the unloading, storage, or processing of solid waste may not occur within any easement or buffer zone and a minimum separating distance of 25 feet between the facility boundary and processing equipment, loading, unloading and storage areas. Transport vehicles that store medical waste in refrigerated units with temperatures below 45 degrees Fahrenheit will not be subject to this requirement.

Adopted new §326.71(i) requires generalized construction information or manufacturer specifications of all medical waste storage and processing units. Adopted §326.71(i) is revised to clarify that the number of waste management units be provided. Additionally, the owner or operator will provide design information for secondary containment structures for storage and processing areas that are designed to control and contain spills and contaminated water from leaving the facility. The owner or operator will acknowledge that the storage of medical waste be secure and in a location that affords protection from theft, vandalism, inadvertent human or animal exposure, rain, water, and wind and managed so as not to provide a breeding place or food for insects or rodents, and not to generate noxious odors. Putrescible or biohazardous untreated medical waste stored for longer than 72 hours during post-collection storage period will need to be maintained at a temperature of 45 degrees Fahrenheit or less. Adopted §326.71(i)(5) is revised to remove the requirement to maintain refrigeration of waste that was refrigerated before collection.

Adopted new §326.71(j) requires that medical waste be treated in accordance with the provisions of 25 TAC §1.136. Alternative treatment technologies may be approved in accordance with requirements found in 25 TAC §1.135. The owner or operator will provide a written procedure for the operation and testing of any equipment used and a written procedure for the preparation of any chemicals used in treatment. The owner or operator will conduct weekly testing and demonstrate a minimum reduction of microorganisms to a four log ten reduction as defined by reference in 25 TAC §1.132. Owner or operator may substitute the biological monitoring based on manufacturer compliance with the performance standards prescribed under 25 TAC §1.135. The owner or operator will be responsible for following the manufacturer's instructions and maintaining quality control for single-use, disposable treatment units. Owner or operator of medical waste incinerators will comply with the requirements prescribed in §111.123 in lieu of biological or parametric monitoring. In response to comments, adopted §326.71(j)(7) is added to clearly indicate that alternative treatment technologies must be approved by DSHS by moving the second sentence of §326.71(j) to adopted §326.71(j)(7).

Adopted new §326.71(k) and (l) establish the preparation of the closure plan and the certification for a final closure. The owner or operator will remove all waste to an authorized facility. All units will be dismantled and removed off site or decontaminated and closure will be completed within 180 days following the most recent acceptance of materials unless otherwise approved in writing by the executive director.

Adopted new §326.71(m) and (n) establish the criteria for owners or operators to prepare closure cost estimates to address the disposition of the maximum inventories of all processed and unprocessed waste. The estimate will be based on the costs of hiring a third party that is not affiliated with the owner or operator;

and be based on a per cubic yard and/or short-ton measure for collection and disposition costs. Revisions to the closure cost estimate may be made once the changes are approved by the commission. Documentation will be required to demonstrate financial assurance as specified in Chapter 37, Subchapter R and be submitted 60 days prior to the initial receipt of waste. Continuous financial assurance coverage for closure will be provided until all requirements of the final closure plan have been completed and the site is determined to be closed in writing by the executive director.

Adopted new §326.71(o) and (p) establish that a site operating plan be prepared to address and implement all the provisions in §326.75. The site operating plan and all other pertinent documents and plans are considered to be a part of the operating record and are operational requirements of the facility.

§326.73, Registration Application Processing

Adopted new §326.73(a)(1) - (5) discuss registration application processing and require that the owner or operator and the commission provide the opportunity for a public meeting in accordance with the criteria under 30 TAC §55.154(c) (Public Meetings). Notice of a public meeting will be provided as specified in 30 TAC §39.501(e) (Application for Municipal Solid Waste Permit). Response to comments by the commission will not be required and there will be no opportunity for a contested case hearing. The owner, operator, or their authorized representative will attend the public meeting. The owner or operator will post a sign or signs at the site of the adopted facility declaring that an application has been filed with the commission and that the owner or operator may be contacted for further information under requirements listed in §326.73(a)(5)(A) - (I).

Adopted new §326.73(a)(6) - (8) establish that posted signs at the facility indicating that a proposed medical waste facility application has been filed and the signs must be located within ten feet of every property line bordering a public highway, street, or road and visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, will be required along any property line paralleling a public highway, street, or road. The owner or operator will also post signs at the facility in an alternative language when the alternative language requirements in 30 TAC §39.405(h)(2) (General Notice Provisions) are met. Variances from sign posting requirements may be approved by the executive director.

Adopted new §326.73(b) and (c) establish that the executive director determine if the application be approved or denied and in accordance with 30 TAC §50.133(b) (Executive Director Action on Application or WQMP Update), if the executive director acts on an application, the chief clerk will mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion under 30 TAC §50.139 (Motion to Overturn Executive Director's Decision). The chief clerk will mail this notice to the owner and operator, the public interest counsel, and to other persons who timely filed public comment in response to public notice. The owner or operator, or a person affected may file with the chief clerk a motion to overturn the executive director's action on a registration application, under §50.139. The criteria regarding motions to overturn will be explained in public notices given under 30 TAC Chapter 39 (Public Notice) and §50.133.

§326.75, Site Operating Plan

Adopted new §326.75 defines the contents of a site operating plan required under adopted new §326.71(o). Adopted new §326.75(a)(1) - (3) require owners or operators to provide the

functions and minimum qualifications for key personnel; general instructions that operating personnel will follow; and procedures for detection and prevention of the receipt of prohibited waste. In response to comments, proposed §326.75(a)(3) requiring information about equipment has been deleted. In response to comments that employees would be required to open containers for random inspections, the commission did not intend to require the opening of containers for random inspections. Section 326.75(a)(3)(A) is revised to clarify this requirement.

Adopted new §326.75(b) requires the owner or operator to identify the sources and characteristics of medical waste that they will receive for storage, processing or disposal. The information will include the maximum amount of medical waste to be received daily, the maximum amount of medical waste to be stored, the maximum allowable period of time that all medical waste (unprocessed and processed) are to remain on-site, and the intended destination of the medical waste received at the facility. The rule makes clear that medical waste facilities may not receive regulated hazardous waste as defined in 40 CFR §261.3 unless the waste is excluded from regulation as a hazardous waste under 40 CFR §261.4(b), or was generated by a conditionally exempt SQG. In regards to the appropriate method of disposition (e.g., incineration, landfilling or transfer) required by the phrase ". . . the application must include the intended destination of the medical waste received" is not intended to require that a particular facility name and location be identified. Facility may have dual authorizations to accept hazardous and medical waste. However hazardous waste authorization is separate from medical waste registration authorization and cannot be accepted under medical waste registrations. This includes accepting, storing and/or processing of hazardous waste. All of these activities can only be authorized by an industrial hazardous waste authorization separately. The commission has processed dual authorization facilities in the past and they are required to have physically separated waste management areas and units and the authorization boundaries for each should be depicted on a site layout drawing. There may be other requirements that must be addressed on a case-by-case basis.

The commission currently allows the recycling of source separated materials. The commission also understands there may be situations on a case-by-case basis. In such cases, the recycling of the material may be appropriate however it should be addressed in the application clearly.

Adopted new §326.75(c) establishes how all wastes generated and resulting from the facility operations be processed or disposed. In response to comments, §326.75(c)(5) is revised from requiring a copy of the authorization to discharge wastewater to a treatment facility permitted under Texas Water Code (TWC), Chapter 26 along with the application submittal to requiring making it available prior to beginning of facility's operations and for all inspections.

Adopted new §326.75(d) establishes how recyclable materials be stored and kept separate from solid waste processing areas. All areas used for storage will not constitute a fire, safety, or health hazard or provide food or harborage for animals and vectors, and recyclable materials will be contained or bundled so as not to result in litter. Containers will be maintained in a clean condition so that they do not constitute a nuisance and to prevent the harborage, feeding, and propagation of vectors.

Adopted new §326.75(e) establishes recordkeeping requirements. The owner or operator will be required to maintain on site, hard copies of their registration, registration applica-

tion, correspondence, and all other documents related to the management of medical waste at the facility. For treatment facilities, the owner or operator may send written or electronic copies of the shipping document to the generator that includes a statement that the medical waste was treated in accordance with 25 TAC §1.136. All documents submitted by the owner or operator to the executive director will be signed and certified by the owner or operator or by a duly authorized representative of the owner or operator in accordance with §305.44(a) and (b).

Adopted new §326.75(f) requires the owner or operator to have an adequate supply of water under pressure for firefighting purposes, firefighting equipment, and a fire protection plan that describes the procedures for employee training, safety procedures, and compliance with local fire codes.

Adopted new §326.75(g) establishes how access to the facility will be controlled at the perimeter of the facility boundary and at all entrances to the facility. The means may be artificial and/or natural barriers, and entrances have lockable gates with an attendant on-site during operating hours. The operating area and transport unit storage area will be enclosed by walls or fencing. The facility access road from a publicly owned roadway must be designed for the expected traffic flow and safe on-site access for commercial collection vehicles and for residents. The access road design must include adequate turning radii according to the vehicles that will utilize the facility and avoid disruption of normal traffic patterns.

Adopted new §326.75(h) establishes that unloading areas be confined to as small an area as practical, and that an attendant monitor all incoming loads of waste. Signage must be provided to indicate where vehicles are to unload their waste. Signs and other means, such as forced lanes must also be used to direct traffic to unloading areas and to prevent unloading in unauthorized areas. The owner or operator will ensure that the unloading of prohibited waste does not occur and all prohibited waste is returned to the transporter or generator if it is unloaded. Access from publicly owned roadways will be at least a two-lane gravel or paved road.

Adopted new §326.75(i) addresses the hours a facility will be open to conduct business. A site operating plan will specify operating hours. The operating hours may be any time between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, unless otherwise approved by the executive director or commission.

Adopted new §326.75(i)(1) establishes that the owner or operator has the option to request alternative operating hours of up to five additional days in a calendar year to accommodate special occasions, special purpose events, holidays, or other special occurrences.

Adopted new §326.75(i)(2) establishes that the agency regional offices may allow additional temporary operating hours to address disaster or other emergency situations, or other unforeseen circumstances that could result in the disruption of waste management services in the area.

Adopted new §326.75(j) establishes the required information and design for the facility sign. The sign will measure at least four feet by four feet with letters at least three inches in height stating the facility name; type of facility; the hours and days of operation; the registration number or facility number, if applicable; and facility rules. All entrances to the facility will have this sign conspicuously displayed and the posting of erroneous or misleading information will constitute a violation of this section.

Adopted new §326.75(k) establishes the requirements to address windblown litter. The owner or operator will be required to collect litter within the registered boundary to minimize unhealthy, unsafe, or unsightly conditions as necessary.

Adopted new §326.75(l) requires that facility access roads be all-weather and provide for wet-weather operation. The tracking of mud and debris onto public roadways from the facility will be minimized. A water source and necessary equipment or other means of dust control will be provided, all on-site and other access roadways will be maintained on a regular basis, and regraded as necessary to minimize depressions, ruts, and pot-holes.

Adopted new §326.75(m) requires the owner or operator to provide screening or other measures to minimize noise pollution and adverse visual impacts.

Adopted new §326.75(n) addresses overloading and breakdown and requires that the design capacity of the facility not be exceeded during operations. The owner or operator will not be allowed to accumulate medical waste in quantities that cannot be processed within such time that it will cause the creation of odors, insect breeding, or harborage of other vectors. Additionally, if a mechanical breakdown or other event causes a significant work stoppage, the owner or operator will be required to restrict waste acceptance and divert all waste to an approved processing or disposal facility. The owner or operator will need to have alternative processing or disposal procedures for waste in the event the facility is inoperable longer than 24 hours.

Adopted new §326.75(o) requires the owner or operator to have sanitary facilities for all employees and visitors, and to wash down all working surfaces that come into contact with wastes, wash waters used to wash down surfaces that come into contact with waste will be collected and disposed in an authorized manner and may not be accumulated onsite without proper treatment to prevent odors or an attraction to vectors.

Adopted new §326.75(p) requires that all facilities and air pollution abatement devices obtain authorization, under THSC, Chapter 382 (Texas Clean Air Act) and 30 TAC Chapter 106 or 116 (Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification), from the Air Permits Division prior to the commencement of construction, except as authorized in THSC, §382.004. Additionally, the adopted rule will have all facilities and air pollution abatement devices operate in compliance with all applicable air-related rules including 30 TAC Chapter 101 (General Air Quality Rules) related to prevention of nuisance odors, minimizing maintenance, startup and shutdown emissions, and emission event reporting and recordkeeping.

Adopted new §326.75(q) establishes that the facility have a health and safety plan and that facility personnel are trained in the appropriate sections of the plan.

Adopted new §326.75(r) establishes that medical waste addressed in this section be treated in accordance with 25 TAC §1.136 and disposed and labeled appropriately.

Adopted new §326.75(r)(1) and (2) establish that treated medical waste such as microbiological waste, blood, blood products, body fluids, laboratory specimens of blood and tissue, and animal bedding may be managed as routine municipal solid waste for the purposes of disposal in accordance with Chapter 330. The owner or operator will be required to follow disposal requirements applicable to incinerator ash. Any markings that identify the waste as a medical waste will be covered with a label that

identifies the waste as treated medical waste. The identification of the waste as treated may be accomplished by the use of color-coded, disposable containers for the treated waste or by a label that states that the contents of the disposable container have been treated in accordance with 25 TAC §1.136.

Adopted new §326.75(r)(3) establishes that treated carcasses and animal body parts designated as medical waste may be managed as routine municipal solid waste and be disposed of in a permitted landfill in accordance with Chapter 330. Transport and disposal will also conform to the applicable local ordinance or rule, if such ordinance or rule is more stringent than §326.75(r).

Adopted new §326.75(r)(4) establishes that treated recognizable human body parts, tissues, fetuses, organs, and the product of human abortions, spontaneous or induced, be managed in accordance with 25 TAC §1.136(a)(4).

Adopted new §326.75(r)(5) establishes how treated and unused sharps will be disposed of in a permitted landfill in accordance with Chapter 330.

§326.77, Duration, Limits and Additional Registration Conditions

Adopted new §326.77(a) - (g) establish how the executive director will approve or deny a registration application based on whether the application meets the requirements of Chapter 326. A registration is issued for the life of the facility but may be revoked or modified at any time if the operating conditions do not meet the minimum standards in Chapter 326. A registration may be transferred from one person to another. Except for transporters and mobile treatment units, a registration is attached to realty and may not be transferred from one facility location to another. For revocations and denials, the registration will be considered to be a permit for the purposes of revocation and denial in accordance with 30 TAC Chapter 305 (Consolidated Permits). The owner or operator may file a motion to overturn the executive director's denial of a registration under §50.139. Once a registration is issued, if the owner or operator does not commence physical construction within two years of issuance of a registration or within two years of the conclusion of the appeals process, whichever is longer, the registration will automatically terminate and will be no longer be effective.

Adopted new §326.77(h) - (k) establish that changes to the issued registration may be processed as a permit modification in accordance with §305.70 (Municipal Solid Waste Permit and Registration Modifications) and need to be approved prior to their implementation. The owner or operator will obtain and submit certification by a Texas-licensed professional engineer that the facility has been constructed as designed in accordance with the issued registration and in general compliance with the regulations prior to initial operation. Prior to accepting medical waste, the owner or operator will contact the executive director and region office in writing and request a pre-opening inspection. A pre-opening inspection will be conducted by the executive director within 14 days of notification by the owner or operator. Once the pre-opening inspection is complete, the executive director will provide a written or verbal response within 14 days of completion of the pre-opening inspection. The facility will be considered approved for the acceptance of medical waste if the executive director has not provided a response within the 14 days.

Subchapter G: Fees and Reporting

§326.85, Purpose and Applicability

Adopted new §326.85(a) establishes that fees are mandated by THSC, §361.013, to collect a fee for solid waste disposed of within the state, and from transporters of solid waste who are required to register with the state. Reports will be required to enable equitable assessment and collection of fees.

Adopted new §326.85(b) establishes that the owner or operator of a medical waste processing facility, with the exception of facilities authorized as transfer stations only, to pay a fee to the agency based upon the amount of waste received as described in this rule. All registered facility operators are required to submit reports to the executive director covering the types and amounts of waste processed at the facility or process location and the amount of processing capacity of facilities in Texas. The information requested on forms provided is not considered to be confidential or classified unless specifically authorized by law, and refusal to submit the form complete with accurate information by the applicable deadline will be considered a violation of this section and subject to appropriate enforcement action and penalty. An owner or operator failing to make payment of the fees imposed under this subchapter when due will be assessed penalties and interest in accordance with 30 TAC Chapter 12 (Payment of Fees).

§326.87, Fees

Adopted new §326.87(a) establishes that the owner or operator of a medical waste processing facility, with the exception of facilities authorized as transfer station only, will need to comply with the measurement options described in this rule to calculate the correct fees due and to provide accurate reports. Exemptions from a fee are provided for solid waste processing 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.

Adopted new §326.87(b) establishes that all transporters, with the exception of self-transporters, and mobile on-site treatment unit operators will be required to comply with fees determined by the criteria described in this section.

§326.89, Reports

Adopted new §326.89(a) establishes that all medical waste facilities with the exception of transfer stations to provide quarterly reports on forms provided by the executive director with the information in this rule such as the reporting units, and weight/volume conversion factors. This section also establishes that failure to submit reports by the due date shall be sufficient cause for the commission to revoke the authorization to process waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 or take any other action authorized by law to secure compliance.

Adopted new §326.89(b) requires medical waste process facilities to report. Each operator of a medical waste process facility will be required to comply with §326.89(b)(1) - (7) such as annual reporting, report form required, reporting units, and weight/volume conversion factors.

Adopted new §326.89(c) establishes the reporting requirements for mobile on-site treatment unit operators.

Adopted new §326.89(d) establishes the reporting requirements for transporters.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of a "major environmental rule". Under Texas Government Code, §2001.0225, "major environmental rule" means a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking is intended to implement HB 2244 by consolidating and revising the rules governing medical waste into one new chapter. In addition to implementing HB 2244, the new Chapter 326 includes other updates and revisions which are not expected to have a significant impact on industry or the public.

Furthermore, the adoption 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 which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these applicability requirements. First, there are no standards set for authorizing these types of facilities by federal law. The adopted rules included revisions to reconcile any conflict with federal laws governing the transportation of medical waste. Second, the adopted rules do not exceed an express requirement of state law. There are no specific statutory requirements for authorizing these types of facilities. Third, the rules do not exceed an express 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. Fourth, the commission does not adopt the rule solely under the general powers of the agency, but rather under the authority of: THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, which provides the commission with rulemaking authority; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and, THSC, §361.0905 (HB 2244), which governs the regulation of medical waste. Therefore, the commission does not adopt the rules solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the adopted rulemaking is to implement HB 2244 by consolidating and revising the rules governing

medical waste into one new chapter. In addition to implementing HB 2244, the new Chapter 326 includes other updates and revisions which are not expected to have a significant impact on the industry or the public.

The adopted rulemaking does not impose a burden on a recognized real property interest and therefore does not constitute a taking. The promulgation of the adopted rulemaking is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rulemaking does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that will otherwise exist in the absence of this rulemaking; nor will it reduce its value by 25% or more beyond that value which will exist in the absence of the adopted rules. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received.

Public Comment

The commission held a public hearing on January 25, 2016. The comment period closed on February 8, 2016. The commission received comments from the Honorable John Zerwas, M.D., District 28, Texas House of Representatives, Biomedical Waste Solutions LLC. (BWS), Cook-Joyce, Inc. (CJI), Gulfwest Solutions (GS), Sharps Compliance, Inc. (SCI), Stericycle, Inc. (SI), Titanium Environmental Services (TES), and The University of Texas System Environmental Health & Safety Advisory Committee (UT System). The commission received written comment from seven entities, and one person provided verbal comment at the public hearing. All seven commenters suggested changes. CJI supported the change from a 50-foot buffer to a 25-foot buffer for medical waste facilities as well as the allowance of storage units being allowed in the buffer zone.

Chapter 326, Medical Waste Management

Comment

Representative Zerwas provided guidance stating that one of the goals of HB 2244 is to consolidate rules relating to medical waste into a separate, standalone chapter of the TCEQ administrative code in order to reduce confusion regarding the applicability of many of the rules that relate to municipal solid waste facilities. The other objective was to give the agency, industry and stakeholders the opportunity to review these regulations, which were inherited by TCEQ from the former Texas Department of Health, so that regulations deemed unnecessary or without reasoned justification can be eliminated or revised.

Response

The TCEQ appreciates Representative Zerwas' comments and has made changes throughout this rulemaking to address his concerns.

Comment

TES commented that it is unclear and requested clarification whether proposed Chapter 326 and amended Chapter 335 require a Class 2 Texas Waste Code for the Solid Waste Registration of an exempt medical waste operator for on-site medical waste generation and storage.

Response

Exempt medical waste facilities for on-site medical waste generation and storage are not industrial facilities, and therefore, are not required to obtain a Class 2 Texas Waste Code for the Solid Waste Registration. The commission has made no changes.

§326.1(a)(1) and (2), Purpose and Applicability

Comment

SI stated that reapplying for permits, registrations and other authorizations would be overly burdensome, if there is no substantive change to the documents. SI requested that there should not be a requirement to do a full refile of all documents with engineering approvals if there are not changes made to the submittals other than to change the regulatory citation in the application. SI indicated that a full application including an engineering design review would be a requirement if the applicant proposes additional amendments. BWS stated that the proposed rule to file for a new registration application would result in unnecessary costs for the medical waste industry and for the agency with no added environmental benefit. SCI requested a revision to the rule to allow entities operating under a valid existing TCEQ authorization to continue to operate for the remaining term of any existing authorizations instead of a two-year deadline. According to SCI, under this approach, transition to authorization under the new Chapter 326 requirements would occur at the renewal of the entity's permit.

Response

The commission agrees with the comments to the extent that it may not be necessary to submit a new registration application with new engineering seals and signatures. Therefore, the commission will accept a one-time submittal of a new permit or registration application without updated engineering seals and signatures for the purposes of complying with Chapter 326. The sealed and signed pages of the existing application can be incorporated into the new submittal as long as the owner and/or operator provides a statement that the application is revised to only replace references to Chapter 330 with Chapter 326 along with minor corrections. However, the commission continues to require new engineering seals and signatures for submittals for substantive changes to a facility design or operation.

The commission has provided a two-year deadline to comply with updating existing permits and registrations with the option of allowing an extension to the two-year deadline for requests supported by good cause. Existing permits and registrations include many references to the existing Chapter 330 rules. It is necessary for these permits and registrations to be revised to correct these references to new Chapter 326 in order to avoid any future confusion about the applicable requirements for these facilities. The commission amended §326.1(a)(1) to explain that the existing processing facility registrations and permits which have no expiration date are the only authorization tiers that would be subject to this two-year time frame; existing notification tier authorizations are not required to renew their notification; and registration by rule tier authorizations are subject to an annual re-

new schedule. Therefore, no changes have been made to the two-year deadline for a permit or registration.

§326.1(a)(3), *Purpose and Applicability and §326.77(h), Duration, Limits and Additional Registration Conditions*

Comment

SI commented that it is not clear what sections of the provisions under §305.70 would be required in addition to Chapter 326. SI indicated that Chapter 326 was intended to be substantively inclusive of all that would be necessary for regulated medical waste operations. SI recommended that the agency either be more specific as to the provisions it intends to be applicable here or add them to Chapter 326 directly. SI also requested that certain operating activities that are administrative should not require a full modification or re-registration as well as certification by a Texas licensed professional engineer. Examples of this are stated as change in operating hours, replacement of type of operating equipment, landscaping and pavement changes and non-production area changes (offices/breakrooms).

Response

The provisions of Chapter 305 set the standards and requirements for applications, permits, and actions by the commission to carry out the responsibilities for management of waste disposal activities under TWC, Chapters 26 - 28 and 32, and THSC, Chapters 361 and 401. Specifically, §305.70 includes provisions that establish the types of changes that may be made to permits and registrations by either a modification with or without notice, new registration, or amendment to a permit. Even though, the commission references §305.70 for medical waste registration application modification requests, the commission has revised §326.1(a)(3) to provide that changes to operating hours and buffer zones (increases or decreases) will be processed as non-notice modifications under §305.70(l) to implement THSC, §361.0905(e)(2) (HB 2244). For all other changes, the commission establishes the criteria (e.g., modification, amendment, etc.) for changing an authorization under §305.70. HB 2244 requires rulemaking for primarily extracting the rules related to medical waste from Chapter 330 and moving them to adopted new Chapter 326.

§326.3, *Definitions, §326.71(a)(2)(i), Maps and Drawings and §326.71(i), Waste Management Unit Design*

Comment

SI suggested to add a definition for "Waste Unit" since SI stated that medical waste facilities do not have waste management units as typically identified in landfill operations. In relation to the same comment, SI agreed with the sections under §326.71(i) regarding "Waste Management Unit Design" but suggested retitling the section as "Waste Management Operations Design."

Response

Waste management unit design is described with examples specifically for medical waste facilities under §326.71(i)(1) as all storage and processing units (autoclaves, incinerators, etc.) and ancillary equipment (i.e., tanks, foundations, sumps, etc.) with regard to approximate dimensions and capacities, construction materials, vents, covers, enclosures, protective coatings of surfaces, etc. Therefore, it is unnecessary to provide a separate definition for waste unit. The commission has made no changes.

§326.3(23), *"Medical Waste" Definition*

Comment

SI commented that it is unclear why treated waste is still medical waste. SI suggested to add a separate definition for "Treated medical waste" under §326.3.

Response

The definition for medical waste under §326.3 includes "treated medical waste" and is based on THSC, §361.003(18-a) as amended by HB 2244. It is unnecessary to add a definition for "treated medical waste" because it is understood to be medical waste that is treated by an approved method in accordance with 25 TAC §1.136. Therefore, the commission has made no changes in response to this comment.

§326.3(27), *"Non-hazardous pharmaceutical waste" and §326.3(57), "Trace chemotherapy waste" Definitions*

Comment

SI expressed agreement with added new definitions for non-hazardous pharmaceutical and trace chemotherapy wastes.

Response

The commission acknowledges EPA's proposed rules regarding the Management Standards for Hazardous Waste Pharmaceuticals which include a definition for "non-hazardous waste pharmaceuticals." The commission is hesitant to adopt a definition at this time since EPA has not adopted the proposed rule and the proposed definition may change. Therefore, the proposed definitions for both terms are not adopted.

