

Texas Regulatory Efficiency Office

Rulemaking Guide For State Agencies

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Rulemaking Guide

Chapter 1. Background, Purpose, Scope, Values, Principles, Definitions.

- 1.1. Background.
- 1.2. Purpose, Scope, and Agency Implementation
 - 1.2.1 Purpose and Scope
 - 1.2.2. Agency Implementation
- 1.3. Core Values and Guiding Principles
- 1.4. Key Terms and Definitions

Chapter 2. Legal Foundation, Authority, and Overview.

- 2.1. Purpose
- 2.2. Statutory Authorization
 - 2.2.1. Valid Exercise of Authority
 - 2.2.2. Types of Statutory Authority
 - 2.2.3. Types of Rulemaking Authority
 - 2.2.4. Examples of Statutory Rulemaking Authority
- 2.3. Foundational Rulemaking Requirements.
 - 2.3.1. Additional Statutory Obligations and Public Access.
 - 2.3.2. Administrative Action Prior to Effective Date.
- 2.4. Rulemaking Process, Notice, Participation, and Adoption
 - 2.4.1. Petition for Adoption of Rules.
 - 2.4.2. Proposed Rules Notice Requirements.
 - 2.4.3. Public Participation and Adoption Requirements.
 - 2.4.4. Emergency Rulemaking.
 - 2.4.5. Effective Date and Filing of the Rules.
- 2.5. Compliance, Legal Challenges, and Review
 - 2.5.1. APA Compliance Standards.
 - 2.5.2. Procedural Challenges to the Rules.
 - 2.5.3. Validity or Applicability Challenges to the Rules.
 - 2.5.4. Four-Year Rule Review.

Chapter 3. Rule Initiation, Planning, and Scoping.

- 3.1. Purpose
- 3.2. Documentation and Standard Planning Documents (**Appendices A & B**)
- 3.3. Elements of a Rulemaking Plan
 - 3.3.1. Rulemaking Purpose and Scope
 - 3.3.2. Legal Foundation
 - 3.3.3. Preliminary Guidance on the Rule Content
 - 3.3.4. Expected Costs and Benefits
 - 3.3.5. Operational Details

- 3.3.5.1. Project Identification
- 3.3.5.2. Agency Staff Roles
- 3.3.5.3. Stakeholder Engagement
- 3.3.5.4. Timeline and Deadlines

Chapter 4. Stakeholder Engagement.

- 4.1. Purpose
- 4.2. Background
- 4.3. Independent Research
 - 4.3.1. Internal Records
 - 4.3.2. Legal and Legislative Authority
 - 4.3.3. Comparative and External Analysis
 - 4.3.4. Fiscal Research
- 4.4. Methods of Engagement
 - 4.4.1 Targeted Consultation
 - 4.4.2 Broad Public Engagement
 - 4.4.3. Written Comment Solicitations
 - 4.4.4. Information Request
 - 4.4.5. Survey/Questionnaire
- 4.5. Stakeholder Engagement Documents
 - 4.5.1. Drafting and Textual Tools
 - 4.5.2. Visual and Comparative Tools
 - 4.5.2.1 Process Flowchart

Chapter 5. Drafting and Formatting Standards.

- 5.1. Core Values and Guiding Principles
- 5.2. Plain Language Requirements
- 5.3. Writing Tips
- 5.4. Format of the Preambles and the Rules Text
 - 5.4.1. Consistency Across Agencies
 - 5.4.2. Secretary of State / *Texas Register* Formatting Requirements
- 5.5. Chapter 5 Resources.

Chapter 6 Economic Analysis of Proposed Rules.

- 6.1. Purpose
- 6.2. Regulatory Economic Analysis Manual

Chapter 7. Reviews.

- 7.1. Office of the Governor Review.
 - 7.1.1. Overview. **(Appendices C and D)**
- 7.2. Regulatory Compliance Division Review.
 - 7.2.1. Overview. **(Appendix D)**
 - 7.2.2. Best Practices.

Chapter 8. Notice of Proposed Rules and Public Comments.

- 8.1. Purpose
- 8.2. Notice Requirements
 - 8.2.1. Required Elements. **(Appendix E)**
 - 8.2.2. Statutory Authority Requirements.
 - 8.2.3. Secretary of State Requirements.
- 8.3. Notice by Mail and Additional Methods of Notice.
 - 8.3.1. Notice by Mail.
 - 8.3.2. Additional Methods of Notice.
- 8.4. Notice to Primary Bill Authors and Sponsors.
 - 8.4.1. Requirements.
 - 8.4.2. Implementation
- 8.5. Plain Language Summary
 - 8.5.1. Preparation and Translation of the Summary.
 - 8.5.2. Website Posting and Other Methods of Distribution.
- 8.6. Request for Public Comments and for Information Relating to the Cost, Benefit, or Effect of the Proposed Rules
 - 8.6.1. Existing and New Requests.
 - 8.6.2. Incorporating the New Request into Agency Communications.
- 8.7. Public Comment Submission and Timing
 - 8.7.1. Methods of Submission.
 - 8.7.2. Timing of Submissions.
- 8.8. Public Hearing on the Proposed Rules.
 - 8.8.1. Scheduling the Public Hearing.
 - 8.8.2. Conducting the Public Hearing.
 - 8.8.3. Comments Received During the Public Hearing.
- 8.9. Define and Handle Public Comments
 - 8.9.1. Defining Public Comments.
 - 8.9.2. Submissions that are Not Public Comments
 - 8.9.3. Submissions after the Public Comment Period Ends.
- 8.10. Summarize and Respond to the Public Comments
 - 8.10.1. Summarize the Public Comments.
 - 8.10.2. Respond to the Public Comments.
 - 8.10.3. Changes to the Proposed Rules in Response to the Public Comments
- 8.11. Chapter 8 Resources

Chapter 9. Adoption Requirements.

- 9.1. Adoption Order / Notice Requirements
- 9.2. Statutory Authority Requirements.
- 9.3. Prepare Rulemaking Documents for the Agency's Governing Board (**Appendices F-1 and F-2**)
- 9.4. Consider and Vote on the Proposed Rules at an Open Meeting.**
- 9.5. Prepare and File the Adopted Rules Notice. (Appendix F-3)**
- 9.6. Publication in the *Texas Register* and Additional Methods of Notice.**
- 9.7. Chapter 9 Resources.

Chapter 10. Other Rule-Related Activities and Processes.

- 10.1. Purpose.
- 10.2. Four-Year Rule Review.
 - 10.2.1. Overview
 - 10.2.2. Mandatory Review and Assessment.
 - 10.2.3. Required Procedures.
 - 10.2.4. Public Notice and Comment Period.
 - 10.2.5. Agency Assessment of Initial Reasons for Adoption and Other Changes.
 - 10.2.6. Final Determination and Actions Resulting from Review.
 - 10.2.7. Documentation and Publication of the Final Determination.
 - 10.2.8. Rule Review Schedule and Records.
 - 10.2.9. Future Agency Action.
 - 10.2.10. Best Practices.
- 10.3. Rulemaking Petitions.
 - 10.3.1. Overview
 - 10.3.2. Best Practices.
- 10.4. Emergency Rulemaking.
 - 10.4.1. Overview
 - 10.4.2. Best Practices.
- 10.5. Negotiated Rulemaking.
 - 10.5.1. Overview
 - 10.5.2. Best Practices.
- 10.6. Chapter 10 Resources

Chapter 11. Increasing Public Participation in the Rulemaking Process.

