

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 20. PHYSICAL THERAPY [THERAPISTS'] SERVICES

1 TAC §354.1291

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §354.1291, concerning Benefits and Limitations.

BACKGROUND AND PURPOSE

The purpose of the proposal is to expand who can prescribe physical therapy (PT) services to a Medicaid recipient. The rule currently provides that physical therapy services must be prescribed by a physician to be reimbursed by Medicaid. This amendment allows a physician, a physician assistant (PA), an advanced practice registered nurse (APRN), including a certified nurse practitioner (CNP) or a clinical nurse specialist (CNS), to prescribe physical therapy services. This amendment clarifies the type of practitioner allowed to prescribe physical therapy services from physician only to physicians and allowed practitioners to align with the rules governing physical therapy as a home health benefit in §354.1031(b)(1)(B) and §354.1039(a)(5)(C). The proposed amendment also updates references, clarifies language, improves accuracy and uniformity to enhance understanding of services under Texas Medicaid.

SECTION-BY-SECTION SUMMARY

The title of Division 20 is currently, "Physical Therapists' Services." It is retitled as "Physical Therapy Services" to specify the name of the service described in the rule.

The proposed amendment to §354.1291, makes the following changes to the rule.

Proposed new subsection (a) adds definitions to provide the meaning of terms used in the rule. Definitions for "allowed practitioner," "physical therapist," "physical therapist assistant," "physical therapy," "physician," and "prescribing provider" are added. The new definition of "prescribing provider" when used in the proposed rule means a physician or an allowed practitioner. "Allowed practitioner" means an individual with a valid and registered prescriptive authority agreement in accordance

with Texas Occupations Code, Chapter 157, Subchapter B, and is licensed as a PA or an APRN licensed as a certified nurse practitioner or clinical nurse specialist. The new definition of "physician" is also used in the proposed rule as a person who provides physical therapy services.

Proposed new subsection (b), currently subsection (a), removes the reference to "the Texas Department of Health (department) or its designee" and replaces it with "HHSC" to update an agency name. The amendment also replaces "the Texas Medical Assistance Program" with "Texas Medicaid."

Proposed new subsection (c) sets forth the requirements for physical therapy services to be reimbursable. Proposed new subsection (c)(1) requires physical therapy to be provided by a physician, physical therapist, or a physical therapist assistant under the supervision of the physical therapist. Proposed new subsection (c) uses prescribing provider instead of physician to allow a physician or an allowed practitioner to prescribe physical therapy services.

Current subsection (b) is deleted because its contents have been replaced by proposed new subsection (c).

Proposed new subsection (d), combines current subsections (d) and (e) and sets forth what is not considered reimbursable as physical therapy services under Texas Medicaid. This change is necessary to enhance clarity and group together items that are not reimbursable in a single subsection.

Current subsections (d) and (e) are deleted because their contents have been replaced by proposed new subsection (d).

Proposed new subsection (e), currently subsection (c), sets forth that a provider of physical therapy services must have a treatment plan on file and available for inspection for each Medicaid recipient who is treated. Proposed subsection (e) includes that both a physician and a physical therapist can provide physical therapy services. Proposed subsection (e) allows a treatment plan to be based on a prescribing provider's prescription instead of being established by the attending physician and/or by the therapist. Proposed subsection (e) removes that a prescription must be "written" to allow for electronic prescriptions. Proposed subsection (e) contains some formatting changes for clarity and readability.

The proposed amendment to subsection (f) removes the term "licensed" with respect to physical therapist and clarifies that the therapist may not bill Texas Medicaid for physical therapy services if it would result in duplicate billing. Additionally, a portion of subsection (f) related to the basis and amount of Medicaid reimbursement actually provided is relocated to new subsection (g). This change is necessary to separate the two different topics. Other non-substantive edits are made for clarity.

Proposed new subsection (h), currently subsection (g), clarifies that "services" is referring to "physical therapy services" and clarifies that physical therapy services provided in long-term care facilities must be billed to the Medicaid recipient's nursing facility rather than the Nursing Home Program.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Trey Wood, HHSC Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because provider participation is optional.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the public will benefit from a greater number of prescribing providers available to sign all prescriptions, evaluations and treatment plans related to the provision of physical therapy services.

Trey Wood, HHSC Chief Financial Officer, has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because provider participation in Medicaid physical therapy services is optional.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSCRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R017" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies and provides the executive commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

The amendment implements Texas Government Code §524.0151 and Texas Human Resources Code §32.021.

§354.1291. Benefits and Limitations.

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

(1) Allowed practitioner--An individual:

(A) that maintains a valid and registered prescriptive authority agreement in accordance with Texas Occupations Code Chapter 157, Subchapter B; and

(B) is licensed as:

(i) a physician assistant under Texas Occupations Code Chapter 204; or

(ii) an advanced practice registered nurse licensed by the Texas Board of Nursing as a:

(I) certified nurse practitioner; or

(II) clinical nurse specialist.

(2) Physical therapist--An individual licensed under Texas Occupations Code Chapter 453.

(3) Physical therapist assistant--An individual licensed under Texas Occupations Code Chapter 453.

(4) Physical therapy--This term has the meaning assigned in Texas Occupations Code §453.001.

(5) Physician--A Doctor of Medicine or Doctor of Osteopathy legally authorized to practice medicine or osteopathy at the time and place the service is provided.

(6) Prescribing provider--A physician or an allowed practitioner.

(b) [(a)] Subject to the specifications, conditions, requirements, and limitations established by HHSC, [the Texas Department of Health (department) or its designee,] physical therapy services, which include necessary equipment and supplies provided by a licensed physical therapist, are covered by Texas Medicaid. [the Texas Medical Assistance Program.] Covered services also include the services of a physical therapist assistant when the services are provided under the direction of and billed by the licensed physical therapist.

[(b) To be payable, the services must be:]

[(1) within the physical therapist's scope of practice, as defined by state law;]

[(2) reasonable and medically necessary, as determined by the department or its designee;]

[(3) expected to significantly improve the patient's condition in a reasonable and generally predictable period of time, based on the physician's assessment of the patient's restorative potential after any needed consultation with the therapist (benefits are not provided when the patient has reached the maximum level of improvement); and]

[(4) prescribed by a physician (MD or DO), who is licensed in the state in which he practices.]

(c) To be reimbursable, physical therapy services must be:

(1) provided by a physician, physical therapist, or a physical therapist assistant under the supervision of the physical therapist;

(2) reasonable and medically necessary, as determined by HHSC, or its designee;

(3) expected to significantly improve the recipient's condition in a reasonable and generally predictable period of time, based on the prescribing provider's assessment of the recipient's restorative potential after any needed consultation with the physical therapist; and

(4) prescribed by the recipient's prescribing provider.

(d) The following are not reimbursable physical therapy services under Texas Medicaid:

(1) services relating to activities for the general good and welfare of a recipient such as general exercises to promote overall fitness and flexibility;

(2) services relating to activities to provide diversion or general motivation; and

(3) repetitive services designed to maintain a recipient's function after the recipient reaches the maximum level of improvement.

(e) [(e)] The physician or [licensed] physical therapist who provides physical therapy services must have on file and available for inspection for each Medicaid recipient treated:

(1) a signed and dated physical therapy treatment plan [established by the attending physician and/or by the therapist] based on the prescribing provider's [physician's] prescription. The treatment plan [which] addresses:

(A) diagnosis;[;]

(B) modalities, if any;

(C) frequency of treatment;[;]

(D) expected duration of treatment;[;] and

(E) anticipated goals; and

(2) a [written] prescription signed and dated by the recipient's prescribing provider [attending physician] for [the] therapy services.

[(d) Services related to activities for the general good and welfare of patients such as general exercises to promote overall fitness and flexibility and activities to provide diversion or general motivation are not considered appropriate therapy services and are not reimbursable under the Texas Medical Assistance Program (TMAP).]