§326.3(27), *"Non-hazardous pharmaceutical waste" Definition*

Comment

BWS commented that the definition of non-hazardous pharmaceutical waste seems to be specific to incineration, although other treatment technologies, such as autoclaves are allowed. CJI commented that medical waste facility owners and operators will be able to manage non-hazardous pharmaceutical wastes but not be allowed to treat the waste. However, the definition seems to be specific to incineration for the treatment technology followed by disposal only. CJI indicated that no evidence has been presented to show that current treatment technologies are not effective and that incineration facilities are limited in Texas and as such this regulatory requirement places an economic hardship on generators to have this waste stream segregated from other medical wastes and incinerated. Additionally, CJI indicated that by requiring only incineration of this waste is in essence providing exclusivity to incinerators when prior to the proposed Chapter 326 rules other treatment technologies were allowed to receive and treat the material and no deficiencies in those treatment technologies have been demonstrated as it relates to the effective management of these wastes. Both CJI and BWS requested review of this definition to enable facilities to use other treatment technologies to treat this waste stream and provided the following language: ". . . Non-hazardous pharmaceutical waste shall be treated by autoclave technology, approved alternate treatment technology as identified in 25 TAC §1.133 and §1.135) or incineration prior to or disposal at a facility authorized to accept this waste."

GWS commented that the United States Environmental Protection Agency (EPA) is currently working on proposed rules for the management of hazardous pharmaceuticals. EPA's proposed rules can be found in the September 25, 2015, issue of the *Federal Register* (80 FR 58029). This proposal has been de-

veloped to assist the healthcare industry in the proper management of pharmaceuticals. While the proposed rules pertain to hazardous pharmaceuticals there is a discussion on the management of non-hazardous pharmaceuticals. In the September 25, 2015, issue of the *Federal Register* (80 FR 58029) it states that non-hazardous wastes or non-pharmaceutical hazardous waste were not included in the scope of the rulemaking, however, EPA recognizes that these non-hazardous pharmaceuticals may pose some risks to public health and the environment. EPA also recognizes that a large portion of the pharmaceutical wastes generated at healthcare facilities will not meet the definition of Resource Conservation Recovery Act (RCRA) hazardous waste under RCRA, Subtitle C. Nonetheless, EPA provides guidance or Best Management Practices (BMP) for the disposal of these wastes because they understand that while these wastes will not be regulated under federal regulations they will be considered a solid waste, and must be managed in accordance with applicable federal, state and/or local regulatory requirements. The EPA also makes the statement that they endorse the recommendation made by Practice Greenhealth in their 2008 Blueprint for Healthcare Facilities in the United States which recommends incineration for any non-hazardous waste pharmaceuticals, even when they do not possess hazardous waste like quantities. This method of treatment/destruction ensures that the pharmaceuticals will be completely destroyed for the protection of human health and the environment. Additionally, GWS commented that, in 2014, the United States Drug Enforcement Administration (DEA) finalized rules for the disposal of controlled substances (21 CFR Parts 1300, 1301, 1304, 1305, 1307 and 1317). The DEA does not specify a specific standard on how controlled substances must be destroyed as long as the destruction provides the desired result of being non-retrievable.

Recent federal rulemaking regarding the proper treatment/disposal of non-hazardous pharmaceutical and/or controlled substances identify that full destruction needs to be achieved and the waste needs to be rendered non-retrievable. The best option to achieve these end results is to require the incineration of these items. GWS suggested the following revision: "Nonhazardous pharmaceutical waste and controlled substances shall be incinerated prior to disposal."

Response

The commission acknowledges that incineration may not be the only method of treatment for non-hazardous pharmaceutical waste and that there are a limited number of incinerators available to process the waste which could result in an economic hardship on generators of the waste. The commission also acknowledges that there are recommendations from EPA related to treatment of non-hazardous pharmaceutical waste, but that no federal rules have been adopted to address management of this waste at this time. As far as the definition, the commission acknowledges EPA's proposed rules regarding the Management Standards for Hazardous Waste Pharmaceuticals which include a definition for "non-hazardous waste pharmaceuticals." The commission is hesitant to adopt a definition at this time since EPA has not adopted the proposed rule and the proposed definition may change. Therefore, the definition of non-hazardous pharmaceutical waste and the requirement to incinerate are not adopted. For clarification, the commission is not changing the requirements for managing and disposing drugs as special waste under Chapter 330.

§326.3(42), "Putrescible Waste" Definition

Comment

SI requested amending the definition of "Putrescible waste" to be specific to regulated medical waste. SI proposed the definition to read "Regulated medical waste that contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to cause obnoxious odors and to be capable of attracting or providing food for birds or animals."

Response

The commission agrees that "Putrescible waste" definition should be more specific to medical waste related content. Therefore, the definition is amended as suggested with the exception of the word "Regulated."

§326.3(53), "Storage" Definition

Comment

BWS and CJI commented that the inclusion of a 24-hour storage time frame creates a problem for those transporters that are providing collection services to communities that may be located several hundred miles away where routes may be conducted on Friday and Monday, with collection vehicles being parked for over 24 hours during the weekend, prior to transporting the waste to an authorized transfer or treatment facility. BWS recommends extending the storage time to 72 hours to accommodate long distance routes and multiple pickup locations prior to treatment and disposal. CJI commented that the inclusion of a 24-hour storage time frame is more restrictive than current regulations and no evidence has been provided to require an added regulatory burden to industry for no apparent benefit to the public or for environmental protection. CJI recommends a storage time of 96 hours with refrigeration required after 72 hours. CJI also provided suggested language to facilitate their recommendation as follows: "Any vehicle inactivity such as not continuing a collection route for a period less than 96 hours is considered a temporary storage period. Exceeding 96 hours of temporary storage will require the operator to obtain a medical waste registration per Subchapter F of this title (relating to Operations Requiring a Registration). If storage exceeds 72 hours, a storage temperature of 45 degrees Fahrenheit or less for putrescible waste will be maintained. Exceeding 96 hours of temporary storage will require the operator to obtain a medical waste registration per Subchapter F of this title (relating to Operations Requiring a Registration)."

Response

The commission acknowledges and agrees with the concern for those transporters that are providing collection services to communities that may be located several hundred miles away where routes may be conducted on Friday and continue on Monday prior to transporting the waste to an authorized transfer or treatment facility. The commission considers providing additional storage time for up to 72 hours is sufficient in order to cover the need for weekend temporary storage without a storage registration. In addition, 72 hours coincides with the maximum storage time allowed without refrigeration. Therefore, the commission revised this section to extend the temporary storage time to 72 hours to accommodate long distance routes and multiple pickup locations prior to treatment or disposal.

§326.3(53), "Storage" Definition

Comment

SI suggested a grammatical correction to the definition of storage to remove "that" from the beginning of each sub-definition.

Response

The commission agrees. The definition is amended as suggested.

§326.3(57), "Trace chemotherapy waste" Definition

Comment

CJI commented that trace chemotherapy waste stream has historically been treated using various treatment technologies other than incineration and no evidence has been presented that current management standards are ineffective or in any way not protective of human health and the environment. CJI indicated that incineration facilities are limited in Texas and as such this regulatory requirement places a financial burden on generators to segregate and separately manage these waste streams to be incinerated. CJI agreed that even though this new term is appropriate with the creation of the new medical waste rules as this is a waste stream that can be managed in the same manner as medical waste, CJI believes that those treatment technologies currently approved in the state of Texas are appropriate treatment. CJI recommended that if the commission proceeds with this proposed requirement for incineration of this newly defined waste stream, State of Texas Environmental Electronic Reporting System (STEERS) should be updated to allow medical waste generators to identify which of the special categories of medical waste are generated at their facilities so the agency, transporters, and processors can be aware of wastes that may be present at the site that will require special handling and/or be prohibited from being processed in their specific treatment units. CJI suggested replacing "incinerated" with ". . .and treated by approved DSHS treatment technologies. . . ."

GWS agreed with the proposed rule and supported the definition that trace chemotherapy waste shall be managed as medical waste and incinerated.

Response

The commission acknowledges that incineration may not be the only method of treatment for trace chemotherapy waste and that there are a limited number of incinerators available to process the waste which could result in an economic hardship on generators of the waste. The commission also acknowledges that there are discussions from EPA related to treatment of trace chemotherapy waste, but that no federal rules have been adopted to address management of this waste at this time. Therefore, the definition of trace chemotherapy waste and the requirement to incinerate are not adopted.

§326.19(b), Packaging and §326.21(b), Labeling

Comment

SI commented that they would like to have a clarification for the applicability of §326.19(b) to sharps containers. SI also requested clarification if the lettering on sharps containers would be required to be 0.24 inches as referenced under 49 CFR §173.197. SI suggested the following clarification: "For shipments of sharps containers on racks meeting Federal Department of Transportation (DOT) requirements, each rack must be appropriately marked to identify the name and address of the generator and the date of shipment."

Response

The commission acknowledges that sharps containers must be packaged to comply with applicable requirements referenced or cross-referenced under 49 CFR §173.134. The commission acknowledges that §326.21(b) does not apply to sharps containers since the requirements for marking (labeling) sharps is

addressed under §326.19(b). The commission recognizes that the title and the contents of §326.21(b) does not specifically exclude sharps from those requirements. Therefore, the title for §326.21 is amended from "Labeling" to "Labeling Containers Excluding Sharps" to clarify any ambiguity. Since marking/labeling for sharps containers are specifically referenced to appropriate federal requirements, additional language suggested by SI has not been added to the rule.

§326.31, Exempt Medical Waste Operations

Comment

CJI and GS commented that current and proposed rules have regulations pertaining to generators (generator status, packaging medical waste, storing medical waste) but the agency has not enforced these rules with generators by performing inspections to determine compliance of generators with these requirements. Since the commission is including new language to identify generator status, the commission should update the STEERS to provide a means for medical waste generators that use STEERS to provide this information electronically. The self-certification can also be done through STEERS reporting (for those facilities that have a STEERS account) and would assist generators in understanding their waste management obligations regarding the proper identification, packaging and labeling of medical waste. This reporting would add negligible regulatory burden and would not cause an economic hardship for those generator's that are already reporting through STEERS to the agency. By requiring those facilities that are already reporting to the commission to identify their generator status, the commission will have a greater opportunity to enforce packaging and specific management requirements for medical wastes and ensure proper management by waste transporters and management facilities. CJI and GS understand that while there are generators that are not currently reporting activities to the agency through STEERS, most generators that are large quantity generators of medical waste are doing so now. CJI and GS stated that it would also be easy for the generators to identify if they generate any medical wastes that require special management or treatment technologies (as required in this rulemaking) to enable transporters and treatment facilities to assist generators in ensuring proper management of the medical wastes they generate. CJI and GS encouraged and requested that the commission provide a means for generators to easily document their status and the special classes of medical waste they generate in the adopted rules.

Response

The commission disagrees. Requiring generators to submit self-certification information to comply with identification, packaging and labeling medical waste through STEERS or any other mechanism is beyond the scope of the proposed rules and HB 2244. Additionally, the new terminology (SQG and LQG) is intended to classify the generators using existing rule language which distinguishes between those generators with less than 50 pounds per month of medical waste generation versus more than 50 pounds per month. The commission has made no change.

§326.31(a), Small Quantity Generator (SQG) and Large Quantity Generator (LQG) On-site Storage Facility

Comment

SI recommended a clarification edit to distinguish small quantity and large quantity generators as it relates to medical waste management since similar terminology is used for hazardous waste

generators as well. SI suggested using "of regulated medical waste" for those terms.

Response

The commission understands that there is a reference to SQGs and LQGs in hazardous waste rules, however the commission intends that the terms listed under §326.3(14) define that these terms are for medical waste generators for the purposes of proposed Chapter 326. Therefore, the commission has made the change as suggested.

§326.37(a), General Requirements, §326.69(a), Registration Application Formatting, Posting, Appointment and Fees

Comment

SI commented that notifications should be made available to the agency in one hard copy stamped and otherwise submitted electronically. SI states that this makes it easier for both the agency and the regulated entity in providing appropriate documentation. SI also commented that registration applications should also have the option to be submitted in one hard copy and electronically.

Response

The commission agrees that providing a notification and a registration application electronically is a possible option. Currently, the agency has e-permitting and e-reporting systems established for municipal solid waste notifications for recycling facilities and for quarterly and annual reporting for municipal solid waste facilities. At this time, the agency does not have the resources to accept electronic submittals for notifications and registration applications for medical waste management facilities. However, the commission recognizes that there should be an option for future use of these systems for medical waste facilities. Therefore, the commission is adding language to authorize the executive director to allow for future electronic submittals as its filing systems develop.

§326.39(a), On-Site Treatment by Small Quantity Generators and §326.41(a), On-Site Treatment by Large Quantity Generators

Comment

UT Systems commented that non-exempt generators who intend to store and process waste must notify the TCEQ and the intent is a one-time notification, but the proposed language is not specific and has been interpreted as requiring ongoing notification to the agency when personnel changes. UT Systems suggested a change in rule language to reflect one-time notification clarification.

Response

The commission agrees with the comment and has revised rule to include "one-time" notification.

§326.39(a)(1), On-Site Treatment by Small Quantity Generators and §326.41(a)(1), On-Site Treatment by Large Quantity Generators

Comment

UT Systems commented that the name (printed) and initials of the person(s) performing the treatment are not relevant to facility notifications and advised the following language:

"Names and contact information for the responsible party or institutional department overseeing the treatment of waste."

Response

The commission acknowledges that contact information for the facility must be provided instead of name and initials of the person(s) performing the treatment. The name and initials of the person(s) are needed for on-site recordkeeping. The commission has made the suggested change and also revised §326.39(b) and §326.41(b) to add the name and initials of the person(s) performing the treatment to those sections.

§326.43(b)(2), Medical Waste Collection and Transfer by Licensed Hospitals, §326.53(b)(6)(B)(vi), Transporters-Other Requirements, and §326.71(i)(5), Waste Management Unit Design

Comment

SI, CJI, and GS commented that these rule provisions are burdensome and potentially unenforceable due to the inability of the agency or transporters to know if a medical waste box has been previously refrigerated and if the boxes contained putrescible wastes.

Commenters also stated that most route trucks are not refrigerated and routes are not currently established based on this type of waste. This regulatory requirement favors those companies that can easily absorb the cost of maintaining a fleet of refrigerated trucks. This inability to allow for the 72-hour delay will also cause increase cost for transporters and healthcare. Finally, CJI and GS commented that a review of the regulations leading up to the currently approved medical waste regulations (Chapter 330, Subchapter Y) could only identify that the primary concern for refrigeration is to prevent those organisms of concern from creating a public nuisance in the form of putrescence (Adopted Rules, December 6, 1994 (19 TexReg 9617)). The preamble for the 1991 rule adoption (May 7, 1991 (16 TexReg 2529)), provides a discussion as to why the health department chose to only require refrigeration of waste for transporters and storage facilities that hold waste longer than 72 hours. In this proposed rule making process, the agency has not presented any technically justifiable basis for requiring this increased regulatory burden. All commenters indicated that there is nothing in the federal regulations that require refrigeration today. This leaves this option to the generator based on the potential waste they generate and commenters are not aware of any instances where this has caused any public harm or environmental threat where once refrigerated material is unrefrigerated and then refrigerated again. Therefore, all commenters strongly recommended that the agency remove this requirement and not place a restriction that would require refrigeration from the time of pick up.

The suggested change by CJI and GS is also to add "or if objectionable odors are detected when transported and/or held for longer than 72 hours during the post-collection transporter storage period." to the end of §326.53(b)(6)(B)(vi) and to remove "The 72-hour delay is not allowed for putrescible or biohazardous untreated medical waste that has been elected to be refrigerated during pre-collection storage. In that case, the putrescible or biohazardous untreated medical waste must remain refrigerated during post-collection storage as well."

Additionally, CJI and GS stated that the rule requires refrigeration for "biohazardous waste" yet the proposed rules do not provide a definition for biohazardous waste. They indicated that they could not find a definition for "biohazardous waste" under U.S. DOT, Occupational Safety and Health Administration (OSHA), and EPA. The only reference to this term is in OSHA's Blood-

borne Pathogen Standard as it relates to a "biohazardous symbol."

All commenters requested the agency review this proposed rule and consider adopting the current storage time frames for medical waste that have proven to be effective as identified in 30 TAC §330.1209(b) and §330.1211(c)(2)(F). CJI and GS also requested the agency to remove the undefined term "biohazardous" waste.

Response

The commission recognizes the concerns for the 72-hour refrigeration requirement initiated at the time of pickup if the waste has already been refrigerated. The commission agrees to allow transporters to begin the 72-hour time limit for refrigeration at the time of collection whether or not the waste has been refrigerated during pre-collection storage. Therefore, the commission has made the suggested change to the rules citations included in the comment's heading.

In regards to the "biohazardous" definition, the commission acknowledges that the term biohazard has been brought over from Chapter 330, Subchapter Y as it existed. The commission agrees that the term "biohazardous" waste has not been defined under federal regulations. However, the commission finds that the "biohazardous" term and the label is universally accepted in the health care and medical waste management industry because of biohazard labeling references to OSHA standards in various federal and state regulations. Therefore, the commission will provide clarification for the "biohazard" terminology by referencing the OSHA standards for labeling. The commission considers that the healthcare industry and OSHA are better suited to classify biohazardous material. Therefore, the commission has made a change to §326.21(a) to add a reference to OSHA labeling standards for "biohazardous" materials.

§326.53(b)(6), Other Requirements

Comment

SI suggested a punctuation correction to the end of the sentence for this rule.

Response

The commission agrees and has made the correction to replace the period "." with a colon ":" at the end of the sentence.

§326.53(b)(6)(A), Other Requirements

Comment

SI questioned whether the identification requirement for the cargo-carrying compartments should be continued to be displayed regardless of waste being in the unit or not.

Response

The intention of the rule for identification requirement for the cargo-compartment applies to the use of the compartment while it contains medical waste. The commission considers that a clarification should be added to the preamble since the rule has been brought over from Chapter 330, Subchapter Y as it existed. The commission has not made any changes in response to this comment.

§326.53(b)(6)(B), Other Requirements

Comment

SI requested clarification as to whether sealed wood floors would be acceptable as an impervious, non-porous material since it has been causing inconsistencies for enforcement.

CJI commented that during stakeholder meetings the agency indicated that "The impervious flooring is needed for the protection of human health and the environment" without providing any evidence as to the basis for this statement. CJI stated that while this requirement is not a new requirement being proposed during this rulemaking, the basis for requiring impervious flooring, which is not defined in the rule, for the transportation of wastes which do not contain free liquids and/or are packed with sorbent materials is excessive. According to CJI, this requirement exceeds even the requirement for the transportation of hazardous wastes which can be shipped in drums and bulk containers of free liquids. CJI does not believe that the cargo compartment, with respect to the flooring, should be regulated more stringently for medical wastes than the cargo compartments used to transport hazardous wastes. CJI believes the need for impervious flooring was originally identified as a requirement at a time when the management of medical waste was just beginning to be regulated and federal and state agencies did not have enough information regarding the environmental impact of medical waste. Any impact to human health and the environment is minimized by the packaging requirements for medical wastes. Additionally, proposed §326.53(b)(6)(A)(iii) requires transporters to carry a spill kit to address any spills that may occur.

CJI also indicated that this requirement will be burdensome to smaller transport companies especially in the event of a transportation unit malfunction. In the event of a malfunction transporters will typically need to rent an additional vehicle. Obtaining rental vehicles with impervious flooring is difficult and is not always available. Therefore, CJI requested the requirement be revised to read that the cargo compartment must be constructed and maintained to prevent loss of waste material and minimize health and safety hazards to solid waste management personnel, the public, and the environment.

Response

The commission considers that human health and safety would be lessened by removing the criteria for an impervious and non-porous surface since waste may leak during transportation even if the packaging requirements are met; specifically if the transporter is involved in an accident. Sealed floors and sides would serve as an additional layer of protection from environmental contamination and exposure to contaminants. In addition, this rule has been brought over from Chapter 330, Subchapter Y as it existed and revising the requirement to reduce this criteria from "impervious and nonporous floor and sides" to generic requirement to "prevent loss of waste material" is excessively broad. The commission has made no changes. In regards to SI's request to clarify whether sealed wood floors are impervious and nonporous, the commission considers that wood floors are not impervious and nonporous. In cases where wood floors have been modified, the applicant must demonstrate that the modification of the wood floor renders it impervious and nonporous.

§326.53(b)(8)(B), Other Requirements

Comment

SI commented that the requirement for listing the names of the persons collecting, transporting and unloading the waste on a manifest is an unreasonable burden and enforcement issue. SI indicated that the main concern for the agency should be the company. The names of the persons collecting, transporting

and unloading the waste could all be different and ultimately the owner/operator of the facility is responsible for compliance therefore the employee names should be irrelevant. SI also requested clarification that whether the facility would be the ultimate responsible party and not the individual.

Response

The commission disagrees with the comment because the person collecting, transporting and unloading medical waste is responsible to ensure that medical waste has been packaged by the generator in accordance with the provisions of §§326.17, 326.19, and 326.21. Transporters must not accept containers of waste that are leaking or damaged unless or until the shipment has been repackaged. In addition the rule has been brought over from Chapter 330, Subchapter Y as it existed. SI also commented that providing the individual names is burdensome and causes unreasonable enforcement issues for the facility/transporter. The commission has made no changes.

§326.53(b)(8)(G) and (b)(10), Other Requirements

Comment

SI requested that "or electronic record" option for name and signature of facility representative acknowledging receipt of the untreated medical waste and the weight or volume of containers of waste received be added to the rule. SI also requested to add "or electronic copies" as an option to the original manifest.

Response

At this time, the agency does not have the resources to accept electronic records of names and signatures on manifests or as an option for original manifests. However, the commission recognizes that there should be an option for future use of these systems for medical waste facilities. Therefore, the commission is adding language to authorize the executive director to allow for future electronic submittals if the commission implements such a system.

§326.53(b)(12) and (13), Other Requirements

Comment

SI requested addition of the term "or Regulated Garbage" after the term "Animal and Plant Health Inspection Service (APHIS)" waste to ensure that it is clear for inspections by the agency since according to SI, they are required to include the term "Regulated Garbage" on shipping documents and containers.

Response

The commission agrees with the comment and has revised the language to reference "APHIS Regulated Garbage" instead of "APHIS waste."

§326.53(b)(17), Other Requirements

Comment

SI suggested a punctuation correction to replace the word "as" with "at" before "a treatment/processing facility."

Response

The commission agrees and has made the correction.

§326.61(a), Applicability and General Information

Comment

UT Systems commented that the proposed language in this section is intended to require registration by commercial medical

waste treatment facilities. This subchapter could easily be misconstrued to include institutions, such as teaching hospitals, that store or process untreated medical waste. UT Systems recommended the addition of "This excludes small and large quantity generators that may store or process untreated medical waste." to §326.21(a) to prevent misunderstanding and inclusion of hospitals.

Response

The commission agrees that licensed hospitals are not required to obtain a registration under Chapter 326, Subchapter F. The levels of authorizations clearly identify the types of entities that must apply for notification, registration by rule and registrations. Registration applications are not inclusive of licensed hospitals since they are referenced under the notification requirements of this chapter. The commission has made no changes in response to this comment.

§326.61(d) and (e), Applicability and General Information

Comment

SI commented that these rule provisions are vague, subjective and difficult to enforce and it could create public perception concern. SI also stated that if there are other requirements, they should be included or at least specifically referenced so that the applicant is clear on the expectation.

Response

The rule provides flexibility for the agency to request any additional information specific to a facility to assure compliance with applicable statutory and regulatory requirements. Specific information would be listed in the facility's authorization under standard or special provisions which would address public and compliance concerns, and any requirements associated with those concerns. No changes have been made in response to this comment.

§326.61(h), Applicability and General Information

Comment

SI requested clarification whether this rule addresses home generated regulated medical wastes and pharmaceutical wastes or if it means that waste generated from a household will be processed as medical waste if it ends up at a medical waste facility.

Response

The commission's intention is to allow medical waste facilities to accept municipal solid waste from homes and workplaces where the municipal solid waste would be classified as medical waste if it were generated by health care-related facilities. Examples might be sharps used by individuals who self-medicate at home or at workplaces and would like to deliver them to an authorized treatment facility. This provision provides the processing facility with an option to accept this type of waste from the public. Therefore, no changes have been made.

§326.63(b), Property Rights

Comment

SI and CJI commented that medical waste facilities do not have post closure care. These facilities do not "dispose" of waste on site. SI indicated that it is not clear how or why the owner or operator would retain rights of entry to the facility especially if it were a leased property. SI stated that this may have been a carry-over from the solid waste regulations that should be removed. CJI also commented that only an unforeseen circumstance at the

time of closure that caused waste constituents to be left in place would require post closure care and this circumstance would require an amendment to the approved closure which could require post closure care. CJL suggested the insertion of "if required" after "the end of closure care period."

Response

The commission acknowledges that the terminology requires clarification. The rule referencing the closure care period was to address closure activities not a post closure care period. Medical waste facilities similar to other municipal solid waste facilities do not require post closure care unless unforeseen circumstances occur that would require extended care. The commission does not agree with the insertion of "if required" since the rule is not intended for post closure care period but rather for closure activities. Therefore, the commission has only replaced the term "closure care period" with "closure activities."

§326.71(a)(2)(D), Facility access and facility layout and §326.75(m), Noise Pollution and Visual Screening

Comment

SI commented that the provisions for visual screening are more specific to municipal solid waste landfill operations. SI also indicated that medical waste operations are typically operated within enclosed facilities, would not have these same risks and, most often, regulated medical waste operations are within industrial areas.

Response

The commission disagrees, noise pollution and visual screening is specifically required by THSC, §361.0905(e)(18), HB 2244 as it applies to medical waste facilities. This information must be described in the site operating plan. In addition, reduced buffer zone distance may lead to close proximity to residents and/or landowners of adjacent properties. Even though the majority of activities are conducted in an enclosed building, most medical waste facilities would have trucks parked outdoors and there would be truck traffic which may require visual screening from surrounding neighbors. Therefore, the commission has made no changes in response to this comment.

§326.71(a)(2)(G), Facility access and facility layout

Comment

SI commented that a facility should identify the main roadways, but these facilities will not be the same type of operations as a landfill requiring heavy equipment. Therefore, SI requested to leave this section to address only the general location of roadways.

Response

The commission understands that medical waste facilities are not the same types of operations as the landfills, however, medical waste facilities utilize public roadways for incoming and outgoing waste that is transported in varying truck sizes designed for medical waste. The impact of a facility's expected volume of traffic in the area warrants the information including surface types of those roads to be depicted on a map for affected landowners, interested persons and the general public. Therefore, the commission has made no change in response to this comment.

§326.71(a)(2)(J) and (K), Facility Access and Facility Layout

Comment

SI commented that the requirements listed under §326.71(a)(2)(J) and (K) are typically needed for landfill operations and that there would not be any need to have construction phases that would mandate the extensive representations as would be needed for a landfill that would continue to grow or develop in phases. SI also commented that initial utilities should be identified as part of general construction process.