- 11.1. Purpose.
- 11.2. Create a Rulemaking Webpage.
- 11.3. Explain the Elements of Rulemaking and the Rulemaking Process.
- 11.4. Explain How to Participate in the Process.
- 11.5. Provide Tips for Submitting Public Comments. (**Appendix G**)
- 11.6. Explain How to Submit a Rulemaking Petition.

11.7. Explain How to Stay Informed and Involved.

Appendices

- Appendix A. Standardized Planning Document Example
- Appendix B. Using the Standardized Planning Document
- Appendix C. Letter from OOG Chief of Staff to State Agency Heads dated June 22, 2018
- Appendix D. Letter from OOG Chief of Staff to State Agency Heads dated August 27, 2019
- Appendix E. Proposed Rules Notice Template
- Appendix F. Adoption Templates
 - F-1. Adoption Order Template
 - F-2. Adoption Justification Template
 - F-3. Adopted Rules Notice Template
- Appendix G. Guidance to the Public on Submitting Public Comments

Chapter 1. Background, Purpose, Scope, Core Principles, and Definitions.

1.1 Background.

The Texas Regulatory Efficiency Office (TREO) was established within the Office of the Governor (OOG) under Texas Government Code, [Chapter 465](#), as added by [Senate Bill 14](#), 89th Legislature, Regular Session (2025). TREO is established to identify and expand opportunities for implementing efficiencies in the rule adoption process and regulatory review process. TREO's duties extend to every aspect of "the process by which state agencies adopt rules." (Texas Government Code, Section 465.0052(a)(1)(A) and (B)).

TREO is charged with assisting state agencies in identifying: (1) unnecessary and ineffective rules; (2) the effect and cost to this state and regulated persons of the agencies' rules and proposed rules; and (3) opportunities to repeal or amend rules to provide effective protection to the public with the least cost and inconvenience to regulated persons. (Texas Government Code, Section 465.0052(a)(2)).

As part of that effort, TREO is required to prepare and publish a Regulatory Economic Analysis Manual. The manual must identify and describe best practices for state agencies related to specific economic impact elements that must be addressed when an agency proposes rules. (Texas Government Code, Section 465.0053).

1.2. Purpose, Scope, and Agency Implementation.

1.2.1. Purpose and Scope.

TREO has developed this guide, the TREO Rulemaking Guide, to assist state agencies in the rulemaking process under Texas Government Code, [Chapter 2001](#) and other applicable statutes, rules, and authorities.

The TREO Rulemaking Guide explains the statutory requirements and establishes standards, recommendations, and best practices to ensure that every Texas state agency promulgates rules in a clear, concise, and consistent manner. This guide provides the framework for more uniform rulemaking across agencies operating under Texas Government Code, [Chapter 2001](#) (Administrative Procedure Act).

The TREO Regulatory Economic Analysis Manual required under Texas Government Code, Section 465.0053 is incorporated by reference into the TREO Rulemaking Guide under Chapter 6. This separate manual addresses all rulemaking economic analysis elements, not just those specified under Texas Government Code, Section 465.0053.

The TREO Rulemaking Guide also addresses the following rulemaking related activities and processes: four-year rule review; rulemaking petitions; emergency rulemaking; negotiated rulemaking; and informal rulemaking.

1.2.2. Agency Implementation.

Each state agency that promulgates rules should develop and maintain its own agency-level rulemaking guide that adopts the statutory rulemaking requirements and incorporates the recommendations in this TREO Rulemaking Guide, as appropriate. The agency's rulemaking guide may incorporate the procedures, citations, and templates recommended in this guide and adapt them to the agency's specific statutory mandates and functions while maintaining structural consistency across state government.

Nothing in this guide should be considered legal advice. A state agency should consult its own legal counsel before making determinations or decisions.

1.3. Core Values and Guiding Principles.

A state agency should consider the following core values and guiding principles when engaged in rulemaking. These core values and guiding principles should be kept in mind as a state agency drafts new rules or amendments or repeals of existing rules.

- **Clarity** – Wherever practicable, rules should be written in plain language that readily communicates intent, regulatory requirements, and compliance expectations to the regulated persons and the public
- **Conciseness** – Rules should avoid superfluous language, redundant provisions, and unnecessary detail.
- **Consistency** – Rules should follow uniform formatting standards, language conventions, and structural organization.

A state agency should uphold these values when adopting new rules or amending or repealing existing rules under Texas Government Code, [Chapters 2001](#) and [2006](#).

A state agency should further refine and frame its efforts to achieve the goals of Clarity, Conciseness, and Consistency and improved rulemaking by adopting and applying the following guiding principles:

- **Consistent and Active Review** – A state agency should ensure a rule's continued effectiveness and necessity as part of the rulemaking process. A state agency should actively identify outdated, duplicative, or ineffective rules and repeal or amend such rules.
- **Necessary and Proportional Rules** – A state agency should ensure that its rules are necessary and proportional to the regulatory objective.

- Rules should express only what is necessary to meet the specific statutory objective or provide clarity. Also, rules should provide the least restrictive form of regulation to meet the statutory objective and that will adequately protect the public.
- This balancing test should consider the effect of the regulation on Texans' health, safety, prosperity, and freedom, including the cost, impact, and inconvenience on this state and regulated persons.
- Rules that fail to meet this test, or where the regulatory burden outweighs the public benefit, should be considered for repeal or amendment, and any new draft proposed rules should be rewritten if possible.
- **Plain Language and Understandable Rules** – A state agency should ensure that its rules are written in plain language, wherever practicable, and are understandable.
 - Wherever practicable, rules should be written in plain language to maximize reader comprehension, using brevity, good organization, and standard English conventions. Also, rules should be readily understandable by the general public, including individuals with limited English proficiency, to the extent practicable.
 - Rules that require extensive professional legal interpretation for compliance may be deemed excessively complex and should be reviewed for simplification and for rewriting in plain language, where practicable.
- **Public Engagement and Transparency** – A state agency should ensure that its rulemaking process is transparent, predictable, and offers meaningful opportunities for public input regarding proposed rules. A state agency must clearly articulate the basis and any available data supporting the proposed rules.

1.4. Key Terms and Definitions.

For the purposes of this guide, the following key terms and definitions apply:

1. **Administrative Procedure Act (APA):** Texas Government Code, [Chapter 2001](#), which establishes the uniform procedures for state agency rulemaking, contested case adjudication, and judicial review.
2. **Clarity:** The core value encouraging rules to be written in plain language that readily communicates the intent, regulatory requirements, and compliance expectations to the regulated public.
3. **Conciseness:** The core value requiring rules to be written to eliminate superfluous language, redundant provisions, and unnecessary detail.