[(e) Repetitive services designed to maintain function once the maximum level of improvement has been reached are not a benefit of the TMAP.]

(f) Physical [Licensed physical] therapists who are employed by or remunerated by a physician, hospital, facility, or other provider may not bill Texas Medicaid [TMAP] directly for physical therapy services if the therapist's [that] billing would result in duplicate payment for the same services. If physical therapy [the] services are covered and reimbursable by Texas Medicaid, [TMAP,] payment may be made to the physician, hospital, or other provider (if approved for participation in Texas Medicaid [TMAP]) who employs or reimburses the licensed physical therapist.

(g) The basis and amount of Medicaid reimbursement depends on the services actually provided, who provided the services, and the reimbursement methodology utilized by Texas Medicaid [TMAP] as appropriate for the services and providers [provider(s)] involved.

(h) [(g)] Physical therapy services [Services] provided by or under the direction of a [licensed] physical therapist in long-term care facilities must be billed to the Medicaid recipient's nursing facility. [Nursing Home Program.]

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

Filed with the Office of the Secretary of State on June 20, 2025.

TRD-202502094

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: August 3, 2025

For further information, please call: (512) 438-2910

TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.55

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §33.55, concerning the exemption to money transmission licensing under Finance Code §152.004(9), relating to certain activity by attorneys and title companies. The new rule is proposed to clarify the term "attorney" for purposes of §152.004(9) and the conditions necessary to invoke the exemption.

Finance Code §152.004(9), in relevant part, exempts an attorney that "in connection with a real property transaction receives and disburses domestic currency or issues an escrow or trust fund check only on behalf of a party to the transaction," from licensing under Chapter 152. As Finance Code §152.004(9) is written, the reference to "an attorney" is ambiguous and the necessary conditions to qualify for the exemption are unclear.

The proposed new rule clarifies that only licensed attorneys who are a member of the State Bar of Texas, or Texas professional corporations organized to provide professional legal services, who receive and disburse escrow or trust funds in the course of providing legal representation may avail themselves of §152.004(9)—so long as all other conditions of the exemption are met.

Related provisions in the Texas Finance Code ("Finance Code") and Texas Insurance Code ("Insurance Code") which exempt attorneys from regulation are similarly limited to services a Texas-licensed attorney renders in the course of legal representation. For example, Finance Code §182.021, which lists exemptions to charter requirements for trust companies, exempts a company "rendering a service customarily performed as an attorney in a manner approved and authorized by the Supreme Court of Texas or State Bar of Texas." Tex. Fin Code §182.021(2).

Additionally, Insurance Code §2551.001(e), which clarifies the licensing requirements for escrow officers, states that "[t]his title does not regulate the practice of law by an attorney." TEX. INS CODE §2551.001(e). "Attorney" under the Insurance Code is further defined as "a person who is licensed to practice law and is a member of the State Bar of Texas," or "a Texas professional corporation organized to provide professional legal services." *Id.* §2501.003(2)(A)-(B).

Read together, these provisions indicate that the Texas Legislature does not intend to regulate an attorney's performance of legal work, which is already governed by the Texas Disciplinary Rules of Professional Conduct and subject to oversight by the State Bar of Texas. However, the private business activities of a person who incidentally holds a law license, which are separate from the person's practice of law, remain subject to licensure. Moreover, given the context of the exemption in Section 152.004(9), relating specifically to escrow activity associated with a real property transaction, the exemption should be interpreted consistently with the comparable provisions of the Insurance Code.

Jesus (Jesse) Saucillo, Director of Non-Depository Supervision, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Director Saucillo has also determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated, as a result of enforcing the rule, is more effective implementation of the Money Services Modernization Act and enhanced consumer protection by providing clarity as to who qualifies for this exemption.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;

- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed new section must be submitted no later than 5:00 p.m. on August 4, 2025. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Texas Finance Code §152.052, which provides that the commission may adopt rules to administer and enforce chapter 152, including rules necessary and appropriate to implement and clarify the chapter.

Finance Code §152.004(9) is affected by the proposed new rule.

§33.55. Clarification of Texas Finance Code § 152.004(9).

For an attorney to qualify for the exemption under Texas Finance Code § 152.004(9), the attorney must be licensed to practice law and a member of the State Bar of Texas, or a Texas professional corporation organized to provide professional legal services, and must be performing legal services in connection with the real property transaction.

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

Filed with the Office of the Secretary of State on June 20, 2025.

TRD-202502076

Robert K. Nichols, III

General Counsel

Texas Department of Banking

Earliest possible date of adoption: August 3, 2025

For further information, please call: (512) 475-1327



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 12. COAL MINING REGULATIONS

SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS

DIVISION 2. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

16 TAC §12.108

The Railroad Commission of Texas (Commission) proposes amendments to §12.108, relating to Permit Fees. The Commission proposes the amendments to implement provisions of Senate Bill 1, 89th Texas Legislature (Regular Session, 2025), and, specifically, Article VI, Railroad Commission Rider 5, which requires the amounts appropriated from general revenue for state fiscal years (FY) 2026 and 2027 to cover the cost of permitting and inspecting coal mining operations. The Rider is contingent upon the Commission assessing fees during the 2026-2027 biennium sufficient to generate revenue to cover the general revenue appropriations. The Commission proposes to amend the annual fees required by coal mining permittees in subsection (b) as explained in the following paragraphs.

The Texas State Legislature appropriated the applicable funds in Senate Bill 1 based on fees collected as set forth in Rider 5, including fees appropriated for both the coal mining program and a separate, existing program for uranium exploration permitting. The uranium program cost is subtracted from the total annual appropriation to determine the cost of the coal regulatory program. The Commission's coal mining regulatory program is partially funded with a 50 percent cost reimbursement grant from the United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement. The remaining 50 percent is funded by the fees collected in §12.108.

Joseph Parks, Director, Surface Mining and Reclamation Division, has determined that the appropriated state share of the cost for implementing the coal and uranium regulatory programs of \$4,263,161 in FY 2026 and \$5,267,042 in FY 2027 are the costs that must be funded through fees paid by the regulated coal mining and uranium industries, resulting in an average annual state share cost of \$4,765,102 for the 2026-2027 biennium.

Fees for the Commission's surface coal mining regulatory program come from two general categories: application fees and annual fees. The application fees are specified in §12.108(a), and the Commission does not propose to revise those fees in this rulemaking. The annual fees are specified in §12.108(b) and are currently based on the bonded acreage for each permit as of December 31 of each year and a fee for each permit in effect as of December 31 of each year.

The total amount of annual fees required to fund the coal regulatory program was determined by subtracting the total amount of application fees estimated to be collected in each fiscal year for the two regulatory programs (coal and uranium) from the average annual state share cost for both FY 2026 and FY 2027, \$4,765,102. Mr. Parks estimates that the Commission will collect coal program application fees annually in the amount of \$43,000 and uranium exploration program application fees in the amount of \$72,000 in both FY 2026 and FY 2027. The remainder in state share expense, \$4,650,102, is then allocated for collection from the coal mining program annual fees.

The Commission proposes splitting the annual fee for each acre of land within a permit area covered by a reclamation bond on December 31st of each year, currently at \$12.85, into two fees. First, the Commission proposes a fee to remain at the current amount of \$12.85 for the bonded acres of land that have met the Phase I reclamation release requirements of §12.313(a)(1) of this title (relating to Criteria and Schedule for Release of

Performance Bond) based on the number of bonded acres of land identified by the applicant as meeting the requirements of §12.313(a)(1), as shown on the map required by §12.142(2)(C) of this title (relating to Operation Plan: Maps and Plans) and approved by the Commission.