Response

The commission considers phased construction to provide flexibility to business owners to grow their operations in phases instead of establishing all at once and providing financial assurance as needed for each phase. Additionally drainage, pipeline and utility easements may need to be addressed for each phase of development. Therefore, the commission has made no change in response to this comment.

§326.71(a)(3), Land-use map and §326.71(a)(5), Impact on Surrounding Area

Comment

SI commented that surrounding property should be identified but that one mile is not necessary because of the way most medical waste facilities would be built. SI recommended the identification of owners in the immediate property line.

SI also commented that §326.71(a)(5) is too vague and subjective. SI believes that if a facility has met the criteria laid out in the regulations then it should be sufficient to be protective of the environment and that it would be difficult to enforce this section of the rule and could create a public perception concern. SI recommended this section be removed or revised to be more specific to regulated medical waste.

Response

The commission considers this information important to evaluate the impact of the facility and to assess the compatibility with the surrounding area. Additionally, this information allows the commission to ensure that the use of land for a medical waste facility would not adversely impact human health or the environment. Therefore, the commission has made no change in response to this comment.

§326.71(e)(1) - (4), Transportation

Comment

SI commented that this section would be more appropriate for a solid waste transfer station that would have larger impact on the environment, such as larger equipment, frequent truck traffic, different types of truck traffic, etc. SI requested a modification to the section to make it more specific to regulated medical waste and minimize the amount of information requested such as the estimated number of trucks for the operation. SI also indicated that medical waste operations are even less impactful than a general common carrier operation and that evaluation of traffic within a one-mile radius is excessive.

Response

The commission disagrees. Transportation information is a component for development and design of a facility that would have incoming and outgoing trucks loaded with waste. It is necessary to evaluate the current and future impact of truck traffic expected to be generated by the facility within one mile of its intended location and coordination with the entity exercising maintenance responsibility of any and all public roadway improvements that may be needed. Additionally, site development information is a re-

quirement listed in THSC, §361.0905(e)(1)(B), HB 2244. Therefore, the commission has made no change in response to this comment.

§326.71(j), Treatment Criteria

Comment

SI requested clarification if these additional requirements for procedures are related to those alternative technology options as identified under 25 TAC §1.135.

Response

The written procedure for the operation and testing of any approved equipment used and for the preparation of any chemicals used in medical waste treatment must be maintained on site. Alternative treatment technologies are not related to the procedures listed in this rule. The listed procedures are required for approved treatment methods at authorized medical waste facilities. Alternative treatment technologies must be approved by DSHS prior to the commission allowing its use at a medical waste facility. The commission has made a change to the rule to clearly indicate that alternative treatment technologies must be approved by DSHS by moving the second sentence in §326.71(j) to adopted §326.71(j)(7).

§326.75(a), Personnel and Equipment

Comment

SI commented that all the information required under §326.75(a) is new and is already covered by regulations identified by other regulations (OSHA). SI indicated that the need to have this information in the site operating plan (size and type of equipment) can be very restrictive to a facility. With the advancement in personal protective equipment and changing regulations, facilities should have the freedom to provide the correct equipment to their employees with the need for a site operating plan modification. SI requested this section to be removed and replaced with something that states that the facility is required to provide adequate and appropriate equipment for employees for their operations and under all other applicable regulatory requirements. SI indicated concern that by putting something in the application it would require modifications any time there is a change to this equipment. If there was a concern based on the recent events (Ebola and other potential emerging diseases) then the regulation should point the operations to Center for Disease Prevention and Control requirements. Specifically, SI requested removal of §326.75(a)(3) since it will be specific to the functions of the operations and if there are minor modifications then each time something changes then it will require some type of modification.

SI also requested a revision to §326.75(a)(4) to the procedures for the detection and prevention of the receipt of prohibited wastes since SI believes that employees required to open containers for random inspections. The suggested language is as follows: "Employees should be trained on identification of improper waste; If waste is identified the generator will be notified to ensure proper management of that waste; Records of unacceptable loads shall be maintained on site (sic) as part of operating record."

Response

The commission's intent is not to require operators to provide information on personal protective equipment. Equipment is referenced in other parts of the rules such as processing, storage equipment or ancillary equipment. Therefore, the commission has removed the "and Equipment" from the title of this sec-

tion and replaced it with "Functions." In addition, the commission has also removed §326.75(a)(2) which required duplicate information for equipment used at the facility. To require the number of processing and storage equipment that will be utilized at the facility, the commission has added "number of units" to §326.71(i). The key personnel functions and their titles are needed for the site operating plan to identify responsibilities for waste management activities such as but not limited to waste receipt, loading/unloading, processing of waste properly, inspections and recordkeeping. The commission is concerned with information regarding key personnel functions and not with individual's names occupying each position.

The commission does not intend to require the opening of containers for random inspections. Even though the commission does not accept the suggested language, the commission has provided clarification to this requirement by adding "packaging for" after "random inspections of" to §326.75(a)(4)(A).

§326.75(b), Waste Acceptance

Comment

SI agreed that the medical waste operations should have waste acceptance protocols to reduce the potential of unacceptable waste being managed. SI stated that asking for "the sources and characteristics of medical wastes proposed to be received for storage and processing . . ." could be unrealistic depending on what the agency is asking. SI believes that the general definition of regulated medical waste identifies the types of things that a facility expects to be brought to the facility for treatment.

SI requested clarification if the commission is referring to identification of the landfill that the medical waste will go after treatment of if the waste is going to be transferred to another site with the phrase ". . . and the intended destination of the medical waste received."

SI also requested clarification if medical waste facilities could receive hazardous waste but not for treatment. SI considers a scenario at the same site where medical and hazardous waste may be stored together since many healthcare facilities are generating more hazardous waste. SI asked if the commission would consider a situation where a facility would be requested to permit a dual waste location.

Additionally, SI asked whether recyclable materials that are comingled with medical waste such as used medical devices can be segregated and sent back to generator or the manufacturer.

Response

Facilities may process different types of medical waste that would be subject to different types of handling, processing and final disposition. The commission requires the operator to identify sources and characteristics of the waste so the commission can determine if the waste management operations would be in compliance with the waste streams that are identified. Additionally, waste acceptance and analysis is specifically required by THSC, §361.0905(e)(4), HB 2244 as it applies to medical waste facilities.

The agency is referring to the appropriate method of disposition (e.g., incineration, landfilling or transfer) with the phrase ". . . and the intended destination of the medical waste received" not a particular facility name and location.

The commission agrees that a facility may have dual authorizations to accept hazardous and medical waste. However, haz-

ardous waste authorization is separate from medical waste registration authorization and cannot be authorized or accepted under medical waste registrations. This includes accepting, storing and/or processing of hazardous waste. All of these activities can only be authorized by an industrial hazardous waste authorization separately. The commission has processed dual authorization facilities in the past and they are required to have physically separated waste management areas and units and the authorization boundaries for each should be depicted on a site layout drawing. There may be other requirements that must be addressed on a case-by-case basis.

The commission currently allows the recycling of source separated materials. The commission also understands there may be situations on a case-by-case basis where it may be acceptable to allow the separation of recyclable material from medical waste. In such cases, the commission may consider the recycling of the material to be appropriate however it should be addressed in the application clearly and be evaluated by the commission on an application specific basis. The commission has made no changes in response to these comments.

§326.75(c)(4) and (5), Facility Generated Waste

Comment

SI commented that this section seems to be unnecessary as non-waste management rule is already covered under the Texas Pollution Discharge Elimination System Authority. SI recommended that it simply states that the facility must maintain compliance with these provisions without further specification.

Response

The commission did not accept the suggested language, however, it agrees with the comment to the extent that a copy of the permit to discharge wastewater to a treatment facility permitted under TWC, Chapter 26 would be available for all inspections and it must be obtained prior to beginning of facility's operations. The commission therefore revised the language under §326.75(c)(5) from "The owner or operator shall provide a copy of the authorization to discharge wastewater to a treatment facility permitted under TWC, Chapter 26." to "The owner or operator shall make available the authorization to discharge wastewater to a treatment facility permitted under TWC, Chapter 26 prior to beginning of facility's operations and for all inspections."

§326.75(g)(2), Access Control, §326.75(l), Facility Access Roads

Comment

SI commented that the access control is a requirement more suitable for a municipal solid waste facility especially for those which would be accepting waste from the public. Most if not all regulated medical waste facilities are not generally open to the public. SI agrees that there should be safe access but it would be authorized access only for those employees that are fully aware and trained for the proper management of equipment on site. SI requested removal of §326.75(g)(2).

SI also commented that requirements listed under §326.75(l) are more associated with heavy equipment, large and high volume of trucks and more occasions for there to be dust present. SI recommended §326.75(l)(1) to be modified further to be more specific to medical waste facilities. More specifically, SI requested removal of §326.75(l)(2) and (3).

Response

The commission provided an option for medical waste facilities to accept waste from the public as explained in a previous comment regarding §326.61(h). Therefore, the commission does not agree that the safe access would be required in all cases only for employees that are fully aware and trained for the proper management of equipment on site. The commission has neither removed nor made changes to §326.75(g)(2).

In regards to §326.75(l), the commission agrees that dust may be present more often with heavy equipment and higher truck volumes but the possibility of dust becoming a nuisance still exists with any volume of truck traffic or lack of dust controls. Access roads owned by the facility must be maintained so as not to create safety issues such as depressions, ruts and potholes and that is the responsibility of the facility owner as part of the site operating plan. In addition, the commission considers that it is the responsibility of the facility owner to coordinate with the maintenance authority for other access roads to ensure public safety and safe transportation of waste to and from the facility. Therefore, the commission has made no changes.

§326.75(i) and (i)(1), Operating Hours

Comment

SI requested that the facility provide site operating hours instead of the specific hours and days provided by the commission and alternative operating hours of up to five days in a calendar year to accommodate special occasions, special purposed events, holidays, or other special occurrences. SI requested deleting those hours and days specified by the commission.

Response

The commission considers that it has a reasonable basis to restrict operating hours to limit impacts on the public as appropriate. Therefore, no change has been made.

§326.75(k), Control of Windblown Material and Litter

Comment

SI commented that this rule is more of a municipal waste facility requirement and recommended removal of it.

Response

The commission disagrees, control of litter including windblown material applies to medical waste facilities and is specifically required by THSC, §361.0905(e)(17), HB 2244.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §§326.1, 326.3, 326.5, 326.7

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted rules implement THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

§326.1. Purpose and Applicability.

(a) The regulations promulgated in this chapter cover aspects of medical waste management from medical waste facilities under the authority of the commission and are based primarily on the stated purpose of Texas Health and Safety Code (THSC), Chapter 361. The provisions of this chapter apply to any person as defined in §3.2 of this title (relating to Definitions) involved in any aspect of the management and control of medical waste as defined in THSC, §361.003(18-a) and medical waste facilities and activities including storage, collection, handling, transportation, and processing. Furthermore, these regulations apply to any person that by contract, agreement, or otherwise arranges to process, store, or dispose of, or arranges with a transporter for transport to process, store, or dispose of, medical waste owned or possessed by the person, or by any other person or entity.

(1) Permits and registrations issued by the commission and its predecessors, that existed before this chapter became effective remain valid for the later of two years from the effective date of this chapter or until a final decision is made on a timely filed application for an existing authorization to comply with this chapter. Authorizations under the existing Chapter 330 rules must be updated by filing a new application within two years of the effective date of this chapter to comply with the provisions of this chapter. Registrations by rule, subject to annual renewal, remain in effect and must renew under this chapter. The executive director is authorized to extend this deadline based on an authorized entity making a request supported by good cause. Applications for an existing permit or registration to comply with this chapter will not be subject to the standard procedures for processing applications, including any requirements for notice and public participation. Authorizations, other than permits, registrations, or registrations by rule, that existed before the adoption of this chapter became effective, remain valid and are subject to these rules when they become effective.

(2) A person that has a pending application for the management of medical waste as of the effective date of this chapter shall be considered under the former rules of Chapter 330 of this title (relating to Municipal Solid Waste) unless the applicant elects otherwise. Permits or Registrations issued under the former rules remain in effect for the later of two years from the effective date of this chapter or until the commission makes a final decision on an application to comply with this chapter.

(3) Modification requests submitted after the effective date of this chapter shall be prepared and submitted in accordance with the provisions of §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications) and in accordance with this chapter. Requests to modify buffer zones or operating hours under this chapter will be processed as modifications that do not require notice. Modification requests pending on the effective date of this chapter may be prepared and submitted in accordance with the provisions of §305.70 of this title and in accordance with the former rules in Chapter 330 of this title unless the applicant elects otherwise.

(4) The requirement in §326.23(e) of this title (relating to Shipping) to provide notice to landfills that waste shipments include treated medical waste applies to existing authorizations regardless of any conflicting language in those authorizations or rules in Chapter 330 of this title.

(b) This chapter does not apply to waste that is subject to 25 TAC Chapter 289 (relating to Radiation Control).

§326.3. Definitions.

Unless otherwise defined in this chapter, those definitions of words, terms, and abbreviations used in this chapter which are defined in 25 TAC §1.132 and §133.2 (relating to Definitions) apply. Should the definitions found in 25 TAC §1.132 change, such changes shall prevail over the definitions found in this section. Unless otherwise noted, all terms

contained in this section shall be defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Active life--The period of operation beginning with the initial receipt of medical waste and ending at certification/completion of closure activities in accordance with §326.71 of this title (relating to Registration Application Contents).

(2) Affiliated facility--A health care-related facility that generates a medical waste that is routinely stored, processed, or disposed of on a shared basis in an integrated medical waste management unit owned, operated by a hospital, and located within a contiguous health care complex.

(3) Affiliated with--A person, "A," is affiliated with another person, "B," if either of the following two conditions applies:

(A) "A" owns or controls more than 20% of the voting interest, fair market value, profits, proceeds, or capital gains of "B;" or

(B) "B" owns or controls more than 20% of the voting interest, fair market value, profits, proceeds, or capital gains of "A."

(4) Buffer zone--A zone free of medical waste processing and storage activities within and adjacent to a facility boundary (registration boundary) on property owned or controlled by the owner or operator of the facility.

(5) Collection--The act of removing waste (or materials that have been separated for the purpose of recycling) for transport elsewhere.

(6) Commence physical construction--The initiation of physical on-site construction on a site for which an application to authorize a medical waste management facility is pending, the construction of which requires approval of the commission. Construction of actual facility and necessary appurtenances requires approval of the commission, but other features not specific to medical waste management are allowed without commission approval.

(7) Compacted waste--Waste that has been reduced in volume by a collection vehicle or other means with the exception of waste that has been reduced in volume by a small, in-house compactor device owned and/or operated by the generator of the waste.

(8) Conditionally exempt small quantity generator--A person that generates no more than 220 pounds of hazardous waste in a calendar month.

(9) Container--Any portable device in which a material is stored, transported, or processed.

(10) Contaminated water--Water that has come into contact with waste.

(11) Discharge--Includes deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or to allow, permit, or suffer any of these acts or omissions.

(12) Facility--All contiguous land and structures, other appurtenances, and improvements on the land used for the storage or processing of medical waste.

(13) Garbage--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

(14) Generator--Any person, by site or location, that produces medical waste to be shipped to any other person, or whose act or process produces a medical waste or first causes it to become regulated.

(A) Small quantity generator (SQG)--A medical waste generator that produces 50 pounds or less per month of medical waste.

(B) Large quantity generator (LQG)--A medical waste generator that produces more than 50 pounds per month of medical waste.

(15) Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §§6901 *et seq.*, as amended.

(16) Incinerator of Hospital/medical/infectious waste--Any device that combusts any amount of hospital waste and/or medical/infectious waste as defined under §113.2070(15) of this title (relating to Definitions).

(17) Incineration--The process of burning special waste from health care-related facilities in an incinerator as defined in Chapter 101 of this title (relating to General Air Quality Rules) under conditions in conformance with standards prescribed in Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter).

(18) Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

(19) Inert material--A natural or man-made non-putrescible, non-hazardous material that is essentially insoluble, usually including, but not limited to, soil, dirt, clay, sand, gravel, brick, glass, concrete with reinforcing steel, and rock.

(20) License--

(A) A document issued by an approved county authorizing and governing the operation and maintenance of a medical waste facility used to process or store medical waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(B) An occupational license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(21) Liquid waste--Any waste material that is determined to contain "free liquids" as defined by United States Environmental Protection Agency (EPA) Method 9095 (Paint Filter Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

(22) Manifest--The waste shipping document originated and signed by the generator or offeror in accordance with §326.53(b)(8) and (9) of this title (relating to Transporters) and any other applicable requirements under 49 Code of Federal Regulations §172.202.

(23) Medical waste--Treated and untreated special waste from health care-related facilities that is comprised of animal waste, bulk blood, bulk human blood, bulk human body fluids, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions) from the sources specified in 25 TAC §1.134 (relating to Application), as well as regulated medical waste as defined in 49 Code of Federal Regulations §173.134(a)(5), except that the term does not include medical waste produced on a farm or ranch as defined in 34 TAC §3.296(f) (relating to Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer), nor does the term include artificial, nonhuman materials removed from a patient and requested by

the patient, including, but not limited to, orthopedic devices and breast implants. Health care-related facilities do not include:

(A) single or multi-family dwellings; and

(B) hotels, motels, or other establishments that provide lodging and related services for the public.

(24) Municipal hazardous waste--Any municipal solid waste or mixture of municipal solid wastes that has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

(25) 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 solid waste.

(26) New medical waste management facility--A medical waste facility that has not begun construction.

(27) Notification--The act of filing information with the commission for specific solid waste management activities that do not require a permit or a registration, as determined by this chapter.

(28) Nuisance--Waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of groundwater or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare. A nuisance is further set forth in Texas Health and Safety Code, Chapters 341 and 382; Texas Water Code, Chapter 26; and any other applicable regulation or statute.

(29) On-site--Medical waste managed on property that is owned or effectively controlled by one entity and that is within 75 miles of the point of generation or generated at an affiliated facility shall be considered to be managed on-site.

(30) Operate--To conduct, work, run, manage, or control.

(31) Operating hours--Those hours which the facility is open to receive waste, process, and transport waste or material.

(32) Operating record--All plans, submittals, and correspondence for a medical waste facility required under this chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

(33) Operation--A medical waste site or facility is considered to be in operation from the date that waste is first received or deposited at the medical waste site or facility until the date that the site or facility is properly closed in accordance with this chapter.

(34) Operator--The person(s) responsible for operating the facility or part of a facility.

(35) Owner--The person that owns a facility or part of a facility.

(36) Permit--See the definition of permit contained in §3.2 of this title (relating to Definitions).

(37) Physical construction--The first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, the laying of underground pipework, or any work beyond the stage of excavation. Physical construction does not include land preparation, such as clearing, grading, excavating, and filling; nor does it include the installation of roads and/or walkways. Physical construction includes issuance of a building or other construction permit, provided that permanent con-

struction commences within 180 days of the date that the building permit was issued.

(38) Pollutant--Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

(39) Pollution--The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

(40) Processing--Activities including, but not limited to, 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 waste, designed to change the physical, chemical, or biological character or composition of any waste to neutralize such waste, or to recover energy or material from the waste, or render the waste safer to transport, store, dispose of, or make it amenable for recovery, amenable for storage, or reduced in volume.

(41) Public highway--The entire width between property lines of any road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state's legislative jurisdiction through its police power.

(42) Putrescible medical waste--Medical waste that contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to cause odors or gases or are capable of providing food for or attracting birds, animals, and disease vectors.

(43) 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.

(44) Registration--The act of filing information with the commission for review and approval for specific solid waste management activities that do not require a permit, as determined by this chapter.

(45) Regulated hazardous waste--A solid waste that is a hazardous waste as defined in 40 Code of Federal Regulations (CFR) §261.3 and that is not excluded from regulation as a hazardous waste under 40 CFR §261.4(b), or that was not generated by a conditionally exempt small quantity generator.

(46) Rubbish--Non-putrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(47) Run-off--Any rainwater or other liquid that drains over land from any part of a facility.

(48) Run-on--Any rainwater or other liquid that drains over land onto any part of a facility.

(49) Site--Same as facility.

(50) Site operating plan--A document that provides general instruction for facility management and operating personnel throughout the operating life of the facility in a manner consistent with the engineer's design and the commission's regulations to protect human health and the environment and prevent nuisances.

(51) 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, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) 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 under Texas Water Code, Chapter 26;

(B) 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; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Texas Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 United States Code, §§6901 *et seq.*).

(52) Source-separated recyclable material--Recyclable material from those health care-related facilities as listed in 25 TAC §1.134 (relating to Application), that at the point of generation has been separated, collected, and transported separately from medical waste, or transported in the same vehicle as medical waste, but in separate containers or compartments.

(53) Storage--The keeping, holding, accumulating, or aggregating of medical waste at the end of which the medical waste is processed, disposed, or stored elsewhere.

(A) Pre-collection--that storage by the generator, normally on the generator's premises, prior to initial collection;

(B) Post-collection transporter--that storage by a transporter while the medical waste is in transit. Any vehicle inactivity such as not continuing a collection route for a period less than 72 hours is considered a temporary storage period. Exceeding 72 hours of temporary storage will require the operator to obtain a medical waste registration per Subchapter F of this chapter (relating to Operations Requiring a Registration);

(C) Post-collection processor--that storage by a processor at a processing facility while the waste is awaiting processing or transfer to another storage, disposal, or recovery facility.

(54) Surface water--Surface water as included in water in the state.

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

(56) Transfer station--A facility used for transferring medical waste from collection vehicles to long-haul vehicles (one transportation unit to another transportation unit). It is not a storage facility such as one where individual residents can dispose of their wastes in bulk storage containers that are serviced by collection vehicles.

(57) Transportation unit--A truck, trailer, open-top box, enclosed container, rail car, piggy-back trailer, ship, barge, or other trans-

portation vehicle used to contain medical waste being transported from one geographical area to another.

(58) Transporter--A person that collects, conveys, or transports medical waste; does not include a person transporting his or her household waste.

(59) Trash--Same as "Rubbish."

(60) Treatment--Same as "Processing."

(61) Uncompacted waste--Any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted prior to collection by any type of mechanical device other than small, in-house compactor devices owned and/or operated by the generator of the waste.

(62) Unloading areas--Areas designated for unloading, including all storage areas, and other processing areas.

(63) 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.

(64) Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(65) Waters of the United States--All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide, with their tributaries and adjacent wetlands, interstate waters and their tributaries, including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; that are used or could be used for industrial purposes by industries in interstate commerce; and all impoundments of waters otherwise considered as navigable waters; including tributaries of and wetlands adjacent to waters identified in this paragraph.

(66) Wetlands--As defined in Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

§326.5. *General Prohibitions.*

No person may cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal, or the use or operation of a solid waste facility to store, process, or dispose of solid waste in violation of the THSC, or any regulations, rules, permit, license, order of the commission, or in such a manner that causes:

(1) the discharge or imminent threat of discharge of medical waste into or adjacent to the waters in the state without obtaining specific authorization for the discharge from the commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the human health and welfare of the environment.

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 May 5, 2016.

TRD-201602177

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: May 26, 2016

Proposal publication date: December 25, 2015

For further information, please call: (512) 239-2613

SUBCHAPTER B. PACKAGING, LABELING AND SHIPPING REQUIREMENTS

30 TAC §§326.17, 326.19, 326.21, 326.23

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted rules implement THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

§326.19. *Packaging.*

(a) The generator shall place the container which contains medical waste in an outer container that is rigid, leak resistant, impervious to moisture, of sufficient strength to prevent tearing and bursting under normal conditions of use and handling, and sealed to prevent leakage or as otherwise required by the United States Department of Transportation under regulations set forth in 49 Code of Federal Regulations (CFR) §173.134 and 49 CFR §173.196 which include infectious substances.

(b) The generator shall place sharps in a rigid, marked, and puncture-resistant container designed for sharps as described in 49 CFR §173.134.

§326.21. *Labeling Containers Excluding Sharps.*

(a) The generator shall conspicuously mark the outer container with a warning legend in English and in Spanish, along with the international symbol for biohazardous material as referenced under 29 Code of Federal Regulations (CFR) §1910.1030(g)(1)(i)(A). The warning must appear on the sides of the container, twice in English and twice in Spanish. The wording of the warning legend shall be: "CAUTION, contains medical waste which may be biohazardous" and "PRECAUCIÓN, contiene desechos medicos que pueden ser peligro biológico" or as otherwise required by the United States Department of Transportation under regulations set forth in CFR §173.134 and 49 CFR §173.196 which include infectious substances.

(b) The generator shall affix to each container a label that contains at the minimum the name and address of the generator, and the date of shipment.

(c) If the transporter assists with weighing containers and label preparation, the generator shall ensure that the container labels meet the requirements of this section before releasing them to the transporter.

(d) The generator shall record the weight or volume on the manifest for reporting and fee purposes. If the generator chooses to use weight, the generator may have the transporter weigh each container for the generator and note the weight on the container label prior to offsite transport. Applicable fees are provided in Subchapter G of this chapter (relating to Fees and Reporting) for each recording method.

(e) The generator shall ensure that the transporter affixes to each container a label that contains the name, address, telephone number, and state registration number of the transporter. This information may be printed on the container.

(f) The generator shall ensure that the printing on required labels is done in indelible ink with letters at least 0.25 inch in height.

(g) If a single label is used to identify the generator and the transporter, the transporter shall ensure the label is affixed to or printed on the container.

(h) The requirements of subsections (b) and (e) of this section shall not apply to shipments where the United States Postal Service or an equivalent delivery service is the transporter in accordance with the Mailing Standards of the United States Postal Service, Domestic Mail Manual, incorporated by reference in 39 CFR Part 111.

(i) The executive director may waive any or all of the requirements of this section if required to protect the public health and safety from the effects of a natural or man-made disaster.

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 May 5, 2016.

TRD-201602178

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: May 26, 2016

Proposal publication date: December 25, 2015

For further information, please call: (512) 239-2613



SUBCHAPTER C. EXEMPT MEDICAL WASTE OPERATIONS

30 TAC §326.31

Statutory Authority

The rule is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted rule implements THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

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 May 5, 2016.

TRD-201602179

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: May 26, 2016

Proposal publication date: December 25, 2015

For further information, please call: (512) 239-2613



SUBCHAPTER D. OPERATIONS REQUIRING A NOTIFICATION

30 TAC §§326.37, 326.39, 326.41, 326.43

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted rules implement THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

§326.37. General Requirements.