4. **Consistency:** The core value requiring all rules to follow uniform formatting standards, language conventions, and structural organization.
5. **Economic Impact:** The quantifiable or qualitative effect a proposed or existing rule has on the finances, operations, or competitiveness of the regulated community, including compliance costs, administrative burdens, and potential market effects.
6. **Four-Year Rule Review:** The mandatory process established by Texas Government Code, Section 2001.039 requiring state agencies to review all rules at least once every four years to assess whether the reasons for initially adopting each rule continue to exist.
7. **Mandatory statutory authority:** Statutory language that requires an agency to adopt rules, typically indicated by terms such as “shall,” “must,” or “required.”
8. **Mixed statutory authority:** A rule that was adopted based upon both mandatory and permissive statutory authority.
9. **Permissive statutory authority:** Statutory language that authorizes, but does not require, an agency to adopt rules, typically indicated by terms such as “may,” “is authorized to,” or “as necessary.”
10. **Plain language:** Generally, writing that is clear, concise, organized, can be readily understood by individuals with limited English proficiency, and follows standard English conventions, employing active voice, short sentences, and common vocabulary to maximize reader comprehension.
11. **Rule:** As set forth in Texas Government Code, Section 2001.003(6), a state agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of a state agency. A rule includes new rules, amendments, and repeals.
12. **Rulemaking:** The process of proposing and adopting a rule by a state agency in accordance with the procedures set forth in the APA; other applicable statutes, rules, and authorities; and the recommendations and best practices made in this guide.
13. **State agency (or agency):** Any state agency, department, board, commission, council, or other governmental unit as defined under Texas Government Code, Section 2001.003(7). “State agency” and “agency” are used interchangeably in this guide.
14. **Subject matter expert (SME):** Agency personnel with specialized technical knowledge in areas such as healthcare, environmental science, engineering, financial regulation, or other domains requiring expertise.

Chapter 2. Legal Foundation, Authority, and Overview.

2.1. Purpose.

This chapter provides an overview of the uniform legal framework that governs rulemaking for all Texas state agencies. The APA establishes statewide procedures for notices of proposed rules, public participation, the adoption of rules, and judicial review. These procedures ensure transparency, public access, and a reasoned justification that connects the rule text to its statutory basis.

This chapter explains the legal foundations and statutory authority that authorize rulemaking. It also highlights the procedural requirements that must be followed under the APA and the standards courts use when evaluating whether a rule is valid and enforceable. Later chapters in this guide go into a more in-depth discussion of certain elements of the APA process.

2.2. Statutory Authorization.

A state agency does not possess inherent authority to adopt rules. A state agency only has such authority as granted by the Texas Legislature. The Texas Legislature may give a state agency broad general rulemaking authority or specific rulemaking authority. In addition, the Texas Legislature may either *require* a state agency to adopt rules or *permit* a state agency to adopt rules. For this reason, every rulemaking action must begin with a review of the statutory provision that authorizes, directs, or permits the agency to regulate the subject matter and to promulgate a rule.

Every state agency must establish clear authorization before initiating any rulemaking action. This foundational requirement ensures that the agency is not exceeding the authority granted to it by the Texas Legislature and that the regulatory process adheres to the principle of preventing unnecessary rules.

2.2.1. Valid Exercise of Authority.

A rule's validity often turns on whether the agency remained within the statutory authority granted by the Texas Legislature. Actions taken beyond that authority are considered “*ultra vires*” (beyond the agency's statutory authority).

- **Source and Scope of Authority:** An agency's authority to adopt rules derives solely from the powers that the Texas Legislature has granted. A rule must be grounded in a statute that authorizes the agency to regulate the subject matter addressed in the rule.
- **Identifying and Explaining the Statutory Authority:** Texas Government Code, Sections 2001.024(a) and 2001.033(a) require an agency to identify the statutory authority under which the agency proposes and adopts the rules.

- Section 2001.024(a)(3) requires an agency’s proposed rules notice to include “a statement of the statutory or other authority under which the rule is proposed to be adopted, including: (A) a concise explanation of the particular statutory or other provisions under which the rule is proposed; (B) the section or article of the code affected; (C) if applicable, the bill number for the legislation that enacted the statutory authority under which the rule is proposed to be adopted if the legislation was enacted during the four-year period preceding the date notice of the proposed rule is given; and (D) a certification that the proposed rule has been reviewed by legal counsel and found to be within the state agency’s authority to adopt.”
- Section 2001.033(a)(2) requires an agency’s adoption order to include “a concise restatement of the particular statutory provisions under which the rule is adopted and of how the agency interprets the provisions as authorizing or requiring the rule.” Section (a)(3) also requires the adoption order to include “a certification that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.”
- **Practice Tip: Strict Interpretation of Rulemaking Authority.**
 - A state agency should strictly interpret its statutorily authorized power and rulemaking authority. An agency may not use rulemaking to enlarge its statutory authority.

2.2.2. Types of Statutory Authority.

A state agency should distinguish between rules that are mandatory under the statute (“shall”) and those that are permissive under the statute (“may”) and then provide justification for those rules.

Mandatory Statutory Authority.

Mandatory rules are the result of an explicit statutory directive.

- The statute uses words like “shall,” “must,” or “required,” which remove any discretion an agency has as to whether it undertakes a rulemaking.
- When a statute uses mandatory language, the Texas Legislature has directed the agency to take specific regulatory action. In these circumstances, the agency must adopt rules necessary to carry out the statutory requirement.
- For rules adopted under mandatory statutory authority, the underlying statute instructs the agency that it “shall adopt rules” or otherwise requires the agency to regulate a particular subject. In these cases, the agency should:
 - Identify the specific statutory citation that mandates rulemaking;
 - Determine whether the statute specifies required content, processes, or outcomes; and

- Describe which portions of the existing rule are necessary to implement the statutory directive and which portions (if any) reflect discretionary policy choices.

Permissive Statutory Authority.

Permissive rules are the result of an agency policy choice.

- The statute uses words like “may,” “is authorized to,” or “as necessary,” which represent that an agency has discretion as to whether it adopts a rule.
- When a statute uses permissive language, the Texas Legislature gave an agency the option to regulate this area. The agency has discretion regarding whether to adopt rules. Because the decision to regulate is discretionary, the agency must clearly explain the need for the rule and how the rule advances the statute’s purpose.
- For rules adopted under permissive statutory authority, the statute authorizes but does not require the agency to adopt rules. In these instances, the agency should:
 - Identify the statutory citation that provides permissive authority;
 - Determine whether the rule is necessary; and
 - Identify the reasons for adopting the rule.

Mixed Statutory Authority.

Some rules may be developed that contain provisions that are adopted under mandatory statutory authority and other provisions that are adopted under permissive statutory authority. When developing rules, the agency should be clear on its authorization for each rule.

