

# 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 7. BANKING AND SECURITIES

### PART 7. STATE SECURITIES BOARD

#### CHAPTER 101. GENERAL ADMINISTRATION

##### 7 TAC §101.2

The Texas State Securities Board adopts an amendment to §101.2, concerning Classification of Regulatory Standards, without changes to the proposed text as published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1793). The amended rule will not be republished.

Subsection (e) is amended to conform terminology to the Texas Securities Act and existing rules, and the statutory reference in subsection (f) is updated to refer to the codified version of the Act, which became effective January 1, 2022. Subsection (f) is also reorganized, and language concerning a fee that is duplicative of a section in the Act is replaced with a reference to the statutory provision setting the amount of the fee.

The rule is current and accurate, and it conforms to §4006.058 of the Act, which promotes transparency and efficient regulation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Government Code, Section 4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Government Code §4006.058.

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 June 16, 2023.

TRD-202302179

Travis J. Iles

Securities Commissioner

State Securities Board

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Proposal publication date: April 7, 2023

For further information, please call: (512) 305-8303



#### CHAPTER 103. RULEMAKING PROCEDURE

##### 7 TAC §103.6

The Texas State Securities Board adopts an amendment to §103.6, concerning Negotiated Rulemaking, without changes to the proposed text as published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1794). The amended rule will not be republished.

A typographical error in the rule has been corrected.

The rule will be clear and accurate.

No comments were received regarding adoption of the amendment.

##### STATUTORY AUTHORITY

The amendment is adopted under the authority of the Texas Government Code, Sections 4002.151 and 4002.1535. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 4002.1535 requires the Board to develop a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of Board rules; and appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction.

The adopted amendment affects Chapter 2008 of the Texas Government Code and the Texas Securities Act, Texas Government Code Sections 4001.001-4008.105.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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#### CHAPTER 104. PROCEDURE FOR REVIEW OF APPLICATIONS

##### 7 TAC §§104.2, 104.3, 104.6

The Texas State Securities Board adopts amendments to §104.2, concerning Purpose; §104.3, concerning Definition of Days; and §104.6, concerning Exceeding the Time Periods, with changes to the proposed text as published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1794). The amendments will be republished.

The changes made consist of the addition of a parenthetical in each rule after each cross-reference to multiple sections to include the names of the sections being referenced. These non-substantive changes to the rule text were made at the request of the Texas Register editors when the notice of the rule adoptions were submitted for publication.

Sections 104.2, 104.3, and 104.6 of this title are amended to more accurately refer to the relevant sections in the Chapter, and the reference to a section of the Texas Securities Act in subsection (f) of 104.6 is updated to refer to the codified version of the Texas Securities Act in the Texas Government Code, which became effective January 1, 2022.

References to other rules in the Chapter are clarified and a statutory reference conforms to the codified version of the Act which promotes transparency and efficient regulation.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Government Code, Section 4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendments affect Texas Government Code §2005.003, and the following sections of the Texas Securities Act: Texas Government Code §4002.154; Chapter 4003, Subchapters A, B, and C; and Chapter 4004, Subchapters A-G.

#### §104.2. Purpose.

Sections 104.2 - 104.6 of this title (relating to Purpose, Definition of Days, Registration of Securities--Review of Applications, Registration of Dealers and Investment Advisers--Review of Applications, and Exceeding the Time Periods, respectively) are intended to implement the provisions of Texas Government Code, Chapter 2005. They are not intended to supersede any substantive requirement of the Texas Securities Act or Board rules. If a provision under one of these sections would cause such a conflict, the provision will not be given effect under the particular circumstances giving rise to the conflict.

#### §104.3. Definition of Days.

For purposes of §§104.2 - 104.6 of this title (relating to Purpose, Definition of Days, Registration of Securities--Review of Applications, Registration of Dealers and Investment Advisers--Review of Applications, and Exceeding the Time Periods, respectively) "days" means each calendar day without any exclusions.

#### §104.6. Exceeding the Time Periods.

(a) The Agency may exceed the time periods set forth in §104.4 or §104.5 of this title (relating to Registration of Securities--Review of Applications and Registration of Dealers and Investment Advisers--Review of Applications, respectively) if:

(1) the number of permits and registration authorizations exceeds by 15% or more the number processed in the same calendar quarter of the preceding year;

(2) the Securities and Exchange Commission, CRD, IARD, or another public or private entity, including the applicant itself, causes the delay;

(3) the applicant requests delay; or

(4) other conditions exist that give the Agency good cause for exceeding the established time periods.

(b) If it appears to the applicant that for reasons other than those set forth in subsection (a)(2) of this section, the Agency exceeded the time periods, the applicant may appeal by filing a complaint in writing with the Deputy Commissioner who shall provide the staff with a copy of the complaint immediately.

(c) If the Agency's staff believes that the time periods were not exceeded for the reasons alleged in the complaint, the staff may file with the deputy commissioner a written response to the complaint within five days of receipt by the Agency of the complaint.

(d) The deputy commissioner shall render a decision and communicate it to the applicant within 10 days of receipt of the applicant's complaint, whether or not a response is filed by the staff.

(e) If the complaint is decided in favor of the applicant, the applicant shall receive full reimbursement of all filing fees paid by the applicant.

(f) If the complaint is decided in favor of the staff, the applicant may appeal the decision by requesting a hearing before the Commissioner pursuant to the Texas Securities Act, §4007.107(a).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 10. UNIFORM MULTIFAMILY RULES

##### SUBCHAPTER F. COMPLIANCE MONITORING

#### 10 TAC §§10.606, 10.613, 10.622, 10.626, 10.627

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes to the proposed text as published in the March 24, 2023, issue of the *Texas Register* (48 TexReg 1608), amendments to 10 TAC §10.606 Construction Inspections; 10 TAC §10.613 Lease Requirements; 10 TAC §10.622 Special Rules Regarding Rents and Rent Limits Violations; 10 TAC §10.626 Liability; and 10 TAC §10.627 Temporary Suspension of Sections of this Subchapter. The

rules will be republished. The rule amendments add a new and revised notification requirements regarding rent increases, correct references to other Department rules, add existing and new program requirements to existing subsections of the rule, and delete outdated references to Average Income.

**FISCAL NOTE.** Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the rule amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

**GOVERNMENT GROWTH IMPACT STATEMENT.** Mr. Wilkinson also has determined that, for the first five years the adopted rule amendment would be in effect:

1. The adopted amendment to the rule will not create or eliminate a government program;
2. The adopted amendment to the rule will not require a change in the number of employees of the Department;
3. The adopted amendment to the rule will not require additional future legislative appropriations;
4. The adopted amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The adopted amendment to the rule will create a new regulation; which is needed to provide economic benefit for tenants.
6. The adopted amendment to the rule will not repeal an existing regulation;
7. The adopted amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The adopted amendment to the rule will neither positively nor negatively affect this state's economy.

**PUBLIC BENEFIT/COST NOTE.** Mr. Wilkinson also has determined that, for each year of the first five years the adopted amendment to the rule is in effect, the public benefit anticipated as a result of the action will be a clearer and more germane rule. While there may be a theoretical loss of increased rent to the developer, i.e. to not be able to receive rent increases for the notice period, this theoretical loss is difficult to quantify and a simple and reliably accurate model for such loss cannot be created: for every tenant that may remain in the property and could be estimated to pay the increased rent, it may be just as likely that the charged tenant, when learning of a rent increase of that amount (over \$900 per year if more than \$75 per month) would be unable to pay the increased rent, give notice and move-out, or just moves out -- in all cases creating a different economic impact on the tenant and property. Additionally, to only consider the fiscal impact to the developments limits the analysis to only the property. The fiscal impact on a low-income household of a large rent increase with little to no advance notice cannot be disregarded from this analysis, nor the likelihood of increased evictions. Therefore, the public benefit versus the theoretical cost clearly favors the adoption of this policy, which also falls squarely within the foundational purposes of the Department as seen in Tex. Gov't Code §§2306.001 and .002.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES.** The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

**SUMMARY OF PUBLIC COMMENT.** Public comment was accepted from March 24, 2023, through April 24, 2023. Comment was received from 7 commenters. Comments regarding the proposed amendments were accepted in writing and by e-mail with comments received from:

Executive Vice President, Texas Apartment Association  
Program Manager, Supportive Housing and Community Recovery Team

Attorney at Law, Texas RioGrande Legal Aid

Research Analyst, Texas Housers

Resolution Asset Management, Encore Residential

Compliance Director, Dayrise Residential

Compliance Director, Accolade Property Management

Rule Section §10.606.

Comment Summary: No comments received

Rule Section §10.613.

Comment Summary: Commenter 3 proposes a small grammatical adjustment to the second sentence in subsection (n). The sentence should read: "Challenges to evictions or terminations of tenancy must be determined by a court of competent jurisdiction..."

Commenter 4 proposes strengthening tenant protections related to termination of tenancy and applying these protections consistently to all multifamily programs. Their proposals include defining "good cause," requiring all payments apply to rent first and not late fees, and pursuing alternatives to eviction, including providing opportunities to cure lease violations. They propose the following language: "§10.613(a-1) Eviction and/or termination of lease for HTC, TCAP, and Exchange Developments.

(1) The Development must specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than those listed in section §10.613(a-1)(2) are prohibited.

(2) Owner may not terminate the tenancy or refuse to renew the lease of a tenant except for:

(i) Serious or repeated violations of the terms and conditions of the lease agreement (e.g., failure to pay rent, or unlawful activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; willful and repeated destruction of rental property or property of other residents; or use of the unit for unlawful purposes);

(ii) Completion of tenancy period for transitional housing in which case at least 30 days before the end of the transitional housing tenancy period, the Owner is required to provide the tenant with written notice that the tenancy period is ending in accordance with subsection (a-2), or

(iii) The temporary or permanent uninhabitability of the Development justifying relocation of all or some of the Development's tenants (except where such uninhabitability is caused by the deferred maintenance, actions or inactions of the Owner). Termination under this provision shall trigger either the Relocation provisions in section 8 of this subsection or grounds for termination of the lease, except in cases where the property becomes uninhabitable due to the tenant's intentional actions.

(3) Owner hereby agrees to apply all partial and/or full payments made by a tenant or on behalf of a tenant to Rent first to reduce the risk of eviction for nonpayment of rent.

(4) Should a tenant become current on Rent prior to the issuance of a judgment for eviction due to nonpayment of Rent, Owner agrees to dismiss the eviction proceeding with prejudice.

(5) Owner may not evict a tenant for nonpayment of Rent after a Payment Plan has been entered into, unless the tenant subsequently violates the Payment Plan.

(6) In the event of an eviction being filed against a tenant, Owner will provide contact information of government-funded legal aid agencies or other legal representation organizations the tenant may contact to request assistance in either understanding or representing them in the eviction process. Owner agrees to work with the legal representative, if one is obtained, to reach an agreement and dismiss the eviction proceeding or take other measures to prevent the court from issuing a judgment in the eviction proceeding.

(7) Once a lease is terminated, Owner may not take, hold, or sell personal property of the tenant, or any occupant of the tenant's dwelling, without written notice to the tenant and a court decision on the rights of the parties except when the property remains in the unit after the tenant has moved out of the unit and the property is disposed of in accordance with State law.

(8) Tenant relocation for HTC, TCAP, and Exchange Developments. If a tenant is required to move out of the Development, or a tenant's individual unit, due to any repair, replacement, renovation of the unit, Owner will provide relocation assistance to the tenant including but not limited to packing, moving, storage and seeking a replacement unit as closely as possible mirroring Development and the living conditions (e.g. location, cost, proximity to community resources, etc.) the tenant enjoyed while residing at the Development. Upon the completion of such repairs or renovations which necessitated the tenant's relocation, Owner agrees to offer the tenant the Right of First Refusal to return to their previous unit or a comparable unit within the Development. If the tenant refuses to return to the Development within thirty (30) business days from the date that the Right of First Refusal was offered, then the Owner is no longer responsible for providing relocation assistance.

§10.613(a-2) Notices regarding eviction and/or termination of lease for HTC, TCAP, and Exchange Developments.

(1) To terminate or refuse to renew a tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least 30 days before the termination of tenancy, unless the termination is based on serious violent criminal activity that poses an immediate threat to the safety of staff or other residents.

(2) The written notice shall be served to the tenant by either:

- (i) Both first class mail and either certified or registered mail; or
- (ii) by personal delivery to the tenant or a household member 16 years or older.