Second, the Commission proposes a higher fee of \$29.80 for the bonded acres of land that have not met the Phase I reclamation release requirements of §12.313(a)(1) based on the number of bonded acres of land identified by the applicant as not meeting the requirements of §12.313(a)(1), as shown on the map required by §12.142(2)(C) and approved by the Commission. The Commission proposes no change to the fee of \$6,170 for each permit in effect as of December 31st of the year. The Commission anticipates that annual fees in these amounts will result in revenue of \$4,650,102 for the coal regulatory program in each year of the 2026-2027 biennium, as explained below.

The Commission proposes that the fee for the bonded acres of land that have met the Phase I reclamation requirements of §12.313(a)(1) based on the number of bonded acres of land identified by the applicant as meeting the requirements of §12.313(a)(1), as shown on the map required by §12.142(2)(C), remain at the current amount of \$12.85 per acre. Thus, the total amount of revenue expected to be collected from the bonded acres of land that have met the Phase I reclamation requirements is \$427,507, calculated by multiplying \$12.85 (current fee per acre, which based on the proposed amendments will apply only to bonded acres that have met Phase I reclamation requirements) by the estimated number of acres that will have met the Phase I reclamation requirements (33,269 acres). The Commission also proposes that the individual annual permit fee in proposed subsection (b)(3) remain at the current amount of \$6,170 per permit. Thus, the total amount of revenue expected to be collected from the individual annual permit fee is \$154,250, calculated by multiplying \$6,170 (current annual permit fee) by the estimated number of permits on December 31, 2025 (25 permits). As a result, the proposed annual fee for acres of land that have not met the Phase I reclamation release requirements of §12.313(a)(1) based on the number of bonded acres of land identified by the applicant as not meeting the requirements of §12.313(a)(1), as shown on the map required by §12.142(2)(C), must generate revenue of approximately \$4,068,345 to collect the total amount of appropriations required to be covered by the coal program annual fees (\$4,650,102 (-) \$427,507 (-) \$154,250). Therefore, the proposed annual fee for acres of land that have not met the Phase I reclamation release requirements is \$29.80 per acre, calculated by dividing \$4,068,345 by the estimated number of acres that will not have met the Phase I reclamation requirements (136,560 acres).

The Commission may adjust the annual fees in future rulemakings if additional funding is needed due to changes in federal funding, legislative appropriations, the number of permits, the amount of funds received from application fees, the bonded acreage, or other relevant factors. The Commission finds that amending the annual fees in subsection (b) will allow it to continue to fund its coal mining program, and splitting the annual fees proposed in subsection (b)(1)-(2) incentivizes the coal mining industry to achieve Phase I release for its bonded acreage.

Mr. Parks has determined that during each year of the first five years the proposed amendments would be in effect, there will be no additional cost to state government as a result of enforcing and administering the amendments as proposed. There is

also no fiscal effect on local government. The Commission anticipates additional revenue from annual fees due to the proposed amendments as described earlier in this preamble and described in more detail below.

Mr. Parks has determined that for each year of the first five years that the proposed amendments will be in effect, the primary public benefit resulting from the new fee structure for coal mining activities is the alignment of fees paid by the coal mining industry with the costs incurred by the Commission, as established in Senate Bill 1.

Mr. Parks has determined that for each year of the first five years the proposed amendments are in effect, there will be an increase in the economic cost to the coal mining industry of approximately \$2,314,692. This number is based on a comparison of (1) the revenue that would be generated under the current annual fees in existing §12.108, and (2) the revenue that would be generated under the proposed amendments in this rulemaking. More specifically, the Commission compared (1) the revenue that would be generated under the existing fee of \$12.85 per bonded acre and the existing annual fee of \$6,170 per permit, and (2) the revenue that would be generated under the proposed increase of \$29.80 per bonded acre that has not met Phase I reclamation requirements, the proposed fee of \$12.85 per bonded acre that has met Phase I reclamation requirements, and the existing annual fee of \$6,170 permit for an anticipated 25 remaining permits.

In accordance with Texas Government Code, §2006.002, the Commission has determined there will be no adverse economic effect on rural communities, small businesses or micro-businesses resulting from the proposed amendments because there are no rural communities, small businesses or micro-businesses, as those terms are defined in Texas Government Code §2006.001, holding coal mining permits from the Commission. Therefore, the Commission has not prepared the economic impact statement or regulatory flexibility analysis required under §2006.002(c).

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the proposed amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the amendments would be in effect, the proposed amendments would not: create or eliminate a government program; create new employee positions or eliminate any existing employee positions; increase or decrease future legislative appropriations to the agency; create a new regulation, as annual fees are currently required under the rule; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or affect the state's economy. The proposed amendments would require an increase in fees paid to the agency as described above.

The Commission reviewed the proposed amendments and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(4), nor would they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(3). Therefore,

the proposed amendments are not subject to the Texas Coastal Management Program.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Monday, August 4, 2025. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Adam Krabbenhoft, Assistant Director, Surface Mining and Reclamation Division, at (512) 305-8830. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

The Commission proposes the amendments under Texas Natural Resources Code §134.011, §134.013, and §134.055, which authorize the Commission to promulgate rules pertaining to surface coal mining operations.

Statutory Authority: Texas Natural Resources Code §134.011, §134.013 and §134.055.

Cross-reference to statute: Texas Natural Resources Code §134.011, §134.013 and §134.055.

§12.108. Permit Fees.

(a) Application Fees. Each application for a surface coal mining and reclamation permit or renewal or revision of a permit shall be accompanied by a fee. The initial application fee and the application fee for renewal of a permit may be paid in equal annual installments during the term of the permit. The fee schedule is as follows:

- (1) application for a permit: \$5,000.
- (2) application for revision of a permit: \$500.
- (3) application for renewal of a permit: \$3,000.

(b) Annual Fees. In addition to application fees required by this section, each permittee shall pay to the Commission the following annual fees due and payable not later than March 15th of the year following the calendar year for which these fees are applicable:

(1) a fee of \$12.85 for each acre of land within a permit area covered by a reclamation bond that has met the requirements of §12.313(a)(1) of this chapter (relating to Criteria and Schedule for Release of Performance Bond) on December 31st of the year, based on the number of bonded acres of land identified by the applicant as meeting the requirements of §12.313(a)(1) of this chapter on the map included in the permit as required by §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans) and approved by the Commission;

(2) a fee of \$29.80 for each acre of land within a permit area covered by a reclamation bond that has not met the requirements of §12.313(a)(1) of this chapter on December 31st of the year, based on the number of acres of land identified by the applicant as not meeting the requirements of §12.313(a)(1) on the map included in the permit as required by §12.142(2)(C) of this chapter and approved by the Commission; and

(3) [(2)] a fee of \$6,170 for each permit in effect on December 31st of the year.

(c) Fees paid to the Commission under this section shall be deposited in the state treasury and credited to the general revenue fund.

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

Filed with the Office of the Secretary of State on June 17, 2025.

TRD-202502041

Natalie Dubiel

Assistant General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: August 3, 2025

For further information, please call: (512) 475-1295



TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.6

The Texas State Board of Pharmacy (TSBP) proposes amendments to §291.6, concerning Pharmacy License Fees. The amendments, if adopted, increase pharmacy license fees based on expected expenses following the appropriations made to TSBP under the General Appropriations Act of the Eighty-Ninth Legislature.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue Increase

FY2026 = \$110,700.00

FY2027 = \$110,700.00

FY2028 = \$113,356.80

FY2029 = \$116,077.36

FY2040 = \$118,863.22

There are no anticipated fiscal implications for local government.

Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to assure that the Texas State Board of Pharmacy is adequately funded to carry out its mission and to fairly allocate fee burdens in proportion to the services provided by the Board. The economic cost to large, small or micro-businesses (pharmacies) required to comply with the amended rule will be an increase of \$27 for an initial license and an increase of \$27 for the renewal of a license. The economic cost to an individual will be the same as the economic cost to a business, if the individual chooses to pay the license fee for the business. An economic impact statement and regulatory flexibility analysis is not required because the proposed

amendments will have a de minimis economic effect on Texas small businesses or rural communities.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do require an increase in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do not limit or expand an existing regulation because the amendments change the amount of licensing fees to cover expected expenses for the appropriations made to TSBP;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., August 4, 2025.

The amendments are proposed under §§551.002, 554.006, and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets Section 554.006(a) as authorizing the agency to adopt fees to cover the cost of administering Subtitle J, Title 3, Occupations Code. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.6. Pharmacy License Fees.

(a) Initial License Fee. The fee for an initial license shall be \$610 [§583] for the initial registration period.

(b) Biennial License Renewal. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacy licenses provided under the Act §561.002.

(c) Renewal Fee. The fee for biennial renewal of a pharmacy license shall be \$607 [§580] for the renewal period.

(d) Fee for Change of Location/Name/Rank. The application fee for a change of name, location, or rank shall be \$100.

(e) Remote Pharmacy Services Fee. The application fee for an initial or renewed certificate to provide remote pharmacy services under §291.121 of this title (relating to Remote Pharmacy Services) shall be:

(1) for a certificate to provide remote pharmacy services using automated pharmacy systems under §291.121(a) of this title: \$100;

(2) for a certificate to provide remote pharmacy services using emergency medication kits under §291.121(b) of this title: \$50;

(3) for a certificate to provide remote pharmacy services using telepharmacy systems under §291.121(c) of this title: \$150; and

(4) for a certificate to provide remote pharmacy services using automated dispensing and delivery systems under §291.121(d) of this title: \$100.

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

Filed with the Office of the Secretary of State on June 20, 2025.

TRD-202502077

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: August 3, 2025

For further information, please call: (512) 305-8084



CHAPTER 295. PHARMACISTS

22 TAC §295.5

The Texas State Board of Pharmacy proposes amendments to §295.5, concerning Pharmacist License or Renewal Fees. The amendments, if adopted, increase pharmacist license fees based on expected expenses following the appropriations made to TSBP under the General Appropriations Act of the Eighty-Ninth Legislature.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue Increase

FY2026 = \$342,000.00

FY2027 = \$342,000.00

FY2028 = \$350,208.00

FY2029 = \$358,612.99

FY2030 = \$367,219.70

There are no anticipated fiscal implications for local government.

Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to assure that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The economic cost to large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the fee for the individual. The economic cost to individuals who are required to comply with the amended rule will be an increase of \$18 for an initial license and an increase of \$18 for the renewal of a license. An economic impact statement and regulatory flexibility analysis is not required because the proposed amendments will have a

de minimis economic effect on Texas small businesses or rural communities.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do require an increase in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do not limit or expand an existing regulation because the amendments change the amount of licensing fees to cover expected expenses for the appropriations made to TSBP;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., August 4, 2025.

The amendments are proposed under §§551.002, 554.006, and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets Section 554.006(a) as authorizing the agency to adopt fees to cover the cost of administering Subtitle J, Title 3, Occupations Code. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§295.5. Pharmacist License or Renewal Fees.

(a) Biennial Registration. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacist licenses provided under the Pharmacy Act, §559.002.

(b) Initial License Fee.

(1) The fee for the initial license shall be \$399 [~~\$384~~] for a two-year registration.

(2) New pharmacist licenses shall be assigned an expiration date and initial fee shall be prorated based on the assigned expiration date.

(c) Renewal Fee. The fee for biennial renewal of a pharmacist license shall be \$396 [~~\$378~~] for a two-year registration.

(d) Exemption from fee. The license of a pharmacist who has been licensed by the Texas State Board of Pharmacy for at least 50 years or who is at least 72 years old shall be renewed without payment of a

fee provided such pharmacist is not actively practicing pharmacy. The renewal certificate of such pharmacist issued by the board shall reflect an inactive status. A person whose license is renewed pursuant to this subsection may not engage in the active practice of pharmacy without first paying the renewal fee as set out in subsection (c) of this section.

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

Filed with the Office of the Secretary of State on June 20, 2025.

TRD-202502078

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: August 3, 2025

For further information, please call: (512) 305-8084



CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.4

The Texas State Board of Pharmacy proposes amendments to §297.4, concerning Fees. The amendments, if adopted, increase pharmacy technician registration fees based on expected expenses following the appropriations made to TSBP under the General Appropriations Act of the Eighty-Ninth Legislature.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue Increase

FY2026 = \$104,000.00

FY2027 = \$104,000.00

FY2028 = \$106,496.00

FY2029 = \$109,051.90

FY2030 = \$111,669.15

There are no anticipated fiscal implications for local government.

Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to assure that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The economic cost to large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the fee for the individual. The economic cost to individuals who are required to comply with the amended rule will be an increase of \$4 for an initial registration as a pharmacy technician and an increase of \$4 for the renewal of a registration as a pharmacy technician. An economic impact statement and regulatory flexibility analysis is not required because the proposed amendments will have a de minimis economic effect on Texas small businesses or rural communities.

For each year of the first five years the proposed amendments will be in effect, Dr. Carroll has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do require an increase in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do not limit or expand an existing regulation because the amendments change the amount of licensing fees to cover expected expenses for the appropriations made to TSBP;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., August 4, 2025.

The amendments are proposed under §§551.002, 554.006, and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets Section 554.006(a) as authorizing the agency to adopt fees to cover the cost of administering Subtitle J, Title 3, Occupations Code. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§297.4. Fees.

(a) Pharmacy technician trainee. The fee for registration shall be \$55 for a two-year registration.

(b) Pharmacy technician.

(1) Biennial Registration. The board shall require biennial renewal of all pharmacy technician registrations provided under Chapter 568 of the Act.

(2) Initial Registration Fee. The fee for initial registration shall be \$88 [\$84] for a two-year registration.

(3) Renewal Fee. The fee for biennial renewal shall be \$85 [\$84] for a two-year registration.

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

Filed with the Office of the Secretary of State on June 20, 2025.

TRD-202502079



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES

SUBCHAPTER B. IMMUNIZATION REQUIREMENTS IN TEXAS ELEMENTARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

25 TAC §97.62

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §97.62 concerning Exclusions from Compliance.

BACKGROUND AND PURPOSE

Section 97.62 provides that exclusions from compliance are allowable on an individual basis for medical contraindications, reasons of conscience, including a religious belief, and active duty with the armed forces of the United States. The rule outlines the steps of how an individual can claim any of these exclusions.

The purpose of the proposal is to comply with Health and Safety Code §161.0041, as amended by House Bill (H.B.) 1586, 89th Legislature, Regular Session, which requires DSHS to develop a blank affidavit form to be used by a person claiming an exemption from a required immunization and make the affidavit form available on the DSHS website. DSHS will post a blank affidavit form on the website for a person to download and submit to their child-care facility, school, or institution of higher education, including medical or veterinary school.

The current process requires individuals to request an affidavit form from DSHS, which DSHS must print on security-sealed paper and mail to the requesting individual.

Individuals will print these documents themselves (or request that DSHS send them a blank affidavit, which does not need to be printed on this special paper), and thus DSHS anticipates the volume of requests to decrease to the point we won't need contractors. Also anticipate envelopes, postage, and printing costs decrease.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §97.62 allows a person claiming exclusion for reasons of conscience, including a religious belief, from a required immunization to obtain an affidavit form by downloading it from the department's internet website or submitting the request to the department.

The proposal also removes the requirement for the submitted request to include full name and date of birth of child or student. Submitting a request (via online, fax, mail or hand-delivery) will

only require a mailing address and number of affidavit forms requested. Those downloading the affidavit will not need to submit any information.