- **Practice Tip: Statutory Connection:**
 - The agency must be able to demonstrate a clear connection between the rule’s requirements and the statutory provision cited as authority. A rule that lacks this statutory connection may be at risk of being challenged and being declared invalid by a court for exceeding the agency’s delegated powers.
- **Practice Tip: Reasoned Justification Matters:**
 - For rules adopted under permissive authority, the agency’s “reasoned justification” under Texas Government Code, Section 2001.033 is especially important. The justification should describe the factual and legal basis for the rule and explain the logical connection between that basis and the rule’s requirements. A well-documented justification is the agency’s primary support if the rule is later challenged as an abuse of discretion.

2.2.3. Types of Rulemaking Authority.

The Texas Legislature may give a state agency broad general rulemaking authority or specific rulemaking authority.

- **Broad General Rulemaking Authority:**
 - Under broad general authority, a state agency is authorized to adopt rules necessary to administer and enforce a statute or to carry out the agency's responsibilities.
 - A state agency may rely on broad grants of statutory authority to carry out its core mission and functions, including responsibilities related to public health, safety, and welfare. In addition, an agency may have broad or general authority in its enabling statute to adopt rules necessary to administer and enforce its programs.
- **Specific Rulemaking Authority:**
 - Under specific authority, a state agency is authorized to adopt rules on a specific topic or issue under the agency's jurisdiction.
- **Practice Tip: Broad General Authority:**
 - Broad general authority still requires a clear connection between the statute and any proposed rule.
 - When relying on a general enabling provision as a basis for rulemaking, the agency should clearly explain how the proposed rule relates to the statutory duties set out in the provision. The broader the grant of authority, the more important it is to demonstrate the logical connection between the statutory responsibility and the proposed rule so that a reviewing court can determine that the rule falls within the agency's delegated authority.

2.2.4. Examples of Statutory Rulemaking Authority.

The Texas Legislature's wording determines whether an agency is required to adopt rules or has the discretion to do so, and what level of justification is necessary. Below are examples of these concepts:

- **Mandatory Authority**
 - Statutory term: "shall", "must", or "required"
 - Statutory example: Health & Safety Code Section 242.037(a): "The executive commissioner **shall** make and the department **shall** enforce rules and minimum standards to implement this chapter, including rules and minimum standards relating to quality of life, quality of care, and residents' rights."
 - Agency action: the agency is required to adopt rules addressing the subjects identified in the statute. Not adopting rules and minimum standards relating to

quality of life, quality of care and residents' rights would fail to carry out a statutory duty.

- **Permissive Authority**

- Statutory term: “may” or “is authorized to”
- Statutory example: Health & Safety Code Section 242.0021(d): “The executive commissioner **may** adopt rules...”
- Agency action: the agency has the discretion to adopt rules. If the agency chooses to proceed, it must still ensure that the adopted rules remain within the scope of the statutory authority and serve a legitimate purpose.

- **Permissive Authority**

- Statutory term: “as necessary”
- Statutory example: Occupations Code Section 51.203(a): “The commission shall adopt rules **as necessary**...”
- Agency action: the agency shall adopt rules if determined necessary. If the agency determines rules are necessary to proceed, it must ensure that the adopted rules remain within the scope of the statutory authority and serve a legitimate purpose.

2.3. Foundational Rulemaking Requirements.

The APA sets out some foundational requirements about rulemaking. Additional related requirements are found in Texas Government Code, [Chapter 2002](#). These foundational requirements apply to every state agency that adopts rules, except as noted. A state agency should consult with the agency's legal counsel for implementation and compliance with these requirements.

2.3.1. Additional Statutory Obligations and Public Access. (Sections 2001.004, 2001.005, and 2001.007, and Chapter 2002)

- **Rules of Practice (Section 2001.004):** An agency must adopt rules of practice describing the nature and requirements of all available formal and informal procedures.
- **Indexing and Availability (Section 2001.004):** An agency must index and make available for public inspection all currently effective rules and all statements of policy or interpretation of general applicability.
- **Effect of Non-Publication (Section 2001.005):** A rule is not valid or effective against a person or party, and may not be invoked by the agency, unless it has been indexed and

made available as required by law. This section does not apply in favor of a person or party that has actual knowledge of the rule, order, or decision.

- **Secretary of State Indexes (Chapter 2002):** The Secretary of State indexes the rules of each agency in the *Texas Register* (Sections 2002.011, 2002.0151, and 2002.019) and in the Texas Administrative Code (Sections 2002.051, 2002.052, 2002.054, 2002.055, and 2002.057). Emergency rules are included in the *Texas Register*, but they are not included or codified in the Texas Administrative Code (TAC) (Section 2002.051). Certain other rules are excepted from inclusion in the *Texas Register* (e.g., Section 2002.052).
- **Practice Tip: Indexing:** “Index” is broad method of organizing rules. There is not a uniform method by which agencies may index their rules internally or on their websites. The Secretary of State has a uniform method for indexing consistently across agencies.
- **Practice Tip: Binding Test:** If a policy statement or guidance document establishes a binding standard of conduct, duty, or right that regulated persons or the public must follow, it constitutes a rule and must be adopted through the rulemaking process. If a state agency intends to enforce a policy statement or guidance document against a regulated person, those documents must be adopted by rule. Otherwise, those documents are not binding, and they have no effect.
- **Internet Accessibility (Sections 2001.007 and 2001.037, and Chapter 2002):**
 - An agency must make the text of its rules and any explanatory and interpretive materials, including letters, opinions, or compliance manuals, available on a publicly accessible Internet site. The website must be designed so that a member of the public may send questions about the agency's rules to the agency electronically and receive responses to the questions from the agency electronically. A state agency may comply with this section through the actions of another agency, such as the Secretary of State, on the agency's behalf (Section 2001.007(d)).
 - The Secretary of State indexes the rules of each agency in the *Texas Register* (Texas Government Code, Sections 2002.011, 2002.0151, and 2002.019) and in the Texas Administrative Code (Texas Government Code, Sections 2002.051, 2002.052, 2002.054, 2002.055, and 2002.057). The *Texas Register* and the TAC are available for free and can be accessed on the Secretary of State’s website (Texas Government Code, Chapter 2002).
 - According to Texas Government Code, Section 2001.037, titled Official Text of Rule, if “a conflict exists, the official text of a rule is the text on file with the Secretary of State and not the text published in the *Texas Register* or on file with the issuing state agency.”
- **Practice Tip: Internet Website:**

- An agency may make the text of its rules available through a third party's Internet site, including the Secretary of State's website. (Section 2001.007(d))
- Any rules posted on the agency's website are unofficial versions of the rules. Some agencies may provide the rules as a customer service to licensees and the public, but these agencies usually include a disclaimer statement that these are unofficial rules. The agencies direct licensees and the public to the Texas Administrative Code for the official version of the rules.

2.3.2. Administrative Action Prior to Effective Date. (Section 2001.006)

- **Preparatory Action:** A state agency may take preparatory administrative actions, such as proposing rules, before a statute's effective date in order to prepare for implementation. Likewise, an agency may take preparatory administrative actions, such as training or internal planning, before a rule's effective date if necessary to prepare for implementation.
- **Restriction on Enforcement:** A rule may not be enforced, applied to the public, or used as a basis for sanctions or compliance obligations before the effective date of the statute or the rule, unless a separate statute expressly authorizes earlier enforcement.
- **Practice Tip: Enforcement Consequence:** Any attempt to enforce a rule before the effective date of the statute or the rule, renders the enforcement action not valid or effective.