(3) Opportunity to Discuss. The written notice shall also inform the tenant of the right to discuss with the Owner the proposed termination or non-renewal of tenancy. The notice must give the tenant at least ten (10) business days from the date of the notice to request a meeting with the Owner. The tenant may provide written notice of a request to meet with an Owner through mail, text message, e-mail, or any other written communication that

the Owner uses for correspondence with tenants. If the tenant makes a timely request, the Owner agrees to meet with the tenant and to discuss the proposed termination or nonrenewal.

(4) Opportunity to Cure Lease Violations. For termination or non-renewal of tenancy due exclusively to serious or repeated lease violations, excluding drug activity or other serious criminal activity, the written notice shall also inform the tenant of the opportunity to cure any alleged violation of the lease agreement before the effective date of the termination or nonrenewal in the written notice as required by paragraph (1) of this subsection."

Commenter 5 and Commenter 6 oppose adding the CARES Act requirement of a 30 day eviction notice for nonpayment of rent. They argue that this 30 days is in addition to the time it takes to get a court date. They feel this is unreasonable and hinders the owner's ability to pay for rising costs.

STAFF RESPONSE:

Staff agrees with Commenter 3 and proposes their language be adopted.

While staff appreciates Commenter 4's commitment to helping low income Texans, their proposed rewrite of 10 TAC §10.613(a), Eviction and/or termination of lease for HTC, TCAP, and Exchange Developments, would be an overreach of the Department's authority and would cause a financial and administrative burden for the Department's stakeholders. It is not within the Department's purview to define "good cause;" this is the job of the judicial system. The additional clarifications in the rule for federally funded Developments or Developments with HOME Match Units in §10.613(b) are pulled directly from federal regulations, but do not apply to the tax credit program. The Department does not wish to overly regulate. We believe these comments may be more effectively implemented by amending the lease contract, which is a tenant-landlord matter. No changes to this section will be made as a result of this comment.

Staff disagrees with comments made by Commenters 5 and 6. After receiving previous comments in opposition to the CARES Act 30 day eviction notice, staff agreed to add language that would make this provision invalid if additional legislation is passed removing or altering the requirement. In the meantime, staff is required to enforce the requirement and felt that adding it to the compliance rules would add clarity and transparency. No changes to this section will be made as a result of these comments.

Rule Section §10.622.

Comment Summary: Commenter 1 opposes the proposed change requiring 75 days' notice for rental increases of \$75 or more as arbitrary. They feel a 30 or 60 day notice is more compatible with the TAA lease and the current practice of most owners. Commenter 5 agrees with Commenter 1 and adds that they should be able to evict people who are just "working the system" and move in people who can actually pay their rent.

Commenter 2 supports this change and asks that language be added to require the notice also be sent to the applicable housing authority if the tenant is a voucher holder. That way the tenant will know whether the increase is covered by the voucher or not, decreasing the risk of incurring late fees or facing eviction.

Commenter 3 feels the proposed change does not go far enough. Ideally rent would be locked in for the entire term of the lease as it is with conventional apartments. Also, the \$75 is arbitrary, and the amount should instead be based on

a percentage of the current rent. The commenter proposes the following language: "(l) An owner may not increase the rent during the first six months of the lease term. Owners who choose to increase the rent during the lease term must give 75 days' written notice of the rent increase and may not increase the rent by more than 2% of the monthly rent. Tenants who are notified of a rent increase during the term of the lease must also be notified that they have the legal right to terminate their tenancy any time before the effective date of the rent increase. If an owner increases the household rent by more than 2% after the end of the lease term, the owner must give the household 75 days' written notice of the proposed rent increase."

Commenter 4 supports the proposed changes and requests the Department update the "Income and Rent Limit Tenant Handout" and "Income and Rent Limits in TDHCA-Supported Properties" webpage to highlight the new requirements.

Commenter 6 opposes both the 75 day notice requirement and the \$75 limit. They argue that most housing authorities require a 60 day notice of increase for their voucher holders, and that should be sufficient across the board. If required to send out a 75 day notice, another notice would still be required at 60 days for voucher holders. Also, they feel rental increases should not be capped at \$75 because, due to COVID, many owners have not raised rent in years. Increases of any amount should be allowed as long as the rent remains below the limit.

Commenter 7 opposes the proposed notice requirement because the 75 days does not align with the lease's 35 day notice requirement. They also feel that maximum rent should be available to owners as soon as possible for the long-term viability of the asset.

#### STAFF RESPONSE:

In response to Commenters 1 and 5, staff does not believe that 60 days is enough time for low income tenants to prepare for a rent increase of \$75 or more. As multiple commenters noted, the cost of doing business has increased due to inflation; however, the same can be said for the cost of living for the tenant.

In response to Commenter 2, staff appreciates the intent; however, the relationship between the owner and the housing authority is not regulated by the Department. If Commenter believes strongly in this requirement, it would be best to work with the housing authority or HUD.

In response to Commenter 3, staff agrees that it is an unfair reality that a lease contract for market households locks in a rental rate for the entire term but does not for low income tenants; however, owners of market rate housing do not have rent restrictions. Department programs are already rent restricted under federal and state regulations. It is not the Department's role to implement further rent control. Several bills are currently making their way through the state legislature which if enacted would regulate rental increases during a lease term, and the Department continues to monitor their progress.

Staff appreciates Commenter 4's support and will look into updating the handouts.

In response to Commenter 6, staff is not advocating a cap on rental increases; only a threshold at which the owner must provide extended notice. Staff does not believe the housing authority would oppose notice of an additional 15 days; therefore only one notice at 75 days would need to be given.

In response to Commenter 7, staff feels that while there may be a theoretical loss of increased rent to the developer, i.e. to not be able to receive rent increases for the notice period, this theoretical loss is difficult to quantify and a simple and reliably accurate model for such loss cannot be created: for every tenant that may remain in the property and could be estimated to pay the increased rent, it may be just as likely that the charged tenant, when learning of a rent increase of that amount (over \$900 per year if more than \$75 per month) would be unable to pay the increased rent, give notice and move-out, or just moves out -- in all cases creating a different economic impact on the tenant and property. Additionally, to only consider the fiscal impact to the developments limits the analysis to only the property. The fiscal impact on a low-income household of a large rent increase with little to no advance notice cannot be disregarded from this analysis, nor the likelihood of increased evictions. Therefore, the public benefit versus the theoretical cost clearly favors the adoption of this policy, which also falls squarely within the foundational purposes of the Department as seen in Tex. Gov't Code §§2306.001 and .002.

Rule Section §10.626.

Comment Summary: No comments received

Rule Section §10.627.

Comment Summary: No comments received

STATUTORY AUTHORITY. The adoption of this action is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the action affects no other code, article, or statute.

#### §10.606. *Construction Inspections.*

(a) Owners are required to submit evidence of final construction within 30 calendar days of completion in a format prescribed by the Department. Owners are encouraged to request a final construction inspection promptly to allow the Department to inspect Units prior to occupancy to avoid disruption of households in the event that corrective action is required. In addition, the Architect of Record must submit a certification that the Development was built in compliance with all applicable laws, and the Engineer of Record (if applicable) must submit a certification that the Development was built in compliance with the design requirements.

(b) During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable accessibility requirements. In addition, a Uniform Physical Condition Standards inspection may be completed.

(c) IRS Form(s) 8609 will not be released until the Owner receives written notice from the Department that all noted deficiencies have been resolved.

#### §10.613. *Lease Requirements.*

(a) Eviction and/or termination of a lease. HTC, TCAP, and Exchange Developments must specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action. For nonpayment of rent, HTC, TCAP, Exchange, and NHTF Developments require a thirty (30) day written notice. If the CARES Act is modified to eliminate the 30-day notice requirement, HUD or Treasury requirements will supersede this 30-day notice requirement for nonpayment of rent.

(b) HOME, TCAP RF, NHTF, NSP, and HOME-ARP Developments are prohibited from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for Transitional Housing (if applicable), or for other good cause. It must be specifically stated in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253 and 24 CFR §93.303). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253 or 24 CFR §93.303, as applicable. To terminate or refuse to renew tenancy in HOME, TCAP RF, NSP, and HOME-ARP Developments, the Owner must serve written notice to the tenant specifying the grounds for the action at least 30 days before the termination of tenancy. For HOME-ARP, Owners may not terminate the tenancy or refuse to renew the lease of the Qualifying Household in any Unit that is supported by capitalized operating costs because of the household's inability to pay rent of more than 30 percent of the qualifying household's income toward rent during the longer of the federal affordability period or the time period identified in the Contract.

(c) In accordance with the Violence Against Women Act, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking against the documented victim of such actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as a serious or repeated violation of a lease or good cause for termination of tenancy. Additionally, it shall not be construed as a serious or repeated violation of a lease or action eligible for termination of tenancy if a person has opposed any act or practice made unlawful by the Violence Against Women Act 2022, or because that person testified, assisted, or participated in any matter covered by the Violence Against Women Act 2022.

(d) A Development must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of HTC Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) For HOME, TCAP, TCAP RF, NHTF, 811 PRA, NSP, ERA and HOME-ARP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that all households at HOME, TCAP, TCAP RF, NHTF, NSP, ERA, and HOME-ARP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355, 24 CFR §93.361 and §570.487(c), and Section 1018 of Title X, as applicable). The addendum and disclosure are not required if all lead has been certified to have been cleared from the Development in accordance with 24 CFR §35.130, and the Owner has the required certification in its on-site records.

(g) An Owner may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the Unit or other affiliated individual as defined in the VAWA 2013.

(h) All NHTF, TCAP RF, NSP, HOME, and HOME-ARP Developments for which the contract is executed on or after December 16, 2016, must use the Department created VAWA lease addendum which

provides the ability for the tenant to terminate the lease without penalty if the Department determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e). 811 PRA Units are prohibited from using the expired 2005 VAWA lease addendum. After OMB approval of a VAWA lease addendum, all 811 PRA households must have a valid and executed VAWA lease addendum. For the 811 PRA program certain addenda for the HUD model lease may be required such as Lead Based Paint Disclosure form, house rules, and pet rules. No other attachments to the lease are permissible without approval from the Department's 811 PRA staff.

(i) Leasing of HOME, HOME Match, TCAP RF, or NHTF Units to an organization that, in turn, rents those Units to individuals is not permissible for Developments with contracts dated on or after August 23, 2013. Leases must be between the Development and an eligible household. NSP and HOME-ARP Developments may only utilize Master Leases, if specifically allowed in the Development's LURA.

(j) Housing Tax Credit Units leased to an organization through a supportive housing program where the owner receives a rental payment for the Unit regardless of physical occupancy will be found out of compliance if the Unit remains vacant for over 60 days. The Unit will be found out of compliance under the Event of Noncompliance "Violation of the Unit Vacancy Rule."

(k) It is a Development Owner's responsibility at all times to know what it has agreed to provide by way of common amenities, Unit amenities, and services.

(l) A Development Owner shall post in a common area of the leasing office a copy and provide each household, during the application process and upon a subsequent change to the items described in paragraph (2) of this subsection, the brochure made available by the Department, A Tenant Rights and Resources Guide, which includes:

(1) Information about Fair Housing and tenant choice;

(2) Information regarding common amenities, Unit amenities, and services; and

(3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure.

(4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received.

(m) For Section 811 PRA Units, Owners must use the HUD Model lease, HUD form 92236-PRA.

(n) Except as identified in federal or state statute or regulation for Direct Loans, or as otherwise identified in this Chapter, the Department does not determine if an Owner has good cause or if a resident has violated the lease terms. Challenges to evictions or terminations of tenancy must be determined by a court of competent jurisdiction or an agreement of the parties (including an agreement made in arbitration), and the Department will rely on that determination.

#### *§10.622. Special Rules Regarding Rents and Rent Limit Violations.*

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that an HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Owner must correct the violation by reducing the rent charged. The Department will

report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside.

(c) Rent Violations of the maximum allowable limit due to application fees. Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to \$5.50 per Unit for their other out-of-pocket costs for processing an application without providing documentation. Example 622(2): A Development's out-of-pocket cost for processing an application is \$17.00 per adult. The property may charge \$22.50 for the first adult and \$17.00 for each additional adult.

(2) Documentation of Development costs for application processing or screening fees must be made available during monitoring reviews or upon request. The Department will review application fee documentation during monitoring reviews. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. Developments that pay a flat monthly fee must determine the appropriate application fee at least annually based on the prior year's activity. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee or collected impermissible deposits, the noncompliance will be reported to the IRS on Form 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, Owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected back in compliance on January 1st of the year after they were overcharged the application fee or an impermissible deposit.

(4) Throughout the Affordability Period, Owners may not charge a deposit or any type of fee (other than an application fee) for a household to be placed on a waiting list.

(d) Rent or Utility Allowance Violations on MFDL programs, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees and any rental assistance (unless otherwise described in the LURA) cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household's account. In the absence of a household's election, a full refund check must be presented to the household within thirty days.

