

TREO Rulemaking Guide

Appendix E – Proposed Rules Notice Template

Instructions

- This template is used to draft the proposed rules notice for the *Texas Register*. It includes the elements required by Government Code Chapters 2001, 2002, 2006, and 2007.
- Legal citations are included in parentheses for reference purposes.
- Instructions for each section are highlighted in yellow.
- Complete the proposed rules notice using the template language provided below and the information provided in the completed fiscal impact form.
- Before finalizing the proposed rules notice:
 - remove the “OPENING” heading (this heading is not published in the *Texas Register*);
 - retain all other headings (they will be included in the *Texas Register* notice); and
 - remove the instructions, legal citations, and any unused template language.

Start of Template

OPENING

(Authority: Government Code [Section 2002.017](#); and 1 TAC [Section 91.35\(c\)](#))

Insert and complete the following sentence. List the new rules, the amendments to existing rules, and the repeal of existing rules in the opening sentence. The order of the list is based on the numerical order of the rule sections affected. If there is only one proposed rule, use “proposed rule” in this paragraph and throughout the preamble.

The [Insert Agency Name] (Insert Agency Acronym or Short Reference) proposes [new rules / amendments to existing rules / the repeal of existing rules] at [Insert Title ##] Texas Administrative Code (TAC), Chapter ##, Subchapter __, Section ##, regarding the [Insert Program Name or Chapter Name]. [Optional text - These proposed changes are referred to as “proposed rules.”]

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

(Authority: Government Code [Section 2001.024\(a\)\(1\)](#) and (a)(3); and [Section 2001.033](#). This template includes elements required in the proposed rules notice (explanation) and in the adoption notice (justification). The explanation and justification are included upfront in the proposed rules notice and again in the adoption notice.)

Insert and complete the following sentence. It will be the first sentence in this section of the preamble.

The rules under [Insert Title ##] TAC, Chapter ##, implement Texas [Insert Name of Code] Code, Chapter ##, [Insert Name of Statutory Chapter].

Insert and complete the two sentences regarding explanation and justification below and include additional explanation sentences. The order of the two sentences may be switched depending on the summary. Give a brief explanation of the proposed rules (explanation) (“what”); explain why the proposed rules are necessary (justification) (“why”); and provide any necessary background and other information regarding the proposed rules. The explanation and justification need to provide adequate notice to the general public about the scope and purpose of the proposed rules.

This information will include, as applicable: (1) enacted legislation that is being implemented by these rules (identify the bill or the portion(s) of it that are being implemented by the proposed rules and briefly summarize if necessary); (2) advisory board or workgroup studies, discussions, or recommendations; (3) changes being made as a result of the four-year rule review based on the agency’s review and/or the public comments received; (4) technical clean-up changes or other changes recommended by agency staff; or (5) changes recommended by the agency’s commission or board, licensees, interested persons, or the public (could include Strategic Plan or rule petition changes). For rules that address multiple categories of changes, consider using subheadings in italics to separate different types of changes and to improve readability.

The proposed rules [insert explanation of the proposed rules (“what”)]. The proposed rules are necessary to [insert justification for the rulemaking (“why”)]. [Insert additional explanation sentences regarding background and other information.]

The following subsection applies only if the agency uses an advisory board or committee for the proposed rules. These can be advisory boards or committees permanently established in statute; authorized in statute and established by rule; or created under Government Code, [Chapter 2110](#), Government Code [Section 2001.031](#), or other statutory authority.

If the advisory board/committee met and discussed the proposed rules, insert the following subheading and paragraph. Insert information regarding any advisory board/committee meetings, discussions, and recommendations that occurred before publication in the *Texas Register*. Revise the template sentences as necessary.

Advisory Board/Committee Recommendations (if applicable)

The proposed rules were presented to and discussed by the [Insert Full Name of Advisory Board/Committee] at its meeting on [Insert Date of Meeting]. [The Advisory Board/Committee recommended the following changes to the proposed rules: _____. OR The Advisory Board/Committee did not recommend any changes to the proposed rules.] The Advisory Board/Committee voted and recommended that the proposed rules [with changes] be published in the *Texas Register* for public comment.