H.B. 1586's changes begin with the 2025-2026 school year.

FISCAL NOTE

Christy Havel-Burton, CFO, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated reduction in cost to state government as a result of enforcing and administering the rule as proposed. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local government.

The effect on state government for each year of the first five years the proposed rule is in effect is an estimated reduction in cost of \$177,746 in fiscal year (FY) 2026, \$177,746 in FY 2027, \$177,746 in FY 2028, \$177,746 in FY 2029, and \$177,746 in FY 2030.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

Christy Havel-Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no involvement with small business, micro-business or rural community impact to satisfy the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and to implement legislation that does not specifically state that Section 2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Joshua Hutchison, Deputy Commissioner, Infectious Disease Prevention Division, has determined that for each year of the first five years the rule is in effect, the public benefit will be allowing individuals to download and print blank affidavit forms so

they can submit to their child-care facility, school, or institution of higher education, including medical or veterinary school.

Christy Havel-Burton has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule would eliminate the need to hire contractors for the summer months between June-September. There would also be a reduction in cost due to reduced need for mailing supplies, to include: envelopes, postage and security paper.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 14 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R041" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code §161.004 and §161.0041, which authorize the executive commissioner to adopt rules necessary to administer statewide immunization of children and exceptions; and Texas Government Code §524.0151 and Texas Health and Safety Code §1001.075, which authorize the executive commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

This amendment affects Texas Health and Safety Code §161.0041 and Chapter 1001, and Texas Government Code §524.0151.

§97.62. Exclusions from Compliance.

Exclusions from compliance are allowable on an individual basis for medical contraindications, reasons of conscience, including a religious belief, and active duty with the armed forces of the United States. Children and students seeking enrollment in schools, child-care facilities, or institutions of higher education, to include medical or veterinary school, [in these categories] must submit evidence for exclusion from compliance as specified in the Health and Safety Code[.] §161.004(d), Health and Safety Code[.] §161.0041, Education Code[.] Chapter 38, Education Code[.] Chapter 51, and the Human Resources Code[.] Chapter 42.

(1) To claim an exclusion for medical reasons, the child or student must present an exemption statement to the school or child-care facility, dated and signed by a physician (M.D. or D.O.), properly licensed and in good standing in any state in the United States who has

examined the child or student. The statement must state that, in the physician's opinion, the vaccine required is medically contraindicated or poses a significant risk to the health and well-being of the child or student or any member of the child's or student's household. Unless it is written in the statement that a lifelong condition exists, the exemption statement is valid for only one year from the date signed by the physician.

(2) To claim an exclusion for reasons of conscience, including a religious belief, the child's parent, legal guardian, or a student 18 years of age or older must present to the school or child-care facility a completed, signed, and notarized affidavit on a form provided by the department stating that the child's parent, legal guardian, or the student declines vaccinations for reasons of conscience, including because of the person's religious beliefs. The affidavit will be valid for a two-year period from the date of notarization. A child or student, who has not received the required immunizations for reasons of conscience, including religious beliefs, may be excluded from school in times of emergency or epidemic declared by the commissioner of the department.

(A) A person claiming exclusion for reasons of conscience, including a religious belief, from a required immunization may only obtain the affidavit form from the department by:

(i) downloading the affidavit form from the department's internet website, or

(ii) submitting a request (via online, fax, mail, or hand-delivery) to the department.

(B) The request must include the following information:

~~[(i) full name of child or student;]~~

~~[(ii) child's or student's date of birth (month/day/year);]~~

~~[(i) [(iii)] complete mailing address, including name, address, and telephone number; and~~

~~[(ii) [(iv)] number of requested affidavit forms [(not to exceed 5)].~~

(C) ~~[(B)]~~Requests for mailed affidavit forms must be submitted to the department through one of the following methods:

(i) written request through the United States Postal Service (or other commercial carrier) to the department at: DSHS Immunization Branch, Mail Code [eode] 1946, P.O. Box 149347, Austin, Texas 78714-9347;

(ii) by fax [faesimile] to (512) 776-7544;

(iii) by hand-delivery to the department's physical address at 1100 West 49th Street, Austin, Texas 78756; or

(iv) via the department's Immunization program website (at www.ImmunizeTexas.com).

(D) ~~[(C)]~~The department will mail the requested affidavit forms ~~[form(s) (not to exceed five forms per child or student)]~~ to the specified mailing address.

(E) ~~[(D)]~~The department may [shall] not maintain a record of the personally identifiable information [names] of individuals who request an affidavit and must [shall] return the original documents (when applicable) with the requested affidavit forms.

(3) To claim an exclusion for armed forces, persons who can prove ~~[that they are serving on]~~ active duty service with the armed forces of the United States are exempted from the requirements in these sections.

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

Filed with the Office of the Secretary of State on June 20, 2025.

TRD-202502086

Cynthia Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: August 3, 2025

For further information, please call: (512) 776-6319



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER CC. SEXUALLY ORIENTED BUSINESS FEE

34 TAC §3.722

The Comptroller of Public Accounts proposes amendments to §3.722, concerning the sexually oriented business fee. The comptroller amends this section to implement the decision in *Tex. Entm't Ass'n, Inc. v. Hegar*, 10 F.4th 495 (5th Cir. 2021) and to implement House Bill 3345, 88th Legislature, 2023.

The comptroller amends the definition of clothing in subsection (a)(1), to remove the provision that was deemed unconstitutional in the *Texas Entertainment Association, Inc.* case.

The comptroller amends subsection (d)(1) and (2), and increases the fee imposed on a sexually oriented business to \$10 for each entry by each customer admitted to the business, as provided in House Bill 3345.

The comptroller also replaces the term "return" with "report" for consistent usage throughout the section.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not create a new regulation, expand an existing regulation, limit an existing regulation, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute and comptroller practice while removing language found to be unconstitutional. There would be no significant economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses, micro-businesses or rural communities.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The comptroller proposes the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller) which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments to this section implement Business and Commerce Code, §102.051 (Definitions).

§3.722. Sexually Oriented Business Fee.

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

(1) Clothing--A garment used to cover the body, or a part of the body, typically consisting of cloth or a cloth-like material. [~~Paint, latex, wax, gel, foam, film, coatings, and other substances applied to the body in a liquid or semi-liquid state are not clothing.~~]

(2) Customer--Any person on the premises of a sexually oriented business except:

(A) an owner, operator, independent contractor of the business or an employee of that sexually oriented business; or

(B) a person who is on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises.

(3) Nude--To be entirely unclothed, or clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts, if the person is female, or any portion of the genitals or buttocks.

(4) Sexually oriented business--A nightclub, bar, restaurant, or similar commercial enterprise that:

(A) provides for an audience of two or more individuals live nude entertainment or live nude performances; and

(B) authorizes on-premises consumption of alcoholic beverages, regardless of whether the consumption of alcoholic beverages is under a license or permit issued under the Alcoholic Beverage Code.

(b) Clothing requirements. An entertainer or performer will be considered "nude" for purposes of this section unless the entertainer or performer wears fully opaque clothing that covers all portions of the genitals and buttocks, and if the entertainer or performer is a female, the entertainer or performer must also wear fully opaque clothing that covers the portions of the breasts below the top of the areola of the breasts.

(c) Questionnaire. A sexually oriented business, as defined in this section, is required to complete and submit a Texas Sexually Oriented Business Fee Questionnaire, Form AP-225 or a subsequent form prescribed by the comptroller to file the report and remit the fee imposed under Business and Commerce Code, Chapter 102 (Sexually Oriented Businesses).

(d) Imposition and Calculation of Fee.