(e) Rent or Utility Allowance Violations on HTC Developments after the Compliance Period, HTC properties for three years after the LURA is released as a result of a foreclosure or deed in lieu of foreclosure (as applicable), BOND, and THTF the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household within thirty days.

(f) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the household. If the violation effects multiple households, the Owner may set up a single account with all of the unclaimed funds. The account must remain open for the shorter of a four year period, until all funds are claimed, or the expiration of the Extended Use Agreement. If funds are not claimed after the required period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes. All unclaimed property remissions to the Comptroller must be broken out by individuals and particular amounts.

(g) Rent Adjustments for HOME, TCAP RF, and HOME-ARP Developments:

(1) 100% HOME/TCAP-RF/HOME-ARP assisted Developments. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to 30% of the household's adjusted income;

(2) HOME/TCAP-RF/HOME-ARP Developments with any Market Rate Units. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to the lesser of 30% of the household's adjusted income or the comparable Market rent; and

(3) HOME/TCAP-RF/HOME-ARP Developments layered with other Department affordable housing programs. If a household's income exceeds 80% at recertification, the owner must charge rent equal to the lesser of 30% of the household's adjusted income or the rent allowable under the other Program.

(h) Rent Adjustments for HOME-ARP Qualified Populations:

(1) Units restricted for occupancy by Qualifying Populations with incomes equal to or less than 50% will have rents of 30% of the adjusted income of the household, with adjustments for number of bedrooms in the unit.

(2) Units restricted for occupancy by Qualifying Populations with incomes greater than 50% of median income but at or below 80% of the median income must pay rent not greater than the rent specified in 24 CFR §92.252(a), high HOME rent.

(3) Units restricted for occupancy by Qualifying Populations with incomes greater than 80% of median income will follow the rent adjustments of subsection (g) of this section.

(i) Employee Occupied Units (HTC and THTF Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is

calculated using the residential rental units/space in a building, employee occupied units are taken out of both the numerator and the denominator.

(j) Owners of HOME, NSP, TCAP-RF, NHTF, and HOME-ARP must comply with §10.403 of this chapter (relating to Review of Annual HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents) which requires annual rent review and approval by the Department's Asset Management Division or Department-procured vendor. Failure to do so will result in an Event of Noncompliance.

(k) Owners are not permitted to increase the household portion of rent more than once during a 12 month period, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a federal housing program that requires such changes or the household transfers to a Unit with additional Bedrooms. If it is determined that the Development increases rent more than once in a 12-month period, the Department will require the Owner to refund or credit the affected household. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household.

(l) If an Owner is increasing a household's rent \$75 or more per month, the Owner is required to provide the household a 75-day written notice of such increase, unless the Unit or household is governed by a federal housing program that requires such a change. If an Owner increases the household's rent more than \$75 without providing a 75-day notice, any amounts in excess of \$75 per month must be refunded or credited to the affected household(s). The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In absence of a tenant election, a full refund check must be presented to the household.

*§10.626. Liability.*

Full compliance with all applicable program requirements, including compliance with §42 of the Code, is the responsibility of the Development Owner. If the Development Owner engages a third party to address any such requirements, they are jointly and severally liable with the Development Owner. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner, including the Development Owner's noncompliance with §42 of the Code, the Fair Housing Act, §504 of the Rehabilitation Act of 1973, HOME, HOME-ARP, NHTF, TCAP RF, and NSP program regulations, Bond and ERA program requirements, and any other laws, regulations, requirements, or other programs monitored by the Department.

*§10.627. Temporary Suspension of Sections of this Subchapter.*

(a) Subject to the limitations stated in this section, temporary suspensions of sections of this subchapter may be granted by the Executive Director if there are extenuating circumstances which make it not possible or an undue administrative burden to comply with a requirement of this subchapter as long as substantial compliance is still in effect. For example, the Executive Director could suspend the requirement to report online or use Department approved forms, or alter the sample size for calculating a utility allowance using the actual use method.

(b) Under no circumstances can the Executive Director, the Enforcement Committee or the Board suspend for any period of time compliance with the HOME Final Rule, NHTF Interim Rule, or regulations issued by HUD or any other federal agency when required by federal law.

(c) Under no circumstances can the Executive Director, the Enforcement Committee or the Board suspend for any period of time Treasury Regulations, IRS publications controlling the submission of IRS Form 8823, or any sections of 26 U.S.C. §42.

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 June 16, 2023.

TRD-202302177

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 6, 2023

Proposal publication date: March 24, 2023

For further information, please call: (512) 475-3959



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 300. MANUFACTURE, DISTRIBUTION, AND RETAIL SALE OF CONSUMABLE HEMP PRODUCTS SUBCHAPTER A. GENERAL PROVISIONS

##### 25 TAC §300.104

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the amendment to §300.104, concerning Manufacturing and Processing of Hemp Products for Smoking. The amendment to §300.104 is adopted without changes to the proposed text as published in the March 17, 2023, issue of the *Texas Register* (48 TexReg 1513). This rule will not be republished.

##### BACKGROUND AND JUSTIFICATION

The amendment to §300.104 removes the prohibition of "distribution" and "retail sale" of hemp products for smoking.

House Bill 1325, 86th Legislature, Regular Session, 2019, established Texas Health and Safety Code, Chapter 443, Manufacture, Distribution, and Sale of Consumable Hemp Products (CHPs). Texas Health and Safety Code §443.204(4) prohibits "the processing or manufacturing of a consumable hemp product for smoking."

On June 24, 2022, as a result of *Texas Dep't of State Health Servs. v. Crown Distrib. LLC*, 647 S.W.3d 648 (Tex.2022), the Texas Supreme Court upheld the ban on the manufacturing and processing of consumable hemp products for smoking within the state of Texas. The amendment complies with the ruling in *Texas Dep't of State Health Servs. v. Crown Distrib. LLC* and Texas Health and Safety Code §443.204(4).

##### COMMENTS

The 31-day comment period ended on Monday, April 17, 2023.

During this period, DSHS did not receive any comments regarding the proposed rule.



## STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services by DSHS, and for the administration of Texas Health and Safety Code, Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 15, 2023.

TRD-202302165

Cynthia Hernandez

General Counsel

Department of State Health Services

Effective date: July 5, 2023

Proposal publication date: March 17, 2023

For further information, please call: (512) 800-5343



## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 301. IDD-BH CONTRACTOR ADMINISTRATIVE FUNCTIONS

##### SUBCHAPTER G. MENTAL HEALTH

##### COMMUNITY SERVICES STANDARDS

##### DIVISION 2. ORGANIZATIONAL

##### STANDARDS

##### 26 TAC §301.327

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §301.327, concerning Access to Mental Health Community Services.

Section 301.327 is adopted without changes to the proposed text as published in the March 17, 2023, issue of the *Texas Register* (48 TexReg 1515). This rule will not be republished.

#### BACKGROUND AND JUSTIFICATION

The adopted rule is necessary to broaden the type of staff qualified to answer and screen crisis hotline calls for local mental health authorities (LMHAs), local behavioral health authorities (LBHAs), and their subcontractors. The adopted rule allows staff members trained in crisis screening to conduct the crisis calls in addition to staff members who are credentialed as a Qualified Mental Health Professional-Community Services (QMHP-CS). This allows LMHAs, LBHAs, and their subcontractors to broaden recruiting and applicant pools thereby potentially reducing call wait times and answering more calls within the required time-frame.

#### COMMENTS

The 31-day comment period ended April 17, 2023.

During this period, HHSC did not receive any comments regarding the proposed rule.

## STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Health and Safety Code §533.0345(a), which requires the Executive Commissioner of HHSC to by rule develop model program standards for mental health services for use by each state agency that provides or pays for mental health services; §533.0356(i), which allows the Executive Commissioner of HHSC to adopt rules to govern the operations of local behavioral health authorities; and §534.052(a), which requires the Executive Commissioner of HHSC to adopt rules, including standards, the Executive Commissioner considers necessary and appropriate to ensure the adequate provision of community-based mental health services through an LMHA under Chapter 534.

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 June 13, 2023.

TRD-202302136

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: July 3, 2023

Proposal publication date: March 17, 2023

For further information, please call: (512) 672-4255



## TITLE 28. INSURANCE

### PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

#### CHAPTER 55. LUMP SUM PAYMENTS

##### 28 TAC §55.15

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 Texas Administrative Code §55.15, concerning Compromise Settlement Agreements. DWC adopts §55.15 without changes to the proposed text published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 639) and will not be republished.

REASONED JUSTIFICATION. Amending §55.15 is necessary to update obsolete submission method requirements and obsolete references to the Industrial Accident Board, a predecessor agency of DWC. The amendments eliminate the use of colored or carbon copy paper when submitting settlement agreements to DWC. The amendments do not change the requirements of settlement agreements, just the way they are submitted to DWC. The amendments also update the agency's name.

Labor Code §402.061 requires the commissioner of workers' compensation to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Section 55.15

implements requirements for the contents of compromise settlement agreements. Former §55.15(6) required that all compromise settlement agreements be submitted to DWC in four parts on carbonless paper or with carbon paper left intact. Adopted §55.15(b) no longer has the requirement to submit compromise settlement agreements on carbonless paper and now requires compromise settlement agreements to be sent to DWC in the form and manner DWC prescribes.

**SUMMARY OF COMMENTS.** DWC did not receive any comments on the proposed amendments.

**STATUTORY AUTHORITY.** The commissioner of workers' compensation adopts the amendments to §55.15 under Labor Code §§408.005, 402.00111, 402.00116, and 402.061.

Labor Code §408.005 requires in part that a settlement be signed by the commissioner and all parties to the dispute and sets out criteria for the commissioner to approve the settlement. Subsection (f) states that a settlement that is not approved or rejected before the 16th day after the date the settlement is submitted to the commissioner is considered to be approved by the commissioner on that date. So, to comply with Labor Code §408.005, settlements must be submitted to the commissioner.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation 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 June 13, 2023.

TRD-202302152

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Effective date: July 3, 2023

Proposal publication date: February 10, 2023

For further information, please call: (512) 804-4703



## **TITLE 30. ENVIRONMENTAL QUALITY**

### **PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

#### **CHAPTER 5. ADVISORY COMMITTEES AND GROUPS**

##### **SUBCHAPTER B. ADVISORY COMMITTEES**

###### **30 TAC §5.3, §5.15**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §5.3; and new §5.15.

Amended §5.3 and new §5.15 are adopted *without changes* to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 298) and, therefore, will not be republished.

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

This rulemaking adoption implements the requirements of Texas Government Code, Chapter 2110 with respect to establishing in rule the date on which an advisory committee is abolished.

During Sunset review, Sunset Commission staff recommended that the agency renew advisory committees created by the commission through a rulemaking process. Texas Government Code, §2110.008 provides that an advisory committee is automatically abolished on the fourth anniversary date of its creation unless the state agency has established, by rule, a different date on which the advisory committee will automatically be abolished. In consideration of the Sunset review recommendation, the commission determined that seven advisory committees that do not have dates for abolishment currently established in statute or rule should continue in existence because they continue to serve the purpose of providing advice to the agency. This rulemaking will continue the existence of those seven advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. The rule specifies December 31, 2032, as the date of abolishment for these advisory committees. Advisory committees that are subject to a statutory duration or excluded from the applicability of Texas Government Code, Chapter 2110 are not included in this rule.

#### **Section by Section Discussion**

The commission adopts the amendment to §5.3 providing that advisory committees created by the commission are to be automatically abolished according to the requirements of Texas Government Code, §2110.008 unless the advisory committee is required to remain in effect without abolishment under a state or federal law, or a different date for abolishment is established under §5.15. An advisory committee that is subject to a requirement under a state or federal law to remain in effect without abolishment or an advisory committee that is not subject to Texas Government Code, §2110.008 is not subject to abolishment under §5.3 or §5.15.

The commission adopts new §5.15 to establish the duration of advisory committees under subchapter B. New subsection (a) provides that the advisory committees listed in subsection (b) are renewed and continue to exist with the abolishment date established for the listed advisory committee. New subsection (b) establishes an abolishment date of December 31, 2032, for the following advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. The commission expects that future rulemaking may add to the list of advisory committees or amend the date of abolishment for any advisory committee.

Final Regulatory Impact Determination

The commission reviewed the rulemaking adoption in light of the regulatory analysis

requirements of the Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking adoption is not a major environmental rule because it is not anticipated to adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state from the revisions because the changes are not substantive. The rulemaking addresses procedural requirements for establishing the dates on which listed advisory committees are to be abolished.