(a) Generators that are not exempt and that intend to store or process medical waste authorized under this subchapter shall provide written notification to the executive director, and any local pollution agency with jurisdiction that has requested in writing to the commission to be notified that storage or processing activities are planned. The required notifications must be submitted at least 90 days prior to a generator engaging in these activities, except for recycling and other activities as may be specifically exempted. Additional information may be requested to enable the executive director to determine whether such storage or processing is in compliance with the terms of this chapter. This information may include, but is not limited to, type of waste, waste management methods, and facility design. Any information provided under this subsection shall be submitted to the executive director in duplicate with one copy sent directly to the appropriate regional office. A person shall include a statement justifying the facility's eligibility for a notification as established under this section. The executive director is authorized to approve requests to submit this information electronically if the commission develops electronic systems to manage the data.

(b) Any person that stores or processes medical waste authorized under this subchapter shall have the continuing obligation to provide prompt written notice to the executive director of any changes or additional information concerning type of waste, waste management methods, facility design plans additional to that reported in subsection (a) of this section authorized in any notification filed with the executive director. Any information provided under this subsection shall be submitted to the executive director in duplicate form with copies sent directly to the appropriate regional office and any local pollution agency with jurisdiction that has requested to be notified.

(c) Any person that stores or processes medical waste authorized under this subchapter shall provide written notification to the executive director, and any local pollution agency with jurisdiction that has requested in writing to the commission to be notified of any closure activity or activity of facility expansion not authorized by any notification. The required notifications must be submitted at least 90 days prior to a person conducting this activity. The executive director may request additional information to determine whether such activity is in compliance with this chapter. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

§326.39. *On-Site Treatment by Small Quantity Generators.*

(a) A small quantity generator (SQG) is required to provide written notification to the executive director of the operation of an approved treatment process unit used only for the treatment of medical waste generated on-site in accordance with the provisions of 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition). Alternative treatment technologies may be approved in accordance with requirements found in 25 TAC §1.135 (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities). This one-time notification shall include:

- (1) contact information for the generator;
- (2) if applicable, name, address, telephone number, and the Texas Commission on Environmental Quality authorization number of the mobile treatment operator providing treatment; and
- (3) the method/conditions of treatment.

(b) An SQG shall maintain on-site a written record that contains the information listed in subsection (a) of this section and the following:

- (1) the name (printed) and initials of the person(s) performing treatment;
- (2) the dates of treatment; and
- (3) the amounts of waste treated.

(c) A SQG shall follow the requirements listed in §326.41(c) of this title (relating to On-site Treatment by Large Quantity Generators) for disposal of medical wastes that have been treated in accordance with the provisions of 25 TAC §1.136.

§326.41. *On-Site Treatment by Large Quantity Generators.*

(a) A large quantity generator (LQG) that treats all or part of the medical waste generated on-site shall provide written notification to the executive director of the operation of an approved treatment process unit used only for the treatment of medical waste generated on-site in accordance with the provisions of 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition). Alternative treatment technologies may be approved in accordance with requirements found in 25 TAC §1.135 (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities). This one-time notification shall include:

- (1) the contact information for the generator;
- (2) if applicable, the name, address, telephone number, and the Texas Commission on Environmental Quality authorization number of the mobile treatment operator providing treatment; and
- (3) the method/conditions of treatment.

(b) A LQG shall maintain on-site a written record that contains the information listed in subsection (a) of this section and the following:

- (1) the name (printed) and initials of the person(s) performing treatment;
- (2) the dates of treatment;
- (3) the amounts of waste treated; and
- (4) written procedure for the operation and testing of any equipment used and written procedure for the preparation of any chemicals used in the treatment.

(A) The operator shall demonstrate a minimum four log ten reduction (as defined in 25 TAC §1.132 (relating to Definitions)) on routine performance testing using appropriate *Bacillus* species biological indicators (as defined in 25 TAC §1.132). The operator shall conduct testing at the following intervals:

(i) for generators of more than 50 pounds but less than or equal to 100 pounds per month, testing shall be conducted at least once per month;

(ii) for generators of more than 100 pounds but less than or equal to 200 pounds per month, testing shall be conducted at least every two weeks; and

(iii) for generators of more than 200 pounds per month testing shall be conducted at least weekly.

(B) For those processes that the manufacturer has documented compliance with the performance standard prescribed in 25 TAC §1.135, based on specified parameters (for example, pH, temperature, pressure), and for previously approved treatment processes that a continuous readout and record of operating parameters is available, the operator may substitute routine parameter monitoring for biological monitoring. The operator shall confirm that any chemicals or reagents used as part of the treatment process are at the effective treatment strength. The operator will maintain records of operating parameters and reagent strength, if applicable, for three years.

(C) The manufacturer of single-use, disposable treatment units shall be responsible for maintaining adequate quality control for each lot of single-use products. The treating facility or entity shall be responsible for following the manufacturer's instructions.

(D) Owners or operators of medical waste incinerators shall comply with the requirements in §111.123 of this title (relating to Medical Waste Incinerators) in lieu of biological or parametric monitoring.

(c) Disposal of treated medical waste. Medical wastes that have been treated in accordance with the provisions of 25 TAC §1.136 may be managed as routine municipal solid waste unless otherwise specified in paragraphs (1) - (5) of this subsection.

(1) Incinerator ash shall be disposed of in a permitted landfill in accordance with Chapter 330 of this title (relating to Municipal Solid Waste).

(2) Treated microbiological waste, blood, blood products, body fluids, laboratory specimens of blood and tissue, and animal bedding may be disposed of in a permitted landfill. Any markings that identify the waste as a medical waste shall be covered with a label that identifies the waste as treated medical waste. The identification of the waste as treated may be accomplished by the use of color-coded, disposable containers for the treated waste or by a label that states the contents of the disposable container have been treated in accordance with the provisions of 25 TAC §1.136.

(3) Treated carcasses and body parts of animals designated as a medical waste may, after treatment, be disposed of in a permitted landfill in accordance with Chapter 330 of this title. The collection

and transportation of these wastes shall conform to the applicable local ordinance or rule, if such ordinance or rule is more stringent than this subsection.

(4) Treated recognizable human body parts, tissues, fetuses, organs, and the products of human abortions, spontaneous or induced, shall not be disposed of in a municipal solid waste landfill. These items shall be disposed of in accordance with the provisions of 25 TAC §1.136(a)(4).

(5) Sharps treated and containerized with one of the approved methods as described under 25 TAC §1.136(a)(5) shall be disposed of in a permitted landfill in accordance with Chapter 330 of this title. Unused sharps shall be disposed of as treated sharps.

§326.43. *Medical Waste Collection and Transfer by Licensed Hospitals.*

(a) A licensed hospital may function as a medical waste collection and transfer facility and may accept untreated medical waste from generators that generate less than 50 pounds of untreated medical waste per month and that transport their own waste if:

(1) the hospital is located in an incorporated area with a population of less than 25,000 and in a county with a population of less than one million; or

(2) the hospital is located in an unincorporated area that is not within the extraterritorial jurisdiction of a city with a population of more than 25,000 or within a county with a population of more than one million.

(b) The hospital shall provide written notification to the executive director of the operation as a medical waste collection station. The hospital's notice shall acknowledge the following:

(1) Waste delivered to a medical waste collection station must be packaged in accordance with the provisions of §§326.17, 326.19, and 326.21 of this title (relating to Identification; Packaging; and Labeling Containers Excluding Sharps, respectively) by the generator.

(2) For putrescible or biohazardous untreated medical waste, maintaining a temperature of 45 degrees Fahrenheit or less during pre-collection storage is optional. Such medical waste stored for longer than 72 hours during post-collection storage period shall be maintained at a temperature of 45 degrees Fahrenheit or less.

(3) The storage of medical waste shall be in a secure manner and location that affords protection from theft, vandalism, inadvertent human or animal exposure, rain, water, and wind. The waste shall be managed so as not to create a nuisance.

(4) Medical waste must be released only to a registered medical waste transporter. A list of the waste collected at the medical waste collection station including the identity of the generator of medical waste must be provided to the transporter.

(5) Waste collected at a medical waste collection station may not be treated at the facility unless it is authorized as a treatment facility.

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 May 5, 2016.
TRD-201602180

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 26, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 239-2613

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**SUBCHAPTER E. OPERATIONS REQUIRING
A REGISTRATION BY RULE**

30 TAC §326.53, §326.55

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted rules implement THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

§326.53. *Transporters.*

(a) A registration by rule is granted for persons that plan to transport medical waste. The transporter shall complete registration forms provided by the commission and submit the following information to the executive director at least 60 days prior to commencing operations:

(1) Applicant information. Name, address, and telephone number of registrant.

(2) Partner, corporate officer and director information. Name, address, and telephone number of partners, corporate officers, and directors, if applicable.

(3) Fee information. Transporters shall pay an annual registration fee to the commission based upon the total weight or volume of untreated medical waste transported. Transporter fees are located in Subchapter G of this chapter (relating to Fees and Reporting).

(4) Transportation unit information. Description of each transportation unit, including:

(A) make, model, and year;

(B) motor vehicle identification number, if applicable;

(C) license plate (tag) number, including state and year;

and

(D) name of transportation unit owner or operator.

(5) Instructions for mailing fees. Fees assessed in §326.87(b) of this title (relating to Fees) by the executive director shall be paid by the registrant within 30 days of the date of the invoice and shall be submitted in the form of a check, money order, or a copy of an electronic payment confirmation made payable to the agency cashier.

(b) Other requirements.

(1) Registrations by rule expire annually on September 30th of each year for all transporters. Registrations by rule shall not be

renewed unless the owner or operator has submitted to the executive director:

(A) an annual report in accordance with §326.89(d) of this title (relating to Reports);

(B) an annual fee in accordance with §326.87(b) of this title; and

(C) a renewal form to the executive director prior to the expiration of the registration by rule, but no later than August 1st.

(2) When an owner or operator has made timely application for the renewal of a registration by rule, the existing registration by rule will not be renewed until the application has been determined administratively complete by the executive director.

(3) The executive director shall, after review of any application for registration by rule, approve or deny the application. This action shall be based on whether the application meets the requirements of this chapter.

(4) Failure to timely pay the annual fee eliminates the option to manage wastes.

(5) The executive director will send a copy of the registration by rule issued with an assigned registration number, to the owner or operator.

(6) Requirements for a transportation unit and associated cargo compartment used to collect or transport untreated medical waste that is packaged and labeled as described in Subchapter B of this chapter (relating to Packaging, Labeling and Shipping Requirements) are as follows:

(A) The transportation unit used to collect and or transport medical waste shall:

(i) have a fully enclosed, leak-proof, cargo-carrying body, such as a cargo compartment, box trailer, or roll-off box;

(ii) protect the waste from mechanical stress or compaction;

(iii) carry spill cleanup equipment including, but not limited to, disinfectants, absorbent materials, personal protective equipment such as gloves, coveralls, and eye protection, and leak-proof containers or packaging materials; and

(iv) have the following identification on the two sides and back of the cargo-carrying compartment in letters at least three inches high: (the name of the transporter); TCEQ; (registration by rule number); and Caution: Medical Waste.

(B) The cargo compartment of the vehicle or trailer shall:

(i) be maintained in a sanitary condition;

(ii) be locked when the vehicle or trailer is in motion;

(iii) be locked or secured when waste is present in the compartment except during loading or unloading of waste;

(iv) have a floor and sides made of an impervious, nonporous material;

(v) have all discharge openings securely closed during operation of the vehicle or trailer; and

(vi) maintain a temperature of 45 degrees Fahrenheit or less for putrescible or biohazardous untreated medical waste transported for longer than 72 hours during post-collection storage period.

(7) Transportation units used to transport untreated medical waste shall not be used to transport any other material until the transportation unit has been cleaned and the cargo compartment disinfected. A written record of the date and the process used to clean and disinfect the transportation unit shall be maintained for three years unless the commission directs a longer holding period. The record must identify the transportation unit by motor vehicle identification number or license tag number. The owner or operator of the transportation unit, if not the registered transporter, shall be notified in writing by the transporter that the transportation unit has been used to transport medical waste and when and how the transportation unit was disinfected.

(8) The transporter shall maintain a record of each waste shipment collection and deposition. The record shall be in the form of a manifest or other similar documentation and copies may be maintained in electronic media as described in §326.23(d) of this title (relating to Shipping). The transporter shall retain a copy of all manifests showing the collection and disposition of the medical waste. Copies of manifests shall be retained by the transporters for a minimum of three years in the transporter's main office and made available to the commission upon request. The manifest or other similar documentation shall include:

(A) transporter's name, address, telephone number, and assigned transporter registration number;

(B) name and address of the person that generated the untreated medical waste and the date collected;

(C) total volume or the total weight of the containers from each generator of untreated medical waste collected for transportation;

(D) name of persons collecting, transporting, and unloading the waste;

(E) date and place where the untreated medical waste was deposited or unloaded;

(F) identification (authorization number, location, and operator) of the facility where the untreated medical waste was deposited; and

(G) name and signature in writing or through an electronic record as allowed by the executive director of facility representative acknowledging receipt of the untreated medical waste and the weight or volume of containers of waste received.

(9) The transporter shall furnish the generator a signed manifest for each shipment at the time of collection of the waste. The manifest shall include the name, address, telephone number, and registration number of the transporter. The document shall also identify the generator by name and address, and shall list the weight of waste or volume of containers collected and date of collection. The transporter must provide the generator with a written or electronic statement of the total weight or volume of the containers collected within 45 days.

(10) The transporter must be able to provide a manifest for each shipment from the point of collection through and including the unloading of the waste at a facility authorized to accept the waste. The original manifest or an electronic record as allowed by the executive director must accompany each shipment of untreated waste to its final destination. The transporter shall ensure the proper collection and deposition of untreated medical waste accepted for transport.

(11) Shipments of untreated medical waste shall be stored or deposited only at a facility that has been authorized by the commission to accept untreated medical waste. Untreated medical waste that is transported out of the state shall be deposited at a facility that is authorized by the appropriate agency having jurisdiction over such waste.

(12) Shipments of untreated medical waste, properly containerized Animal and Plant Health Inspection Service (APHIS) regulated garbage, and non-hazardous pharmaceutical waste may be commingled during transport or storage. Authorizations for the acceptance of APHIS regulated garbage shall be obtained from United States Department of Agriculture, Animal and Plant Health Inspection Service.

(13) Shipments of untreated medical waste, properly containerized APHIS regulated garbage, and non-hazardous pharmaceutical waste that are commingled with any other waste (such as rubbish, garbage, hazardous waste, asbestos, or radioactive waste regulated under 25 TAC Chapter 289 (relating to Radiation Control)), shall be delivered to the same treatment facility.

(14) The post-collection storage of medical waste by a transporter shall be in a secure manner and location that affords protection from theft, vandalism, inadvertent human or animal exposure, rain, water, and wind. The waste shall be managed so as not to provide a breeding place or food for insects or rodents, and not generate noxious odors.

(15) Transporters shall not accept untreated medical waste unless the generator has packaged the waste in accordance with the provisions of §§326.17, 326.19, and 326.21 of this title (relating to Identification; Packaging; and Labeling Containers Excluding Sharps, respectively). Transporters shall not accept containers of waste that are leaking or damaged unless or until the shipment has been repackaged. All transporters described in this subsection must obtain any additional transportation authorizations to comply with local, state and federal rules.

(16) Persons who engage in the transportation of waste within Texas when the transportation neither originates nor terminates in Texas are exempt from these regulations, except for paragraph (6)(A)(i) - (iii) and (B) of this subsection.

(17) Packages of untreated medical waste shall not be transferred between transportation units unless the transfer occurs at and on the premises of a facility authorized as a transfer station, or at a treatment/processing facility that has been approved to function as a transfer station except as provided in §326.43 of this title (relating to Medical Waste Collection and Transfer by Licensed Hospitals).

(18) In case of transportation unit malfunction, the waste shipment may be transferred to an operational transportation unit and the executive director, and any local pollution agency with jurisdiction that has requested to be notified, shall be notified of the incident in writing within five working days. The incident report shall list all transportation units involved in transporting the waste and the cause, if known, of the transportation unit malfunction. Update to the transporter's registration by rule is required when the new unit or units are placed in medical waste transport service for a period of time exceeding five days. When using a unit not registered, the transporter shall comply with paragraphs (6) and (7) of this subsection.

(19) In case of a traffic accident, the waste shipment may be transferred to an operating transportation unit if necessary. Any containers of waste that were damaged in the accident shall be repackaged as soon as possible. The nearest regional office, and any local pollution agency with jurisdiction that has requested to be notified, shall be notified of the incident no later than the end of the next working day. The incident report shall list all vehicles involved in transporting the waste.

(20) Persons that apply for the registration by rule must maintain a copy of the registration by rule issued by the executive director with an assigned registration by rule number, at their designated place of business and with each transportation unit used to transport untreated medical waste.

(c) Changes to the registration by rule. Transporters shall notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, by letter, within 30 days of any changes to their registration if:

- (1) the office or place of business is moved;
- (2) the name of owner or operator of the operation is changed;
- (3) the name of the partners, corporate directors, or corporate officers change; or
- (4) the unit information has changed.

§326.55. *Mobile Treatment Unit.*

(a) A registration by rule is granted for an owner or operator of mobile treatment units conducting on-site treatment of medical waste but is not the generator of the waste. The mobile on-site treatment unit owner or operator completes registration by rule forms provided by the commission and submits the following information at least 60 days prior to commencing operations:

- (1) Applicant information. Name, address, and telephone number of registrant.
- (2) Partner, corporate officer and director information. Name, address, and telephone number of partners, corporate officers, and directors, if applicable.
- (3) Fee information. The owner or operator of a mobile treatment unit shall pay an annual registration fee to the commission based upon the total weight of medical waste treated on-site under each registration by rule. Fees to be assessed of owners or operators of an on-site treatment unit are located in Subchapter G of this chapter (relating to Fees and Reporting).
- (4) Approved treatment method. Description of approved treatment method to be employed and chemical preparations, as well as the procedure to be utilized for routine performance testing/parameter monitoring.
- (5) Performance testing. A written procedure for the operation and testing of any equipment used and a written procedure for the preparation of any chemicals used in treatment. Routine performance testing using biological indicators and/or monitoring of parametric controls shall be conducted in accordance with §326.41(b)(4) of this title (relating to On-Site Treatment by Large Quantity Generators); and identification of performance test failures including date of occurrence, corrective action procedures, and retest dates.
- (6) Evidence of competency. Documentation in the form of a relevant training certificate and/or description of work experience.
- (7) Wastewater disposal. A description of the management and disposal of process waters generated during treatment events.
- (8) Contingency plan. A written contingency plan that describes the handling and disposal of waste in the event of treatment failure or equipment breakdown. If there is any question as to the adequacy of treatment of any load, that load shall be run again utilizing biological indicators to test for microbial reduction before the material is released for landfill disposal. If the waste must be removed from the facility before treatment is accomplished, a registered transporter shall remove the waste and all other applicable sections of this chapter shall be in effect.
- (9) Cost estimate and financial assurance. An estimate of the cost to remove and dispose of waste and disinfect the waste treatment equipment and evidence of financial assurance using procedures specified in §326.71(k) - (n) of this title (relating to Registration Ap-

plication Contents) and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities).

(10) Mobile on-site treatment unit information. Description of each mobile treatment unit, including:

- (A) make, model, and year;
- (B) motor vehicle identification number, if applicable;
- (C) license plate (tag) number, including state and year;
- (D) name of mobile treatment unit owner or operator.

(11) Instructions for mailing fees. Fees assessed in §326.87(b) of this title (relating to Fees) by the executive director shall be paid by the registrant within 30 days of the date of the invoice and shall be submitted in the form of a check or money order or copy of the confirmation of an electronic payment made payable to the agency cashier.

(b) Other requirements.

(1) Registrations by rule expire annually on September 30th of each year. Registrations by rule shall not be renewed unless the owner or operator has submitted to the executive director:

- (A) an annual report in accordance with §326.89(d) of this title (relating to Reports);
- (B) an annual fee in accordance with §326.87(b) of this title;
- (C) evidence of financial assurance as of September 30th of the current year; and
- (D) a registration by rule renewal form to the executive director by August 1st.

(2) When an owner or operator has made timely application for the renewal of a registration by rule, the existing registration by rule will not be renewed until the application has been determined administratively complete by the executive director.

(3) The executive director shall, after review of any application for registration by rule, approve or deny the application. This action shall be based on whether the application meets the requirements of this chapter.

(4) Failure to timely pay the annual fee eliminates the option to manage wastes.

(5) The executive director will send a copy of the registration by rule issued with an assigned registration number, to the owner or operator.

(6) Requirements for mobile treatment unit and associated cargo compartment used in the treatment of medical waste are as follows.

(A) The mobile treatment unit used to treat medical waste shall:

- (i) have a fully enclosed, leak-proof, cargo-carrying body, such as a cargo compartment, box trailer, or roll-off box; and
- (ii) carry spill cleanup equipment including, but not limited to, disinfectants, absorbent materials, personal protective equipment, such as gloves, coveralls, and eye protection, and leak-proof containers or packaging materials.

(B) The cargo compartment of the vehicle and any self-contained treatment unit(s) shall:

(i) be maintained in a sanitary condition;

(ii) be secured when the vehicle is in motion;

(iii) be made of such impervious, non-porous materials as to allow adequate disinfection/cleaning of the compartment or unit(s); and

(iv) have all discharge openings securely closed during operation of the vehicle.

(7) Mobile treatment units used in the treatment of medical waste shall not be used to transport any other material until the unit has been cleaned and disinfected. A written record of the date and the process used to clean and disinfect the unit shall be maintained for three years unless the executive director requires a longer holding period. The record must identify the unit by motor vehicle identification number or license tag number. The owner of the unit, if not the operator, shall be notified in writing that the unit has been used in the treatment of medical waste and when and how the unit was disinfected.

(8) Owners or operators of mobile on-site treatment units shall maintain records of all waste treatment, which includes the following information:

- (A) the name, address, and phone number of each generator;
- (B) the date of treatment;
- (C) the amount of waste treated;
- (D) the method/conditions of treatment; and
- (E) the name (printed) and initials of the person(s) performing the treatment.

(9) Persons receiving a registration by rule shall maintain a copy of the registration by rule issued by the executive director with an assigned registration by rule number, at their designated place of business and in each mobile treatment unit used in treating medical waste.

(10) Owners or operators of mobile on-site treatment unit shall furnish the generator the documentation required in paragraph (6)(A) and (B) of this subsection and a statement that the medical waste was treated in accordance with 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition) for the generator's records.

(11) Untreated medical waste shall not be commingled or mixed with hazardous waste, asbestos, or radioactive waste regulated under 25 TAC Chapter 289 (relating to Radiation Control) either before or after treatment.

(12) Owners or operators of mobile on-site treatment unit shall not transport untreated waste unless they are registered as a transporter of medical waste.

(13) Owners or operators of mobile on-site treatment unit shall ensure adequate training of all operators in the use of any equipment used in treatment.

(14) Owners or operators shall maintain the treatment equipment so as to not result in the creation of nuisance conditions.

(c) Changes to the Registration by Rule. Owners or operators of mobile on-site treatment unit shall notify the executive director, by letter, within 30 days of any changes to their registration if:

- (1) the method employed to treat medical waste changes;
- (2) the office or place of business is moved;

(3) the name of owner or operator of the operation is changed;

(4) the name of the partners, corporate directors, or corporate officers change; or

(5) the unit information changes.

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 May 5, 2016.

TRD-201602181

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Effective date: May 26, 2016

Proposal publication date: December 25, 2015

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SUBCHAPTER F OPERATIONS REQUIRING A REGISTRATION

**30 TAC §§326.61, 326.63, 326.65, 326.67, 326.69, 326.71,
326.73, 326.75, 326.77**

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted rules implement THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

§326.61. *Applicability and General Information.*

(a) A registration is required for facilities that store or process untreated medical waste that is received from off-site sources. The executive director may authorize these facilities to store and process other related waste. For the purposes of this subsection, off-site shall be any location that does not meet the definition of on-site found in §326.3 of this title (relating to Definitions). No person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any medical waste unless that activity is authorized by a registration or other authorization from the commission. In the event this prohibition is violated, the executive director may seek recourse against not only the person that 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 waste to be stored, processed, or disposed.

(b) No person may commence physical construction of a new medical waste management facility subject to this registration requirement without having received a registration from the commission.

(c) Registration application. A registration application for a medical waste facility is not subject to an opportunity for a contested case hearing.

(d) The information required by this subchapter defines the basic elements for an application. All aspects of the application and design requirements must be addressed by the owner or operator, even if only to show why they are not applicable for that particular site.

(e) The applicant for a medical waste facility registration shall provide the executive director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no endangerment of the human health and welfare or the environment.

(f) Failure of the owner or operator to provide complete information as required by this chapter may provide cause for the executive director to return the application without further action.

(g) Submission of false information shall constitute grounds for denial of the registration application.

(h) Processing facilities registered under subsection (a) of this section, excluding facilities operating as transfer station only, may store or process municipal solid waste that would be classified as medical waste if it were generated by health care-related facilities. This municipal solid waste shall be subject to the same requirements as medical waste when it is accepted by a facility that is only a registered medical waste facility.

§326.63. *Property Rights.*

(a) It is the responsibility of an owner or operator to possess or acquire a sufficient interest in or right to the use of the surface estate of the property for which an authorization is issued, including the access route if access is not provided by public right of way. The granting of an authorization neither conveys any property rights or interest in either real or personal property nor authorizes any injury to private property, invasion of personal rights, impairment of previous contract rights, or any infringement of federal, state, or local laws or regulations outside the scope of the authority under which an authorization is issued.

(b) The owner or operator shall retain the right of entry to the facility until the end of the closure activities for inspection and maintenance of the facility.

§326.69. *Registration Application Formatting, Posting, Appointment and Fees.*

(a) Registration applications for medical waste must be initially submitted in three copies. The owner or operator shall furnish additional copies of the application for use by required reviewing agencies, upon request of the executive director. The executive director is authorized to approve requests to submit this information electronically if the commission develops electronic systems to manage the data.

(b) Preparation. Preparation of the application must conform with the Texas Occupations Code, Chapter 1001, Texas Engineering Practice Act.

(1) The responsible engineer shall provide the firm number and seal, sign, and date the title page of each bound engineering report or individual engineering plan, table of contents and each engineering drawing in the application as required by Texas Engineering Practice Act, §1001.401, and in accordance with 22 TAC §137.33 (relating to Sealing Procedures).

(2) Applications that have not been sealed shall be considered incomplete for the intended purpose and shall be returned to the owner or operator.

(c) Application format.

(1) Applications shall be submitted in three-ring binders.

(2) The title page shall include:

(A) name of the facility;

- (B) medical waste registration application number, if assigned;
- (C) name of owner and operator;
- (D) location by city and county;
- (E) date the application was prepared;
- (F) the seal and signature of the engineer preparing the application; and the firm number; and
- (G) when applicable, the number and date of the revision.