Also, the agency should consider including information on any informal draft rules posted to the agency’s website for preliminary public input. No specific language is provided in this template. The agency may tailor the information in this notice to reflect its informal rulemaking process.

SECTION-BY-SECTION SUMMARY

(Authority: Government Code [Section 2001.024\(a\)\(1\)](#)) and (a)(3); and [Section 2001.033](#). This template includes elements required in the proposed rules notice and in the adoption notice. These elements are included upfront in the proposed rules notice and again in the adoption notice.)

Provide a section-by-section rule summary. List each rule section that is new, amended, or being repealed. Include the name of the rule section in the summary. Explain what the proposed changes are to each section. The summary may be more than one sentence. If many changes are being made to one section, it may be helpful to summarize the changes by subsection.

The proposed rules add new Section ###.##, [Insert Name of Rule Section]. The proposed rules [insert explanation of the proposed new rule].

The proposed rules amend Section ###.##, [Insert Name of Rule Section]. The proposed rules [insert explanation of the proposed changes to the existing rule].

The proposed rules repeal Section ###.##, [Insert Name of Rule Section]. The proposed rules [insert explanation of the proposed repeal of the existing rule].

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

(Authority: Government Code [Section 2001.024\(a\)\(4\)\(A\), \(B\), \(C\), and \(D\)](#))

If there are NO estimated additional costs or estimated reductions in costs to state or local government, then insert the following sentence. You may also add sentences to supplement or explain this statement based on the information provided in the rulemaking fiscal impact form.

[Insert Employee Name], [Insert Employee Title], has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

If there are NO estimated increases in revenue or estimated losses of revenue to state or local government, then insert the following sentence. You may also add sentences to supplement or explain this statement based on the information provided in the rulemaking fiscal impact form.

[Insert Employee Name], [Insert Employee Title], has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

If there are additional costs, reductions in costs, increases in revenue, or losses in revenue to state or local government, then list and explain the fiscal implications (costs and revenues) to state and local government. Include the information provided in the rulemaking fiscal impact form. Separate paragraphs may be required to address each fiscal implication for each governmental entity. Start each paragraph with the following sentence:

[Insert Employee Name], [Insert Employee Title], has determined that for each year of the first five years the proposed rules are in effect, there will be _____.

The following statements may be included in the preamble as appropriate.

[Insert Employee Name], [Insert Employee Title], has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state governments.

[Insert Employee Name], [Insert Employee Title], has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

(Authority: Government Code [Section 2001.022](#) and [Section 2001.024\(a\)\(6\)](#))

If there is NO local employment impact, then include the following sentence. You may also add sentences to supplement or explain this statement based on the information provided in the rulemaking fiscal impact form.

Because [Insert Mr./Ms. Employee Last Name] has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code Section 2001.022.

If there is an impact on local employment, insert the following first sentence and then add sentences to explain.

Because [Insert Mr./Ms. Employee Last Name] has determined that the proposed rules will affect at least one local economy, the agency has prepared a local employment impact statement, as detailed and required under Texas Government Code Section 2001.022. [Insert sentences to explain the impact on local employment. Add the required local employment impact statement.]

PUBLIC BENEFITS

(Authority: Government Code [Section 2001.024\(a\)\(5\)\(A\)](#))

Insert and complete the following sentence. You may also add sentences to supplement or explain this statement based on the information provided in the rulemaking fiscal impact form.

[Insert Mr./Ms. Employee Last Name] has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be _____.

If there will be a reduction in costs (savings) to persons required to comply with the rules, insert the following first sentence and then include information explaining the specific reductions in costs.

[Insert Mr./Ms. Employee Last Name] has determined that for each year of the first five-year period the proposed rules are in effect, there will be a reduction in costs (savings) to persons who are required to comply with the proposed rules. [Insert explanation regarding the specific reduction in costs.]

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

(Authority: Government Code [Section 2001.024\(a\)\(5\)\(B\)](#))

If there are NO probable economic costs (increase or decrease) to persons required to comply with the rules, insert the following sentence. You may also add sentences to supplement or explain this statement based on the information provided in the rulemaking fiscal impact form.