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

First, the rulemaking does not exceed a standard set by federal law because the commission is adopting this rulemaking to continue advisory committees and establish the dates on which the advisory committees will be abolished. There are no standards set by federal law that are exceeded by the adopted rules.

Second, the rulemaking adoption does not exceed a requirement of state law because Texas Government Code Chapter 2110 authorizes a state agency to establish, by rule, the date on which an advisory committee is to be abolished.

Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. There is no applicable delegation agreement or contract addressing the duration requirements for advisory committees.

And fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, this rulemaking is authorized by Texas Water Code, §5.103 which provides specific authority to adopt rules and §5.107 which authorizes the commission to create advisory committees.

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

## Takings Impact Assessment

The commission evaluated the rulemaking adoption and performed analysis of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to continue the existence of listed advisory committees and establish the date on which the advisory committees are to be abolished. The rulemaking adoption substantially advances these stated purposes by adopting rules that continue the existence of the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee and establish the date of December 31, 2032, on which these committees will be abolished.

The commission's analysis indicates that the adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in real property because the adopted rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The adopted rules are procedural, addressing the requirements for advisory committees, and do not affect real property.

## Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

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

## Public Comment

The commission offered/held a public hearing on February 27, 2023. The comment period closed on February 28, 2023. The commission received comments from Harris County Pollution Control Service (HCPCS).

## Response to Comments

### *Comment*

*HCPCS commented that it recommends that the Texas Health & Safety Code, Texas Government Code and the proposed rule change process be reevaluated to better conform with the Sunset Commission's concerns or recommendations.*

### *Response*

The commission's rulemaking to renew the advisory committees by rule and establish dates for abolishment in rule for the advisory committees was intended to address only a part of the Sunset Advisory Commission Staff Report with Commission Decisions, Management Action recommendation 1.6 (Sunset Commission Staff Report recommendation), the recommendation that TCEQ extend advisory committees by rule. This rulemaking was not intended to fulfill the entirety of the recommendation that directed the agency to evaluate the

use of advisory committees to provide more public involvement in rulemaking and other decision-making processes. Other approaches to encourage public participation in agency decision-making include provisions of the Sunset legislation (House Bill 1505 and Senate Bill 1397, 88th Legislature, 2023), and agency rule and guidance changes that address public meetings, public notice, contested case hearings, and the availability of information on TCEQ's public website.

*Comment*

*HCPCS commented that the proposal to establish dates of abolishment for seven advisory committees does not address the "atmosphere of distrust" identified by the Sunset Commission or adhere to their recommendation for "correctly extending advisory committees and not inadvertently letting them be abolished by function of law."*

*Response*

The commission's rulemaking to renew the advisory committees by rule and establish dates for abolishment in rule for the advisory committees was intended to address only a part of the Sunset Commission Staff Report recommendation, the recommendation that TCEQ extend advisory committees by rule. This rulemaking was not intended to fulfill the entirety of the recommendation that sought to encourage public participation in agency decision-making. The commission does consider that the adopted amendment to §5.3 and new §5.15 appropriately renews the advisory committees by rule and establishes a date of abolishment in rule so that the advisory committees are not abolished by operation of Texas Government Code, §2110.008, conforming to the Sunset Commission Staff Report recommendation.

*Comment*

*HCPCS commented that the proposed rule change in the future could potentially result in the advisory committees being inadvertently abolished.*

*Response*

The adoption of new §5.15 establishes dates of abolishment for the listed advisory committees so that the advisory committees are not abolished by operation of Texas Government Code, §2110.008. Establishing the date of abolishment in rule is intended to prevent inadvertent abolishment.

*Comment*

*HCPCS commented that using dates of abolishment, where the advisory committee must be renewed by rule, is a potential burden to the public, who may not understand how to navigate the rules process to extend the advisory committee's existence.*

*Response*

The Commission determined that rulemaking was necessary to implement the Sunset Commission Staff Report recommendation. The adoption of new §5.15 renews the seven listed advisory committees by rule as recommended by the Sunset Commission Staff Report and establishes dates of abolishment in rule so that advisory committees are not abolished by operation of Texas Government Code, §2110.008.

*Comment*

*HCPCS commented that the rule change process does not address the Sunset Commission's concern or recommendation of correctly extending the advisory committee.*

*Response*

The commission determined that rulemaking was necessary to implement the Sunset Commission staff report recommendation for extending advisory committees. The adoption of new §5.15 renews the seven listed advisory committees by rule as recommended by the Sunset Commission Staff Report.

*Statutory Authority*

The amendment and new rule are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The adopted amendment and new rule implement TWC, §5.107 and Texas Government Code, Chapter 2110.

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 June 16, 2023.

TRD-202302169

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: July 6, 2023

Proposal publication date: January 27, 2023

For further information, please call: (512) 239-2678



## CHAPTER 285. ON-SITE SEWAGE FACILITIES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§285.2, 285.3, 285.7, 285.32-285.34, 285.38, 285.64, and 285.91.

Amended §§285.2, 285.3, 285.7, 285.32 - 285.34, 285.38, and 285.64 are adopted *without changes* to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8898). These rules will not be republished. Amended §285.91 is adopted *with changes* to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8898) and, therefore, will be republished.

### Background and Summary of the Factual Basis for the Adopted Rules

On November 12, 2020, the Texas On-Site Wastewater Association (TOWA) filed a petition for rulemaking. On April 5, 2021, B&J Wakefield Services, Inc. (Wakefield) filed a petition for rulemaking. On December 16, 2020, and May 19, 2021, respectively, the commission directed the executive director (ED) to initiate rulemaking after stakeholder involvement concerning the issues raised in the petitions. The petitions requested amendments to several sections, and the ED considered the changes recommended by TOWA and Wakefield. House Bill (HB) 1680 87th Legislature, 2021, allows leased portions of federal properties to be considered separately for the purposes of the implementation

of 30 Texas Administrative Code (TAC) Chapter 285. HB 1680 does not require rulemaking; however, the ED has determined that implementing the bill language through rulemaking will clarify the requirements. This rulemaking will incorporate some, but not all, of the changes recommended by TOWA, none of the changes recommended by Wakefield, and the requirement regulating on-site sewage facilities (OSSFs) on certain leased land that is owned by the federal government. The adopted rules will update the definition of "direct communication" to ensure that, in addition to the installer and the installer's apprentice being able to communicate directly, the maintenance provider and the maintenance provider's technician will also be able to communicate directly. The updated definition will also allow any form of immediate communication rather than specifying "in person, by telephone, or by radio."

The adopted rules will clarify that: single family dwellings located on a tract of land that is ten acres or larger must adhere to all the requirements of Chapter 285 that are not specifically listed in the rule as exempt; all required tags must indicate the maintenance dates and maintenance provider information must be located outside the motor cover, control panel, or breaker box; "flows" are in reference to "hydraulic flows," and installers and owners can be parties in a contract with a maintenance provider.

The adopted rules will require risers to be installed over all inspection and cleanout ports, and all risers be at least two inches above grade. This requirement will be effective with permits issued on September 1, 2023, and later.

The adopted rules will update the language for timers used in dosing systems, and the requirement for purple fittings for reclaimed water systems.

The adopted rules will allow flexible conduit to be used in areas between the buried pipe and the control panels where rigid pipe is not feasible, with a limit of four feet of flexible conduit.

The adopted rules will clarify that the maintenance provider is contracted to provide maintenance on an OSSF. After the two-year period after installation, the homeowner is responsible for either contracting with the provider or is responsible for obtaining the necessary training to maintain the system themselves.

In addition to the above changes, the adopted rules will correct references and cross-references.

The adopted rules will implement HB 1680 by adding the requirement that if a tract of land owned by the federal government contains separately leased individual parts, each leased part is considered a separate tract of land.

#### Section by Section Discussion

##### *§285.2, Definitions*

The adopted rule will amend the definition of "direct communication" in §285.2(18) to include communication between the installer and the apprentice, and the maintenance provider and the maintenance technician. The adopted rule removes the examples of means of communication to reflect that the modernization of communication provides for better, more efficient communication.

##### *§285.3, General Requirements*

The adopted rule will amend §285.3(f)(2) to clarify that the 10-acre exception only applies to the requirements for planning materials, permits, or inspections at an OSSF at a single-family dwelling but does not allow exception from the planning,

construction and installation standards as required by Chapter 285, Subchapter D. The current provision has been misinterpreted by homeowners, installers, authorized agents, and other stakeholders as meaning that single-family dwellings on 10 acres or more were exempt from the entirety of Chapter 285. This clarification will help authorized agents, homeowners, and installers better understand the regulatory requirements for large properties and correctly implement the rules, resulting in better protection of public health and the environment.

The adopted rule will also amend §285.3(f) to add paragraph (4) to incorporate the requirement from HB 1680 into the rule. The statute provides that "If a tract of land owned by the federal government contains separately leased individual parts, each leased part is considered a separate tract of land for purposes of this chapter, or a rule adopted under this chapter."

##### *§285.7, Maintenance Requirements*

The adopted rule to amend §285.7(e)(2) will clarify that the required weather resistant tag must be located outside of the motor cover, control panel, or breaker box. The adopted language will improve safety for homeowners as it will require easy access to the maintenance provider's contact information.

The adopted rule to amend §285.7(c) will correct the reference from "§285.7(d)(1)(A) - (E)" to "§285.7(d)(1)(A) - (F)." This correction is necessary as the provision "(F)" requires the business physical address and telephone number for the maintenance provider, which is important for the maintenance contract.

##### *§285.32, Criteria for Sewage Treatment Systems*

The adopted rule to amend §285.32(b)(1)(D) will require tank risers to be at least two inches above grade. Currently the risers on some OSSFs are installed at or below grade, which makes maintenance of the OSSF difficult. This change will allow easier access to the OSSF for maintenance. Additionally, requiring risers to be installed two inches above grade will help prevent the OSSF from being infiltrated with rainwater during rain events. This requirement will be effective with permits issued on September 1, 2023, and later.

The adopted rule to amend §285.32(c)(5)(A) will remove the descriptor for the initials "NSF". The reference to National Sanitation Foundation (NSF) is outdated.

The adopted rule to amend §285.32(d)(5) corrects the reference to read "§285.34(c)".

##### *§285.33, Criteria for Effluent Disposal Systems*

The adopted rule to amend §285.33(c)(4) corrects the reference to "§285.32(c)(5)" rather than "§285.32(c)(4)(B)".

The adopted rule to amend §285.33(d)(2)(D) will remove the descriptor for the initials "NSF". The reference to National Sanitation Foundation (NSF) is outdated.

The adopted rule to amend §285.33(d)(2)(G)(i) will remove the requirement that a commercial irrigation timer be used. Other timers that are readily available provide the same functionality and level of service.

The adopted rule to amend §285.33(d)(2)(G)(iii)(I) will remove the requirement that a commercial irrigation timer be used. Other commercially available products can provide the needed functionality and level of service.

The adopted rule to amend §285.33(d)(2)(G)(iii)(II) will remove the requirement that a commercial irrigation timer be used. Other

commercially available products provide the needed functionality and level of service.

The adopted rule to amend §285.33(d)(2)(G)(v) will remove the requirement that fittings in distribution systems for reclaimed water systems be permanently colored purple. The use of purple pipe is to clearly distinguish piping used for wastewater from other pipes, however, purple fittings are not readily available and are more expensive. The use of non-purple fittings will not affect an individual's ability to distinguish piping used for wastewater from piping used for other purposes because the pipe is still required to be purple.

#### §285.34, *Other Requirements*

The adopted rule to amend §285.34(a) will remove the descriptor for the initials "NSF." The reference to National Sanitation Foundation (NSF) is outdated.

The adopted rule to amend §285.34(b)(3) will clarify the type of flow by adding the word "hydraulic" to the provision. By adding the word "hydraulic", the rules will clearly identify the referenced flows as those within the OSSF system (wastewater generated on the site where it is treated).

The adopted rule to amend §285.34(c) will allow up to four feet of electrical wiring that is not buried to be contained in water-tight flexible electric conduit, rather than in rigid pipe. Flexible conduit will provide sufficient safety measures to prevent infiltration or other exposures of the wiring to damage. The amended language is necessary to address wire protection in tight spaces, that are typically between the buried electrical wiring and the panel(s), that sometimes make configuring rigid conduit difficult.

#### §285.38, *Prevention of Unauthorized Access to On-Site Sewage Facilities (OSSFs)*

The adopted rule to amend §285.38(c) will require all inspection and cleanout ports to have risers that extend at least two inches above grade. This change eliminates the exception that the inspection and cleanout ports of septic tanks are not required to have risers. This change will allow easier access to the OSSF for maintenance and inspection. Additionally, requiring risers to be installed two inches above grade will help prevent the OSSF from being infiltrated with rainwater during rain events. This requirement will be effective with permits issued on September 1, 2023, and later.