2.4. Rulemaking Process, Notice, Participation, and Adoption.

Texas Government Code, [Chapter 2001](#), Subchapters A and B, set out the procedural requirements for standard rulemakings and other rulemaking activities. Additional requirements are found in Texas Government Code, [Chapters 2002](#), [2006](#), and [2007](#). These rulemaking procedural requirements apply to every state agency that adopts rules, except where noted. A state agency should consult with the agency's legal counsel for implementation and compliance with these requirements.

This section provides a brief overview of some of the procedural requirements under Chapters 2001 and 2002. Additional information is located in later chapters of this guide as noted.

2.4.1. Petition for Adoption of Rules. (Section 2001.021)

- **Requirements:** An interested person (as defined) may petition an agency to adopt, amend, or repeal a rule. Within 60 days, the agency must either deny the petition in writing with reasons or initiate a rulemaking.
- **Additional Information:** See Chapter 10 for additional information on rulemaking petitions.

2.4.2. Proposed Rules Notice Requirements. (Sections 2001.023 and 2001.024)

- **Timing:** A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. The notice of the proposed rule must be filed with the Secretary of State for publication in the *Texas Register*, and the notice is effective upon publication.
- **Contents:** The notice must include:
 - the text of the proposed rules;
 - a brief explanation of the proposed rules;
 - the statutory authority under which the rules are proposed;
 - legal counsel certification stating that the rules are within the agency's authority;
 - the required economic analyses;
 - a request for public comments on the proposed rules; and
 - a request for information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis.
- **Formatting:** Amendments must show deleted text in brackets with strikethroughs and added text is underlined. New rules must be fully underlined.
- **Additional Information:** For additional information, see Chapter 5 on drafting the proposed rules notice; Chapter 6 on the required economic analyses; and Chapter 8 on notices of proposed rules and public comments.

2.4.3. Public Participation and Adoption Requirements. (Sections 2001.029 - 2001.033)

- **Opportunity to Provide Comments (Section 2001.029):** A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing, before adopting a rule. A state agency shall consider fully all written and oral submissions about a proposed rule.
- **Hearing Requirement (Section 2001.029):** A public hearing is required if requested by at least 25 persons, a governmental subdivision, or an association with at least 25 members.
- **Informal Conferences and Advisory Committees (Section 2001.031):** A state agency may use an informal conference or consultation to obtain the opinions and advice of

interested persons about contemplated rulemaking. A state agency may appoint advisory committees of experts or interested persons or representatives of the public to advise the agency about contemplated rulemaking.

- **Adoption Order Requirements (Section 2001.033(a)):** The adoption order must contain:
 - a reasoned justification for the adopted rules that includes:
 - a summary of public comments;
 - the factual basis for the rule that demonstrates the rational connection between facts and the rule text; and
 - the reasons why the agency disagrees with the comments or proposed suggestions.
 - a restatement of the statutory authority for the rules and of how the agency interprets the provisions as authorizing or requiring the rule; and
 - a certification that the adopted rule has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.
- **Practice Tip: Addressing Public Comments:** The adoption order must include a summary of all written and oral public comments submitted on the proposed rules and any agency disagreements with the comments submitted. Failure to do so may subject the rule to legal challenge for invalidity.
- **Additional Information:** See Chapter 8 for additional information on public comments and public hearings and Chapter 9 for additional information on rule adoptions.

2.4.4. Emergency Rulemaking. (Section 2001.034)

- **Requirements:** An emergency rule may be adopted without prior notice if it is required by law or if the agency identifies an imminent peril to public health, safety, or welfare and states its reasons in writing. An agency must explain and justify the need for emergency rules.
- **Term:** The emergency rule is only valid for 120 days, with a one-time extension of 60 days. To continue on a permanent basis, the rule must be proposed through the standard rulemaking process.

Practice Tip: Narrow Interpretation: Emergency rulemaking should be narrowly construed. If the exception is used improperly, the resulting rule may be found invalid or ineffective.

- **Additional Information:** See Chapter 10 for additional information on emergency rulemaking.

2.4.5 Effective Date and Filing of the Rules. (Sections 2001.034 and 2001.036, and Chapter 2002)

- **General Requirements (Section 2001.036 and Chapter 2002):**

- Adopted rules take effect 20 days after the date on which they are filed with the Secretary of State, with certain statutory exceptions.
- The adopted rules notice, which includes the preamble and rule text, will be published in the *Texas Register* under the “Adopted Rules” section.
- The adopted rules will be incorporated into the TAC.
- **Emergency Rule Requirements (Sections 2001.034 and 2001.036, and Chapter 2002):**
 - Emergency rules are effective immediately on filing with the Secretary of State, or on a stated date less than 20 days after the filing date.
 - The emergency rules must be filed with: (i) the agency’s finding that an expedited effective date is necessary because of imminent peril to the public health, safety, or welfare; and (ii) the reasons for the findings.
 - The text of the emergency rules and the agency’s findings and reasons will be published in the *Texas Register* under the “Emergency Rules” section.
 - The agency must take appropriate measures to make the emergency rules known to persons who may be affected by them.
 - The emergency rules will not be incorporated or codified in the TAC.

2.5. Compliance, Legal Challenges, and Review.

The APA includes provisions addressing ongoing compliance, accountability, and review after the rulemaking process concludes and the rules are effective. An agency should ensure that its official rulemaking record is complete and accurate.

2.5.1 APA Compliance Standards.

The APA contains procedural elements that govern rule validity. A rule is voidable unless the state agency is in substantial compliance with Sections 2001.022 through 2001.034. Some requirements are strict, meaning that failure to comply may render a rule not valid or effective. Other requirements are substantial, meaning that defects may be correctable upon judicial review.

2.5.2 Procedural Challenges to the Rules. (Sections 2001.035 and 2001.040)

- **Timing:** A person must initiate a proceeding to contest a rule on the ground of noncompliance with the procedural requirements of Sections 2001.022 - 2001.034 not later than two years after the effective date of the rule.
- **Consequences:** If a court finds that an agency has not substantially complied with one or more procedural requirements of Sections 2001.022 - 2001.034, the court may remand the rule (in full or in part) to the agency and shall provide a reasonable time for the agency to either revise or readopt the rule through the established procedures.

- **Rule Effectiveness:** During the remand period, the rule shall remain effective unless the court finds good cause to invalidate the rule (in whole or in part), effective as of the date of the court's order.

2.5.3. Validity or Applicability Challenges to the Rules. (Section 2001.038 and 2001.042).

- **Scope of Challenge:** A person affected by a rule, including an emergency rule adopted under Section 2001.034, may seek a declaratory judgment on the rule's validity or applicability. A person may allege that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the person.
- **Venue:** The action must be brought in a Travis County district court, but it may be transferred to the Fifteenth Court of Appeals.
- **Court's Decision:** A court may render a declaratory judgment without regard to whether the person requested the state agency to rule on the validity or applicability of the rule in question. A court is not required to give deference to a state agency's legal determination regarding the construction, validity, or applicability of the law or a rule adopted by the state agency.

