



Texas Funeral Service Commission

Preamble

The Texas Funeral Service Commission (Commission) proposes new §203.36 of Title 22, Part 10, Chapter 203 of the Texas Administrative Code (TAC), to be titled Inspection of Solid Waste Disposal and Sanitation Facilities. The proposed new rule establishes procedures, as required by Texas Occupations Code §651.158(b), for the inspection of a funeral establishment's solid waste disposal and sanitation facilities when those facilities have not been inspected by the Texas Department of State Health Services (DSHS).

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The proposed rule under 22 TAC, Chapter 203, implements Texas Occupations Code §651.158, Inspection of Certain Facilities.

Section 651.158(a) authorizes the Commission to require a funeral establishment that has solid waste disposal and sanitation facilities that have not been inspected by the Texas Department of Health to be inspected by Commission inspectors. (The Texas Department of Health was abolished and its functions transferred to DSHS under House Bill 2292, 78th Legislature, Regular Session, 2003, effective September 1, 2004; references in §651.158 to the Texas Department of Health should be read as references to DSHS.) Section 651.158(b) requires the Commission, by rule, to establish procedures for any inspection required under that section. This rule satisfies that statutory directive.

Specifically, proposed new §203.36 authorizes a funeral establishment whose solid waste disposal and sanitation facilities have not been inspected by DSHS to be inspected for compliance with the standards specified by DSHS by Commission inspectors.

The proposed rule does not establish new substantive sanitation standards; rather, it creates a procedural pathway for demonstrating compliance with existing DSHS-equivalent standards in circumstances in which DSHS has not itself performed an inspection. The proposed rule preserves the Commission's authority to require additional or independent inspection under §651.158 or other applicable law.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

The Interim Executive Director of the Commission has determined that, for each year of the first five years the proposed rule is in effect, there are no foreseeable increases or reductions in costs to state government resulting from enforcement or administration of the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

The proposed rule will not affect a local economy. Therefore, the Commission is not required to prepare a local employment impact statement under §2001.022, Texas Government Code.

PUBLIC BENEFIT & PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

The Interim Executive Director has also determined that, for each year of the first five-year period the proposed rule is in effect, the public benefit will be: (1) clarification of the procedural pathway by which a funeral establishment whose solid waste disposal and sanitation facilities have not been inspected by DSHS may demonstrate compliance with applicable solid waste disposal and sanitation requirements; (2) protection of public health through verified sanitation compliance at funeral establishments; and (3) reduction of regulatory uncertainty for licensed funeral establishments.

The rule does not require any funeral establishment to expend funds for equipment, technology, staff, supplies, or infrastructure, unless it is not in compliance with DSHS Standards and does not impose any new fee payable to the Commission.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

The proposed rule has no anticipated adverse economic effect on small businesses, micro-businesses, or rural communities that is distinct from the effect on any other funeral establishment. Therefore, an economic impact statement under Texas Government Code §2006.002 is not required.

REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rule is necessary to protect the health, safety, and welfare of residents in Texas and is required to implement a legislative enactment. Therefore, the Commission is not required to provide a statement under Texas Government Code §2001.0045. Even if such a statement were required, the proposed rule does not impose a cost on regulated persons, another state agency, a special district, or a local government that exceeds the benefits of the rule. As a result, the Commission is not required to take any further action under §2001.0045.

TAKINGS IMPACT ASSESSMENT

The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, the agency has determined the following:

- 1) The proposed rule does not create or eliminate a government program.
- 2) Implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions.
- 3) Implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the Commission.
- 4) The proposed rule does not require an increase or decrease in fees paid to the Commission.
- 5) The proposed rule creates a new regulation. As described above, the proposed rule is required by Texas Occupations Code §651.158(b), which directs the Commission to establish, by rule, procedures for an inspection required under §651.158. The new regulation is created to comply with that statutory mandate.
- 6) The proposed rule does not expand, limit, or repeal an existing regulation.
- 7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; the rule applies to the same class of licensed funeral establishments already subject to §651.158.
- 8) The proposed rule neither positively nor adversely affects this state's economy.

PUBLIC COMMENTS

Comments on the proposed rule may be submitted to Maria Haynes, Interim Executive Director, by e-mail to legal@tfsc.texas.gov or by mail to Texas Funeral Service Commission, Attn: Maria Haynes, 1801 Congress Avenue, Suite 11-800, Austin, Texas 78701. The deadline for comments is 30 days after publication in the Texas Register.

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code §651.152, which authorizes the Commission to adopt rules necessary to administer and enforce Chapter 651 of the Occupations Code.

The proposed rule is also proposed pursuant to the authority set out in Texas Occupations Code §651.158(b), which requires the Commission, by rule, to establish procedures for an inspection of a funeral establishment's solid waste disposal and sanitation facilities required under §651.158(a) when those facilities have not been inspected by the Texas Department of Health (now the Texas Department of State Health Services).

Cross Reference. The new section implements Texas Occupations Code §651.158.

<rule>

§203.36. Inspection of Solid Waste Disposal and Sanitation Facilities.

(a) Applicability. This section applies to a funeral establishment licensed or seeking licensure under Texas Occupations Code Chapter 651 whose solid waste disposal and sanitation facilities have not been inspected by the Texas Department of State Health Services (DSHS). As used in this section, references in Texas Occupations Code §651.158 to the Texas Department of Health are construed as references to DSHS, which has succeeded to the relevant functions of that agency.

(b) Authorization of Local Health Department Inspection. A funeral establishment described in subsection (a) of this section may satisfy any inspection requirement imposed by the Commission under Texas Occupations Code §651.158(a) by obtaining an inspection of its solid waste disposal and sanitation facilities from the municipal or county health department with jurisdiction over the physical location of the funeral establishment.

(c) Inspection Standards. A Commission inspector or local health department performing an inspection under this section shall apply the same sanitation and solid waste standards that DSHS applies, or would apply, to an inspection of a comparable funeral establishment facility, including any applicable standards adopted by DSHS under Health and Safety Code Chapters 341 and 343 and rules promulgated thereunder, currently specified at 25 Texas Administrative Code §1.136.

(d) Frequency. Unless the Commission requires inspection on a more frequent basis, a funeral establishment subject to this section shall obtain:

(1) an inspection under this section prior to the issuance of the establishment's initial license, if the facilities have not been inspected by DSHS; and

(2) a subsequent inspection under this section at least once every three years following the date of the most recent inspection, if DSHS has not performed an inspection during that period.

(e) Reservation of Commission Authority. Nothing in this section limits the authority of the Commission to:

(1) require additional inspection of a funeral establishment's solid waste disposal and sanitation facilities under Texas Occupations Code §651.158(a) or any other provision of law;

(2) accept a DSHS inspection in lieu of an inspection conducted under this section; or

(3) take disciplinary or enforcement action against a funeral establishment for any violation of Texas Occupations Code Chapter 651 or Commission rules.