The deletion of §285.38(d) is necessary to prevent ambiguity in the rules since §285.38(c) will no longer exempt septic tank inspection and cleanout ports from having risers.

The subsequent provisions were relabeled accordingly.

#### §285.64, *Duties and Responsibilities of Maintenance Providers and Maintenance Technicians.*

The adopted rule to amend §285.64(a)(5) will clarify that the maintenance provider is contracted to perform maintenance on an OSSF. The adopted change will remove the ambiguity in the rule that the installer is the only person that may contract with a maintenance provider to provide maintenance on an OSSF. After the end of the two-year period after installation, the homeowner is responsible for either contracting with a maintenance provider or obtaining the necessary training to maintain the OSSF system themselves.

#### §285.91, *Tables.*

The adopted rule to amend §285.91 (2) Table 2 addresses the minimum aerobic tank treatment capacity for one and two bed-

room homes with less than 1501 square feet. This correction adds these homes to the table and resolves the questions that arise as a result of smaller homes not being addressed.

The adopted rule to amend §285.91 (10) Table 10 corrects the citation regarding wells completed in accordance with the rules in 16 TAC Chapter 76 to read "§76.100(b), 76.100(e), and 76.100(f). This correction is necessary as the current reference is incorrect.

The adopted rule to amend §285.91 (10) Table 10 updates the reference from the Ra value "less than" to read the Ra value "equal to" 0.1. This correction is necessary as the current reference is incorrect. As indicated in §285.91 (1) Table 1, no reference to an Ra value less than 0.1 is given; rather, an Ra value of equal to 0.1 is given.

The adopted rule to amend §285.91 (Table 10) (Footnote 6) updates the language for timers to remove the reference to "commercial irrigation" timers to align with the updated language that is adopted in §285.33(d)(2)(G)(i). This change will remove ambiguity in the amended rules.

#### 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 that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a 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."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The purpose of this rulemaking is to update the rules in 30 TAC 285 to make them current with industry standards and practices.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not 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. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: "1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preced-

ing applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the regulation of OSSFs; 2) does not exceed any express requirements of state law related to the regulation of OSSFs; 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 adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule," this rulemaking is not subject to Texas Government Code, §2001.0225.

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

#### Takings Impact Assessment

The commission evaluated this rulemaking and performed an analysis of whether the adopted rules will constitute a taking. Texas Government Code, §2007.002(5), defines a taking as either: 1) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Sections 17 or 19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission determined that the adopted rules will not constitute a taking as that term is defined under Texas Government Code, §2007.002(5). Specifically, the adopted rules will not affect any landowner's rights in private real property, and there are no burdens that will be imposed on private real property by the adopted rules.

#### Consistency with the Coastal Management Program

The ED reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The ED conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies. The applicable goals of the CMP are: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance 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; and to balance these competing interests. The specific CMP policies

applicable to these adopted amendments include clarifications in OSSF rules, updated language to be consistent with industry standards, require technical changes to provide easier access for maintenance of OSSFs, and implement House Bill 1680 which will allow separately leased individual parts of federal lands to be considered as separate tracts for the purposes of Chapter 285. In addition to these changes, several typographical errors and incorrect references within Chapter 285 will be corrected. Promulgation and enforcement of these adopted rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, because these adopted rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the adopted rules do not relax current treatment or disposal standards.

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

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

#### Public Comment

The commission offered a public hearing on January 30, 2023. The comment period closed on January 31, 2023, during which time one comment was received. The commenter was against including new requirements for risers in 30 TAC §285.38. The commenter also noted that the proposed reference in §285.91(10) was incorrect.

#### Response to Comments

##### *Comment 1*

An individual commented on the problems that might be created by increasing the required riser height to two inches above grade. The commenter's concerns include increased accessibility to the OSSF by unauthorized people, creating stumbling obstacles, and the difficulty of increasing riser heights on systems that are located in sidewalks, parking lots, in front of businesses, residences, and commercial operations.

##### *Response 1*

The commission appreciates the concern for safety that could be created by the proposed changes. Based on other stakeholder comments and TCEQ inspector experience, the benefits of requiring risers that extend above ground level outweigh the potential costs. Currently, the risers on some OSSFs are installed below grade, which can make maintenance of the OSSF difficult.

Two specific requirements in the current rule are meant to prevent unauthorized access. In the event that unauthorized persons remove the lid, the rules include provisions to prevent the person from falling or otherwise entering the tank. Specifically, the rules require: a riser secured with a padlock, a cover that can be removed with tools, a cover with a minimum weight of 65 pounds, or other means approved by the TCEQ Executive Director (30 TAC §285.38(c)(3)(A)); and a secondary plug, cap, or other suitable restraint system provided below the riser cap (30 TAC §285.38(c) and (30 TAC §285.38(d)).

The provision to require riser lids that extend to two inches above grade does not apply to systems that are already permitted. This provision will only apply to systems associated with new per-

mits. New permits will not authorize construction of OSSFs in sidewalks, parking lots, or within certain distances of any other structures or site improvements (site improvements include any concrete that is laid on the ground surface for any reason). No changes have been made as a result of this comment.

*Comment 2*

An individual commented that raising the riser two inches above grade will not prevent infiltration into an OSSF but would rather make damage to the riser more likely, increasing the potential for infiltration. The commenter stated that the law already requires that risers to be water-tight and if they are not, they should be fixed.

*Response 2*

The commission recognizes that increasing the minimum height of risers might lead to additional damage to risers, and that risers are already required to be water-tight; however, based on other stakeholder comments and TCEQ inspector experience, increasing the riser height to two inches above ground level will reduce the potential for infiltration from rain and surface water. The benefits of not only preventing infiltration into the OSSF but also increasing accessibility for maintenance personnel outweigh the potential risk that additional damage may be done to elevated risers. No changes were made in response to this comment.

*Comment 3*

An individual commented that there was an error in the amendment to a reference in §285.91 (10).

*Response 3*

The proposed language in §285.91 (10) Table 10 incorrectly referenced 16 TAC §76.100(a)(1) whereas Table 10 should have referenced §76.100(b), §76.100(e), and §76.100(f). Changes were made to correct this reference.

## SUBCHAPTER A. GENERAL PROVISIONS

### 30 TAC §§285.2, 285.3, 285.7

#### Statutory Authority

These amendments are adopted under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, and THSC §366.011 which establishes the commission's authority over on-site sewage facilities; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules. No other statutes, articles, or codes are affected by the adoption.

This rulemaking implements House Bill 1680, 87th Leg. (2021), codified as Texas Health and Safety Code, §366.006, which provides that certain tracts of land owned by the federal government that contain separately leased parts are considered as separate tracts of land for purposes of on-site sewage facilities permitting.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. PLANNING, CONSTRUCTION, AND INSTALLATION STANDARDS FOR OSSFS

### 30 TAC §§285.32 - 285.34, 285.38

#### Statutory Authority

These amendments are adopted under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, which establishes the commission's authority over on-site sewage facilities; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules. No other statutes, articles, or codes are affected by the adoption.

This rulemaking implements House Bill 1680 (87th legislative session), codified as Texas Health and Safety Code, §366.006, which provides that certain tracts of land owned by the federal government that contain separately leased parts is considered a separate tract of land for purposes of on-site sewage facilities permitting.

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## SUBCHAPTER F. LICENSING AND REGISTRATION REQUIREMENTS FOR INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, SITE EVALUATORS, MAINTENANCE PROVIDERS, AND MAINTENANCE TECHNICIANS

### 30 TAC §285.64

#### Statutory Authority

These amendments are adopted under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for imple-



menting the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, which establishes the commission's authority over on-site sewage facilities; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules. No other statutes, articles, or codes are affected by the adoption.

This rulemaking implements House Bill 1680 (87th Legislative Session), codified as Texas Health and Safety Code, §366.006, which provides that certain tracts of land owned by the federal government that contain separately leased parts is considered a separate tract of land for purposes of on-site sewage facilities permitting.

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## SUBCHAPTER I. APPENDICES

### 30 TAC §285.91

#### Statutory Authority

These amendments are adopted under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, which establishes the commission's authority over on-site sewage facilities; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules. No other statutes, articles, or codes are affected by the adoption.

This rulemaking implements House Bill 1680 (87th legislative session), codified as Texas Health and Safety Code, §366.006, which provides that certain tracts of land owned by the federal government that contain separately leased parts is considered a separate tract of land for purposes of on-site sewage facilities permitting.

#### §285.91. Tables.

The following tables are necessary for the proper location, planning, construction, and installation of an on-site sewage facility (OSSF).

(1) Table I. Effluent Loading Requirements Based on Soil Classification.

Figure: 30 TAC §285.91(1) (No change.)

(2) Table II. Septic Tank and Aerobic Treatment Unit Sizing.

Figure: 30 TAC §285.91(2)

(3) Table III. Wastewater Usage Rate.

Figure: 30 TAC §285.91(3) (No change.)

(4) Table IV. Required Testing and Reporting.

Figure: 30 TAC §285.91(4) (No change.)

(5) Table V. Criteria for Standard Subsurface Absorption Systems.

Figure: 30 TAC §285.91(5) (No change.)

(6) Table VI. USDA Soil Textural Classifications.

Figure: 30 TAC §285.91(6) (No change.)

(7) Table VII. Yearly Average Net Evaporation (Evaporation-Rainfall).

Figure: 30 TAC §285.91(7) (No change.)

(8) Table VIII. OSSF Excavation Length (3 Feet in Width or Less).

Figure: §30 TAC 285.91(8) (No change.)

(9) Table IX. OSSF System Designation.

Figure: 30 TAC §285.91(9) (No change.)

(10) Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.

Figure: 30 TAC §285.91(10)

(11) Table XI. Intermittent Sand Filter Media Specifications (ASTM C-33).

Figure: 30 TAC §285.91(11) (No change.)

(12) Table XII. OSSF Maintenance Contracts, Affidavit, and Testing/Reporting Requirements.

Figure: 30 TAC §285.91(12) (No change.)

(13) Table XIII. Disposal and Treatment Selection Criteria.

Figure: 30 TAC §285.91(13) (No change.)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 65. WILDLIFE

#### SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

#### DIVISION 1. CHRONIC WASTING DISEASE (CWD)

#### 31 TAC §§65.82, 65.85, 65.88

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 25, 2023 adopted amendments to 31 TAC §§65.82, 65.85, and §65.88, concerning Disease Detection and Response, without changes to the proposed text as published

in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2048). The rules will not be republished.

The amendments function collectively to refine surveillance efforts as part of the agency's effort to manage chronic wasting disease (CWD).

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD, although robust efforts to increase knowledge are underway in many states and countries. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. Currently, there is scientific evidence to suggest that CWD has zoonotic potential; however, no confirmed cases of CWD have been found in humans. Consequently, both the CDC and the World Health Organization strongly recommend testing animals taken in areas where CWD exists, and if positive, recommend not consuming the meat. What is known is that CWD is invariably fatal to certain species of cervids and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD has been confirmed. The purpose of those CWD zones is to determine the geographic extent and prevalence of the disease while containing it by limiting the unnatural movement of live CWD-susceptible species as well as the movement of carcass parts.

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) <https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml>. Developed in 2012 in consultation with the Texas Animal Health Commission, other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the state of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are absolutely critical to containing it on the landscape. Accordingly, the first step in the department's response to CWD detections is the timely establishment of management zones around locations where detection occurs. One type of management zone is the surveillance zone (SZ),

defined by rule as "a department-defined geographic area in this state within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected." Within an SZ, the movement of live deer is subject to restrictions and the presentation of harvested deer at a department check stations is required. In addition, deer carcass movement restrictions set forth in §65.88 of Subchapter B, Division 1 apply.

The Texas Parks and Wildlife Commission recently directed staff to develop guidelines or a standard operating procedure (SOP) with respect to the establishment and duration of the various management zones, including SZs. At the January 2023 meeting of the commission, staff presented the SOP for establishing SZs in scenarios where CWD has been detected in a deer breeding facility but not at any release site associated with a breeding facility. In such cases, the department will not establish an SZ if the following can be verified: 1) the disease was detected early (i.e., it has not been in the facility long); 2) the transmission mechanism and pathway are known; 3) the facility was promptly depopulated following detection; and 4) there is no evidence that free-ranging deer populations have been compromised. If any of these criteria is not satisfied, an SZ will be established to consist of all properties that are wholly or partially located within two miles of the property containing the positive deer breeding facility.