2.5.4. Four-Year Rule Review. (Section 2001.039).

- **Requirement:** A state agency must review each rule every four years and shall readopt, readopt with amendments, or repeal each rule as a result of the review. The review must include an assessment of whether the reasons for initially adopting the rule continue to exist.
- **Additional Information:** See Chapter 10 for additional information on four-year rule reviews.

Chapter 3. Rule Initiation, Planning, and Scoping.

3.1. Purpose.

Effective rulemaking begins by establishing a high-level rulemaking plan that will guide agency staff through the rulemaking process. This chapter recommends several topics that an agency should consider as part of its initial rulemaking planning process. It also describes how to document these planning decisions using either a standardized planning document or in the agency's existing template documents.

3.2. Documentation and Standard Planning Documents.

Agencies should document the decisions made during this planning phase. Clear documentation creates a shared reference point for the intended direction of the rulemaking. Documentation also supports continuity when staffing or priorities change and enables agency staff to respond to questions about the reasoning behind the proposed rule when it is considered for final adoption.

One approach to documentation is to use a standardized planning document (SPD). This guide includes a template SPD that agencies can use in its current form. (See **Appendix A.**) However, it is recommended that each agency adjust the contents of the document to better align with its organizational structure and decision-making processes

Alternatively, some agencies may elect to incorporate the documentation of these planning decisions into multiple, specialized documents or processes to communicate initial planning decisions. Regardless of the method selected, the goal is for the agency to set expectations for the rulemaking upfront, communicate those expectations clearly to the project team, and revisit them, as necessary, throughout the rulemaking process. Agencies that elect not to use the SPD form should still review the contents of the SPD and determine if it contains any elements that would improve the agency's own project planning documentation.

Whether an agency uses an SPD or its own documentation, the agency should consider incorporating the following practices into its rulemaking process:

- Initial project communications – the details required to understand what is expected from rulemaking may be documented and used for initial project communications
- Collaborative Review – documentation may be distributed for the purpose of collaborative review.
- Document Accessibility and Maintenance – rulemaking documents should be accessible to agency staff and updated as necessary.
- Termination – rulemaking documents should be updated to detail why rulemaking was terminated, if applicable.

See **Appendix B** – Using the SPD – for how the SPD captures these elements.

3.3. Elements of a Rulemaking Plan.

A state agency should consider addressing the topics outlined in this section when developing a rulemaking plan. Each agency should modify the SPD, or its other documentation, to incorporate the elements that align with its own planning process.

Each topic may not be necessary for each agency or each rulemaking, but at a minimum, it is recommended that an agency document the rulemaking's purpose, statutory authority, scope, and critical deadlines to ensure that the project team and agency leadership are in alignment.

3.3.1. Rulemaking Purpose and Scope.

When initiating a rulemaking project, the agency should clearly define what the rulemaking will and will not address. This is commonly referred to as the rulemaking's "scope." Establishing the rulemaking's scope early is essential to prevent the contents of a proposed rule expanding beyond what was originally intended.

To establish a rulemaking's scope, the agency must first define the purpose of the rulemaking. This can be accomplished with a statement of purpose, which is a concise statement that answers the question "why are we doing this rulemaking?"

The agency should also clarify whether the rulemaking is a broad, comprehensive rulemaking addressing multiple issues or a narrow, focused rulemaking addressing one particular issue. As part of this exercise, the agency should also consider if there are any related topics that are likely to attract interest but that the rulemaking will not address. If so, the agency should document these as outside of the rulemaking's scope.

Defining the scope also informs the preamble to the proposed rule that the agency will publish in the *Texas Register*. While every preamble has an implied scope based on its contents, for projects that are likely to attract comments on a wide array of topics, the agency should consider explicitly stating the scope in the preamble to the proposed rule. Explicitly defining the scope of the rulemaking discourages off-topic comments and makes it easier for agency staff to draft a response when such a comment is filed. (e.g. ABC and XYZ recommended increasing compliance thresholds. The agency declines to make the recommended change because it is beyond the noticed scope of this proceeding).

3.3.2. Legal Foundation.

Every rulemaking must be grounded in the agency's statutory rulemaking authority. Before beginning a rulemaking, the agency should, at minimum, identify the specific statutory provisions that authorize the agency to adopt the contemplated rule (including the bill number, if passed within the last four years, to meet the requirements of Texas Government Code, Section 2001.024(a)(3)(C)) and any relevant general enabling authority. However, the agency should revisit its identified statutory authority as rule drafting progresses to ensure that the

draft rules do not exceed the authority initially identified. When more thorough legal analysis is conducted, or if the scope of the rule does expand, the documentation reflecting the agency's statutory authority should be updated.

3.3.3. Preliminary Guidance on the Rule Content.

During the initial planning phase of a rulemaking, the contents of the contemplated rule have not yet been developed. However, agency leadership or the program staff responsible for creating the rulemaking plan may have specific content expectations or preferences. This can include sample rule language, a list of required features, or policy considerations. This is also an opportunity to identify different, less burdensome approaches that should be evaluated and approaches that have already been attempted or have been considered and rejected.

3.3.4. Expected Costs and Benefits.

The agency should identify the types of public benefits that the rulemaking is expected to produce, the types of burdens or costs that it might impose on the state and regulated entities, or the risks of it impacting local economies. Each of these components will require further research during the rulemaking to draft the fiscal note and public benefits and costs note required to be included in the agency's notice of rulemaking under the Texas Government Code, Section 2001.024(a)(4)-(5), but an initial assessment of these details will focus the research effort, inform how the agency should communicate about the rule, and help determine what types of resources and expertise will be required to achieve the best outcome.

3.3.5. Operational Details.

In addition to the subject matter considerations outlined above, the agency's rulemaking plan should also address key operational aspects of the rulemaking.

3.3.5.1. Project Identification.

Each rulemaking project needs to be clearly identifiable and easily distinguishable from other agency projects. This is especially important when the agency is conducting multiple rulemakings simultaneously or the same rule has been amended multiple times. For most agencies, each rulemaking should be assigned a plain language title or style and a project number or other specific identifier that will be used to track the project internally.

3.3.5.2. Agency Staff Roles.

Another crucial task during the rulemaking planning stage is to identify the agency staff that will participate in the rulemaking and the role each person will play. Because every agency has different policy needs and staffing resources, if an agency does not already have defined roles in its rulemaking procedures, one strategy for approaching this task is to focus on essential

rulemaking functions rather than looking for staff with specific job titles. These functions may include:

- Project management – including responsibility for day-to-day progress, scheduling, document management, coordination, etc.;
- Legal review – including certification of the agency’s statutory authority for the rulemaking, APA compliance, and rule text review;
- Drafting – including translating the agency’s policy decisions into rule language, plain language rule summaries, and summarizing and responding to public comments;
- Subject matter expertise – including the core policy content of the rule, fiscal impact and public benefit analysis, and evaluation of substantive recommendations made in public comments; and
- Secretary of State liaison – required to submit documents to the *Texas Register*.