(1) Effective September 1, 2023, a \$10.00 [A \$5.00] fee is imposed on a sexually oriented business for each entry by each customer admitted to the business. In determining the amount of fee due by a sexually oriented business for more than one entry by the same customer on the same business day at the same location, it shall be presumed to have been one entry by the customer and the fee amount due from the business for the entry is \$10.00 [\$5.00]. A business day begins when the business opens and continues until the close of business. Prior to September 1, 2023, the fee is \$5.00.

(2) A sexually oriented business has the discretion to determine how it will derive the money to pay the fee. All door and cover charges, including reimbursement of the sexually oriented business fee from its customers, are subject to sales tax as provided by Tax Code, Chapter 151 (Limited Sales, Excise and Use Tax). A sexually oriented business that chooses to recover the fee from its customer by including a separately stated charge for the fee on the customer check or invoice must clearly identify the charge as a reimbursement. A charge not clearly identified as reimbursement of the fee is considered a tax collected from the customer and these amounts must be remitted to the comptroller in addition to the \$10.00 [\$5.00 entry] fee.

(3) The comptroller will presume that a business is a sexually oriented business if the business holds itself out as a sexually oriented business. Evidence that the comptroller may consider includes signage, advertising, social media, publication of images, inspections, investigations, and the reputation of the business. To rebut the presumption, a business may prove by a preponderance of the evidence the instances in which the business did not operate as a sexually oriented business.

(e) Report forms. The sexually oriented business fee must be reported on a form as prescribed by the comptroller. The fact that the sexually oriented business does not receive the form or does not receive the correct form from the comptroller for the filing of the report [return] does not relieve the business of the responsibility of filing a report [return] and remitting the fee.

(f) Due date of report and payment.

(1) The sexually oriented business fee report and payment are due no later than the 20th day of the month following the calendar quarter month in which the liability for the fee is incurred.

(2) A sexually oriented business must file a quarterly report even if there is no fee to report.

(g) Penalty. Penalties due on delinquent fees and reports shall be imposed as provided by Tax Code, §111.061 (Penalty on Delinquent Tax or Tax Reports).

(h) Interest. Interest due on delinquent fees shall be imposed as provided by Tax Code, §111.060 (Interest on Delinquent Tax).

(i) Records required.

(1) A sexually oriented business is required to maintain records, statements, books, or accounts necessary to determine the amount of fee for which the business is liable to pay.

(2) A sexually oriented business shall record daily the number of customers admitted to the business. The manner in which a sexually oriented business maintains records of the number of customers admitted to the business may be written, stored on data processing equipment, or may be in any form that the comptroller may readily examine.

(3) The comptroller or an authorized representative has the right to examine any records or equipment of any person liable for the fee in order to verify the accuracy of any report made or to determine the fee liability in the event no report [return] is filed.

(4) Records required by the comptroller must be kept for at least four years after the date on which the records are prepared, and throughout any period in which any tax, fee, penalty, or interest may be assessed, collected, or refunded by the comptroller or in which an administrative hearing or judicial proceedings is pending, unless the comptroller authorizes in writing a shorter retention period. A business must make records available for inspection and audit on request by the comptroller.

(j) Failure to keep accurate records. If a sexually oriented business fails to keep accurate records of the number of customers admitted to the business, the comptroller may estimate the amount of fee liability based on any available information that includes, but is not limited to, any reports required to be filed per Tax Code, Chapter 151, Chapter 171 (Franchise Tax), or Chapter 183 (Mixed Beverage Taxes).

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

Filed with the Office of the Secretary of State on June 23, 2025.

TRD-202502098

Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

Earliest possible date of adoption: August 3, 2025

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



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 7. RAIL FACILITIES

SUBCHAPTER G. OFF-SYSTEM RAIL GRADE SEPARATION STATE FUND PROGRAM

43 TAC §§7.120 - 7.134

The Texas Department of Transportation (department) proposes new §§7.120 - 7.134 concerning the Off-System Rail Grade Separation State Fund Program.

EXPLANATION OF PROPOSED NEW SECTIONS

New §§7.120 - 7.134, contained in new Subchapter G of Chapter 7, describe the policies and procedures for the implementation and administration of the Off-System Rail Grade Separation State Fund Program (Program), as authorized by S.B. 1555 (89th Regular Session, 2025) and codified as Transportation Code, §471.010.

New §7.120, Purpose, states the purpose of the new subchapter.

New §7.121, Definitions, defines the terms used in the new subchapter.

New §7.122, Program Eligibility, sets criteria a project must meet to be eligible for the Program. This includes the statutory criteria that the project must (1) be for the construction of either a highway-rail grade separation structure that will eliminate at least one at-grade rail-highway crossing or a grade-separated pedestrian-rail crossing, (2) be off the state highway system, (3) increase public safety, enhance economic development, or reduce traffic, and (4) be sponsored by the political subdivision

that has jurisdiction over the project's location. In order to maximize efficiency and use of available funds, the program must also constitute a logical, self-contained unit of work that could be constructed as an independent project.

New §7.123, Funding and Eligible Costs, sets the allowable costs under the program. To maximize use of funding, allowable costs are limited to direct grade-separation-related costs, including planning, detailed design activities, right of way acquisition, and utility adjustments. Costs for items such as improving rail capacity or adding mass transit infrastructure, are not allowable, although such an element can be included in the project if it is funded with non-Program funds.

New §7.124, Non-State Funding Match, addresses the statutory requirement that at least 10 percent of total project costs must be provided by a source other than the state as matching funds and the federal regulatory requirement that a railroad participate in the cost of a grade-separation under certain circumstances. The Texas Transportation Commission (commission) may adjust the minimum local matching requirement in accordance with Transportation Code, §222.053. The standard policies apply, that the matching funds must be provided before the work begins, that donated services may be used to reduce the cost of the project but do not constitute matching funds, and that the department's costs of oversight are included as a project cost.

New §7.125, Call for Project Nominations, provides that projects will be selected through a competitive process in order to make the best use of available funding. A program call describing the required application contents will be published in the *Texas Register*.

New §7.126, Nomination Package, limits the number of projects a project sponsor can submit per program call in order to encourage quality applications and equitable distribution of funds. A complete nomination package must be received by the department by the deadline or it will be deemed ineligible.

New §7.127, Project Evaluation Committee, requires the executive director to appoint a project evaluation committee consisting of department staff to make recommendations for the selection of projects funded under the program.

New §7.128, Nomination Screening, requires the project evaluation committee to screen each nominated project to determine its eligibility under statutory and regulatory requirements. It provides for notification if a project is found ineligible and for an appeals process.

New §7.129, Project Evaluation, requires the project evaluation committee to evaluate the benefits of eligible applications based on statutory requirements, the goals of the program, and specific selection criteria set forth in the program call.

New §7.130, Project Selection and Approval, requires the project evaluation committee to make recommendations for project selection to the department's Railroad Division Director. It further requires that at least 10% of funding be recommended for eligible projects in rural areas, in order to ensure equitable use of funds, unless sufficient rural project nominations are not submitted. The division director will make a final recommendation of selected projects to the commission for approval.

New §7.131, Inclusion of Selected Projects in Planning Documents, requires the project sponsor and the state to include the selected project in the local and statewide transportation improvement programs.

New §7.132, Project Implementation, requires the project sponsor and applicable railroad to comply with all applicable laws and regulations, including all applicable state procedures, requirements, and standards and specifications. It requires opportunity for public involvement and any required environmental documentation. An agreement between the state and the project sponsor is required, which must include the responsibilities and duties of the parties, local match funding commitment, the scope and course of the project, and the maximum amount of available funding. As required by statute, the agreement must also designate the department to manage the project under the laws and regulations applicable to state highway projects.

New §7.133, Elimination of Project from the Program, provides the department's executive director criteria for eliminating a project after selection. A project may be eliminated from the program if a project sponsor does not meet the requirements of the program, if a project sponsor chooses to withdraw, if significant deviations from the approved scope of work would be required, if construction has not been initiated within three years of project selection, or if the required agreement is not signed within one year after project selection.