(3) The table of contents shall contain the main sections and the corresponding page numbers of the application.

(4) The narrative of the application shall be printed on 8-1/2 by 11 inches white paper. Drawings or other sheets shall be no larger than 11 by 17 inches so that they can be reproduced by standard office copy machines.

(5) All pages shall contain a page number and date.

(6) Revisions to text shall be tracked to document insertions, deletions and formatting changes. Revised pages shall have the revision date and indicate "Revised" in the footer of each revised page. A minimum of three clean copies of all revised pages shall also be provided.

(7) Dividers and tabs are recommended.

(d) Application drawings.

(1) All information contained on a drawing shall be legible, even if it has been reduced. The drawings shall be 8-1/2 by 11 inches or 11 by 17 inches. Standard-sized drawings (24 by 36 inches) folded to 8-1/2 by 11 inches may be submitted or required if reduction would render them illegible or difficult to interpret.

(2) If color coding is used, it should be distinct when reproduced on black and white photocopy machines.

(3) Drawings shall be submitted at a standard engineering scale.

(4) Each drawing, plan drawing or map shall have a:

- (A) dated title block;
- (B) bar scale at least one-inch long;
- (C) revision block;
- (D) responsible engineer's or geoscientist's seal, if required; and
- (E) drawing number and a page number.

(5) Each plan drawing or map shall also have:

(A) a north arrow. Preferred orientation is to have the north arrow pointing toward the top of the page;

(B) a reference to the base map source and date, if the map is based upon another map. The latest published edition of the base map should be used; and

(C) a legible legend.

(6) Match lines and section lines shall reference the drawing where the match or section is shown. Section drawings should note from where the section was taken.

(e) Posting application information.

(1) Upon submittal of an application that requires public notice, the owner or operator shall provide a complete copy of the application, including all revisions and supplements to the application, on a publicly accessible internet website, and provide the commission with the Web address link for the application materials. This internet posting is for informational purposes only.

(2) The commission shall post on its website the identity of all owners and operators filing an application and the Web address link required by this subsection.

(f) Appointments. The owner or operator shall provide documentation that the person signing the application meets the requirements of §305.44(a) and (b) of this title (relating to Signatories to Applications). If the authority has been delegated, provide a copy of the document issued by the governing body of the owner or operator authorizing the person that signed the application to act as agent for the owner or operator.

(g) Application fees. In accordance with §305.53 of this title (relating to Application Fee), the application fee for a registration, modification, or temporary authorization is \$150.

§326.71. *Registration Application Contents.*

(a) Maps and Drawings.

(1) General location map. The owner or operator shall submit a general location map of the facility at a scale of one inch equals 2,000 feet by using a United States Geological Survey 7 1/2-minute quadrangle sheet or equivalent as the base map.

(2) Facility access and facility layout. A set of maps or drawings showing:

(A) public access roads serving the facility;

(B) longitudinal and latitudinal geographic coordinates for the point of beginning of the facility boundary's metes and bounds description;

(C) facility boundary;

(D) provisions for the maintenance of any natural wind-breaks, such as greenbelts, where they will improve the appearance and operation of the facility and, where appropriate, plans for screening the facility from public view;

(E) all site entrance roads from public access roads;

(F) fencing;

(G) general locations of main interior facility roadways; the location and surface type of all roads within one mile of the facility that will normally be used by the owner or operator for entering or leaving the facility;

(H) locations of buildings and a descriptive title of their purpose;

(I) outline of the waste management units and ancillary equipment for loading/unloading, storage and processing areas;

(J) drainage, pipeline, and utility easements within the facility; and

(K) any other graphic representations or marginal explanatory notes necessary to communicate the proposed construction phases of the facility, if applicable.

(3) Land-use map. This is a constructed map of the facility showing the facility boundary (registration boundary) of the facility and any existing zoning on or surrounding the property and actual uses (e.g., agricultural, industrial, residential) both within the facility and

within one mile of the facility. The owner or operator shall make every effort to show the location of residences, commercial establishments, schools, licensed day-care facilities, churches, cemeteries, ponds or lakes, and recreational areas within one mile of the facility boundary.

(4) Published zoning map. If available, a published zoning map for the facility and within one mile of the facility for the county or counties in which the facility is or will be located. If the facility requires approval as a nonconforming use or a special permit from the local government having jurisdiction, a copy of such approval shall be submitted.

(5) Impact on surrounding area. The use of any land for a medical waste facility shall not adversely impact human health or the environment. The owner or operator shall provide information regarding the likely impacts of the facility on cities, communities, groups of property owners, or individuals by analyzing the compatibility of land use, zoning in the vicinity, community growth patterns, and any other factors associated with the public interest. To assist the commission in evaluating the impact of the facility on the surrounding area, the owner or operator shall provide the following:

(A) information about the character of surrounding land uses within one mile of the proposed facility;

(B) information about growth trends within five miles of the facility with directions of major development; and

(C) the proximity to residences and other uses (e.g., schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, sites having exceptional aesthetic quality, etc.) within one mile of the facility. The owner or operator shall provide the approximate number of residences and commercial establishments within one mile of the proposed facility including the distances and directions to the nearest residences and commercial establishments. Population density and proximity to residences and other uses described in this paragraph may be considered for assessment of compatibility.

(6) Land ownership map with accompanying landowners list. The applicant shall include a list of landowners within 1/4 mile of the facility and their addresses along with an appropriately scaled map locating the property owned by these persons. The landowners' list shall be keyed to the land ownership map and shall give each property owner's name and mailing address. Notice of an application is not defective if property owners did not receive notice because they were not listed in the real property appraisal records. The list shall also be provided in electronic form.

(7) Metes and bounds. The applicant shall include a drawing and a description of the facility boundary signed and sealed by a registered professional land surveyor.

(b) Property owner affidavit. The applicant shall provide a property owner affidavit that is signed by the owner and includes:

(1) acknowledgment that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure of the facility; and

(2) acknowledgment that the facility owner or operator and the State of Texas shall have access to the property during the active life and after closure for the purpose of inspection and maintenance.

(c) Licensed operator. The owner or operator shall acknowledge that a licensed solid waste facility supervisor, as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations), be employed before commencing facility operation.

(d) Legal authority. The owner and operator shall provide verification of their legal status as required by §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits). This shall be a one-page certificate of incorporation issued by the secretary of state.

(e) Transportation. The owner or operator shall:

(1) provide data on the availability and adequacy of roads that the owner or operator will use to access the site;

(2) provide data on the volume of vehicular traffic on access roads within one mile of the proposed facility, both existing and expected, during the expected life of the proposed facility;

(3) project the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility; and

(4) submit documentation of coordination of all designs of proposed public roadway improvements such as turning lanes, storage lanes, etc., associated with site entrances with the entity exercising maintenance responsibility of the public roadway involved. In addition, the owner or operator shall submit documentation of coordination with the Texas Department of Transportation for traffic and location restrictions.

(f) Facility surface water drainage report. The owner or operator of a medical waste facility shall include a certification statement that:

(1) The facility will be constructed, maintained, and operated to manage run-on and run-off during the peak discharge of a 25-year rainfall event and must prevent the off-site discharge of waste and feedstock material, including, but not limited to, in-process and/or processed materials.

(2) Surface water drainage in and around a facility will be controlled to minimize surface water running onto, into, and off the treatment area.

(3) The owner or operator will obtain the appropriate Texas Pollutant Discharge Elimination System storm water permit coverage when required; or shall provide the permit number for coverage under an individual wastewater permit.

(4) The facility will be located outside of the 100-year floodplain unless the owner or operator can demonstrate that the facility is designed and will be operated in a manner to prevent washout of waste during a 100-year storm event, or the facility obtains a conditional letter of map amendment from the Federal Emergency Management Administration administrator.

(5) The facility will not be located in wetlands unless the owner or operator provides documentation to the extent required under Clean Water Act, §404 or applicable state wetlands laws, that steps have been taken to attempt to achieve no net loss of wetlands.

(g) Council of governments and local government review request. The owner or operator shall submit documentation that the application was submitted for review to the applicable council of governments for compliance with regional solid waste plans. The owner or operator shall also submit documentation that a review letter was requested from any local governments as appropriate for compliance with local solid waste plans. Review letters from the aforementioned entities are not a prerequisite to a final determination on a registration application.

(h) General description of the facility location and design.

(1) Facility location. The owner or operator shall provide:

(A) a description of the location of the facility with respect to known or easily identifiable landmarks;

(B) the access routes from the nearest United States or state highway to the facility; and

(C) longitudinal and latitudinal geographic coordinates for the point of beginning of the facility boundary's metes and bounds description.

(2) Facility access. The owner or operator shall describe how access will be controlled for the facility such as the type and location of fences or other suitable means of access control to protect the public from exposure to potential health and safety hazards, and to discourage unauthorized entry.

(3) Buffer zones and easement protection. No solid waste unloading, storage, or processing operations shall occur within any easement, buffer zone, or right-of-way that crosses the facility. Processing equipment and storage areas shall maintain a minimum separating distance of 25 feet between the facility boundary and processing equipment, loading, unloading and storage areas. Storage units in transport vehicles are not subject to this subsection provided that the waste is stored in refrigerated units with temperatures below 45 degrees Fahrenheit. The executive director may consider alternatives to the buffer zone requirements of this subsection where the owner or operator demonstrates that the buffer zone is not feasible and affords ready access for emergency response and maintenance. The buffer zone shall not be narrower than that necessary to provide for safe passage for fire-fighting and other emergency vehicles. The executive director may consider alternatives to buffer zone requirements for authorized medical waste storage and processing facilities.

(4) Flow diagrams and narrative. The owner or operator shall provide flow diagrams showing the various phases of collection, separation, processing, and disposal as applicable for the types of wastes received at the facility along with a narrative describing each phase;

(i) Waste management unit design.

(1) The owner or operator shall provide generalized construction information or manufacturer specifications of all storage and processing units (autoclaves, incinerators, etc.) and ancillary equipment (i.e., tanks, foundations, sumps, etc.) with regard to number of units, approximate dimensions and capacities, construction materials, vents, covers, enclosures, protective coatings of surfaces, etc.

(2) The owner or operator shall provide generalized description of construction materials for slab and subsurface supports of all storage and processing components.

(3) The owner or operator shall provide storage and processing areas designed to control and contain spills and contaminated water from leaving the facility. The design shall be sufficient to control and contain a worst case spill or release. Unenclosed containment areas shall also account for precipitation from a 25-year, 24-hour storm.

(4) The owner or operator shall acknowledge that the storage of medical waste must be in a secure manner and in a location that affords protection from theft, vandalism, inadvertent human or animal exposure, rain, water, and wind. The waste must be managed so as not to provide a breeding place or food for insects or rodents, and not generate noxious odors.

(5) For putrescible or biohazardous untreated medical waste, maintaining a temperature of 45 degrees Fahrenheit or less during pre-collection storage is optional. Such medical waste stored

for longer than 72 hours during post-collection storage period shall be maintained at a temperature of 45 degrees Fahrenheit or less.

(j) Treatment requirements. Medical waste shall be treated in accordance with the provisions of 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition). The owner or operator shall provide a written procedure for the operation and testing of any equipment used and for the preparation of any chemicals used in treatment and comply with the following:

(1) The operator shall demonstrate a minimum four log ten reduction as defined in 25 TAC §1.132 (relating to Definitions) on routine performance testing using appropriate *Bacillus* species biological indicators (as defined in 25 TAC §1.132).

(2) The operator shall conduct testing weekly.

(3) For those processes that the manufacturer has documented compliance with the performance standard prescribed in 25 TAC §1.135 based on specified parameters (for example, pH, temperature, pressure, etc.), and for previously approved treatment processes that a continuous readout and record of operating parameters is available, the operator may substitute routine parameter monitoring for biological monitoring. The operator shall confirm that any chemicals or reagents used as part of the treatment process are at the effective treatment strength. The operator will maintain records of operating parameters and reagent strength for three years.

(4) The manufacturer of single-use, disposable treatment units shall be responsible for maintaining adequate quality control for each lot of single-use products. The treating facility or entity shall be responsible for following the manufacturer's instructions.

(5) Operators of medical waste treatment equipment shall use backflow preventers on any potable water connections to prevent contamination of potable water supplies.

(6) Owners or operators of medical waste incinerators shall comply with the requirements in §111.123 of this title (relating to Medical Waste Incinerators) in lieu of biological or parametric monitoring.

(7) Alternative treatment technologies may be approved in accordance with requirements found in 25 TAC §1.135 (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities).

(k) Closure plan. The facility closure plan shall be prepared in accordance with the following criteria.

(1) Facility units shall be dismantled and removed off-site or decontaminated.

(2) The owner or operator shall remove all waste and material on-site (unprocessed, in process, and processed), transport them to an authorized facility and disinfect all contaminated water handling units and all processing areas.

(3) Closure of the facility must be completed within 180 days following the last acceptance of processed or unprocessed materials unless otherwise directed or approved in writing by the executive director.

(l) Certification of final closure.

(1) No later than 90 days prior to the initiation of a final facility closure, the owner or operator shall, through a published notice in the newspaper(s) of largest circulation in the vicinity of the facility, provide public notice for final facility closure. This notice shall provide the name, address, and physical location of the facility; the registration number, as appropriate; and the last date of intended receipt of waste. The owner or operator shall also make available an adequate number

of copies of the approved final closure plan for public access and review. The owner or operator shall also provide written notification to the executive director of the intent to close the facility and place this notice of intent in the operating record.

(2) Upon notification to the executive director as specified in paragraph (1) of this subsection, the owner or operator of a medical waste management facility shall post a minimum of one sign at the main entrance and all other frequently used points of access for the facility notifying all persons who may utilize the facility of the date of closing for the entire facility and the prohibition against further receipt of waste materials after the stated date. Further, suitable barriers shall be installed at all gates or access points to adequately prevent the unauthorized dumping of solid waste at the closed facility.

(3) Within ten days after completion of final closure activities of a facility, the owner and operator shall submit to the executive director by registered mail:

(A) a certification, signed by an independent licensed professional engineer, verifying that final facility closure has been completed in accordance with the approved closure plan. The submittal to the executive director shall include all applicable documentation necessary for certification of final facility closure; and

(B) a request for voluntary revocation of the facility registration.

(m) Cost estimate for closure.

(1) The cost estimate must:

(A) equal the costs for closure of the facility, including disposition of the maximum inventories of all processed and unprocessed waste;

(B) be based on the costs of hiring a third party that is not affiliated with the owner or operator; and

(C) be based on a volume (cubic yard) and/or weight (pound, ton) measure for collection and disposition costs.

(2) An increase in the closure cost estimate and the amount of financial assurance provided under subsection (n) of this section must be made if changes to the facility conditions increase the maximum cost of closure at any time during the active life of the facility.

(3) A reduction in the closure cost estimate and the amount of financial assurance provided under subsection (n) of this section may be approved if the cost estimate exceeds the maximum cost of closure at any time during the operation of the facility. A reduction in the cost estimate and the financial assurance must be considered a modification and the owner or operator shall provide a detailed justification for the reduction of the closure cost estimate and the amount of financial assurance.

(n) Financial assurance. A copy of the documentation required to demonstrate financial assurance as specified in Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) shall be submitted 60 days prior to the initial receipt of waste. Continuous financial assurance coverage for closure must be provided until all requirements of the final closure plan have been completed and the facility is determined to be closed in writing by the executive director.

(o) Site operating plan. This plan will provide general operating procedures for facility management for day-to-day operations at the facility. At a minimum, the site operating plan must include a description for how the items in §326.75 of this title (relating to Site Operating Plan) will be implemented. A facility that has an environmental management system that meets the minimum standards described in §90.30

of this title (relating to Minimum Standards for Environmental Management Systems) and is approved to operate under an environmental management system in accordance with §90.31 of this title (relating to Review of Incentive Applications for Environmental Management System), is not subject to site operating plan requirements while the authorization to operate under the environmental management system remains in place. In the event the executive director terminates authorization to operate under an environmental management system, the facility must comply with the site operating plan requirements within 90 days.

(p) The approved site operating plan, the final closure plan, and all other documents and plans required by this chapter shall become operational requirements and shall be considered a part of the operating record of the facility. Any deviation from the registration, the incorporated plans, or any other documents associated with the registration is a violation of this chapter.

§326.73. *Registration Application Processing.*

(a) Opportunity for public meeting and posting notice signs.

(1) The owner or operator shall provide notice of the opportunity to request a public meeting and post notice signs for all registration applications not later than 45 days after the executive director's receipt of the application in accordance with the procedures contained in §39.501(c) of this title (relating to Application for Municipal Solid Waste Permit) and by posting signs at the proposed site.

(2) The owner or operator and the commission shall hold a public meeting in the local area, prior to facility authorization, if a public meeting is required based on the criteria contained in §55.154(c) of this title (relating to Public Meetings).

(3) Notice of a public meeting shall be provided as specified in §39.501(e)(3) and (4) of this title. This section does not require the commission to respond to comments, and it does not create an opportunity for a contested case hearing.

(4) The owner, operator, or a representative authorized to make decisions and act on behalf of the owner or operator shall attend the public meeting. A public meeting conducted under this section is not a contested case hearing under the Texas Government Code, Chapter 2001 (Texas Administrative Procedure Act).

(5) At the owner's or operator's expense, a sign or signs must be posted at the site of the proposed facility declaring that the application has been filed and stating the manner in which the commission and owner or operator may be contacted for further information. Such signs must be provided by the owner or operator and must substantially meet the following requirements. Signs must:

(A) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(B) be headed by the words "PROPOSED MEDICAL WASTE FACILITY;"

(C) include the words "REGISTRATION NO." and the number of the registration;

(D) include the words "for further information contact;"

(E) include the words "Texas Commission on Environmental Quality" and the address and telephone number of the appropriate permitting office;

(F) include the name of the owner or operator, and the address of the appropriate responsible official;

(G) include the telephone number of the owner or operator;

(H) remain in place and legible until the period for filing a motion to overturn has expired; and

(I) describe how persons affected may request that the executive director and applicant conduct a public meeting.

(6) Signs must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line paralleling a public highway, street, or road. This paragraph's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the registered facility.

(7) The owner or operator shall also post signs at the facility in an alternative language when the alternative language requirements in §39.405(h)(2) of this title (relating to General Notice Provisions) are met. These signs must meet the location and frequency requirements of paragraph (6) of this subsection.

(8) The owner or operator shall provide a certification to the executive director that the sign posting was conducted according to the requirements of this section.

(9) The executive director may approve variances from the requirements of paragraphs (5) and (6) of this subsection if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those paragraphs and alternative sign posting plans proposed by the owner or operator are at least as effective in providing notice to the public. Approval from the executive director under this paragraph must be received before posting alternative signs for purposes of satisfying the requirements of this paragraph.

(b) Notice of final determination. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. In accordance with §50.133(b) of this title (relating to Executive Director Action on Application or WQMP Update), if the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision). The chief clerk shall mail this notice to the owner and operator, the public interest counsel and to other persons who timely filed public comment in response to public notice.

(c) Motion to overturn. The owner or operator, or a person affected may file with the chief clerk a motion to overturn the executive director's action on a registration application, under §50.139 of this title. The criteria regarding motions to overturn shall be explained in the public notices provided in accordance with Chapter 39 of this title (relating to Public Notice) and §50.133 of this title.

§326.75. *Site Operating Plan.*

(a) Personnel functions.

(1) A description of functions and minimum qualifications for each category of key personnel to be employed at the facility and for the supervisory personnel in the chain of command;

(2) A description of the general instructions that the operating personnel shall follow concerning the operational requirements of this subchapter; and

(3) Procedures for the detection and prevention of the receipt of prohibited wastes; which must include:

(A) random inspections of packaging for incoming loads;

(B) records of all inspections; and

(C) training for appropriate facility personnel responsible for inspecting or observing loads to recognize prohibited waste.

(b) Waste acceptance. The applicant shall identify the sources and characteristics of medical wastes proposed to be received for storage and processing or disposal, the maximum amount of medical waste to be received daily, the maximum amount of medical waste to be stored, the maximum lengths of time that medical waste is to remain at the facility (specify the maximum allowable period of time that unprocessed and processed wastes are to remain on-site), and the intended destination of the medical waste received at this facility. Medical waste facilities may not receive regulated hazardous waste as defined in §326.3(45) of this title (relating to Definitions). Materials accepted for recycling may only be accepted from health care-related facilities as long as the recyclable materials have not been mixed or come into contact with medical waste. Materials mixed or contacting medical waste shall be managed as medical waste.

(c) Facility-generated waste.

(1) All liquids resulting from the facility operations shall be disposed of in a manner that will not cause surface water or groundwater pollution. The owner or operator may send wastewater off-site to an authorized facility or shall provide for the treatment of wastewaters resulting from managing the waste or from cleaning and washing. Except as provided in subsection (b) of this section, the owner or operator shall provide a connection into a public sewer system, a septic system, or a small wastewater treatment plant. On-site wastewater treatment systems shall comply with Chapter 285 of this title (relating to On-site Sewage Facilities). The owner or operator shall obtain any permit or other approval required by state or local code for the system installed.

(2) Contaminated water shall be collected and contained until properly managed.

(3) Wastes generated by a facility must be processed or disposed at an authorized solid waste management facility.

(4) Off-site discharge of contaminated waters shall be made only after approval under the Texas Pollutant Discharge Elimination System authority.

(5) The owner or operator shall provide a copy of the authorization to discharge wastewater to a treatment facility permitted under Texas Water Code, Chapter 26.

(d) Storage requirements.

(1) All solid waste shall be stored in such a manner that it does not create a nuisance.

(2) Storage area(s) for source-separated or recyclable materials from medical waste facilities must be provided that are separate from solid waste processing areas. Control of odors, vectors, and wind-blown waste from the storage area shall be maintained.

(3) Containers must be maintained in a clean condition so that they do not constitute a nuisance. Containers to be mechanically handled must be designed to prevent spillage or leakage during storage, handling, or transport.

(4) If a stationary compactor is utilized, it shall be operated and maintained in such a way as not to create a public nuisance through material loss or spillage, odor, vector breeding or harborage, or other condition.

(e) Recordkeeping and reporting requirements.

(1) A copy of the registration, the approved registration application, and any other required plan or other related document shall be maintained at the medical waste facility at all times. These plans shall be made available for inspection by agency representatives or other interested parties. These documents shall be considered a part of the operating record for the facility.

(2) The owner or operator shall promptly record and retain in an operating record:

(A) all location-restriction demonstrations;

(B) inspection records and training procedures;

(C) closure plans, cost estimates, and financial assurance documentation relating to financial assurance for closure;

(D) copies of all correspondence and responses relating to the operation of the facility, modifications to the registration, approvals, and other matters pertaining to technical assistance; and

(E) all documents, manifests and any other document(s) as specified by the approved authorization or by the executive director.

(3) For signatories to reports, the following conditions apply.

(A) The owner or operator shall sign all reports and other information requested by the executive director as described in §305.128 of this title (relating to Signatories to Reports) and §305.44(a) of this title (relating to Signatories to Applications) or by a duly authorized representative of the owner or operator. A person is a duly authorized representative only if:

(i) the authorization is made in writing by the owner or operator as described in §305.44(a) of this title;

(ii) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity or for environmental matters for the owner or operator, such as the position of plant manager, environmental manager, or a position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(iii) the authorization is submitted to the executive director.

(B) If an authorization under this section is no longer accurate because of a change in individuals or position, a new authorization satisfying the requirements of this section must be submitted to the executive director prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

(C) Any person signing a report shall make the certification in §305.44(b) of this title.

(4) All information contained in the operating record shall be furnished upon request to the executive director and shall be made available for inspection by the executive director.

(5) The owner or operator shall retain all information contained within the operating record and the different plans required for the facility for the life of the facility.

(6) The executive director may set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (1) - (5) of this subsection.

(7) Owners or operators of a medical waste processing facility accepting delivery of untreated medical waste for which a shipping document is required for processing shall ensure each of the following requirements are met:

(A) a shipping document accompanies the shipment, which designates the facility to receive the waste;

(B) the owner or operator signs the shipping document and immediately gives at least one copy of the signed shipping document to the transporter;

(C) the owner or operator retains one copy of the shipping document;

(D) within 45 days after the delivery, the treatment facility owner or operator sends a written or electronic copy of the shipping document to the generator that includes the total weight of waste received and a statement that the medical waste was treated in accordance with 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition).

(f) Fire protection.

(1) An adequate supply of water under pressure must be available for firefighting purposes.

(2) Firefighting equipment must be readily available.

(3) A fire protection plan shall be established, and all employees shall be trained in its contents and use. This fire protection plan shall describe the source of fire protection (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), procedures for using the fire protection source, and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(g) Access control.

(1) Public access to all medical waste facilities shall be controlled by means of artificial barriers, natural barriers, or a combination of both, appropriate to protect human health and safety and the environment. Uncontrolled access to other operations located at a medical waste facility shall be prevented.

(2) The facility access road from a publicly owned roadway must be at least a two-lane gravel or paved road, designed for the expected traffic flow. Safe on-site access for all vehicles must be provided. The access road design must include adequate turning radii according to the vehicles that will utilize the facility and avoid disruption of normal traffic patterns. Vehicle parking must be provided for equipment, employees, and visitors. Safety bumpers at hoppers must be provided for vehicles. A positive means to control dust and mud must be provided.

(3) Access to the facility shall be controlled by a perimeter fence, consisting of a four-foot barbed wire fence or a six-foot chain-link fence or equivalent, and have lockable gates. An attendant shall be on-site during operating hours. The operating area and transport unit storage area shall be enclosed by walls or fencing.

(h) Unloading of waste.

(1) The unloading of solid waste shall be confined to as small an area as practical. An attendant shall be provided at all facilities to monitor all incoming loads of waste. Appropriate signs shall also be used to indicate where vehicles are to unload. The owner or operator is not required to accept any solid waste that he/she determines will cause or may cause problems in maintaining full and continuous compliance with these sections.

(2) The unloading of waste in unauthorized areas is prohibited. The owner or operator shall ensure that any waste deposited in an unauthorized area will be removed immediately and managed properly.

(3) The unloading of prohibited wastes at the medical waste facility shall not be allowed. The owner or operator shall

ensure that any prohibited waste will be returned immediately to the transporter or generator of the waste.

(i) Operating hours. A site operating plan must specify operating hours. The operating hours may be any time between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, unless otherwise approved by the executive director or commission for a registration.

(1) In addition to the requirements of this subsection, the authorization may include alternative operating hours of up to five days in a calendar-year period to accommodate special occasions, special purpose events, holidays, or other special occurrences.

(2) The agency regional office may allow additional temporary operating hours to address disaster or other emergency situations, or other unforeseen circumstances that could result in the disruption of waste management services in the area.