While an individual staff member can perform multiple functions and some functions may require multiple members of staff to complete, each of these broad functions must be accounted for to complete a rulemaking.

An agency also must decide at the outset which members of the rulemaking team have decision-making authority over which aspects of the rulemaking. Similarly, the agency should determine which members of the agency’s leadership team are responsible for supervising the progress of the rulemaking and resolving any disagreements. This may involve designating a single project supervisor or designating reviewers for particular subject matter areas.

3.3.5.3. Stakeholder Engagement.

Under Texas Government Code, Section, 2001.024(a)(7)-(8), a state agency must request comments and other information from interested persons on the proposed rule. However, the agency may also wish to provide stakeholders with additional opportunities to contribute to the rulemaking as it develops its initial proposal. These stakeholder engagement activities may include informal conferences, consultations, or additional written comment solicitations to obtain the opinions and advice of interested persons about contemplated rulemaking. These activities may be beneficial, but are also time consuming and resource intensive, so agencies should consider incorporating them into their initial rulemaking plan.

See Chapter 4, Stakeholder Engagement, for additional discussion on designing a stakeholder engagement strategy.

3.3.5.4. Timeline and Deadlines.

The agency should develop a rulemaking timeline to account for each stage of the APA process and the agency's own internal review process. This can include target dates for formal rule proposal, key stakeholder activities, internal review deadlines, and target adoption dates. The agency should also explicitly list the final deadline for rule adoption driven by statutory implementation requirements, the six-month APA deadline (Texas Government Code, Section 2001.025), or other acritical dates.

If the final adoption order needs to be approved by a governing board that is subject to the Open Meetings Act, the governing body's open meeting schedule should also inform the date the project team plans to present the final rule to the agency's governing board for final adoption. If possible, this target adoption date should be set with at least one scheduled open meeting prior to the final deadline for the rulemaking in the event the board elects to make final edits to the rule or rule preamble prior to adoption.

However, as the initial timeline becomes more detailed, it becomes more important that the team lead has clear direction on what aspects of the timeline can be adjusted and what approvals are required to do so. A crucial value provided by the notice and comment rulemaking process is to provide the agency with additional information and ideas to consider before adopting the final rule. Providing adequate time for the project allows agency staff to fully consider and evaluate public comments and insights, maximizing the value to the public and the agency.

Chapter 4. Stakeholder Engagement.

4.1. Purpose.

This section helps staff make informed decisions about how to gather stakeholder input before drafting a rule. It provides a structured menu of engagement approaches that agencies can mix and match based on the specific policy question, available resources, and stakeholder environment. Staff are encouraged to consult additional resources as needed; this section offers a practical starting point, not an exhaustive catalog.

4.2. Background.

No single engagement method works for every rulemaking. Input can range from private technical consultations to large public forums, and the documents that support engagement such as problem statements or calls for data vary widely in purpose and complexity.

This section addresses that problem with a menu-based framework built around three components that must be aligned for effective engagement:

- Independent Research - establishing what the agency already knows and identifying gaps before turning outward.
- Methods of Engagement - selecting the right type of stakeholder interaction to fill those gaps.
- Engagement Documents - choosing the right document to guide the conversation and elicit useful information.

Because rulemakings vary in scope and complexity, agencies should combine these components into a tailored plan for each project.

4.3. Independent Research.

Before reaching out to stakeholders, an agency should establish a clear internal understanding of what it already knows, what the law requires, and what external models exist. This groundwork defines the agency's factual baseline, identifies gaps that require public input, and helps staff evaluate the credibility of external claims.

A key principle: document what the agency does not know. Gaps in knowledge are findings that shape the next phase of engagement.

Research generally includes four categories.

4.3.1. Internal Records.

Start by reviewing what the agency already has. Enforcement records, inspection logs, complaint data, ombudsman inquiries, and call-center logs can reveal whether a perceived problem is isolated or systemic. Prior rule preambles, Reasoned Justifications, reports, and white papers show whether earlier staff anticipated the current issue or considered alternative approaches.

4.3.2. Legal and Legislative Authority.

Before exploring policy options, staff must confirm what the agency is legally authorized to do. Review the authorizing statute, legislative record (House and Senate Bill Analyses, LBB Fiscal Notes), and Attorney General Opinions. This analysis clarifies the agency's jurisdiction, flags statutory limits on potential approaches, and helps staff avoid revisiting legal questions that have already been answered.

4.3.3. Comparative and External Analysis.

Review how other states and federal agencies have addressed similar issues. Identifying approaches already in use avoids reinventing the wheel. If the Texas approach would differ substantially from other models, staff should understand and be ready to explain why. This research also helps ensure that proposed rules do not conflict with federal requirements or standards that Texas entities are already following.

4.3.4. Fiscal Research

Data from the Texas Comptroller, U.S. Bureau of Labor Statistics, or peer-reviewed literature provides neutral baselines for fiscal analysis and helps ground policy development in real-world conditions. This strengthens the agency's Reasoned Justification and reduces the risk that commenters will challenge financial assumptions as outdated or speculative.

4.4. Methods of Engagement.

Engagement methods should be selected based on what information the agency needs and how best to obtain it. The sections below describe four main approaches, along with guidance on when to use each and how to manage common risks.

4.4.1. Targeted Consultation.

Targeted consultation is an invitation-only format for gathering precise technical or operational information from individuals with relevant expertise. It is used to validate assumptions, clarify how a rule would work in practice, and test early concepts before developing a formal proposal. Common formats include technical roundtables, one-on-one meetings, site visits, and focused discussions with specific industry groups.

This method works best when issues are technically complex, when stakeholders are unlikely to speak candidly in a public setting, or when agency resources limit the feasibility of larger events.

Preparation

Select participants thoughtfully to gain a variety of perspectives. If uncertain who might oppose a proposal, ask known supporters which stakeholders might see things differently. Provide a clear agenda in advance so participants can send the right subject-matter expert. Consider checking with agency attorneys about whether any invited participant is in active or anticipated litigation with the agency on a matter related to the rule project.

Managing the Consultation

Inform participants at the outset that records, attendee lists, and notes are generally subject to the Texas Public Information Act. Follow the planned agenda and document feedback provided.

Risks to Watch

The main risk is exclusion bias: if the agency consults only a narrow group, it may miss important perspectives or create the appearance of favoritism. Verify key claims through additional research rather than relying on a single participant's account. Targeted consultation is most effective as one component of a broader engagement plan, not as a stand-alone substitute.

4.4.2. Broad Public Engagement.

Broad public engagement consists of live events open to anyone without invitation or pre-screening. The primary goals are transparency, accessibility, and gauging broader sentiment. Common formats include:

- Town halls - staff present; participants provide oral testimony.
- Regional tours - identical meetings in different geographic areas to capture regional differences.
- Webinars - virtual option for stakeholders who cannot travel.
- Technical workshops - open-invite forums focused on a specific technical topic, sometimes with an invited expert providing an opening presentation.