New §7.134, Reporting to the Commission, requires the department to submit to the commission annually a report regarding project nominations and selected projects.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Jeff Davis, Director, Rail Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Davis has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be a significant improvement of highway congestion and travel time savings at approximately 10 rail-highway and pedestrian-rail crossings. The rule will make neighborhoods safer, eliminate train-vehicle and train-pedestrian accidents, reduce air pollution, and ensure that emergency services and school busses can access the other side of railroad tracks. The public will also benefit from improved truck freight fluidity and the influence to adjacent state and local system roadways. The proposed rules allow unique projects that would otherwise be difficult to implement.

COSTS ON REGULATED PERSONS

Mr. Davis has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Davis has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Mr. Davis has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §§7.120 - 7.134 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Financial Assistance for Rail." The deadline for receipt of comments is 5:00 p.m. on August 4, 2025. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §471.010, which authorizes the commission to adopt rules as necessary to implement that section.

The authority for the proposed amendments is provided by S.B. No. 1555, 89th Regular Session, 2025. The primary author and the primary sponsor of that bill are Sen. Robert Nichols and Rep. Jared Patterson, respectively.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §471.010

§7.120. Purpose.

This subchapter prescribes the policies and procedures for the implementation and administration of the Off-System Rail Grade Separation State Fund Program authorized by Transportation Code, §471.010.

§7.121. Definitions.

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

- (1) Commission--Texas Transportation Commission.
- (2) Department--Texas Department of Transportation.
- (3) Director--Director of the department's Railroad Division.
- (4) Executive director--The executive director of the department or the executive director's designee.
- (5) Participating railroad--The railroad company that owns or otherwise has control of the railroad at the location of the project.
- (6) Program--The Off-System Rail Grade Separation State Fund Program.
- (7) Project--A project that is eligible for funding under this subchapter.
- (8) Project sponsor--An entity described by §7.122(b) of this subchapter (relating to Program Eligibility).

§7.122. Program Eligibility.

- (a) To be eligible for funding under the program, a project must:
 - (1) be for the construction of a grade separation structure that will either eliminate one or more adjacent at-grade rail-highway crossings or provide a grade-separated pedestrian-rail crossing;
 - (2) be located off the state highway system;
 - (3) increase public safety, enhance economic development, or reduce traffic; and
 - (4) constitute a logical, self-contained unit of work that can be constructed as an independent project whether it is proposed as an independent project or as a part of a larger transportation project.
- (b) To be eligible to request funding under the program, the project sponsor must be the political subdivision of the state that has jurisdiction over the project's location, authority to undertake the project, and authority to enter into the agreement required under §7.132 of this subchapter (relating to Project Implementation).
- (c) The crossing may involve either freight or passenger rail.

§7.123. Funding and Eligible Costs.

- (a) Funding under the program is subject to the Texas Grant Management Standards developed by the comptroller under the Government Code, Chapter 783.
- (b) Planning, detailed design activities, right of way acquisition, and utility adjustments are eligible costs.
- (c) A cost is not eligible for funding under the program if it:
 - (1) was incurred before the department authorizes work to proceed under the agreement required under §7.132 of this subchapter (relating to Project Implementation); or
 - (2) is related to rail capacity improvements or the addition of mass transit infrastructure.

(d) A project may include elements that are not eligible for funding under the program. Funds used to pay for those elements do not qualify as matching funds under §7.124 of this subchapter (relating to Non-State Funding Match).

§7.124. Non-State Funding Match.

(a) In accordance with Transportation Code, §471.010(b), at least 10 percent of the total project costs must be provided by a source other than the state as matching funds, except that the commission may adjust the minimum local matching funds requirement for a project located in an economically disadvantaged county in accordance with Transportation Code, §222.053.

(b) Except as provided by this section, the funding match required by this section must be cash provided by or through the project sponsor. The value of donated services will not be accepted as a funding match but may be used to reduce the overall cost of the project.

(c) The project sponsor must provide the funding match required by this section before the beginning of project activities for each phase of work.

(d) The department's direct costs for the oversight of preliminary engineering and construction of the project are included as a part of the total project costs under subsection (a) of this section.

(e) The participating railroad must share in the project cost in accordance with 23 C.F.R. §646.210. This cost share may count as part of the overall non-state funding match requirement.

§7.125. Call for Project Nominations.

(a) Projects will be selected for available program funding through a competitive process.

(b) The department will issue a notice of a program call for project nominations that is published in the *Texas Register*.

(c) The notice will include information regarding the required content of the nomination package, the procedures applicable to the program call, and the specific evaluation criteria to be used during the project selection process.

§7.126. Nomination Package.

(a) To nominate a project during a program call, the project sponsor must submit its nomination in the form prescribed by the department. During each program call, a project sponsor may submit not more than one nomination package for a grade-separation structure to eliminate one or more adjacent at-grade rail-highway crossings and not more than one nomination package for a grade-separated rail-pedestrian crossing.

(b) The nomination package must present persuasive evidence of support for the proposed project from the affected communities and, if applicable, include a commitment to provide the non-state funding match required by §7.124 of this subchapter (relating to Non-State Funding Match) or an explanation of the project sponsor's eligibility for a funding match adjustment under Transportation Code, §222.053.

(c) A complete nomination package must be received by the department not later than the specified deadline published in the *Texas Register*. A nomination package that fails to include any of the items specified in this section or the respective program call is considered to be incomplete and will not be considered for funding.

(d) The department may request supplemental information as needed to conduct project screening and evaluation.

§7.127. Project Evaluation Committee.

The executive director will appoint a project evaluation committee consisting of department staff to make recommendations for the selection of projects funded under the program.

§7.128. Nomination Screening.

(a) The project evaluation committee will screen each project nomination to determine whether the project is eligible for funding under the program and applicable federal and state law and whether it meets technical standards established by applicable law and accepted professional practice.

(b) The department will notify the project sponsor if a project nomination is determined to be ineligible and the reasons for the determination.

(c) A request for reconsideration of a finding of ineligibility may be initiated only by email or letter from the project sponsor to the director setting forth reasons in support of a finding of eligibility. The email or letter requesting reconsideration must be received by the director not later than the 15th day after the day that the project sponsor received the department's notification, as established by the return receipt.

(d) The determination of the director in response to the request for reconsideration is final.

§7.129. Project Evaluation.

The project evaluation committee will evaluate the public safety, economic development enhancement, traffic reduction, and any other benefit of each nominated project that is determined to be eligible under §7.128(a) of this subchapter (relating to Nomination Screening) based on the specific selection criteria set forth in the program call.

§7.130. Project Selection and Approval.

(a) The project evaluation committee will provide project selection recommendations and supporting documentation to the director.

(b) The project evaluation committee will recommend that at least 10 percent of the total amount available in a program call go to eligible projects that are located in rural areas, unless the project evaluation committee determines that there are not sufficient eligible project applications to reach 10 percent of that amount.

(c) The director will review the recommendations and supporting documentation submitted by the committee and will select projects for funding under the program based on recommendations from the project evaluation committee, consistent with the statutory requirements and the evaluation criteria.

(d) The director will recommend projects selected under subsection (c) of this section to the commission for approval.

(e) The department will notify the project sponsor whether the project was selected and approved for funding.

§7.131. Inclusion of Selected Projects in Planning Documents.

(a) If a project selected is to be implemented in a metropolitan area, the department will request that the Metropolitan Planning Organization for that area immediately begin the process required to include the selected project in its Transportation Improvement Program.

(b) The department will also immediately begin the process required to include the selected project in the Statewide Transportation Improvement Program.

§7.132. Project Implementation.

(a) In undertaking a project, the project sponsor and the participating railroad must comply with all applicable laws and regulations, including all applicable state procedures and requirements.