The amendment to §65.81, concerning Surveillance Zones; Restrictions, establishes ten new surveillance zones (SZ 9-18) and modifies two existing SZs (SZ 3 and SZ 8) in response to recent detections of CWD in deer breeding facilities and on associated release sites. As noted previously in this preamble, the department has been engaged in a long-term effort to stem the spread of CWD; however, by 2021 it was apparent that more robust measures were warranted because CWD was still being detected in additional deer breeding facilities. The commission adopted those rules, which require higher rates of testing, ante-mortem (live-animal) testing of breeder deer prior to release, and enhanced recordkeeping and reporting measures, in December of 2021 (46 TexReg 8724). This year is the first full year of the applicability of those measures.

On August 30, 2022, the department received confirmation that a yearling white-tailed buck deer in a deer breeding facility located in Gillespie County had tested positive for CWD; additional testing at that facility resulted in another positive test confirming CWD in a male yearling white-tailed deer on September 20, 2022 and a six-year-old female on December 15, 2022. On September 12-13 and October 12, 2022, the department received confirmation that five female white-tailed deer of approximately three years of age in a deer breeding facility located in Limestone County had tested positive for CWD. In response, the department promulgated emergency rules (47 TexReg 7615) to establish surveillance zones surrounding the affected facilities. The emergency rule expired on March 4, 2023. The amendment exercises the normal rulemaking process to replace the SZs established by the emergency rule, in accordance with the SOP. The amendment also modifies existing SZ 8 in Duval County. SZ 8 was established in response to the detection of CWD in a deer breeding facility. The modification shrinks the size of the current SZ to be consistent with the SOP. In addition, the amendment eliminates current paragraph (1)(H)(iii), which imposed a date for the termination of effectiveness of the affected subparagraph. In the course of deliberating the proposal, the commission determined that the efficacy of the new SOP for managing SZ delineations would be frustrated in the SZ in Duval County were the

provision in question allowed to remain. The amendment also shrinks existing SZ 3 in Medina, Bandera, and Uvalde counties. The current SZ, along with a containment zone (CZ 3), was established in response to the detection of CWD in a number of deer breeding facilities, as well as in free-ranging deer on release sites associated with several facilities, in Medina County, and was enlarged in response to the confirmation of CWD in two more deer breeding facilities in adjacent Uvalde County (five positives (four males aged 1.5-3.4 years, one female aged 3.5 years) confirmed on March 29, 2021 at one deer breeding facility and one positive (male, 3.8 years of age) confirmed on June 15, 2021, at another deer breeding facility. The department has determined that the new SOP for SZs allows the current SZ 3 to be reduced in overall size, provided a separate SZ is created for each of the two properties in Uvalde County, which is consistent with the new SOP because deer from those facilities were not liberated to adjoining release sites and no additional positives have been detected in the current SZ surrounding those locations. Thus, the amendment essentially creates two SZs in Uvalde County. On March 10, 2023, the department received confirmation that CWD was present in a deer breeding facility in Zavala County (three buck deer approximately 2.5 years of age). On March 17, 2023, the department received confirmation that CWD was present in a deer breeding facility in Gonzales County (three female deer between the ages of 1.5 and 7.5 years of age). On March 21, 2023, the department received confirmation that CWD was present in a deer breeding facility in Hamilton County (one female deer, 3.5 years of age). On March 22, 2023, the department received confirmation that CWD was present in a deer breeding facility in Washington County (one female deer, 1.9 years of age). On April 6, 2023, the department received confirmation that CWD was present in a deer breeding facility in Frio County. The amendment establishes a SZ around each of the positive facilities (SZs 9-18, respectively).

The amendment to §65.85, concerning Mandatory Check Stations, provides for the designation of mandatory check stations for SZs at locations other than within the SZ. The current rule stipulates that the department may establish mandatory check stations in SZs. Under the new SOP for delineation of SZs, however, it could be possible for an SZ to contain no suitable public locations where the department could set up a check station. Therefore, the amendment provides for the establishment of mandatory check stations for a given SZ that are not necessarily within the SZ. The department stresses that such check stations would be sited as close to the SZ as possible and the department would undertake substantial public awareness measures as well as communication with landowners in the SZ.

The amendment to §65.88, concerning Deer Carcass Movement Restrictions, allows the head of a susceptible species taken within an SZ within which the department has not designated a mandatory check station to be transported outside of the SZ, provided such transfer is conducted immediately upon leaving the SZ where the susceptible species was taken and by the most direct route to the nearest department-designated mandatory check station. Under current rule, the head of a susceptible species taken in an SZ cannot be taken from the SZ unless accompanied by a department-issued check station receipt. The department's SOP for SZs, described earlier in this preamble, presents the possibility that the department might be unable to establish mandatory check stations within a given SZ; therefore, the amendment allows for transport in such circumstances. The amendment also prescribes acceptable methods for the disposal of heads following presentation at a

check station (if the head is not being taken to a taxidermist), which consist of either 1) return to the property where the animal was harvested or 2) disposal in a landfill permitted by the Texas Commission on Environmental Quality. Because cranial and spinal tissues have the possibility of being infectious, they must be disposed of properly. Disposal at the location of harvest prevents dispersal of potentially infectious tissues to unexposed locations and landfill disposal at an accredited facility is an acceptable barrier to disease transmission.

The department received five comments opposing adoption of the rules as proposed. Of those comments, two provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that transfer of breeder deer out of a CZ should not be allowed. The department agrees with the comment and responds that the rules as proposed and as adopted do not allow the transfer of breeder deer outside of a CZ. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer breeding facilities are destroying hunting opportunity. The department disagrees with the comment and responds that in the final analysis the threat to deer populations is CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "CWD should be monitored to an extent and where necessary, some animals separated, quarantined and/or euthanized for the overall good of the entire Texas whitetail herd. Wholesale liquidation of herds, regulation of large areas of neighboring ranches and widescale panic is NOT the way to achieve any of your goals." The commenter further stated that "Regulating with a heavy hand without sound science or landowner cooperation is an awful and painful approach and will lead to a divide between TPWD and landowners that is unnecessary" and that "mass and unscientifically euthanizing of animals is creating panic among hunters in areas where CWD may be found." The department disagrees with the comment and responds first, that the entirety of the department's CWD management effort is aimed at protecting the state's wildlife resources from a dangerous communicable disease and represents the collaborative efforts of the department, the Texas Animal Health Commission, and numerous concerned landowners, researchers, veterinarians, and epidemiologists using the best available science. For two decades the department has conducted increasingly robust surveillance efforts to detect CWD in captive and free-ranging herds. The department notes that current Texas Animal Health Commission rules require positive facilities to be immediately placed under quarantine. The department notes that separating positive animals is not efficacious because any animal exposed to CWD directly or indirectly has the potential to contract and spread it; therefore, depopulation of breeding facilities where CWD is detected is the most effective way to prevent further spread of the disease. No changes were made as a result of the comment.

The department received 16 comments supporting adoption of the rules as proposed.

No groups or associations commented in opposition to adoption of the rules as proposed.

The Texas Deer Association, Texas Wildlife Association, Texas Chapter of the Wildlife Society, and Texas Conservation Alliance commented in favor of adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

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 June 14, 2023.

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For further information, please call: (512) 389-4775



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

###### 34 TAC §3.297

The Comptroller of Public Accounts adopts amendments to §3.297, concerning carriers, commercial vessels, locomotives and rolling stock, and motor vehicles, with changes to correct punctuation to the proposed text as published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2321). The rule will be republished. The comptroller amends the section to implement the changes made to Tax Code, §160.001(2) (Definitions) by House Bill 4032, 86th Legislature, 2019 and to codify current comptroller policy regarding the taxability of components and the repair and maintenance of vessels.

The comptroller amends subsection (a)(1) "Chapter 160 boat" to update the maximum length of such a boat from 65 to 115 feet to implement House Bill 4032 and to more closely follow the statute and the definition of taxable boat in §3.741 of this title (relating to Imposition and Collection of Tax).

The comptroller amends subsection (c)(3) entitled, "component parts," by adding the phrase "or a Chapter 160 boat that meets

the definition of a commercial vessel" for clarification without substantive change to the subparagraph.

The comptroller amends subsection (c)(4) entitled, "repair and maintenance," by adding the phrase "or a Chapter 160 boat that meets the definition of a commercial vessel" for clarification in accordance with STAR Accession No. 9809812L (September 15, 1998) without substantive change to the subparagraph.

The comptroller did not receive any comments regarding adoption of the amendment.

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §151.329 (Certain Ships and Ship Equipment), §151.3291 (Boats and Boat Motors), and 160.001(2) (Definitions).

§3.297. *Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Chapter 160 boat--A vessel not more than 115 feet in length, measured from the tip of the bow in a straight line to the stern, other than a canoe, kayak, rowboat, raft, punt, or other watercraft designed to be propelled only by paddle, oar, or pole. The term includes federally documented vessels, sailboats, personal watercraft, and boats designed to accommodate an outboard motor. The term does not include seaplanes. Seaplanes, and canoes, kayaks, rowboats, rafts, punts, or other watercraft designed to be propelled only by paddle, oar, or pole, are not "taxable boats" under Tax Code, Chapter 160 (Taxes On Sales And Use Of Boats And Boat Motors), but are subject to tax under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax).

(2) Commercial vessel--A vessel that displaces eight or more tons of fresh water before being loaded with fuel, supplies, or cargo, and that is:

(A) used exclusively and directly in a commercial or business enterprise or activity, including, but not limited to, commercial fishing; or

(B) used commercially for pleasure fishing by individuals who are paying passengers.

(3) Common carrier--A person who holds out to the general public a willingness to provide transportation of persons or property from place to place for compensation in the normal course of business.

(4) Licensed and certificated common carrier--A person authorized through issuance of a license or certificate by the appropriate United States agency or by the appropriate state agency within the United States to operate a vessel, train, motor vehicle, or pipeline as a common carrier. Certificates of inspection or safety do not authorize a person to operate as a licensed and certificated common carrier.

(5) Locomotive--A self-propelled unit of railroad equipment consisting of one or more units powered by steam, electricity, diesel electric, or other fuel, designed solely to be operated on and supported by stationary steel rails or electromagnetic guideways and to move or draw one or more units of rolling stock owned or operated by a railroad. The term includes a yard locomotive operated to perform switching functions within a single railroad yard, but does not include self-propelled roadway maintenance equipment.

(6) Marine cargo container--A container that is fully or partially enclosed; is intended for containing goods; is strong enough to be suitable for repeated use; and is specially designed to facilitate the carriage of goods by one or more modes of transportation without intermediate reloading. The term includes the accessories and equipment that are carried with the container. The term does not include trailer chassis, motor vehicles, accessories, or spare parts for motor vehicles.

(7) Motor vehicle--A self-propelled vehicle designed to transport persons or property upon the public highway and a vehicle designed to be towed by a self-propelled vehicle while carrying property. The term includes, but is not limited to: automobiles; motor homes; motorcycles; trucks; truck tractors; trailers; semitrailers; house trailers or travel trailers, as defined by §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines); park models, as defined by §3.481 of this title (relating to Imposition and Collection of Manufactured Housing Tax); trailers sold unassembled in a kit; dollies; jeeps; stingers; auxiliary axles; converter gears; and truck cab/chassis. The term does not include a nonrepairable vehicle and a salvage vehicle, as defined by §3.86 of this title (relating to Destroyed and Repaired Motor Vehicles).

(8) Operating exclusively in foreign or interstate coastal commerce--Transporting persons or property between a point in Texas and a point in another state or foreign country. A vessel that travels between a point in Texas and an offshore area or fishing area on the high seas, or between two points in Texas, is not operating exclusively in foreign or interstate coastal commerce.

(9) Railroad--A form of non-highway ground transportation of persons or property in the normal course of business by means of trains solely operated on and supported by stationary steel rails or electromagnetic guideways, including, but not limited to:

(A) high speed ground transportation systems that connect metropolitan areas;

(B) commuter or other short-haul rail passenger service in a metropolitan or suburban area;

(C) narrow gauge shortline railroads, including tourist, historical, or amusement park railroads; and

(D) private industrial railroads operated on steel rails that connect directly to the national rail system of transportation, but not a private industrial railroad operated on steel rails totally inside an installation that is not connected directly to the national rail system of transportation.

(10) Rolling stock--A unit of railroad equipment that is mounted on wheels and designed to be operated in combination with one or more locomotives upon stationary steel rails or electromagnetic guideways owned or operated by a railroad. Examples include, but are not limited to, passenger coaches, baggage and mail cars, box cars, tank cars, flat cars, and gondolas. Rolling stock also includes self-propelled trackmobile rail car movers and roadway maintenance equipment. Rolling stock does not include equipment used for intra-plant transportation or other nontraditional railroad activities and that is mounted on stationary steel rails or tracks but that are not part of, or connected to, a railroad. For example, cranes operated on steel rails or tracks and used to load or unload ships are not rolling stock.