[Insert Mr./Ms. Employee Last Name] has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

If there will be additional costs to persons required to comply with the rules, insert the following first sentence and then include additional sentences that list and explain the specific additional costs.

[Insert Mr./Ms. Employee Last Name] has determined that for each year of the first five-year period the proposed rules are in effect, there will be additional costs to persons who are required to comply with the proposed rules. [Insert explanation regarding the specific additional costs.]

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

(Authority: Government Code [Section 2006.002](#))

If there will be NO adverse economic effect on small businesses, micro-business, or rural communities, insert the following paragraph. You may also add sentences to supplement or explain this statement based on the information provided in the rulemaking fiscal impact form.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code Section 2006.002, is not required.

If there will be an adverse economic effect on small businesses, micro-business, or rural communities, insert the following first paragraph and then insert a second paragraph with additional sentences to explain.

There will be an adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have an adverse economic effect on small businesses, micro-businesses, or rural communities, the agency has prepared an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed and required under Texas Government Code Section 2006.002.

[Insert sentences listing and explaining the probable adverse economic effects on small businesses, micro-businesses, and rural communities, and the number of entities affected. Separate paragraphs may be required to address small businesses and micro-businesses separate from rural communities. Also, there may be an adverse economic effect on one of the three entities, but not the others, so each entity may need to be addressed separately. Add the required Economic Impact Statement and a Regulatory Flexibility Analysis.]

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

(Authority: Government Code [Section 2001.0045](#))

If the rules do NOT have a fiscal note that imposes a cost on regulated persons, insert the following paragraph.

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code Section 2001.0045.

If the rules have a fiscal note that imposes a cost on regulated persons BUT they fall under one of the exceptions under Section 2001.0045(c), insert the following paragraph and cite the applicable exception.

The proposed rules have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government; however, the proposed rules fall under the exception for rules that [Insert Exception] under Section 2001.0045(c)(___). Therefore, the agency is not required to take any further action under Texas Government Code Section 2001.0045.

If the rules have a fiscal note that imposes a cost on regulated persons AND none of the exceptions apply, insert the following paragraph with the necessary explanation.

The proposed rules have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. In addition, the proposed rules do not fall under any of the exceptions under Section 2001.0045(c). Therefore, the agency is proposing the [repeal / amendment] of [Insert Title ##] TAC Section ####.## in order to comply with Texas Government Code Section 2001.0045. The [repeal / amendment] of [Insert Title ##] TAC Section ####.## will offset the costs of the proposed rules on regulated persons. The [repeal / amendment] of [Insert Title ##] TAC Section ####.## [is published as a separate proposal in this issue of the *Texas Register* / is incorporated into this rule proposal].

GOVERNMENT GROWTH IMPACT STATEMENT

(Authority: Government Code [Section 2001.0221](#))

Insert and complete the following paragraph and all eight statements. Optional - Include a short explanation after any statement answered in the affirmative.

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

1. The proposed rules [create / do not create] or eliminate a government program.
2. Implementation of the proposed rules [requires / does not require] the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules [requires / does not require] an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules [require / do not require] an increase or decrease in fees paid to the agency.
5. The proposed rules [create / do not create] a new regulation.
6. The proposed rules [expand / do not expand], limit, or repeal an existing regulation.
7. The proposed rules [increase / do not increase] or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules [positively / do not positively] or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

(Authority: Government Code [Section 2007.043](#) and [Section 2007.002](#))

If the proposed rules do NOT affect private real property interests and there is NO restriction, limitation, or burden on an owner's rights to his or her private real property, then insert the following paragraph.

The [Insert Agency Name] has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code Section 2007.043.

If the proposed rules affect private real property interests, and there is a restriction, limitation, or burden on an owner's rights to his or her private real property, insert the following first paragraph and then insert a second paragraph with additional sentences to explain.

The [Insert Agency Name] has determined that the proposed rules restrict, limit, or impose a burden on an owner's rights to his or her private real property. Because the agency has determined that the proposed rules will result in a burden on private real property, the agency has prepared a Takings Impact Assessment statement, as detailed and required under Texas Government Code Section 2007.043.

[Insert sentences to explain the impact on private property rights. Add the required Takings Impact Assessment statement.]