(3) The facility must record, in the site operating record, the dates, times, and duration when any alternative operating hours are utilized.

(j) Facility sign. Each facility shall conspicuously display at all entrances to the facility through which wastes are received, a sign measuring at least four feet by four feet with letters at least three inches in height stating the facility name; type of facility; the hours and days of operation; the authorization number of the facility; and facility rules. The posting of erroneous or misleading information shall constitute a violation of this section.

(k) Control of windblown material and litter. Windblown material and litter within the registration boundary shall be collected as necessary to minimize unhealthy, unsafe, or unsightly conditions.

(l) Facility access roads.

(1) All-weather roads shall be provided within the facility to the unloading area(s) designated for wet-weather operation. The tracking of mud and debris onto public roadways from the facility shall be minimized.

(2) Dust from on-site and other access roadways shall not become a nuisance to surrounding areas. A water source and necessary equipment or other means of dust control shall be provided.

(3) All on-site access roads owned or controlled by the owner or operator shall be maintained to minimize depressions, ruts, and potholes on a regular basis. For the maintenance of other access roadways not owned or controlled by the owner or operator, the owner or operator shall coordinate with the Texas Department of Transportation, county, and/or local governments with maintenance authority over the roads.

(m) Noise pollution and visual screening. The owner or operator of a transfer station shall provide screening or other measures to minimize noise pollution and adverse visual impacts.

(n) Overloading and breakdown.

(1) The design capacity of the facility shall not be exceeded during operation. The facility shall not accumulate solid waste in quantities that cannot be processed within such time as will preclude the creation of odors, insect breeding, or harborage of other vectors. If such accumulations occur, additional solid waste shall not be received until the adverse conditions are abated.

(2) If a significant work stoppage should occur at a solid waste processing facility due to a mechanical breakdown or other causes, the facility shall accordingly restrict the receiving of solid waste. Under such circumstances, incoming solid waste shall be diverted to an approved backup processing or disposal facility. If the

work stoppage is anticipated to last long enough to create objectionable odors, insect breeding, or harborage of vectors, steps shall be taken to remove the accumulated solid waste from the facility to an approved backup processing or disposal facility.

(3) The owner or operator shall have alternative processing or disposal procedures for the solid waste in the event that the facility becomes inoperable for periods longer than 24 hours.

(o) Sanitation.

(1) The owner or operator shall provide potable water and sanitary facilities for all employees and visitors.

(2) At processing facilities, all working surfaces that come in contact with wastes shall be washed down on a weekly basis at the completion of processing. Processing facilities that operate on a continuous basis shall be swept daily and washed down at least twice per week.

(3) Wash waters shall not be accumulated on site without proper treatment to prevent the creation of odors or an attraction to vectors.

(4) All wash waters shall be collected and disposed of in an authorized manner.

(p) Ventilation and air pollution control. All facilities and air pollution abatement devices must obtain authorization, under Texas Health and Safety Code (THSC), Chapter 382 (Texas Clean Air Act) and Chapter 106 or 116 of this title (relating to Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification), from the Air Permits Division prior to the commencement of construction, except as authorized in THSC, §382.004. Additionally, all facilities and air pollution abatement devices must operate in compliance with all applicable air related rules including Chapter 101 of this title (relating to General Air Quality Rules) related to prevention of nuisance odors, minimizing maintenance, startup and shutdown emissions, and emission event reporting and recordkeeping.

(q) Health and safety. Facility personnel shall be trained in the appropriate sections of the facility's health and safety plan.

(r) Disposal of treated medical waste. Medical wastes that have been treated in accordance with the provisions of 25 TAC §1.136 may be managed as routine municipal solid waste unless otherwise specified in paragraphs (1) - (5) of this subsection.

(1) Incinerator ash shall be disposed of in a permitted landfill in accordance with Chapter 330 of this title (relating to Municipal Solid Waste).

(2) Treated microbiological waste, blood, blood products, body fluids, laboratory specimens of blood and tissue, and animal bedding may be disposed of in a permitted landfill. Any markings that identify the waste as a medical waste shall be covered with a label that identifies the waste as treated medical waste. The identification of the waste as treated may be accomplished by the use of color-coded, disposable containers for the treated waste or by a label that states that the contents of the disposable container have been treated in accordance with the provisions of 25 TAC §1.136.

(3) Treated carcasses and body parts of animals designated as a medical waste may, after treatment, be disposed of in a permitted landfill in accordance with Chapter 330 of this title. The collection and transportation of these wastes shall conform to the applicable local ordinance or rule, if such ordinance or rule is more stringent than this subsection.

(4) Treated recognizable human body parts, tissues, fetuses, organs, and the products of human abortions, spontaneous or

induced, shall not be disposed of in a municipal solid waste landfill. These items shall be disposed of in accordance with the provisions of 25 TAC §1.136(a)(4).

(5) Sharps treated and containerized with one of the approved methods as described under 25 TAC §1.136(a)(5) shall be disposed of in a permitted landfill in accordance with Chapter 330 of this title. Unused sharps shall be disposed of as treated sharps.

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 May 5, 2016.

TRD-201602182

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: May 26, 2016

Proposal publication date: December 25, 2015

For further information, please call: (512) 239-2613



SUBCHAPTER G. FEES AND REPORTING

30 TAC §§326.85, 326.87, 326.89

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted rules implement THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

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 May 5, 2016.

TRD-201602184

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: May 26, 2016

Proposal publication date: December 25, 2015

For further information, please call: (512) 239-2613



CHAPTER 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§330.1, 330.9, 330.11, 330.13, 330.103, 330.171, and 330.219; and adopts the repeal of §§330.1201, 330.1203, 330.1205, 330.1207, 330.1209, 330.1211, 330.1213, 330.1215, 330.1217, 330.1219, and 330.1221.

The amendment to §330.1 is adopted *with change* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9540) and will be republished. The amendments to §§330.9, 330.11, 330.13, 330.103, 330.171, and 330.219; and the repeal of §§330.1201, 330.1203, 330.1205, 330.1207, 330.1209, 330.1211, 330.1213, 330.1215, 330.1217, 330.1219, and 330.1221 are adopted *without changes* and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 2244, passed by the 84th Texas Legislature, 2015, amended Texas Health and Safety Code (THSC), Chapter 361 by adding THSC, §361.0905 (Regulation of Medical Waste) requiring the commission to adopt regulations under a new chapter specific for the handling, transportation, storage, and disposal of medical waste. The adopted rulemaking moves the rules related to medical waste from Chapter 330 to adopted new TAC Chapter 326 (Medical Waste Management). HB 2244 was effective immediately on June 10, 2015, upon the Governor signing it into law. The legislation also states that the commission must adopt any rules required to implement HB 2244 by June 1, 2016.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning Chapter 326 and 30 TAC Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste).

Section by Section Discussion

Subchapter A: General Information

§330.1, Purpose and Applicability

Section 330.1(a)(6), requiring medical waste mobile treatment units to transition to a different authorization level in accordance with the rules that went into effect on March 27, 2006, is adopted to be removed.

Section 330.1(e) is added to provide the transition for relocating the medical waste management rules from this chapter to adopted new Chapter 326. The requirement for existing authorizations to apply to transition to new Chapter 326 has been narrowed from proposal to only require permit and registration tier authorizations to apply under Chapter 326. Registrations by rule, subject to annual renewal under Chapters 330 and 326, will transition to new Chapter 326 upon renewal. Other lower tier authorizations will be subject to Chapter 326 automatically without any additional filing.

§330.9, Registration Required

Section 330.9(e), concerning hospitals acting as medical waste collections and transfer facilities, is adopted to be removed and relocated to adopted new §326.43, Medical Waste Collection and Transfer by Licensed Hospitals. Subsequent subsections are adopted to be re-lettered.

Section 330.9(l), concerning registration by rule for transporters of untreated medical waste, is adopted to be removed and relocated to adopted new §326.53, Transporters.

Section 330.9(m), concerning registration by rule for mobile treatment units, is adopted to be removed and relocated to adopted new §326.55, Mobile Treatment Unit.

Section 330.9(n), concerning registration for facilities that store or process untreated medical waste from offsite sources, is adopted to be removed and relocated to adopted new §326.61, Applicability and General Information. Subsequent subsections are adopted to be re-lettered.

§330.11, Notification Required

Section 330.11(f), concerning notification of treatment process unit for on-site generated medical waste, is adopted to be removed and relocated to adopted new §326.39, Small Quantity Generator On-Site Treatment Facility. Subsequent subsections are adopted to be re-lettered.

Section 330.11(h), concerning notification as self-transporters, is adopted to be removed and relocated to adopted new §326.53.

§330.13, Waste Management Activities Exempt from Permitting, Registration, or Notification

Section 330.13(d) and (e), concerning on-site storage of medical waste generated on-site, and self-transport of medical waste, are adopted to be removed and relocated to adopted new §326.31, Exempt Medical Waste Operations. Subsequent subsections are adopted to be re-lettered.

Subchapter C: Municipal Solid Waste Collection and Transportation

§330.103, Collection and Transportation Requirements

Section 330.103(f), concerning transporters of untreated medical waste, is adopted to be removed, revised and relocated to adopted new §326.53.

Subchapter D: Operational Standards for Municipal Solid Waste Landfill Facilities

§330.171, Disposal of Special Wastes

Section 330.171(c)(1), concerning untreated medical waste received at landfills, is adopted to be amended to update the reference to treatment procedures from Chapter 330, Subchapter Y, to adopted new Chapter 326.

Subchapter E: Operational Standards for Municipal Solid Waste Storage and Processing Units

§330.219, Recordkeeping and Reporting Requirements

Section 330.219(h), concerning operators of Type V processing facility accepting untreated medical waste, is adopted to be removed and relocated to adopted new §326.75, Site Operating Plan.

Subchapter Y: Medical Waste Management

§330.1201, Purpose

This section is adopted to be repealed and relocated to adopted new §326.1, Purpose and Applicability.

§330.1203, Applicability

This section is adopted to be repealed and relocated to adopted new §326.1.

§330.1205, Definitions

This section is adopted to be repealed and relocated to adopted new §326.3, Definitions.

§330.1207, Generators of Medical Waste

This section is adopted to be repealed and relocated to adopted new §§326.17, 326.19, 326.21, 326.23, 326.31, 326.37, 326.43, and 326.53.

§330.1209, Storage of Medical Waste

This section is adopted to be repealed and relocated to adopted new §326.43.

§330.1211, Transporters of Untreated Medical Waste

This section is adopted to be repealed and relocated to adopted new §§326.23, 326.31, 326.53, 326.87, and 326.89.

§330.1213, Transfer of Shipments of Medical Waste

This section is adopted to be repealed and relocated to adopted new §326.53.

§330.1215, Interstate Transportation

This section is adopted to be repealed and relocated to adopted new §326.53.

§330.1217, Medical Waste Collection Stations

This section is adopted to be repealed and relocated to adopted new §326.43.

§330.1219, Treatment and Disposal of Medical Waste

This section is adopted to be repealed and relocated to adopted new §§326.39, 326.41, 326.61, and 326.75.

§330.1221, On-Site Treatment Services on Mobile Treatment Units

This section is adopted to be repealed and relocated to adopted new §§326.39, 326.41, 326.55, and 326.87.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rulemaking does not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking is intended to implement HB 2244 by consolidating and revising the rules governing medical waste into one new chapter. In addition to implementing HB 2244, the new Chapter 326 includes other updates and revisions which are not expected to have a significant impact on industry or the public.

Furthermore, the adoption does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, 1§2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rulemaking does not meet any of these applicability requirements. First, there are no standards set for authorizing these types of facilities by federal law. The adopted rulemaking includes revisions to reconcile any conflict with federal laws governing the transportation of medical waste. Second, the adopted rulemaking does not exceed an express requirement of state law. There are no specific statutory requirements for authorizing these types of facilities. Third, the adopted rulemaking does not exceed an express requirement of a dele-

gation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not adopt the rulemaking solely under the general powers of the agency, but rather under the authority of THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, which provides the commission with rulemaking authority; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and, THSC, §361.0905 (HB 2244), which governs the regulation of medical waste. Therefore, the commission does not adopt the rulemaking solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Comments were not received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the adopted rulemaking is to implement HB 2244 by consolidating and revising the rules governing medical waste into one new chapter. In addition to implementing HB 2244, the new Chapter 326 includes other updates and revisions which are not expected to have a significant impact on industry or the public.

The rulemaking does not impose a burden on a recognized real property interest and therefore does not constitute a taking. The promulgation of the adopted rulemaking is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rulemaking does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that would otherwise exist in the absence of this rulemaking; nor would it reduce its value by 25% or more beyond that value which would exist in the absence of the adopted rules. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. Comments were not received on the CMP.

Public Comment

The commission held a public hearing on January 25, 2016. The comment period closed on February 8, 2016. The commission did not receive comments.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §§330.1, 330.9, 330.11, 330.13

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted amendments implement THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

§330.1. Purpose and Applicability.

(a) The regulations promulgated in this chapter cover aspects of municipal solid waste (MSW) management and air emissions from MSW landfills and transfer stations under the authority of the commission and are based primarily on the stated purpose of Texas Health and Safety Code, Chapter 361 and Chapter 382. The provisions of this chapter apply to any person as defined in §3.2 of this title (relating to Definitions) involved in any aspect of the management and control of MSW and MSW facilities including, but not limited to, storage, collection, handling, transportation, processing, and disposal. Furthermore, these regulations apply to any person that by contract, agreement, or otherwise arranges to process, store, or dispose of, or arranges with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, or by any other person or entity. The comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) are effective 20 days after they are filed with the Office of the Secretary of State.

(1) Permits and registrations, issued by the commission and its predecessors, that existed before the 2006 Revisions became effective, remain valid until suspended or revoked except as expressly provided otherwise in this chapter. Facilities may operate under existing permits and registrations subject to: requirements in the 2006 Revisions, which expressly supersede provisions contained in existing authorizations or require revisions to existing authorizations; and those requirements mandated by the United States Environmental Protection Agency in 40 Code of Federal Regulations (CFR) Parts 257 and 258, as amended, which implement certain requirements of Resource Conservation and Recovery Act, Subtitle D. For those federally mandated requirements and the equivalent state requirements, the effective dates listed in 40 CFR Parts 257 and 258, as amended, shall apply. For those federally mandated requirements, the permittee is under an obligation to apply for a permit change in accordance with §305.62 of this title (relating to Amendments) or §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), as applicable, to incorporate the required standard. The application shall be submitted no later than six months from the effective date of the required standard.

(2) Applications for new permits and major amendments to existing permits that are administratively complete and registration applications for which the executive director has completed a technical review, as of the effective date of the 2006 Revisions, shall be considered under the former rules of this chapter unless the applicant elects otherwise. Existing authorizations are subject to the 2006 Revisions, which expressly supersede provisions contained in existing authorizations or require modifications of existing authorizations regardless of whether a major amendment is being considered for the same facility under the former rules. For new permits and major amendments to increase solid waste disposal capacity, only complete applications (Parts

I - IV), which are submitted and declared administratively complete before the effective date of the 2006 Revisions, may be considered under existing Chapter 330 rules. Such applications are not subject to §305.127(4)(B) of this title (relating to Conditions to be Determined for Individual Permits) and the owner or operator must submit the modifications required by the 2006 Revisions within one year after the commission's decision on the application has become final and appealable, unless a longer period of time is specified in the rules.

(3) Authorizations, other than permits and registrations, that existed before the 2006 Revisions became effective shall comply with the 2006 Revisions within 120 days of the 2006 Revisions becoming effective unless expressly provided otherwise in this chapter. These authorizations include notifications, exemptions, permits by rule, and registrations by rule.

(4) Authorizations, other than permits and registrations, that had not been claimed or did not exist before the 2006 Revisions became effective shall comply with the 2006 Revisions.

(5) Applications for modifications or for amendments that do not increase solid waste disposal capacity that are filed before the 2006 Revisions become effective, or filed within 180 days after the 2006 Revisions become effective, are subject to the former rules. Such applications are not subject to §305.127(4)(B) of this title, and the owner or operator must submit the modifications required by the 2006 Revisions within 180 days after the effective date of the 2006 Revisions, unless a longer period of time is specified in the rules.

(b) The commission at its discretion, may include one or more different types of units in a single permit if the units are located at the same facility with the exception of a facility authorized by an MSW permit by rule. Persons shall seek separate authorizations at a facility that qualifies for an MSW permit by rule.

(c) This chapter does not apply to any person that prepares sewage sludge or domestic septage, fires sewage sludge in a sewage sludge incinerator, applies sewage sludge or domestic septage to the land, or to the owner/operator of a surface disposal site as applicable under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); to sewage sludge or domestic septage applied to the land or placed on a surface disposal site, to sewage sludge fired in a sewage sludge incinerator, to land where sewage sludge or domestic septage is applied to a surface disposal site or to a sewage sludge incinerator as applicable under Chapter 312 of this title; any person that transports sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste; to any person that applies water treatment sludge for disposal in a land application unit, as defined in §312.121 of this title (relating to Purpose, Scope, and Standards) to water treatment sludge that is disposed of in a land application unit, as defined in §312.121 of this title. Persons managing such wastes shall comply with the requirements of Chapter 312 of this title.

(d) This chapter does not apply to any person that composts MSW in accordance with the requirements of Chapter 332 of this title (relating to Composting), except for those persons that must apply for a permit in accordance with §332.3(a) of this title (relating to Applicability). Those persons that must submit a permit application for a compost operation shall follow the applicable requirements of Subchapter B of this chapter (relating to Permit and Registration Application Procedures).

(e) This chapter does not apply to any person that manages medical waste in accordance with the requirements of Chapter 326 of this title (relating to Medical Waste Management). Persons disposing of medical waste at municipal solid waste landfills shall comply with applicable provisions of this chapter. The medical waste provisions being relocated from this chapter to Chapter 326 of this title will remain

in effect and continue to apply to permits, registrations, and registrations by rule issued under this chapter until the later of two years from the effective date of Chapter 326 of this title or until a final decision is made on a timely request for an authorization to be updated to comply with Chapter 326 of this title. Permits, registrations, and registrations by rule issued under the existing Chapter 330 rules must be updated by filing a new application within two years or upon renewal to comply with Chapter 326 of this title. The executive director is authorized to extend this deadline based on an authorized entity making a request supported by good cause. A person who has an application for the management of medical waste pending before the effective date of Chapter 326 of this title shall be considered under the former Chapter 330 rules unless the applicant elects otherwise.

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 May 5, 2016.

TRD-201602185
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 26, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 239-2613



SUBCHAPTER C. MUNICIPAL SOLID WASTE COLLECTION AND TRANSPORTATION

30 TAC §330.103

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted amendment implements THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

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 May 5, 2016.

TRD-201602186
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 26, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 239-2613



SUBCHAPTER D. OPERATIONAL
STANDARDS FOR MUNICIPAL SOLID
WASTE LANDFILL FACILITIES

30 TAC §330.171

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted amendment implements THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

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 May 5, 2016.

TRD-201602187

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: May 26, 2016

Proposal publication date: December 25, 2015

For further information, please call: (512) 239-2613



SUBCHAPTER E. OPERATIONAL
STANDARDS FOR MUNICIPAL SOLID
WASTE STORAGE AND PROCESSING UNITS

30 TAC §330.219

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The amendment implements THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

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 May 5, 2016.

TRD-201602188

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: May 26, 2016

Proposal publication date: December 25, 2015

For further information, please call: (512) 239-2613



SUBCHAPTER Y. MEDICAL WASTE
MANAGEMENT

**30 TAC §§330.1201, 330.1203, 330.1205, 330.1207,
330.1209, 330.1211, 330.1213, 330.1215, 330.1217, 330.1219,
330.1221**

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The repeal of these sections implements THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

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 May 5, 2016.

TRD-201602190

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: May 26, 2016

Proposal publication date: December 25, 2015

For further information, please call: (512) 239-2613



CHAPTER 335. INDUSTRIAL SOLID WASTE
AND MUNICIPAL HAZARDOUS WASTE
SUBCHAPTER R. WASTE CLASSIFICATION

30 TAC §335.508

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amended §335.508.

Section 335.508 is adopted *without changes* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9601) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

House Bill (HB) 2244, passed by the 84th Texas Legislature, 2015, amended Texas Health and Safety Code (THSC), Chapter 361 by adding new §361.0905 (Regulation of Medical Waste)

requiring the commission to adopt regulations under a new chapter specific for the handling, transportation, storage, and disposal of medical waste. The adopted rulemaking moves the rules related to medical waste from 30 TAC Chapter 330 (Municipal Solid Waste) to new 30 TAC Chapter 326 (Medical Waste Management). HB 2244 was effective immediately on June 10, 2015, upon the Governor signing it into law. The legislation also states that the commission must adopt any rules required to implement HB 2244 by June 1, 2016.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning Chapters 326 and 330.

Section Discussion

Subchapter R: Waste Classification

§335.508, Classification of Specific Industrial Solid Wastes

Section 335.508(4), concerning classification of medical waste as type 2 waste, is amended to update a reference to the medical waste provisions from Chapter 330, Subchapter Y to adopted new Chapter 326.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rule does not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking is intended to implement HB 2244 by updating a cross-reference to the medical waste rules which are being relocated into a new chapter in a corresponding rulemaking. The updated cross-reference is not expected to have a significant impact on industry or the public.

Furthermore, the rule 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 which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rulemaking is only updating a cross-reference and does not meet any of these applicability requirements.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Comments were not received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the adopted amendment is to im-

plement HB 2244 by updating a cross-reference to the medical waste rules which are being moved to a new Chapter 326 in a corresponding rulemaking. The updated cross-reference is not expected to have a significant impact on industry or the public.

The amendment does not impose a burden on a recognized real property interest and therefore does not constitute a taking. The promulgation of the adopted rulemaking is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rulemaking does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that would otherwise exist in the absence of this rulemaking; nor would it reduce its value by 25% or more beyond that value which would exist in the absence of the adopted rule. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. Comments were not received on the CMP.

Public Comment

The commission held a public hearing on January 25, 2016. The comment period closed on February 8, 2016. The commission received a comment from Titanium Environmental.

Response to Comments

Comment

Titanium Environmental Commented that it is unclear in proposed Chapter 326 and amended Chapter 335 if a Class 2 Texas Waste Code is required on the Solid Waste Registration of an exempt medical waste operator for on-site medical waste generation and storage, and to please clarify.

Response

Chapter 335 amendment updates references to the medical waste provisions from Chapter 330, Subchapter Y to Chapter 326, in the classification of medical waste as type 2 waste. Exempt medical waste facilities for on-site medical waste generation and storage are not industrial facilities, and therefore, are not required to obtain a Class 2 Texas Waste Code for the Solid Waste Registration. No changes will be made in this chapter in regards to this comment.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry

out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted amendment implements THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

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 May 5, 2016.

TRD-201602191

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: May 26, 2016

Proposal publication date: December 25, 2015

For further information, please call: (512) 239-2613

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.34

The General Land Office (GLO) adopts amendments to §15.34 (relating to Certification Status of Village of Surfside Beach Dune Protection and Beach Access Plan) without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1342). Section 15.34 will not be republished.

BACKGROUND AND JUSTIFICATION

The Village of Surfside Beach's (Village) Dune Protection and Beach Access Plan (Plan) was first adopted on December 12, 2000 and was most recently amended to adopt an increase to their existing Beach User Fee (BUF), which was certified by the GLO as consistent with state law and became effective on March 2, 2015. The Village City Council adopted amendments to its Plan on September 28, 2015 and submitted the amended Plan to the GLO with a request for certification that the Plan is consistent with state law.

The amendments to the Village Plan establish standards for avoiding impacts to dunes and dune vegetation, off-site compensation requirements, notice of proposed dune mitigation activities, the use of fibercrete within the beachfront construction area, and modifies its Beach User Fee (BUF) plan and restricts vehicular beach access to a section of beach.

The amendments to Sections 2 and 3 of the Plan adopt provisions for clarity or requirements and make grammatical corrections. Specifically, the Plan adopts standards for giving notice to adjacent landowners of proposed dune mitigation plans, establishes standards to employ methods that will have no adverse effects to dunes and dune vegetation and clarifies conditions for

off-site compensation and the eligibility of off-site compensation for affected dunes and dune vegetation.

The GLO has reviewed the amendments related to Sections 2 and 3 of the Plan and determined that the amendments provide greater protection for the beach and dune system by providing clear, reasonable and practicable standards to avoid impacts to dunes and dune vegetation and provide parties directly impacted by damage to the dune system with an opportunity to comment on activities that may adversely affect dunes and dune vegetation adjacent to their property. The amendments clarifying off-site compensation eligibility ensure that a local procedure is in place to allow for off-site compensation should there be no practicable alternatives to compensate on-site.

The coastal environment is an interdependent system wherein adverse impacts to the dunes or dune vegetation in one location can have impacts that affect the areas immediately adjacent to impacted areas. It is important to provide landowners adjacent to an area where dunes and dune vegetation will be adversely affected an opportunity to review and comment on impacts to the integrity of the dune system, and therefore, their own property, and comment on the impacts of construction, the proposed mitigation plan, and the issuance of a permit. The proposed amendments to Sections 2 and 3 of the Plan are consistent with requirements in 31 TAC §15.3 and §15.4.

The amendments to Section 5 of the Plan adopt provisions to allow paving or altering the ground within the footprint of a habitable structure located landward of 200 feet from the line of vegetation or landward of an eroding area boundary in eroding areas. The amendments allow the placement of unreinforced fibercrete in four-foot by four-foot sections if construction is located at least 25 feet landward of the landward toe of the dune, or 100 feet landward of the line of vegetation if no dunes exist, and are located beneath the footprint of a habitable structure. The amendments adopt the requirements in 31 TAC §15.6(f)(3) and (5).

The amendments include a variance from 31 TAC §15.5(b)(3) and §15.6(f)(3), which prohibits paving or altering the ground outside the footprint of a habitable structure in eroding areas, except for the stabilization of driveways using pervious materials. The Village will allow the construction of driveways constructed with unreinforced fibercrete in four-foot by four-foot sections, four-inches thick and separated by expansion joints, provided that the size of driveways is restricted to no greater than twenty (20) feet wide, not to exceed ten (10) percent of the lot square footage, and the driveway is located more than 100 feet from the line of vegetation.

The commitment from the Village to establish a limit on the size of the driveway and to limit impervious materials to the use of unreinforced fibercrete to the Dune Protection Line eases the burden of clean-up in a post-storm environment. It is consistent with the requirements of the Brazoria County Erosion Response Plan, which provides for measures to reduce the amount of public expenditures spent after a storm. It also allows for construction that minimizes hydrological impacts. The GLO has determined that the Village has provided reasoned justification for the variance from 31 TAC §15.5(b)(3) and §15.6(f)(3) and provided adequate measures to ensure the variance is as protective as the existing standards. The variance allows for flexible and balanced economic development with neighboring uses while minimizing damage to neighboring properties and the public beach following a storm, resulting in construction that is protective of the public beach and the dune system.