(b) All projects shall be developed in compliance with the department's current standards and specifications.

(c) All project sponsors must enter into with the department an agreement that:

(1) includes a commitment from the project sponsor for the required non-state funding, if applicable;

(2) describes the total scope and course of project activities;

(3) states the maximum amount of the funding provided under this subchapter;

(4) designates the department to manage the project on behalf of the project sponsor in accordance with Transportation Code, §471.010(d); and

(5) outlines the responsibilities and duties of the parties to the agreement.

(d) Before the department will fund any construction activities, the project sponsor must enter into the agreement required by subsection (c) of this section and demonstrate that required opportunities for public involvement have been provided and that all applicable environmental documentation has been completed.

(e) Any change to the scope of work specified in the selected nomination package must have the advance written approval of the executive director.

(f) The department is responsible for the inspection, final acceptance, and certification of a project.

§7.133. Elimination of Project from the Program.

The executive director may eliminate all or a part of a project from participation in the program if:

(1) the project sponsor fails to satisfy any requirement of this subchapter or the agreement required under §7.132 of this subchapter (relating to Project Implementation);

(2) implementation of the project would involve a significant deviation from the scope of work in the approved nomination package;

(3) the project sponsor withdraws from participation in the project;

(4) construction has not been initiated within three years after the date that the project was approved by the commission; or

(5) the agreement required under §7.132 of this subchapter (relating to Project Implementation) is not executed within one year after the date that the project was approved by the commission.

§7.134. Reporting to the Commission.

Annually, the department will submit a report to the commission on the project nominations and projects approved for funding.

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

Filed with the Office of the Secretary of State on June 20, 2025.

TRD-202502084

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 3, 2025

For further information, please call: (512) 463-3164



CHAPTER 25. TRAFFIC OPERATIONS

SUBCHAPTER A. GENERAL

43 TAC §25.1

The Texas Department of Transportation (department) proposes the amendments to §25.1 concerning Uniform Traffic Control Devices.

EXPLANATION OF PROPOSED AMENDMENTS

Under Transportation Code, §544.001, the Texas Transportation Commission (commission) is required to adopt a manual for a uniform system of traffic control devices. The statute further states that the manual must be consistent with the state traffic laws and to the extent possible conform to the system approved by the American Association of State Highway Transportation Officials. The edition of the manual that is currently effective is the 2011 Revision 2 version.

The Manual on Uniform Traffic Control Devices (MUTCD) is adopted and published by the Federal Highway Administration (FHWA) under Title 23, Code of Federal Regulations, Part 655, Subpart F. The federal MUTCD defines the standards used by road managers nationwide to install and maintain traffic control devices on all streets, highways, pedestrian and bicycle facilities, and site roadways open to public travel. The Texas Manual on Uniform Traffic Control Devices (Texas MUTCD) is revised periodically to maintain substantial conformance with the federal MUTCD to allow use of a single manual for local, state, and Federal-aid highway projects.

Amendments to §25.1 adopt the 2025 Texas MUTCD by reference. The federal MUTCD was published with an effective date of January 18, 2024 and Texas is required to adopt the state manual by January 18, 2026. The purpose of the updates is to revise standards, guidance, options, and supporting information relating to the traffic control devices in all parts of the MUTCD. The changes will promote uniformity and incorporate technology advances in the traffic control device application, and ultimately improve and promote the safe and efficient utilization of roads that are open to public travel.

The department has requested FHWA to allow certain variations from the federal manual based on Texas laws and policies. Due to the implementation deadline, the department determined that it would be best for the purposes of these rules to post the manual for public comment with the language recommended for the variations, even though the variations have not yet been approved by FHWA. This will provide interested individuals the opportunity to comment on the department's recommended language as compared to the language in the federal MUTCD.

The pending issues are located in:

1. Section 2A.08 (Par. 03)- font choice
2. Sections 2B.27 (Par. 07), 2B.28 (Par. 03)- placement of Mandatory Movement Lane Control signs
3. Sections 2B.30A, 2D.26 - Turnaround ONLY sign & plaque
4. Sections 2B.31, 31A, 31B and Sections 2C.30, 34- sign text size
5. Section 2B.72 - No Electronic Messaging by Driver sign format
6. Section 2B.74 - Seat Belt sign format
7. Sections 2C.10 (Figure 2C-1) and 2C.43 (Figure 2C-10) - Large Arrow sign design
8. Section 2C.25 (Figure 2C-6)- use of clearance arrow plaque

9. Section 2C.41A- use of HIGHWAY INTERSECTION AHEAD sign
10. Sections 2E and 2G - use of LEFT EXIT or LEFT LANE panels
11. Section 2E.39A - use of Overhead Down Arrow guide signs
12. Section 2E.42 (Figures 2E-44, 46) - Optional Exit Lane sign design
13. Section 2F (multiple Figures throughout)- Toll Road sign design
14. Section 2G (multiple Figures throughout)- Preferential and Managed Lane sign design
15. Section 2L.02 (Par. 02)- alert message types permitted on dynamic/changeable message signs
16. Section 2L.04 (Par. 07)- use of warning beacons on dynamic/changeable message signs
17. Figure 2M-9- use of symbol on Destination Guide Sign for kayaking
18. Figure 2N-1- use of symbol on Hurricane Evacuation Route sign
19. Section 3A.04 (Par. 02)- definition of a "wide line"
20. Section 6H.08B- use of Upward Sloping Arrow sign
21. Section 7C.02 (Par. 04)- use of school zone transverse line

The 2025 version of the Texas MUTCD is available for review online at the department's website at www.txdot.gov and at the department's Traffic Safety Division office at 6230 East Stassney Lane in Austin, Texas. The federal MUTCD is available online at <https://mutcd.fhwa.dot.gov>.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Michael Chacon, P.E., Director, Traffic Safety Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Chacon has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be a more uniform use of traffic control devices statewide. This uniformity increases user comprehension and therefore improves safety and mobility for all users on all streets and highways open to public travel.

COSTS ON REGULATED PERSONS

Mr. Chacon has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state

agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Chacon has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Mr. Chacon has determined that a written takings impact assessment is not required under Government Code, §2007.043.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 10:00 a.m. on August 7, 2025, in the Duro Canyon Meeting Room, First Floor, Stassney Headquarters, 6230 East Stassney Lane, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 9:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain

pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the General Counsel Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8630 at least five working days before the date of the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §25.1, may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "TMUTCD." The deadline for receipt of comments is 5:00 p.m. on September 2, 2025. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code §544.001, which requires the commission to adopt a manual of uniform traffic control devices.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 544

§25.1. *Uniform Traffic Control Devices.*

(a) The 2025 [2011] Texas Manual on Uniform Traffic Control Devices [Revision 2], was prepared by the Texas Department of Trans-

portation to govern standards and specifications for all traffic control devices to be erected and maintained upon any street, highway, bikeway, public facility, or private property open to public travel within this state, including those under local jurisdiction, and is adopted by reference. Copies of the manual are available online through the Texas Department of Transportation web site, www.txdot.gov, and a copy is available for public inspection at the department's Traffic Safety [Operations] Division office located at 6230 East Stassney Lane [148 East Riverside Drive], Austin, Texas 78744.

(b) This manual will be periodically updated. In the intervals between updates, standards contained in "Official Rulings on Requests for Interpretations, Changes, and Experimentation" to the United States Department of Transportation's Manual on Uniform Traffic Control Devices for Streets and Highways will be inserted in this manual and may be used as interim standards.

(c) This manual is not intended to preclude the use of sound engineering judgment and experience in the application and installation of devices and particularly in those cases not specifically covered which must not conflict with the manual or other applicable state laws.

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

Filed with the Office of the Secretary of State on June 20, 2025.

TRD-202502085

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 3, 2025

For further information, please call: (512) 463-3164

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