(11) Train--One or more locomotives coupled to one or more units of rolling stock that are designed to carry freight or passengers, are operated on steel rails or electromagnetic guideways, and are owned or operated by a railroad.

(12) Vessel--A watercraft, other than a seaplane on water, used, or capable of being used, for navigation and transportation of

persons or property on water. The term includes a ship, boat, watercraft designed to be propelled by paddle or oar, barge, and floating dry-dock.

(b) Carriers generally.

(1) Use tax is not due on the storage or use of repair or replacement parts acquired outside of Texas and actually affixed in Texas to a self-propelled vehicle that is used by a licensed and certificated common carrier. Trailers, barges, and semitrailers are not considered to be self-propelled vehicles.

(2) Use tax is due on the storage or use of tangible personal property brought into Texas to be assembled into a vehicle used by a common carrier to transport persons or property from place to place, unless the tangible personal property is otherwise exempt from sales and use tax under this section.

(3) Sales tax is not due on the sale of tangible personal property to a common carrier if the tangible personal property is shipped to a point outside of Texas using the purchasing carrier's facilities under a bill of lading, and if the tangible personal property is to be used by the purchasing carrier in the conduct of its business outside of Texas.

(c) Vessels.

(1) Chapter 160 boats. The sale or use in Texas of a Chapter 160 boat is subject to boat and boat motor sales or use tax under Tax Code, Chapter 160, even if the vessel meets the definition of a commercial vessel. The lease or rental of a Chapter 160 boat is subject to limited sales, excise, and use tax under Tax Code, Chapter 151. For information concerning the imposition of the boat and boat motor sales and use tax, see §3.741 of this title (relating to Imposition and Collection of Tax).

(2) Commercial vessels. Sales or use tax is not due on the sale by the builder of a commercial vessel that is not a Chapter 160 boat.

(3) Component parts. Sales and use tax is not due on the sale or use of materials, equipment, and machinery that become component parts of a commercial vessel, a marine cargo container, or a Chapter 160 boat that meets the definition of a commercial vessel. A component part is tangible personal property that is actually attached to and becomes a part of a commercial vessel, a marine cargo container, or a Chapter 160 boat that meets the definition of a commercial vessel. For example, items such as radios, radar equipment, navigation equipment, winches, long-line fishing gear, and rigging equipment, that are attached to the vessel by means of bolts or brackets, or are otherwise attached to the vessel, including items required by federal or state law, are component parts. Permanent coatings such as paint and varnishes are also component parts. The term does not include furnishings of any kind that are not attached to the vessel, nor does it include consumable supplies. For example, it does not include bedding, linen, kitchenware, tables, chairs, ice for cooling, refrigerants for cooling systems, fuels, lubricants, first aid kits, tools, or polishes, waxes, glazes, or other similar temporary coatings.

(4) Repair and maintenance. Sales and use tax is not due on the labor to repair, remodel, restore, renovate, convert, or maintain a commercial vessel or a Chapter 160 boat that meets the definition of a commercial vessel, or a component part of a commercial vessel or a Chapter 160 boat that meets the definition of a commercial vessel. Sales and use tax is due on the sale or use of machinery, equipment, tools, and other items used or consumed in performing the non-taxable service. For more information about the repair, remodeling, maintenance, and restoration of vessels that are not commercial vessels, see §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).

(5) Vessels operating exclusively in foreign or interstate coastal commerce.

(A) Sales or use tax is not due on the sale of materials and consumable supplies, including items commonly known as ships' stores and sea stores, to the owner or operator of a vessel operating exclusively in foreign or interstate coastal commerce, if the materials and consumable supplies are for use and consumption in the operation and maintenance of the vessel, or if the materials and supplies enter into and become component parts of the vessel.

(B) Operation of the vessel in a manner other than in foreign or interstate coastal commerce will result in a loss of the exemption for ships' stores and sea stores for the quarterly period in which the nonexempt operation occurs.

(C) Any owner or operator of a vessel operating exclusively in foreign or interstate coastal commerce shall, when giving an exemption certificate, include on the certificate the title or position of the person issuing the certificate and the name of the vessel on which the items are to be loaded.

(D) Sales tax is due on sales made to individual seamen operating these vessels.

(6) Closely associated service companies provide servicing operations such as stevedoring, loading, and unloading vessels. Sales or use tax is not due on the sale or use of materials and supplies purchased by a person providing stevedoring services for a vessel operating exclusively in foreign or interstate coastal commerce if the materials and supplies are loaded aboard the vessel and are not removed before its departure. This includes, but is not limited to, such items as lumber, plywood, deck lathing, turnbuckles, and lashing shackles.

(d) Taxable uses of tangible personal property purchased tax free. Sales and use tax is due when tangible personal property sold, leased, or rented tax-free under a properly completed resale or exemption certificate is subsequently put to a taxable use other than the use allowed under the certificate. For more information refer to §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).

(e) Rolling stock, locomotives, and trains.

(1) Sales or use tax is not due on the sale or use of locomotives and rolling stock.

(2) Sales or use tax is not due on the sale or use of fuel or supplies essential to the operation of locomotives and trains, including items required by federal or state regulation. Examples include, but are not limited to, telecommunication and signaling equipment, rails, ballast, cross ties, and roadbed moisture barriers. Items of tangible personal property used to construct, repair, remodel, or maintain improvements to real property such as depots, maintenance facilities, loading facilities, and storage facilities are not supplies essential to the operation of locomotives and trains.

(3) Sales or use tax is not due on the amount charged for labor or incorporated materials used to repair, remodel, maintain, or restore locomotives and rolling stock. Sales or use tax is due on the sale or use of machinery, equipment, tools, and other items used or consumed in performing the non-taxable service.

(4) Sales or use tax is not due on the sale or use of electricity, natural gas, and other fuels used or consumed predominately in the repair, maintenance, or restoration of rolling stock. For more information, see §3.295 of this title (relating to Natural Gas and Electricity).

(5) Sales or use tax is not due on the amount charged for labor or incorporated materials, whether lump-sum or separately stated,

used for the construction of new railroad tracks and roadbeds. For more information, see §3.291 of this title (relating to Contractors). Sales or use tax is not due on the separately stated sales price of incorporated materials used to repair, remodel, restore, or maintain existing railroad tracks and roadbeds. Sales and use tax is due on the sales price for labor to repair, remodel, restore, or maintain existing railroad tracks and roadbeds as nonresidential real property repair, remodeling, and restoration. For more information, see §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(f) Motor vehicles. The sale and use of motor vehicles are taxed under the Tax Code, Chapter 152 (Taxes on Sale, Rental, and Use of Motor Vehicles). For information on repairs to motor vehicles, see §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Comptroller of Public Accounts

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For further information, please call: (512) 475-2220



## SUBCHAPTER EE. BOAT AND BOAT MOTOR SALES AND USE TAX

### 34 TAC §3.741

The Comptroller of Public Accounts adopts amendments to §3.741, concerning imposition and collection of tax, relating to Tax Code, Chapter 160 (Taxes on Sales and Use of Boats and Boat Motors), without changes to the proposed text as published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2324). The rule will not be republished. This amendment implements House Bill 2926, 78th Legislature, 2003; House Bill 1106, 83rd Legislature, 2013; and House Bill 4032, 86th Legislature, 2019. Other amendments to the section reflect changes to existing text for consistency, clarity, and to incorporate long-standing agency policy.

The comptroller amends the section by inserting the word "sales" before the word "tax" when appropriate and replacing the terms "state" and "this state" with the term "Texas" throughout the section for uniformity with other sections of this title. The comptroller also inserts the term "taxable" before the term "boat" where appropriate to conform to the term defined in subsection (a)(12). The comptroller also replaces the term "boat" with the term "outboard" when referring to motor throughout the section to conform to the term defined in subsection (a)(13).

The comptroller amends current subsection (a), entitled "definitions," by revising certain existing definitions and by adding nine new terms in paragraphs (2), (3), (6), (7), (9), (10), (14), (15), and (18). The comptroller rennumbers existing paragraphs in the subsection accordingly.

The comptroller amends subsection (a)(1) defining the term "accessories" by replacing the term "boat" with the more general term "vessel" because accessories may be attached to vessels other than taxable boats. The comptroller further amends the paragraph by adding the terms "water skis" and "tow ropes" deleted and relocated from current subsection (f)(1) and adding a statement excluding boat trailers from the definition of an accessory.

The comptroller adds a new paragraph (2) defining the term "agent of the department." The amendment is derived from the definition of the same term in Parks and Wildlife Code, §31.003(15) (Definitions).

The comptroller adds a new paragraph (3), defining the term "Application for Certificate of Title and/or Registration." The amendment derives the definition, in part, from Parks and Wildlife Code, §31.046 (Application for Certificate of Title), and §31.047 (Application; Form and Content; Fee).

The comptroller amends current paragraph (2), renumbered paragraph (4), defining the term "dealer" based on the revisions to the definition of the term in Parks and Wildlife Code, §31.003(7), and by adding a licensing requirement based on §31.041 (Duties of Dealers, Distributors, and Manufacturers; License Required).

The comptroller adds new paragraph (6) defining the term "Distributor." The definition is based on the definition of the term "distributor" in the Parks and Wildlife Code, §31.003, added by House Bill 2926.

The comptroller adds new paragraph (7) defining the term "federally documented vessel." The definition comes from information on the United States Coast Guard website at <https://www.dco.uscg.mil/Our-Organization/Deputy-for-Operations-Policy-and-Capabilities-DCO-D/National-Vessel-Docummentation-Center/> (April 20, 2023).

The comptroller amends current paragraph (4), renumbered paragraph (8), defining the term "manufacturer." The comptroller amends the definition to incorporate revisions to Parks and Wildlife Code, §31.003(11), and to add a licensing requirement based on §31.041.

The comptroller deletes paragraph (6) defining the term "tax assessor-collector" and adds new paragraph (9) defining the term "participating county tax assessor-collector." The comptroller defines the term as a county tax assessor-collector that has an agreement with the Texas Parks & Wildlife Department (Parks & Wildlife) to title and/or register taxable boats or outboard motors in Texas. The comptroller bases the definition on guidance from STAR Accession No. 9110L1150C10 (October 3, 1991).

The comptroller adds new paragraph (10), defining the term "registered repair facility." The definition incorporates Tax Code, §160.0246 (Exemption for Certain Boats and Motors Temporarily Used in This State), added by House Bill 4032 and includes a requirement that the repair facility hold a Texas sales and use tax permit.

The comptroller amends current paragraph (5), renumbered paragraph (11), defining the term "retail sale" by incorporating the language from Tax Code, §160.001(7) (Definitions), to follow the statute more closely.

The comptroller amends current paragraph (7), renumbered paragraph (12), defining the term "taxable boat." The comptroller amends the definition of "taxable boat" by increasing

the length of a taxable boat from 65 feet to 115 feet based on Tax Code, §160.001(2) revised by House Bill 4032. The comptroller further amends the paragraph to more closely follow the statutory definition of taxable boat in Tax Code, §160.001(9), by rearranging the paragraph, deleting the term "inflatable" and adding the term "punts". The comptroller also adds the word "only" when referring to the how the boat is propelled to clarify the taxability of vessels that are designed to be propelled by oars or motors. The comptroller further amends the paragraph by replacing the term "jet skis," which is a manufacturer's trade name, with the generic term "personal watercraft."

The comptroller amends current paragraph (8), renumbered paragraph (13), by changing the defined term from "taxable motor" to "outboard motor" based on Tax Code, §160.001(5) and (9), and Parks and Wildlife Code, §31.003(13). The comptroller further amends the paragraph by replacing the terms "watercraft" and "boat" with the term "vessel" used in Tax Code, §160.001(2), as amended by House Bill 4032.

The comptroller adds new paragraph (14), defining the term "temporary use permit." The comptroller derives the definition from the language in Tax Code, §160.0247 (Temporary Use Permit), added to Tax Code, Chapter 160, by House Bill 4032.

The comptroller adds new paragraph (15), defining the term "territorial boundaries of Texas." The comptroller derives the definition, in part, from the language in §3.332(c) of this title (relating to Drilling Equipment) and STAR Accession No. 200905476L (May 1, 2009).