The amendment to Section 6 of the Plan prohibits on-beach vehicular access from Thunder Road to Jettyview Park, which is approximately 810 linear feet of beach. The Village identifies that tidal influences and high erosion rates of seven to eight feet per year, as identified by the Bureau of Economic Geology, have significantly narrowed the width of the beach in this area. The Village also identifies that it can cause a public safety concern to vehicular access at high tides. To ensure public access to this beach and to comply with the requirements for vehicular restrictions, the Village and Brazoria County entered into an inter-local agreement to dedicate 54 parking spaces at Jettyview Park to be available specifically for beach access. Signage will be conspicuously posted in the area explaining the nature and extent of vehicular controls, parking and the access point, including access for disabled persons.

The GLO has reviewed the Village's amendments to restrict vehicular access and has determined that the presumptive criteria for parking spaces on or adjacent to the beach and allowing for ingress and egress ways no farther apart than 1/2 mile as set forth in 31 TAC §15.7(h)(1)(A) and (B) have been met. Although, the GLO believes the Plan preserves public access to and use of the beach, this determination is subject to the GLO's long-term monitoring of the site for compliance with the Plan. If the Village fails to implement its Plan, including the commitments made therein, the GLO can require the Village to lift the restriction or withdraw certification of all or a portion of the Plan under 31 TAC §15.10(f) and (g).

The amendment to Section 8 of the Plan allows the Village to expand the geographic scope of the BUF Plan to charge an annual BUF rate to \$12 for parking motor vehicles along the beach-facing side of Beach Drive, immediately adjacent to the beach. This area has been a free parking area for beach goers. In the short term, the Village indicates that additional revenue generated by the additional BUF will enable the Village to provide beach goers with additional portable restrooms spaced 300 feet apart, garbage cans every 100 feet, daily trash pick-up, and additional shade structures for public use. The Village will also use the BUF to construct two additional dune walkovers at Crab Street and Texas Street to allow access over the revetment to the beach, as well as construct rinse-off stations for public use.

In the long term, the Village committed to using increased BUF revenues as match for future and on-going beach nourishment projects in areas prone to high erosion rates.

The GLO has reviewed the Village's amendments related to the BUF Plan and determined that it does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services and is consistent with §15.8 of the Beach/Dune rules and the Open Beaches Act. The additional BUF revenue will provide the Village with additional resources so that it can provide beach related services within its jurisdiction. This determination is based on the Village's commitments outlined in the short and long-term goals that justify the expanded geographic range of the BUF. The GLO will monitor the Village's compliance with the Plan and its commitments. If the Village fails to comply with its Plan, the GLO can withdraw certification of all or a portion of the Plan under 31 TAC §15.10(f) and (g).

The GLO received no public comments on the proposed amendments.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendments are subject to the Coastal Management Program as provided for in the Texas Natural Resources Code

§33.2053 and 31 TAC §505.11(a)(1)(J) and (c), relating to the Actions and Rules Subject to the CMP. GLO has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations and has determined that the proposed action is consistent with 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System).

The amendments are consistent with 31 TAC §501.12(1), (2), and (3) which provides for the protection and preservation and enhancement of the coastal zone, sound management of coastal resources, and compatible economic development and multiple uses of the coastal zone, and the minimization of loss of life and property due to impairment and loss of protective features of coastal resources; and 31 TAC §501.12(4) and (5) which provides for the enhancement of public access and enjoyment of the coastal zone in a manner compatible with private property and other uses, and balances other uses of the coastal zone.

The amendments clarifying avoidance and off-site compensation to adverse effects to dunes and dune vegetation are consistent with 31 TAC §501.12(1) and (2) because they allow for the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and value of coastal natural resource areas (CNRAs). Assurances of individuals applying for beachfront construction permits employing reasonable and practicable standards to avoid impacts to dunes and dune vegetation and ensures the sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

The amendment authorizing fibercrete is consistent with 31 TAC §501.12(2) and (3) because it provides for sound management of coastal resources and compatible development, allows multiple uses of the coastal zone, balances economic development with neighboring uses, and minimizes damage to neighboring properties and the public beach following a storm. The amendment requiring notice to adjacent landowners of proposed dune mitigation activities is consistent with 31 TAC §501.12(1), (2) and (3) because it enhances protection for and preservation of critical dunes, balances economic development with neighboring uses, and minimizes loss of human life and property by protecting critical dunes.

The amendment that modifies the Village's BUF Plan is consistent with 31 TAC §501.12(4) and (5), because it ensures and enhances planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone. It also balances the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing Coastal Natural Resource Areas (CNRAs), the benefits minimizing loss of human life and property, and the benefits from access to and enjoyment of the coastal zone.

The amendment related to the location of beach access at Thunder Road to Jettyview Park is consistent with 31 TAC §501.12(2), (4) and (5), because it preserves access to and use of the public beach by allowing the public to utilize dedicated beach parking with adequate pedestrian pathways to access a section of beach that has narrowed significantly over time. The amendment ensures planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone. It also balances the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring,

and enhancing Coastal Natural Resource Areas (CNRAs), and the benefits from access to and enjoyment of the coastal zone.

The amendments are also consistent with CMP policies in §501.26(a)(2) and (4) (relating to Policies for Construction in the Beach/Dune System) by establishing standards that protect dunes and enhance and preserve the ability of the public, individually and collectively, to exercise its rights of use of and access to and from public beaches. The fibercrete, notice to adjacent landowner, and dune avoidance and compensation amendments ensure that construction within critical dune areas do not materially weaken dunes or materially damage dune vegetation, impacts to dunes are adequately compensated for, and construction is sited, designed, maintained, and operated so that adverse effects to the dunes and the public beach easement are avoided to the greatest extent practicable. The amendment related to the location of beach access at Thunder Road to Jettyview Park ensures that the ability of the public to exercise its rights and use of and access to and from public beaches is preserved.

The GLO received no public comments on the proposed amendment.

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(c), which provides the GLO with the authority to adopt rules governing restriction on vehicular traffic on public beaches, the imposition or increase of beach user fees, construction on land adjacent to and landward of public beaches, and the certification of local government beach access and use plans and public beach vehicular traffic plans as consistent with state law. The amendments are also adopted under Texas Natural Resources Code §63.121 and §63.054(c) which provides the GLO with the authority to adopt rules governing certification of local government procedures and requirements governing the review and approval of dune permits and for certification of those procedures and requirements as consistent with state law.

Texas Natural Resources Code §§61.011, 61.015, 61.022, 63.121 and 63.054 are affected by the proposed amendments.

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 May 5, 2016.

TRD-201602176

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

General Land Office

Effective date: May 25, 2016

Proposal publication date: February 26, 2016

For further information, please call: (512) 475-1859



PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 358. STATE WATER PLANNING GUIDELINES

SUBCHAPTER B. DATA COLLECTION

31 TAC §358.6

The Texas Water Development Board (TWDB) adopts amendments to Chapter 358, State Water Planning Guidelines, §358.6, relating to Water Loss Audits. The amendments are adopted without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 944).

DISCUSSION OF THE ADOPTED AMENDMENTS.

In 2013, the 83rd Texas Legislature passed House Bill (H.B.) 3605 amending Texas Water Code §16.0121 regarding the water loss audit that is required of all retail public utilities providing potable water. H.B. 3605 required a retail public utility providing potable water that receives financial assistance from the TWDB to use a portion of that, or any additional, financial assistance to mitigate the utility's system water loss if the utility's system water loss met or exceeded a threshold established by agency rule.

In late 2014, the TWDB adopted 31 TAC §358.6 (relating to Water Loss Audits), which establishes water loss thresholds for retail public utilities providing potable water that apply for financial assistance from the TWDB. The thresholds were developed based on industry performance indicators for both apparent loss (including meter inaccuracies, billing adjustments, and theft) and for real loss (actual loss of water from leaks and breaks and also loss from unknown and unreported sources).

In 2015, the 84th Texas Legislature passed H.B. 949, amending §16.0121(g) of the Water Code allowing the TWDB, on the request of a retail public utility, to waive the requirement that the utility use the financial assistance to mitigate water loss if the TWDB finds that the utility is satisfactorily addressing its water loss.

The adopted amendment to 31 TAC §358.6(f) requires a utility that is identified as meeting or exceeding the thresholds, and which requests a waiver, to provide the Executive Administrator of the TWDB with information regarding the activities or programs it has, or is planning to have, and the source of funding for their water loss program.

The adopted amendment also deletes 31 TAC §358.6(g) because it is no longer applicable.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Section 358.6(f) is revised for consistency with §16.0121(g) of the Texas Water Code, as amended.

Section 358.6(g) has been deleted because it is unnecessary and is no longer applicable.

REGULATORY IMPACT ANALYSIS

The TWDB has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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 intent of the rulemaking is more closely align the TWDB's rules related to water loss audits to the Texas Water Code related to the same.

Even if the adopted rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because 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. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not 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; and 4) is not proposed solely under the general powers of the agency, but rather §16.0121 of the Texas Water Code. Therefore, this rulemaking does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The TWDB evaluated this adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking is to more closely align the TWDB's rules related to water loss audits to the Texas Water Code related to the same. The rulemaking would substantially advance this stated purpose by incorporating applicable language from the Texas Water Code.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because this is an action that is reasonably taken to fulfill an obligation imposed by state law under Chapter 16 of the Texas Water Code, which is exempt under Texas Government Code, §2007.003(b)(4). The TWDB is an agency that must coordinate the submission of the required water loss audit, and must compile information included in the water loss audit and determine the utility's use of financial assistance from the TWDB to mitigate system water loss in accordance with §16.0121 of the Texas Water Code.

Nevertheless, the TWDB further evaluated this adopted rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007.

Promulgation and enforcement of this rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden 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 regulation. In other words, this rule requires compliance with the submission of a water loss as required by state law unless a waiver is appropriately requested by a retail public utility. This will not burden, restrict, or limit an owner's right to property. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENT

One written comment from the Lone Star Chapter of the Sierra Club was received.

RESPONSE TO COMMENTS

Comment

The Lone Star Chapter of the Sierra Club expressed their agreement with the TWDB's basic approach concerning the amendments to Chapter 358. However, they stated that the amendments needed further specificity and should be complemented by TWDB guidance, with input from stakeholders and perhaps the Water Conservation Advisory Council, to assist retail public utilities applying for financial assistance, the general public, and TWDB staff in evaluating what constitutes a demonstration that a utility is satisfactorily addressing its water loss.

They also recommended the following language on items to be included by a utility in its request for waiver be added:

its water loss reduction targets, the timetable for meeting those targets, and the schedule for reporting to the board on the utility's progress in meeting those targets,

Response

As defined by 31 TAC §358.6(a)(7), mitigation includes action taken by the utility, not necessarily a volume of water. Information provided by the utility about its activities to mitigate its water loss could be considered its target. The information provided by a utility, as well as the anticipated completion date of the funded project, serve as a timetable for implementation. Finally, every utility with an active financial obligation with TWDB is required to submit a water loss audit annually. This information will be used by TWDB to track the utility's progress in mitigating its water loss. TWDB Conservation staff plans to prepare guidance to assist in evaluating whether a utility is satisfactorily addressing its water loss as part of the application for financial assistance process. No changes to the proposed rule were made in response to this comment.

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and also under the authority of Texas Water Code §16.0121, which authorizes the TWDB to waive the water loss mitigation requirements under specified conditions.

This rulemaking affects Texas Water Code, Chapter 16.

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 May 5, 2016.

TRD-201602197

Les Trobman

General Counsel

Texas Water Development Board

Effective date: May 25, 2016

Proposal publication date: February 5, 2016

For further information, please call: (512) 463-7686

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING-- PAYROLL

34 TAC §5.49

The Comptroller of Public Accounts adopts new §5.49, concerning longevity pay, without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2131). The new section clarifies longevity pay provisions for state agencies and their employees.

Subsection (a) provides applicable definitions.

Subsection (b) sets forth the legal authority that governs longevity pay.

Subsection (c) requires state agencies to verify the amount of lifetime service credit that their current employees have accrued in previous employments.

Subsection (d) sets forth the process for establishing a state employee's "effective service date," which is used to determine the amount of the employee's lifetime service credit.

Subsections (e) - (l) address certain longevity pay issues that arise when a state employee works part of a workday; terminates employment after the first workday of the calendar month; returns to work as a state employee after retiring from state employment; retires under a public retirement system; receives hazardous duty pay; works for a state agency under a contract for less than 12 calendar months each year; and leaves a position that accrues lifetime service credit to serve in the military and is later reemployed with the state.

No comments were received regarding adoption of the new section.

The section is adopted under Government Code, §659.047, which requires the comptroller to adopt rules to administer longevity pay.

This section implements Government Code, Chapter 659, Subchapter D, regarding longevity pay.

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 May 5, 2016.

TRD-201602175

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Effective date: May 25, 2016

Proposal publication date: March 18, 2016

For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 431. FIRE INVESTIGATION

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 431, Fire Investigation, Subchapter A, Minimum Standards for Arson Investigator Certification, concerning §431.9, Minimum Standards for Master Arson Investigator Certification, and Subchapter B, Minimum Standards for Fire Investigator Certification, concerning §431.209, Minimum Standards for Master Fire Investigator Certification. The amendments are adopted without changes to the proposed text as published in the February 26, 2016, *Texas Register* (41 TexReg 1365) and will not be republished.

The amendments are adopted to address current requirements only allowing criminal justice courses related to fire and arson investigation to be used to obtain Master level certification for both Arson and Fire Investigators.

The adopted amendments will allow all criminal justice courses to be used to satisfy the 18-semester hour requirement toward the Master levels of Fire or Arson Investigator certifications.

No comments were received from the public regarding adoption of the amendments.

SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §431.9

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which allows the commission to establish qualifications for certifying individuals as fire protection personnel.

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 May 3, 2016.

TRD-201602131

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Effective date: May 23, 2016

Proposal publication date: February 26, 2016

For further information, please call: (512) 936-3812



SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

37 TAC §431.209

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which allows the commission to establish qualifications for certifying individuals as fire protection personnel.

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 May 3, 2016.

TRD-201602132

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Effective date: May 23, 2016

Proposal publication date: February 26, 2016

For further information, please call: (512) 936-3812



CHAPTER 437. FEES

37 TAC §437.5

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 437, Fees, concerning §437.5, Renewal Fees. The amendments are adopted without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1366) and will not be republished.

The amendments are adopted to reduce the renewal fees for certification of fire protection personnel pursuant to a reduction in agency costs.

The adopted amendments will reduce the cost to cities for the annual renewal of their fire protection personnel.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.026, which allows the commission to set certain fees collected for each initial fire protection personnel certification issued and the annual renewal of those certifications.

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 May 3, 2016.

TRD-201602129

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Effective date: May 23, 2016

Proposal publication date: February 26, 2016

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 44. CONSUMER MANAGED PERSONAL ATTENDANT SERVICES

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§44.102, 44.202, and 44.301, in Chapter 44, Consumer Managed Personal Attendant Services. The amendments to §44.102 and §44.202 are adopted with changes to the proposed text published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 453). The amendment to §44.301 is adopted without changes to the proposed text. Section 44.301 will not be republished.

The adoption amends rules related to interest lists for consumer managed personal attendant services (CMPAS), which is provided under Title XX, Subtitle A of the Social Security Act. These amendments implement §531.0931 of the Texas Government Code, as added by Senate Bill 169, 84th Legislature, 2015, and make the rules consistent with other DADS rules.

The adopted rules describe how a person's name is added to a CMPAS interest list and how CMPAS interest lists are maintained. The adopted rules require DADS to keep the name of a military family member who resides out of state on an interest list while a military member is on active duty or for up to one year after a former military member's active duty ends. The adopted rules describe when an applicant's name may be reinstated on an interest list after being removed and how an interest list request date is assigned, including when DADS reinstates an applicant's name to the interest list with the original request date. The adopted rules also describe the notification the applicant receives from DADS regarding the reinstatement.

The adopted rules require a provider, if a person requests that the provider add an applicant's name to a CMPAS interest list, to request specified information about the applicant and send the information and the date and time of the person's request to DADS. The adopted rules, for clarity, add a reference to the requirements a provider must comply with after DADS refers an applicant to the provider. The adopted rules also clarify when a provider must begin providing services to an eligible individual. The adoption also updates terminology used in the subchapter.

DADS received written comments from the Coalition for Nurses in Advanced Practice and one individual. A summary of the comments and the responses follows.

Comment: A commenter suggested changes in §44.102(22) to the definition of "practitioner" to reflect changes in the title and licensing for advanced practice registered nurses (APRNs).

Response: The agency agrees and made the suggested changes in §44.102(22) to update the title and licensing for APRNs.

Comment: A commenter stated that according to §44.202, individuals who want to be placed on the CMPAS interest list must furnish the personally identifiable information (PII) listed in §44.202(c)(1) - (9). The commenter stated that an agency contracting with DADS and a managed care organization (MCO) to deliver authorized services to individuals will be put in a position of screening the individual for services and requesting PII the provider does not need to provide services. The commenter stated that many potential problems exist with the provision of this information to a provider agency and that putting a person on the interest list would require the person's signature to access and use the PII required to place the individual on an interest list and those inquiries are made by phone. The

commenter also stated that the process now requires an agency to refer the individual to the 2-1-1 Texas Program, citing 45 CFR §164.502(b) and §164.514(d).

Response: The provider requirements in §44.202(c) and (d) do not apply to an agency contracted with an MCO; do not require an agency to screen an applicant for services; do not require a signature from the applicant or person contacting the provider; and do not require the provider to refer the individual to the 2-1-1 Texas Program. To clarify the requirements in §44.202(c) for a provider to request information, the agency made changes to require the provider to follow DADS instructions in the CMPAS Provider Manual to request the applicant's information listed in (c)(1) - (9). The agency also made a change in §44.202(d)(1) to require the provider to send DADS information obtained in accordance with subsection (c) rather than (c)(1) - (9). The instructions in the CMPAS Provider Manual, revised effective February 1, 2016, require a provider to obtain only the information listed in §44.202(c)(1) - (3) for DADS to add an applicant's name to the interest list. Obtaining the information listed in §44.202(c)(4) - (9) will prevent duplicate records on the CMPAS interest list and avoid follow-up calls to obtain additional information.

SUBCHAPTER A. INTRODUCTION

40 TAC §44.102

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

§44.102. Definitions.

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

- (1) §1915(c)--A section of the Social Security Act that allows states to establish, by waiver of certain Medicaid requirements, alternative community-based services for individuals who qualify for institutional services.
- (2) Applicant--A Texas resident who requests services under the CMPAS Program.
- (3) Assessor of need--A provider employee responsible for determining an applicant's or individual's need for CMPAS.
- (4) Attendant--A person who provides direct care to an individual.
- (5) Block grant option--One of three CMPAS Program service delivery and payment options. In the block grant option, the individual is the employer of record of an attendant and the provider is the employer of record of a substitute attendant.
- (6) Consumer directed services (CDS) option--One of three CMPAS Program service delivery and payment options. In the CDS option, the individual is the employer of record of the attendant and substitute attendant.
- (7) CMPAS Program--Consumer Managed Personal Attendant Services Program. A DADS program for personal attendant services in which individuals manage their attendant services to varying degrees.

(8) Contract--The written agreement between DADS and a provider to provide services to individuals eligible under this chapter in exchange for payment.

(9) Contract manager--A DADS employee who is responsible for the overall management of a contract.

(10) DADS--The Department of Aging and Disability Services.

(11) DADS region--A region of Texas designated by DADS in which the CMPAS Program is available.

(12) DADS regional designee--A DADS employee appointed by the DADS regional director of a DADS region.

(13) Day--A calendar day, including weekends and holidays.

(14) Family member--A person for whom an individual has a duty under state law to care for.

(15) Financial management services agency--An entity that contracts with DADS to provide financial management services, as defined in §41.103 of this title (relating to Definitions).

(16) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(17) Health-related task--An activity of daily living, a health maintenance task, or a nursing task, as described in 22 TAC Chapter 225.

(18) IDT--Interdisciplinary team. A designated group of persons that meets to discuss service delivery issues of an individual, as described in §44.502(a) of this chapter (relating to Convening an Interdisciplinary Team).

(19) Individual--A person enrolled in the CMPAS Program.

(20) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(21) Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(22) Practitioner--A physician currently licensed in Texas, Louisiana, Arkansas, Oklahoma, or New Mexico; a physician assistant currently licensed in Texas; or an advanced practice registered nurse licensed by the Texas Board of Nursing.

(23) Practitioner's statement--The DADS Practitioner's Statement of Medical Need form (DADS Form 3052).

(24) Provider--A home and community support services agency that contracts with DADS to provide services under the CMPAS Program.

(25) Representative--A person designated by an individual, such as the individual's spouse, relative, or friend; or the individual's legal representative.

(26) Service plan--A document that lists the service tasks and states the hours of services agreed to by the individual and assessor of need.

(27) State mental health facility--A state hospital or a state center with an inpatient psychiatric component operated by the Texas Department of State Health Services.

(28) Substitute attendant--A person who, on a temporary basis and in place of an attendant, provides services to an individual.

(29) Traditional service option--One of three CMPAS Program service delivery and payment options. In the traditional service option, the provider is the employer of record of the attendant and substitute attendant.

(30) Working day--Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code §662.003(a) or (b).

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 May 3, 2016.

TRD-201602113

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: May 23, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-3501



SUBCHAPTER B. ELIGIBILITY AND SERVICE PLANS

40 TAC §44.202

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

§44.202. *CMPAS Interest Lists.*

(a) DADS maintains a CMPAS interest list for each DADS region. An interest list contains the names of applicants who are interested in receiving services through the CMPAS Program.

(b) A person may request that an applicant's name be added to a CMPAS interest list in a DADS region by contacting:

- (1) a provider;
- (2) a DADS regional office, or
- (3) the 2-1-1 Texas Program.

(c) If a person contacts a provider, as described in subsection (b) of this section, the provider must follow DADS instructions in the CMPAS Provider Manual available at www.dads.state.tx.us, to request the applicant's:

- (1) name;
- (2) a physical address in Texas and a mailing address;
- (3) birth date;
- (4) phone number;
- (5) social security number;
- (6) current living arrangements;
- (7) employment status;
- (8) DADS individual number; and
- (9) status regarding receipt of Supplemental Security Income.

(d) Within five working days after the contact described in subsection (b)(1) of this section, a provider must send to a DADS regional office:

- (1) the applicant information obtained in accordance with subsection (c) of this section; and
- (2) the date and time the person contacted the provider.

(e) DADS adds an applicant's name to a CMPAS interest list if:

(1) a request is made in accordance with subsection (b) of this section; or

(2) an applicant's name is on the interest list for a DADS region and the applicant or a representative notifies DADS that the applicant has moved to another DADS region and requests that the applicant's name be added to the interest list for the DADS region to which the applicant has moved.

(f) DADS adds an applicant's name to an interest list with an interest list request date as follows:

(1) for a request to add an applicant's name to the interest list made in accordance with subsection (b) of this section, the date of the request; or

(2) for a request to add an applicant's name to the interest list made in accordance with subsection (e)(2) of this section, the date of the original request made in accordance with subsection (b) of this section.

(g) DADS removes an applicant's name from a CMPAS interest list if:

(1) the applicant or representative requests that the applicant's name be removed from the interest list;

(2) the applicant moves out of Texas, unless the applicant is a military family member living outside of Texas:

(A) while the military member is on active duty; or

(B) for less than one year after the former military member's active duty ends;

(3) the applicant or representative declines an offer of CMPAS Program services, unless the applicant is a military family member living outside of Texas:

(A) while the military member is on active duty; or

(B) for less than one year after the former military member's active duty ends;

(4) the applicant is a military family member living outside of Texas for more than one year after the former military member's active duty ends;

(5) the applicant is deceased; or

(6) DADS denies an applicant's eligibility for the CMPAS Program and the applicant has had an opportunity to exercise the applicant's right to request a fair hearing in accordance with §44.503 of this chapter (relating to Fair Hearing) and did not request a fair hearing, or requested a fair hearing and did not prevail.

(h) If DADS removes an applicant's name from a CMPAS interest list in accordance with subsection (g)(1) - (4) of this section and, within 90 calendar days after the name was removed, DADS receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) reinstates the applicant's name to the interest list with an interest list request date described in subsection (f)(1) or (2) of this section; and

(2) notifies the applicant in writing that the applicant's name has been reinstated to the interest list in accordance with paragraph (1) of this subsection.

(i) If DADS removes an applicant's name from a CMPAS interest list in accordance with subsection (g)(1) - (4) of this section and, more than 90 calendar days after the name was removed, DADS receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) adds the applicant's name to the interest list with an interest list request date of:

(A) the date DADS receives the oral or written request; or

(B) because of extenuating circumstances as determined by DADS, the original request date described in subsection (f)(1) or (2) of this section; and

(2) notifies the applicant in writing that the applicant's name has been added to the interest list in accordance with paragraph (1) of this subsection.

(j) If DADS removes an applicant's name from a CMPAS interest list in accordance with subsection (g)(6) of this section and DADS subsequently receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) adds the applicant's name to the interest list with an interest list request date of the date DADS receives the oral or written request; and

(2) notifies the applicant in writing that the applicant's name has been added to the interest list in accordance with paragraph (1) 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 May 3, 2016.

TRD-201602114

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: May 23, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-3501

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SUBCHAPTER C. SERVICE DELIVERY IN ALL CMPAS OPTIONS

40 TAC §44.301

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 May 3, 2016.