MAJOR ENVIRONMENTAL RULE (if applicable)

(Authority: Government Code [Section 2001.0225](#))

This section applies only if the agency is proposing a "major environmental rule," which is defined as "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." This section does not have to be included in the proposed rules notice, if this section does not apply to the agency or to the proposed rules.

[NOTE: There is no specific template language provided in this section. See Government Code Section 2001.0225 regarding the information that must be addressed in the proposed rules notice if this section applies.]

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

(Authority: Government Code [Section 2001.024\(a\)\(7\)](#), [Section 2001.024\(a\)\(8\)](#), and [Section 2001.029](#))

Insert the following paragraphs. Revise the sentences below to reflect the agency's designated methods for submitting public comments and requested information and any applicable instructions regarding the submissions.

The [Insert Agency Name] is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information.

Comments on the proposed rules and responses to the request for information may be submitted electronically on the agency's website at [Insert the Link to the Public Comment Form]; by email

to [Insert Email Address]; by facsimile to [Insert Fax Number]; or by mail to [Insert Name, Title, Agency Name, and Mailing Address]. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

(Authority: Government Code [Section 2001.024\(a\)\(3\)](#), [\(a\)\(3\)\(A\)](#), [\(a\)\(3\)\(B\)](#), and [\(a\)\(3\)\(C\)](#); [Section 2001.033\(a\)\(2\)](#). This template includes elements required in the proposed rules notice and in the adoption notice. All statutory authority requirements are included upfront in the proposed rules notice and again in the adoption notice.)

Insert and complete the following two paragraphs. Modify and expand the sentences as necessary to state: (1) the applicable statutes that provide authority to the agency to adopt rules and to perform other regulatory actions or functions; (2) how the agency interprets the statutory provisions as authorizing or requiring the rules; and (3) the applicable statutes, sections, or articles that are affected by the proposed rules. The applicable statutes may include the agency’s enabling statute, an agency program statute, and/or a general statute that applies to all state agencies.

The proposed rules are proposed under Texas [Insert Code Name] Code, Chapter ##, [Section ###], which authorizes the [Insert Agency Name] to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the [Insert Agency Name]. The proposed rules are also proposed under Texas [Insert Code Name] Code, Chapter ##, [Insert Chapter Name], [Section ###], which [authorizes/requires] the agency to [Insert explanation of other regulatory actions or functions].

The statutory provisions affected by the proposed rules are those set forth in Texas [Insert Code Name] Code, Chapter ##, [Insert Chapter Name], [Section ###], and [Insert citations to any other statutes, sections, or articles affected by the proposed rules].

For all applicable rules as required by Government Code Section 2001.024(a)(3)(C): If the proposed rules are implementing legislation, or are the result of legislation, that was enacted in the last four years, then cite that specific bill in the sentence below (in addition to citing the statutory authority above). If the bill is cited in the “Explanation and Justification” section of the notice, then the bill is also cited in the “Statutory Authority” section.)

Insert and complete the following sentence. Identify the applicable bill(s).

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate/House Bill ###, ## Legislature, Regular Session (#####).

INSERT FORMATTED RULES TEXT HERE

(Authority: Government Code [Section 2001.024\(a\)\(2\)](#), [\(b\)](#), [\(c\)](#), and [\(e\)](#); Government Code [Section 2002.017](#); and 1 TAC [Section 91.35](#))

The text of the proposed rules must be written in plain language, to the extent practicable. A proposed rule is written in plain language if “the text is written using language the general public, including individuals with limited English proficiency, can readily understand because the language is concise and well-organized.”

[Insert the text of the proposed rules per *Texas Register* formatting standards.]

REVIEW BY AGENCY COUNSEL

(Authority: Government Code [Section 2001.024\(a\)\(3\)\(D\)](#))

Insert and complete the following two sentences and signature line. The person named in the signature line may be the agency’s General Counsel or other legal counsel, the agency’s Executive Director, the Presiding Officer of the board or commission, or another person authorized by the agency.

NOTE: This is the *Texas Register* boilerplate certification language that is used for all state agencies’ proposed rules.

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 [Insert Filing Date].

[Insert Name]

[Insert Title]

[Insert Agency Name]