The comptroller amends current paragraph (9), renumbered paragraph (16), defining the term "total consideration" by incorporating language from Tax Code, §160.002 (Total Consideration), and rearranging certain other terms for clarity and readability. The comptroller amends the second sentence of the paragraph by adding language explaining that total consideration includes the inventory tax due and payable by dealers under Tax Code, §23.124 (Dealer's Vessel and Outboard Motor Inventory; Value). The comptroller further amends the paragraph by including long-standing comptroller practice under STAR Accession No. 9607L1418A11 (July 11, 1996). See Comptroller's Decision No. 42,142 (2005) and §3.74 of this title (relating to Seller Responsibility).

The comptroller amends current paragraph (10), renumbered paragraph (17), defining the term "use" by adding the terms "taxable boat or outboard motor" and creating two examples describing "use" in new subparagraphs (A) and (B). The comptroller derives the example in subparagraph (A) from current subsection (a)(10). The comptroller derives the example in new subparagraph (B), in part, from the language in Tax Code, §160.0246, added by House Bill 4032.

The comptroller adds new paragraph (18), defining the term "vessel." The comptroller derives the definition from §3.297 of this title (relating to Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles), and Parks and Wildlife Code, §31.003(2).

The comptroller amends the heading for current subsection (b) entitled "general principles" to read "general principles of taxation" to better inform readers as to what the subsection contains. The comptroller amends current subsection (b)(1) by deleting the phrase "the boat and boat motor sales and use tax" and adding the title for Tax Code, Chapter 160 for clarification without substantive change.

The comptroller amends subsection (b) by adding a new paragraph (2) by relocating the second sentence from current paragraph (2) and adding the term "lease" and a statement that taxable boats or outboard motors cannot be purchased for resale. The amendment is based on Tax Code, §151.3291 (Boats and Boat Motors), and guidance from STAR Accession No. 9709824L (September 29, 1997).

The comptroller amends current subsection (b)(2), renumbered as paragraph (3), by correcting the title of Tax Code, Chapter 151, and deleting and relocating the second sentence to new paragraph (2) for clarification without substantive change. The amendment includes several minor edits to current subsection (b)(3), renumbered as paragraph (4), for consistency and clarification without substantive change.

The comptroller amends current subsection (b)(4), renumbered as paragraph (5), by inserting the titles for the Parks and Wildlife Code sections cited therein and by making several edits for clarification without substantive change. The comptroller further amends renumbered paragraph (4) and paragraph (5) by replacing the phrase "the provisions of the boat and boat motor sales and use tax" with "Tax Code, Chapter 160" for uniformity without substantive change to the paragraph.

The comptroller adds new paragraph (6) addressing the taxation of a taxable boat or outboard motor purchased at retail outside Texas and brought into Texas for use in Texas by a Texas resident or person domiciled or doing business in Texas in accordance with Tax Code, §160.022 (Use Tax). The new paragraph also adds a reference to the new resident use tax in accordance with Tax Code, §160.023 (New Resident).

The comptroller adds new paragraph (7) addressing the taxation of a boat trailer in accordance with STAR Accession No. 200109441L (September 6, 2001). The new paragraph also references §3.74 of this title and §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines).

The comptroller amends subsection (c), entitled "imposition of the tax," by creating two new subparagraphs in paragraph (1) and by moving the 6.25% tax rate referenced in current paragraph (2) to new paragraphs (1)(A) and (2)(A).

The comptroller derives new subparagraph (A) from Tax Code, §160.021 (Retail Sales Tax), and implements the amendment to Tax Code, Chapter 160, by House Bill 4032, adding Tax Code, §160.026 Limitation on Amount of Tax, limiting the amount of total sales tax due at \$18,750. New subparagraph (B) restates the last two sentences in current paragraph (1) and makes several edits for clarification without substantive change.

The comptroller amends subsection (c) by deleting the language in paragraph (2) and adding new language relating to use tax due under Tax Code, §160.022. New subparagraph (A) states that tax is due on the total consideration paid or to be paid, regardless of any use or depreciation prior to entry into Texas. New subparagraph (B) makes the use tax an obligation of the person who brings the taxable boat or outboard motor into Texas in accordance with Tax Code, §160.022. New subparagraph (B) allows a credit against the Texas use tax in accordance with Tax Code, §160.025 (Credit for Other Taxes). New subparagraph (C) states that the new resident use tax imposed is \$15 and is in lieu of the use tax in accordance with Tax Code, §160.023.

The comptroller further amends subsection (c)(2) by adding a new subparagraph (D) providing that use tax is not due on the use of a taxable boat or outboard motor brought into Texas if the

owner of a taxable boat or outboard motor obtains a current temporary use permit. The addition of new subparagraph (D) implements the amendment to Tax Code, Chapter 160, by House Bill 4032 which added Tax Code, §160.0246 and §160.0247. The comptroller amends subsection (c)(2) by adding a new subparagraph (E) explaining that use tax is due on the use of a taxable boat or outboard motor located within the territorial boundaries of Texas after the expiration date of the temporary use permit. The amendment makes minor changes to current subsection (c)(2), renumbered (3), for clarity without substantive change.

The comptroller amends subsection (d), entitled "payment of the tax," by creating two new subparagraphs in paragraph (1) for clarity and readability. The comptroller further amends section (d)(1) by replacing the phrase "after the completion of the seller, donor, or trader's affidavit" with the phrase "the seller and purchaser must complete an Application for Certificate of Title and/or Registration" since the comptroller and Parks & Wildlife have combined the tax affidavit required under Chapter 160 with Parks and Wildlife's Application for Certificate of Title. New subparagraph (A) is drawn from the remainder of the language in current paragraph (1). The comptroller further amends the new subparagraph by deleting and replacing the term "county tax assessor-collector" with the term "participating county tax assessor-collector" at the end of the subparagraph in accordance with STAR Accession No. 9110L1150C10.

The comptroller amends subsection (d)(2) by designating it as new subparagraph (B) of paragraph (2) and amending the new subparagraph by deleting the phrase "after the completion of the seller, donor, or trader's affidavit for the sale of a boat or boat motor" based on the amendment to subsection (d)(1). The comptroller amends new subparagraph (B) by replacing the term "affidavit" with the term "Application for Certificate of Title and/or Registration" and inserting the term "an agent of the department," and deleting and replacing the term "county tax assessor-collector" with "participating county tax assessor-collector." The amendment further revises new subparagraphs (A) and (B) by replacing the numeral "20" with the numeral "45" in accordance with House Bill 4032.

The comptroller amends subsection (d) by renumbering paragraph (2) as paragraph (3) and adding language to make the paragraph consistent with the rest of the subsection. The amendment revises the paragraph by replacing the numeral "20" with the numeral "45" in accordance with the changes made to Tax Code, §160.041 (Collection Procedure), by House Bill 4032. The comptroller amends current subsection (d) by adding a new paragraph (3) giving guidance for the transfer of a taxable boat or outboard motor due to a tax exemption, even exchange, or gift of a taxable boat or outboard motor in accordance with Tax Code, Chapter 160.

The comptroller makes minor changes to current subsection (e), entitled "Failure of tax remittance by the selling dealer," for clarity and consistency within the section without substantive change.

The comptroller amends the heading for current subsection (f), entitled "purchase of accessories/components for resale," to read "purchase of tangible personal property or accessories for resale" to conform to the contents of the amended subsection. The amendment deletes the heading for paragraph (1) because no paragraphs in the current section contain a heading. The comptroller amends the subsection by inserting the words "properly completed" before the word "resale" for consistency with other sections of this title. The amendment also replaces the term "Limited Sales, Excise, and Use Tax Act" with the term



"Tax Code, Chapter 151" for consistency and readability. The comptroller further amends current subsection (f)(1) by creating a new paragraph (2) from the second sentence in current paragraph (1) and by inserting the language "A properly completed resale certificate may be used in purchasing" for clarity and readability. The amendment also replaces the word "single" with the word "lump-sum" to be consistent with the last sentence in the new paragraph. The comptroller amends current paragraph (1) by deleting the sentence "These accessories include water skis and tow ropes" and relocating the terms "water skis and tow ropes" to subsection (a)(1) defining "accessories."

The amendment renumbers current paragraph (2) as paragraph (3), replaces the term "boat or boat motor" with the term "vessel" and replaces the phrase "boats over 65" with the phrase "vessels over 115" to be consistent with the changes made to Tax Code, §160.001, by House Bill 4032.

The comptroller adds new subsection (g), entitled, "exemptions and non-taxable transactions," which contains three new paragraphs.

The comptroller adds new paragraph (1) concerning an exemption from sales tax for the sale of a taxable boat or outboard motor purchased in Texas for use in another state or nation before any use in Texas. New paragraph (1) implements the amendment to Tax Code, Chapter 160, by House Bill 4032 which added Tax Code, §160.0246 and §160.0247 to Chapter 160. New paragraph (1) contains five subparagraphs (A) through (E).

Subparagraph (A) requires the purchaser to provide the seller with a signed written statement stating that the purchaser intends to remove the taxable boat or outboard motor from Texas for use in another state or nation by complying with either subparagraph (B), (C), or (D).

Subparagraph (B) requires the removal of the taxable boat or outboard motor from Texas within ten days of the sale in accordance with Tax Code, §160.0246(a)(1).

Subparagraph (C) requires the taxable boat or outboard motor be placed in a registered repair facility within 10 days of the date of sale and then removed from Texas within 20 days from the date the repairs, remodeling, maintenance, or restoration are completed in accordance with Tax Code, §160.0246(a)(2).

Subparagraph (D) requires the purchase of a temporary use permit within the time limits described in paragraph (1)(B) and (C) in accordance with Tax Code, §160.0246(a)(3) and (b).

Subparagraph (E) states that sales tax is due if the purchaser fails to meet the requirements of subparagraphs (A), (B), (C), or (D).

The comptroller adds new paragraph (2) concerning an exemption from sales tax for the sale of a taxable boat or outboard motor purchased in Texas for use by a governmental entity. New subparagraph (A) addresses the exemption for sales to the state of Texas, its agencies, instrumentalities, and political subdivisions in accordance with Tax Code, §160.024 (Exemption). New subparagraph (B) addresses the exemption for sales to the United States, its unincorporated agencies and instrumentalities, including instrumentalities chartered by the United States congress, such as the American Red Cross, in accordance with Tax Code, §160.024, and STAR Accession No. 9803362L (March 12, 1998). New subparagraph (C) addresses the exemption for volunteer fire departments in accordance with Tax Code, §160.0245 (Exemption for Emergency Service Organizations).

The comptroller adds new paragraph (3) concerning the non-taxable transfer of a taxable boat or outboard motor to an insurance company due to the settlement of an insurance claim or by a seller or lienholder due to a repossession of a taxable boat or outboard motor in accordance with STAR Accession No. 9306L1247F11 (June 28, 1993).

The comptroller adds new subsection (h), entitled, "refunds," which contains four paragraphs. New paragraph (1) informs the reader who may request a refund of any boat or boat motor sales and use tax paid in error in accordance with Tax Code, §111.104(b) (Refunds).

New paragraph (2) sets out the requirements for filing a refund claim in subparagraphs (A) through (D) in accordance with Tax Code, §111.104(c).

Subparagraph (A) requires that the request be in writing on comptroller's Form 57-200, Texas Claim for Refund of Boat and Boat Motor Tax. Subparagraph (B) requires that the request state the specific grounds upon which the claim is founded. Subparagraph (C) requires that the request be filed within four years from the date on which the tax was due and payable. Subparagraph (D) informs the reader that the comptroller can require a person to submit additional information to verify the refund under Tax Code, §111.004 (Power to Examine Records and Persons).

A new paragraph (3) states that the comptroller will notify a claimant if the comptroller determines that a refund claim cannot be granted, in part or in full, and the comptroller will also notify a claimant which requirements were not met in accordance with Tax Code, §111.1042 (Tax Refund: Informal Review). The amendment also explains that the claimant may request a refund hearing within 30 days of the denial of the refund in accordance with Tax Code, §111.105 (Tax Refund: Hearing). New paragraph (3) provides that a person may not refile a claim for the same transaction and for the same ground or reason as a refund claim previously denied in accordance with Tax Code, §111.107(b) (When Refund or Credit Is Permitted).

New paragraph (4) sets out the requirements for a person who intends to file suit under Tax Code, Chapter 112 (Taxpayers' Suits).

The comptroller did not receive any comments regarding adoption of the amendment.

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §§160.001 (Definitions), 160.002 (Total Consideration), 160.021 (Retail Sales Tax), 160.022 (Use Tax), 160.023 (New Resident), 160.024 (Exemption), 160.0245 (Exemption for Emergency Service Organizations), 160.0246 (Exemption for Certain Boats and Motors Temporarily Used in This State), 160.0247 (Temporary Use Permit), 160.026 (Limitation on Amount of Tax), and 160.041 (Collection Procedure).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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