TRD-201602115

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: May 23, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-3501

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CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), new Subchapter B, Interest Lists, consisting of §§48.1301 - 48.1303, and §48.2702 in Subchapter F, In Home and Family Support Program; amendments to §48.2701, in Subchapter F, In Home and Family Support Program, §§48.2907, 48.2910, and 48.2915 in Subchapter H, Eligibility; and the repeal of Subchapter D, Pilot Project for Persons with AIDS, consisting of §§48.2301 - 48.2305; §48.2702 in Subchapter F, In-Home and Family Support Program; §48.2931 in Subchapter H, Eligibility; and Subchapter J, Community Based Alternatives (CBA) Program, consisting of §§48.6001 - 48.6003, 48.6005 - 48.6011, 48.6015, 48.6020 - 48.6024, 48.6026, 48.6028, 48.6030 - 48.6032, 48.6040, 48.6050, 48.6052, 48.6054, 48.6056, 48.6058, 48.6060, 48.6062, 48.6066, 48.6068, 48.6070, 48.6072, 48.6074, 48.6076, 48.6078, 48.6080, 48.6082, 48.6084, 48.6085, 48.6086, 48.6088, 48.6090, 48.6092, 48.6094, 48.6096, 48.6098, 48.6100, 48.6102, 48.6104, 48.6106, 48.6108, 48.6109, 48.6110, 48.6112, 48.6114, in Chapter 48, Community Care for Aged and Disabled. New §48.1301 is adopted with changes to the proposed text published in the January 8, 2016, issue of the

Texas Register (41 TexReg 457). New §48.1302, §48.1303, and 48.2702; amendments to §48.2701, §48.2907, §48.2910, and §48.2915; and the repeal of §§48.2301 - 48.2305; §48.2702, 48.2931, 48.6001 - 48.6003, 48.6005 - 48.6011, 48.6015, 48.6020 - 48.6024, 48.6026, 48.6028, 48.6030 - 48.6032, 48.6040, 48.6050, 48.6052, 48.6054, 48.6056, 48.6058, 48.6060, 48.6062, 48.6066, 48.6068, 48.6070, 48.6072, 48.6074, 48.6076, 48.6078, 48.6080, 48.6082, 48.6084, 48.6085, 48.6086, 48.6088, 48.6090, 48.6092, 48.6094, 48.6096, 48.6098, 48.6100, 48.6102, 48.6104, 48.6106, 48.6108, 48.6109, 48.6110, 48.6112, and 48.6114 are adopted without changes to the proposed text.

The purpose of the adoption, in part, is to describe how DADS maintains the interest lists in the DADS community care services and programs of adult foster care (AFC), day activity and health services (DAHS), emergency response services (ERS), family care (FC) services, the Home Delivered Meals (HDM) Program, the In-Home and Family Support Program (IH/FSP), the Residential Care (RC) Program, and the Special Services to Persons with Disabilities (SSPD) Program.

The adopted rules implement §531.0931, Texas Government Code, as added by Senate Bill 169, 84th Legislature, 2015, and align the rules with other DADS rules addressing interest lists. The adopted rules require DADS to keep the name of a military family member who resides out of state on an interest list while a military member is on active duty or for up to one year after a former military member's active duty ends. The adopted rules describe the conditions under which an applicant's name may be reinstated on an interest list after being removed and how an interest list request date is assigned, including when DADS reinstates an applicant's name to the interest list with the original request date. The adopted rules also describe the notification the applicant receives from DADS regarding the reinstatement.

The adopted rules update terminology and describe how DADS contacts an applicant to offer IH/FSP services, conducts the eligibility determination process, and provides notice regarding IH/FSP eligibility. A DADS case manager may conduct an initial interview by telephone to determine eligibility and more quickly complete an applicant's enrollment in the IH/FSP.

The adopted rules change the eligibility criteria for DADS Title XIX and XX DAHS to make them consistent with the criteria used by managed care organizations contracting with HHSC to provide DAHS in the Medicaid STAR PLUS waiver program.

The adoption also repeals rules governing a pilot program for persons with AIDS, respite care services, and the Community Based Alternatives (CBA) Program, two programs and a service that have been terminated.

Additional changes were made to update terminology and remove obsolete rules.

The repeal of Subchapter J deletes rules regarding the CBA Program. Conduct governed by Subchapter J that occurred before the effective date of its repeal is governed by the rules in effect on the date of the conduct and Subchapter J continues in effect for that purpose.

A change was made in §48.1301(8) to change "adult day care facility" to "day activity and health services facility." The change implements Senate Bill 1999, 84th Legislature, Regular Session, 2015, that amended the Texas Human Resources Code, Chapter 103, to rename these facilities.

DADS received written comments from the Adult Day Health Care Association of Texas and the Coalition for Nurses in Advanced Practice. A summary of the comments and the responses follows.

Comment: A commenter is concerned that the language stricken in §48.2915(4) could cause confusion regarding whether licensed nursing is a component of DAHS. The commenter stated the state plan clearly indicates that DAHS must be provided under the supervision of a nurse licensed by the state of Texas. The commenter asked that all of the language stricken in §48.2915(4) be added back into this rule.

Response: As described in §48.2915(4), a physician's orders for DAHS do not need to require nursing services for an applicant or client to be eligible for DADS Title XIX and XX DAHS. The Medicaid state plan does require the prescribed DAHS be provided under the supervision of a nurse licensed in the state of Texas, and a licensed DAHS facility is required in Title 40, Part 1, Texas Administrative Code, §98.62(a)(2), to have a facility nurse who must be a registered nurse or a licensed vocational nurse. In addition, a DAHS facility that contracts with DADS to provide DAHS is required in §98.206(1) to provide nursing services as required by an individual receiving services. The agency did not make a change in response to the comment.

Comment: A commenter stated that §48.2915(4) should be changed to allow for "practitioner's orders," instead of "physician's orders," because an advanced practice registered nurse who is an individual's primary care provider should be permitted to write and sign the individual's orders.

Response: The request to change "physician's order" to "practitioner's order" is outside the scope of these amendments. Making this change requires additional research and may be considered at a later time. No changes were made in response to the comment.

SUBCHAPTER B. INTEREST LISTS

40 TAC §§48.1301 - 48.1303

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

§48.1301. Definitions.

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

(1) AFC--Adult foster care. Services provided in a 24-hour living arrangement in an adult foster care home for persons who, because of physical, mental or emotional limitations, are unable to continue to function independently in their own homes.

(2) Applicant--A Texas resident interested in receiving a community care service or program.

(3) Case manager--A DADS employee who is responsible for case management activities.

(4) Community care service or program--Any of the following services and programs:

- (A) AFC;
- (B) DAHS;
- (C) ERS;
- (D) FC;
- (E) the HDM Program;
- (F) the IH/FSP;
- (G) the RC Program; and
- (H) the SSPD Program.

(5) Community care interest list--A list containing the names of applicants who are interested in receiving a community care service or program.

(6) DADS--The Department of Aging and Disability Services.

(7) DADS region--One of eleven regions of Texas that provide access to and support for DADS services.

(8) DAHS--Day activity and health services. Services described in Chapter 98, Subchapter H of this title (relating to Day Activity and Health Services (DAHS) Contractual Requirements) that are designed to meet the needs of an adult in a day activity and health services facility licensed in accordance with Texas Human Resources Code, Chapter 103.

(9) ERS--Emergency response services. Services described in Chapter 52 of this title (relating to Contracting to Provide Emergency Response Services) that provide electronic monitoring for functionally impaired adults who live alone or who are functionally isolated in the community.

(10) FC services--Family care services. In-home attendant services described in Chapter 47 of this title (relating to Contracting to Provide Primary Home Care Services) provided to adults.

(11) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(12) HDM Program--Home Delivered Meals Program. The program described in Chapter 55 of this title (relating to Contracting to Provide Home-Delivered Meals) in which a provider agency delivers meals to an individual.

(13) IH/FSP--In-Home and Family Support Program. The program described in Subchapter F of this chapter (relating to In-Home and Family Support Program) that provides direct grant benefits to an individual with physical disabilities who is four years of age or older and the individual's family to purchase disability-related services that help the individual remain living at home.

(14) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(15) Military family member--A person who is the spouse or child (regardless of age) of:

- (A) a military member; or
- (B) a former military member.

(16) RC Program--Residential Care Program. A program that provides the services described in §46.41 of this title (relating to Contracting to Provide Special Services to Persons with Disabilities) in a licensed assisted living facility.

(17) Responsible party--A person who is:

- (A) an applicant's parent or legal guardian; or
- (B) anyone an adult applicant designates as the applicant's representative with regard to a matter described in this subchapter.

(18) SSPD Program--Special Services to Persons with Disabilities Program. The program described in Chapter 58 of this title (relating to Contracting to Provide Special Services to Persons with Disabilities) designed to assist a person:

- (A) develop the skills needed to remain in the community, living as independently as possible; and
- (B) achieve habilitative or re-habilitative goals.

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 May 3, 2016.

TRD-201602116

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: May 23, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-3501



SUBCHAPTER D. PILOT PROJECT FOR PERSONS WITH AIDS

40 TAC §§48.2301 - 48.2305

The repeals are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 May 3, 2016.

TRD-201602117

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: May 23, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-3501



SUBCHAPTER F. IN-HOME AND FAMILY SUPPORT PROGRAM

40 TAC §48.2701, §48.2702

The amendment and new section are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 May 3, 2016.

TRD-201602119

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: May 23, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-3501



40 TAC §48.2702

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 May 3, 2016.

TRD-201602118

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: May 23, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-3501



SUBCHAPTER H. ELIGIBILITY

40 TAC §§48.2907, 48.2910, 48.2915

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid 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 May 3, 2016.

TRD-201602120

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: May 23, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-3501



40 TAC §48.2931

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid 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 May 3, 2016.

TRD-201602121

Lawrence Hornsby
General Counsel

Department of Aging and Disability Services

Effective date: May 23, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-3501



SUBCHAPTER J. COMMUNITY BASED ALTERNATIVES (CBA) PROGRAM

40 TAC §§48.6001 - 48.6003, 48.6005 - 48.6011, 48.6015, 48.6020 - 48.6024, 48.6026, 48.6028, 48.6030 - 48.6032, 48.6040, 48.6050, 48.6052, 48.6054, 48.6056, 48.6058, 48.6060, 48.6062, 48.6066, 48.6068, 48.6070, 48.6072, 48.6074, 48.6076, 48.6078, 48.6080, 48.6082, 48.6084 - 48.6086, 48.6088, 48.6090, 48.6092, 48.6094, 48.6096, 48.6098, 48.6100, 48.6102, 48.6104, 48.6106, 48.6108 - 48.6110, 48.6112, 48.6114

The repeals are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid 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 May 3, 2016.

TRD-201602123

Lawrence Hornsby
General Counsel

Department of Aging and Disability Services

Effective date: May 23, 2016

Proposal publication date: January 8, 2016

For further information, please call: (512) 438-3501



PART 15. TEXAS VETERANS COMMISSION

CHAPTER 461. VETERANS EDUCATION

SUBCHAPTER A. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

40 TAC §§461.20, 461.30, 461.40, 461.50, 461.60, 461.70, 461.80, 461.90, 461.100, 461.120, 461.130

The Texas Veterans Commission (Commission) adopts amendments to 40 TAC Chapter 461, Subchapter A, §461.20, concerning Definitions; §461.30, concerning Hazlewood Act Exemption; §461.40, concerning Veteran Eligibility; §461.50, concerning Spouse's Eligibility; §461.60, concerning Children's Eligibility; §461.70, concerning Hazlewood Legacy Act Eligibility; §461.80, concerning the Application; §461.90, concerning Supporting Documentation for the Hazelwood Act Exemption Application; §461.100, concerning Subsequent Hazlewood Exemption Award; and §461.120, concerning Reporting; and adopts new §461.130, concerning Records Retention by Institutions, without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1367). The amendments and new section will not be republished.

The rules are adopted following a comprehensive review of the rules and collaboration with the Texas Higher Education Coordinating Board, the Legislative Budget Board, university systems, independent universities, select community colleges and community college systems, and the Texas Coalition of Veterans Organizations. The amendments and new rule reflect the current practices regarding administration of the Hazlewood Act Exemption and provide clarification where needed.

No comments were received regarding the proposed amendments and new rule.

The amendments and new rules are adopted under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; Texas Government Code §434.0079 relating to the Commission's duties regarding certain tuition and fee exemptions for veterans and family members; and Texas Education Code §54.341, authorizing the Commission to adopt rules for the administration of an exemption program for Texas veterans and their dependents at public institutions of higher education in the state (The Hazlewood Act).

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 May 5, 2016.

TRD-201602198

Rufus Coburn
Director, Veterans Education

Texas Veterans Commission

Effective date: May 25, 2016

Proposal publication date: February 26, 2016

For further information, please call: (512) 463-3168



PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES
SUBCHAPTER M. SUBSTITUTE-CARE SERVICES
DIVISION 2. NOTICE OF SIGNIFICANT EVENTS

40 TAC §§700.1351, 700.1353, 700.1355, 700.1357, 700.1359

The Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS), new §§700.1351, 700.1353, 700.1355, 700.1357, and 700.1359 without changes to the proposed text published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1372).

The justification for the new sections is to implement §264.018, Texas Family Code, and describe what should be considered a "significant event" for which notice must be provided by DFPS to a child's parent and other parties, including matters required by the statute, as well as some additional events agreed to by the negotiated rulemaking committee discussed below. The rules also describe the categories of individuals and entities who must receive notice of significant events under new Division 2, and the rules outline the time periods by which certain notices must be given when a significant event occurs in the life of a child in DFPS conservatorship.

Texas Family Code requirements regarding when and to whom DFPS must give notice when a significant event occurs in the life of a child in DFPS managing conservatorship were modified during the 84th Legislative Session in the Department's "Sunset" legislation, Senate Bill 206. The revised Texas Family Code, §264.018, *Required Notifications*, consolidates similar notification requirements in one section of the law and creates consistencies where former law left gaps. During the course of the 84th Session, the agency and multiple stakeholder groups came to consensus on some of the core concepts surrounding notification. However, to further refine specifics and time frames and to ensure that all stakeholder input was addressed, in §264.018(l) Texas Family Code, the Legislature directed HHSC to adopt rules necessary to implement the section using a negotiated rulemaking process under Chapter 2008, Government Code.

In October 2015, a convener contacted key stakeholders, obtained recommendations on additional committee participants, and sought input on the substance of the proposed rules. On October 30, 2015, DFPS conducted a negotiated rulemaking meeting in accordance with the law. Stakeholders representing parents, attorneys, Court Appointed Special Advocates (CASA), residential child-care providers, the judiciary, advocates, and others participated in the full-day meeting. With the assistance of a neutral, third-party facilitator, the negotiated rulemaking committee arrived at a consensus on proposed rule language regarding required notifications. The discussion was robust and overall feedback on the conduct of the meeting and the product resulting from the discussion was positive, with stakeholders indicating they thought the format was useful.

In addition to the rule provisions, there were several critical issues identified by the group, which would not necessarily be reflected in the rule but that DFPS agreed to continue work on. Some of those issues include: the need for a child in care to

have more of an active role and voice in the child's case, and in particular in identification of which events are significant and who should receive notice thereof; the need to address issues with continuity of medical and mental health treatment for a child in foster care who changes placement, as well as the need for additional notification to the medical community of certain events in the life of a foster child; the need for revisiting issues raised during the 84th Session that pertain to a child's attendance at court hearings; and the importance of including many concepts in the practice and policy guidance that will inform the day-to-day work of DFPS caseworkers related to notice, such as how best to reach biological parents and ensure they receive the communication, the importance of notifying biological parents and others in the case of positive events in a foster child's life, and connecting a child who returns to foster care with key individuals such as the child's former attorney ad litem.

Additionally, after DFPS circulated a draft of proposed rules at the beginning of November 2015, some participants raised concerns about notice of "emergency behavior intervention" (EBI), suggesting that the threshold for triggered review set too high a bar. DFPS shares the commenters' view that restraints, seclusions and related interventions are critical issues, and that the associated notification requirements warrant further clarification. DFPS is thus undertaking an immediate review of Minimum Standards related to EBI.

A summary of the changes follows:

New §700.1351 establishes which laws govern the provision of significant events for a child in DFPS' managing conservatorship and clarifies that DFPS must continue to follow other law restricting the release of information, such as situations in which the agency determines the release of investigative information could endanger a child's safety or interfere with an ongoing criminal investigation.

New §700.1353 outlines the purpose and scope of the rule, and reiterates that other laws pertaining to the provision of notice remain in effect, and that the provisions seek to clarify only §264.018 of the Texas Family Code.

New §700.1355 describes what is a "significant event" for which notice must be provided to a child's parent and other parties. Significant events include all of the events listed in §264.018 of the Texas Family Code, with some additional clarifications and requirements agreed upon in the negotiated rulemaking meeting: (1) a placement change, including failure by DFPS to locate an appropriate placement for at least one night; (2) a significant change in medical condition, including mental or behavioral health conditions; (3) an initial prescription of a psychotropic medication or a change in dosage of a psychotropic medication, which includes titration or discontinuation of the medication; (4) significant events in school including a major change in performance, serious disciplinary event and any of the significant events for which the school district is required by the Texas Education Code to notify DFPS; and (5) additional important events, including: (a) a decision by the person authorized to provide medical consent on behalf of the child not to follow a medical recommendation, including ones related to medication; (b) an investigation into alleged abuse or neglect by Residential Child-Care Licensing or Child Protective Services, regardless of whether the subject child is alleged to have been the victim or perpetrator; (c) the use of emergency behavior intervention if DFPS receives notice about its use; and (d) the involvement of the child with law enforcement or juvenile justice.

New §700.1357 describes the categories of individuals who must receive notice of significant events under new Division 2. Categories include: (1) the child's parent; (2) an attorney ad litem appointed for the child; (3) a guardian ad litem appointed for the child; (4) a volunteer advocate appointed for the child; (5) the parent's attorney, if applicable; (6) the licensed administrator of the child-placing agency responsible for placing the child or the administrator's designee; (7) a foster parent, prospective adoptive parent, relative of the child providing care to the child, or director of the group home or general residential operation where the child is residing; and (8) any other person determined by a court to have an interest in the child's welfare.

New §700.1359 outlines the time periods by which certain notices must be given when a significant event occurs in the life of a child in DFPS conservatorship.

The new sections will function so that parents, caregivers, attorneys and other individuals involved in a child welfare case will be notified when a significant event occurs in the life of a child in DFPS conservatorship, allowing the interested individual(s) to remain engaged in the life of the child and to take action, if appropriate, in relation to the event.

There was a DFPS Council meeting held on February 4, 2016, at which the rule changes were presented. DFPS received one written comment and three oral comments. In addition, one of the DFPS Advisory Council members remarked that rule §700.1355(a)(5)(A) was overly broad as drafted, as it required the caseworker to provide notice of any deviation from a medical recommendation, rather than deviation from a major medical recommendation. DFPS thinks the Council member's point is well made, but intends to address the substance in policy and practice. The negotiating parties and entities discussed this issue and agreed that broad language was appropriate for the rule, but that some of the specifics should be addressed in policy and practice guidance. A summary of the formal comments and DFPS's responses follows:

The comments received were about the rules generally.

Comment: The first commenter testified in person and submitted formal public comment in writing on behalf of the Citizens Commission on Human Rights-Texas. The commenter indicated that while the negotiated rulemaking process and resulting rules were positive overall, there is work remaining to be done in the arena of Emergency Behavior Intervention (EBI), including restraints. The commenter felt that the negotiated rulemaking process revealed how little all in the community know regarding restraints, and indicated that restraints are some of the most dangerous procedures that can happen in a mental health setting. The commenter described EBI as the use of force on children, and stated that the threshold for a review by the child's treatment team is too low. Further, the commenter expressed alarm that even if a review of the use of EBI is triggered, DFPS' interpretation of existing rules is that there is no set deadline for DFPS to receive notice of the triggered review. The commenter disagrees with DFPS' interpretation and urges further investigation. The commenter thinks that the current review of Minimum Standards could afford an opportunity for the regulations to be clarified so that DFPS receives notice of triggered reviews. Finally, the commenter opined that 48 hours would be a better time frame for notifying parents, in this case, DFPS.

DFPS response: No change to the rules. However, DFPS is undertaking an immediate review of the standards governing EBI to make any necessary changes to ensure EBI use is limited

and appropriate and that adequate notice is given to parents and others.

Comment: The second commenter testified in the council meeting on behalf of the Parent Guidance Center. The commenter stated that the legislature has historically treated EBI as a parents' rights issue. Per the commenter, it is critical that DFPS as the parent gets notice, and the commenter was horrified DFPS would not be notified. The commenter opined that if a parent engaged in a restraint it would be abuse or neglect, but that if the incident occurs in a facility it is not treated as such. The commenter felt it is also important that CASAs, attorneys, and others in the case receive notice, in addition to DFPS. Finally, the commenter noted that DFPS can clarify in policy the broad language in rule, including language about not following a medical recommendation.

DFPS response: No change to the rules. However, DFPS is undertaking an immediate review of the standards governing EBI to make any necessary changes to ensure EBI use is limited and appropriate and that adequate notice is given to parents and others. In addition, DFPS agrees with the premise that DFPS can utilize policy to clarify broad rule language.

Comment: The commenter spoke on behalf of the National Association of Social Workers-Texas chapter. The commenter had participated in the negotiated rulemaking process and valued it overall. However, the commenter expressed concern that there needs to be more empowerment for the child and the child's voice. Per the commenter, a child or youth needs to be able to decide what a significant event is, consistent with the principle of "nothing about me, without me." Finally, the commenter indicated that increased empowerment for children and youth strengthens the system overall.

DFPS response: No change to the rules. However, DFPS is undertaking an immediate review of the standards governing EBI to make any necessary changes to ensure EBI use is limited and appropriate and that adequate notice is given to parents and others.

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Texas Family Code §264.018.

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 May 9, 2016.

TRD-201602248

Trevor Woodruff

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Effective date: June 1, 2016

Proposal publication date: February 26, 2016

For further information, please call: (512) 438-3854

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CHAPTER 748. MINIMUM STANDARDS FOR
GENERAL RESIDENTIAL OPERATIONS
SUBCHAPTER V. ADDITIONAL
REQUIREMENTS FOR OPERATIONS
THAT PROVIDE TRAFFICKING VICTIM
SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§748.4551, 748.4759, and 748.4763 without changes to the proposed text published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1665).

The justification of the amendments is to implement House Bill (HB) 418 that was passed by the 84th Texas Legislature in 2015.

This bill created Human Resources Code (HRC) §42.0531, which allows a commissioner's court of a county or a governing body of a municipality to contract with a child-placing agency (CPA) that is licensed by Child Care Licensing (CCL) to verify a "secure" foster home that provides trafficking victim services. Although CCL does not use the term "secure" foster home, CCL already has in place rules with additional requirements for CPAs and the foster homes that provide trafficking victim services. While the current requirements cover many of the requirements set forth in this new statute, the statute includes a few additional mandates for foster homes that provide trafficking victim services. These amendments will make the current CPA/foster home rules consistent with the "secure" foster homes as mandated by HRC §42.0531.

In addition, even though HB 418 only applies to CPA foster homes that provide trafficking victim services, CCL is also amending the General Residential Operation (GRO) rules related to operations that provide trafficking victim services to be consistent with the similar CPA rules. HRC §42.042(g-2) requires the Executive Commissioner to adopt standards that address the needs of trafficking victims at GROs. These proposed changes to Chapter 748 are consistent with that mandate.

The amendment to §748.4551 makes the rule consistent with CPA rules related to trafficking victim services, and requires an operation to develop policies that address how an operation will: (1) provide life skills training for children over 14 years old; (2) tailor education to the child's needs; and (3) provide mentoring services.

The amendment to §748.4759 changes the word "therapy" to "counseling" to be consistent with the rest of the chapter. More substantively, the amendment makes the rule consistent with the CPA rules related to trafficking victim services, and requires: (1) that the individual counseling that must be provided to children must address any issues noted in the behavioral health assessment and whether intervention and additional treatment is needed for sexual assault; and (2) family counseling, as appropriate.

The amendment to §748.4763 makes the rule consistent with the CPA rules related to trafficking victim services, and requires that a child's initial service plan include updated plans for behavioral health treatment, including intervention and treatment services for sexual assault, for children who require it.

The amendments will function so that the quality of care for trafficking victims will be improved by strengthening minimum standards related to GROs when trafficking victim services are provided to a base number of children.

No comments were received regarding the adoption of the sections.

DIVISION 2. POLICIES AND PROCEDURES

40 TAC §748.4551

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the HRC §42.0531, which was added by HB 418, and HRC §42.042(g-2).

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 May 9, 2016.

TRD-201602245

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Effective date: June 1, 2016

Proposal publication date: March 4, 2016

For further information, please call: (512) 438-5559

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DIVISION 6. ADMISSION AND SERVICE
PLANNING

40 TAC §748.4759, §748.4763

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the HRC §42.0531, which was added by HB 418, and HRC §42.042(g-2).

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 May 9, 2016.

TRD-201602246

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Effective date: June 1, 2016
Proposal publication date: March 4, 2016
For further information, please call: (512) 438-5559



CHAPTER 749. MINIMUM STANDARDS FOR
CHILD-PLACING AGENCIES
SUBCHAPTER V. ADDITIONAL
REQUIREMENTS FOR CHILD-PLACING
AGENCIES THAT PROVIDE TRAFFICKING
VICTIM SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.4051, 749.4259, and 749.4263 without changes to the proposed text published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1668).

The justification of the amendments is to implement House Bill (HB) 418 that was passed by the 84th Texas Legislature in 2015.

This bill created Human Resources Code (HRC) §42.0531, which allows a commissioner's court of a county or a governing body of a municipality to contract with a child-placing agency (CPA) that is licensed by Child Care Licensing (CCL) to verify a "secure" foster home that provides trafficking victim services. Although CCL does not use the term "secure" foster home, CCL already has in place rules with additional requirements for CPAs and the foster homes that provide trafficking victim services. While the current requirements cover many of the requirements set forth in this new statute, the statute includes a few additional mandates for foster homes that provide trafficking victim services. These amendments will make the current CPA/foster home rules consistent with the "secure" foster homes as mandated by HRC §42.0531.

The amendment to §749.4051 requires a CPA that provides trafficking victim services to develop policies that address how a foster home will: (1) provide life skills training for children over 14 years old; (2) tailor education to the child's needs; and (3) provide mentoring services.

The amendment to §749.4259 changes the word "therapy" to "counseling" to be consistent with the rest of the chapter. More substantively, the amendment requires: (1) that individual counseling provided to children must address any issues noted in the behavioral health assessment and whether intervention and additional treatment is needed for sexual assault; and (2) family counseling, as appropriate.

The amendment to §749.4263 requires that a child's initial service plan must include updated plans for behavioral health treatment, including intervention and treatment services for sexual assault, for children who require it.

The amendments will function so that the quality of care for trafficking victims will be improved by strengthening minimum standards related to CPAs when trafficking victim services are provided to a base number of children.

No comments were received regarding the adoption of the sections.

DIVISION 2. POLICIES AND PROCEDURES

40 TAC §749.4051

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the HRC §42.0531, which was added by HB 418.

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 May 9, 2016.

TRD-201602242

Trevor Woodruff
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Department of Family and Protective Services
Effective date: June 1, 2016

Proposal publication date: March 4, 2016

For further information, please call: (512) 438-5559



DIVISION 5. ADMISSION AND SERVICE
PLANNING

40 TAC §749.4259, §749.4263

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the HRC §42.0531, which was added by HB 418.

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 May 9, 2016.

TRD-201602243

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Department of Family and Protective Services
Effective date: June 1, 2016

Proposal publication date: March 4, 2016

For further information, please call: (512) 438-5559