Broad engagement is most appropriate when an issue affects a large segment of Texans, when a rule affects regions differently, or when significant interest warrants a visible public process.

Best Practices

Avoid opening the floor with a blank request for comments. Display specific questions to keep testimony focused. Offer at least one virtual attendance option. Use visible timers to prevent any single participant from dominating discussion.

4.4.3. Written Comment Solicitations.

Written comment solicitation distributes documents to stakeholders and requests feedback outside of a meeting. Participants respond at their own pace using email distribution lists and web-based forms. This method is most useful when the agency needs precise feedback on draft language.

Best Practices

Decide upfront whether comments will be posted publicly and tell participants clearly. Provide an optional submission template (such as a table with columns for rule citation, concern, and proposed edit) and require submissions in searchable formats like Word or Excel. Establish a dedicated email address with an autoreply confirming receipt

Risks to Watch

Large volumes of comments can be difficult to process, especially when submissions include raw data. Request a summary to accompany the full comment. Avoid asking open-ended or vague questions as they will produce less specific responses.

4.4.4. Information Request.

An information request is a formal request for specific, verifiable information spreadsheets, engineering reports, cost figures, operational logs, or other primary source evidence. An information request is an evidence-gathering tool that allows an agency to replace anecdote with documentation.

When to Use

Use an information request when preparing fiscal analyses, regulatory impact statements, or small business impact assessments; when evaluating whether a numerical or technical standard is feasible across an industry; or when regulated entities claim a proposal is unworkable and the agency needs to see the data underlying those claims.

Best Practices

Specify units, timeframes, and parameters so submissions are standardized and comparable. Explain why the information is needed and how it will be used. Before issuing the request, check

whether the agency already has the data internally. Provide templates or submission guidance to reduce variability.

4.4.5. Survey / Questionnaire.

A survey is an instrument for collecting quantifiable information from a broad audience. It uses closed-ended questions, rating scales, and ranking prompts to obtain information from a regulated community.

When to Use

Use surveys when the agency needs to gauge the cost or impact of rules from a large number of stakeholders.

Best Practices

Keep surveys short and clearly worded. Use neutral phrasing to avoid leading respondents. Explain the survey's purpose so answers reflect genuine stakeholder experience.

Resources Required

Low administrative burden. Modern platforms allow rapid deployment and automatic compilation of results. Ensure the chosen platform complies with agency IT and data-security policies. Exercise care when sample sizes are small.

4.5. Stakeholder Engagement Documents.

4.5.1. Drafting and Textual Tools.

These documents are used when the engagement process is ready to move from concept to actual rule language.

4.5.2. Visual and Comparative Tools.

Visual and comparative tools help stakeholders understand how a proposed rule works or how it relates to existing requirements.

When to Use

Consider side-by-side comparisons of existing and proposed rules when minor changes are being made that could be difficult to spot. Also consider charts listing the current regulatory requirements and the changes proposed.

4.5.2.1. Process Flowchart.

A process flowchart translates regulatory requirements into a sequence of steps, decision points, and responsibilities.

When to Use

Use a flowchart when a rulemaking introduces or revises a procedure such as an application process, compliance timeline, or administrative review and staff needs to confirm that all steps are logically sequenced and operationally workable.

Best Practices

Clearly illustrate decision points and alternative pathways. Link each step back to specific rule citations where possible. Update the flowchart as the rule evolves. Ensure legibility and accuracy before wide distribution.

Chapter 5. Drafting and Formatting Standards.

5.1. Core Values and Guiding Principles.

As explained in Chapter 1, a state agency must uphold the following core values and guiding principles when engaged in rulemaking. These core values and guiding principles should be kept in mind as a state agency drafts new rules or amendments or repeals of existing rules.

- **Clarity** – Wherever practicable, rules should be written in plain language that readily communicates intent, regulatory requirements, and compliance expectations to the regulated persons and the public.
- **Conciseness** – Rules should avoid superfluous language, redundant provisions, and unnecessary detail.
- **Consistency** – Rules should follow uniform formatting standards, language conventions, and structural organization.

A state agency should uphold these values when adopting new rules or amending or repealing existing rules under Texas Government Code, [Chapters 2001](#) and [2006](#).

A state agency should further refine and frame its efforts to achieve the goals of Clarity, Conciseness, and Consistency and improved rulemaking by adopting and applying the following guiding principles:

- **Consistent and Active Review** – A state agency should ensure a rule’s continued effectiveness and necessity as part of the rulemaking process. A state agency should actively identify outdated, duplicative, or ineffective rules and repeal or amend such rules.
- **Necessary and Proportional Rules** – A state agency should ensure that its rules are necessary and proportional to the regulatory objective.
 - Rules should express only what is necessary to meet the specific statutory objective or provide clarity. Also, rules should provide the least restrictive form of regulation to meet the statutory objective and that will adequately protect the public.
 - This balancing test should consider the effect of the regulation on each Texans’ health, safety, prosperity, and freedom, including the cost, impact, and inconvenience on this state and regulated persons.
 - Rules that fail to meet this test, or where the regulatory burden outweighs the public benefit, should be considered for repeal or amendment, and any new draft proposed rules should be rewritten if possible.

- **Plain Language and Understandable Rules** – A state agency should ensure that its rules are written in plain language, wherever practicable, and are understandable.
 - Wherever practicable, rules should be written in plain language to maximize reader comprehension, using brevity, good organization, and standard English conventions. Also, rules should be readily understandable by the general public, including individuals with limited English proficiency, to the extent practicable.
 - Rules that require professional legal interpretation for compliance are deemed excessively complex and should be prioritized for simplification and for rewriting in plain language, where practicable.
- **Public Engagement and Transparency** – A state agency should ensure that its rulemaking process is transparent, predictable, and offers meaningful opportunities for public input regarding proposed rules. A state agency must clearly articulate the basis and any available data supporting the proposed rules.

5.2. Plain Language Requirements.

When drafting proposed rules (new rules, amendments, or repeals), the rules must be written in “plain language.” As defined in Chapter 1, plain language generally means writing that is clear, concise, organized, can be readily understood by individuals with limited English proficiency, and follows standard English conventions, employing active voice, short sentences, and common vocabulary to maximize reader comprehension.

In 2021 and 2025, the Texas Legislature added provisions to the APA rulemaking requirements regarding the use of plain language in the summaries of the proposed rules and in the text of the proposed rules.

[House Bill 1322](#), 87th Legislature, Regular Session (2021) added a plain language summary requirement to Section 2001.023. This requirement had a delayed effective date of September 1, 2023. (excerpt below)

Sec. 2001.023. NOTICE OF PROPOSED RULE.

(c) At the time a state agency files notice of a proposed rule under Subsection (b), the agency shall publish on the agency's Internet website a summary of the proposed rule written in plain language in both English and Spanish in accordance with Section [2054.116](#).

(d) For purposes of Subsection (c), a summary is written in plain language if it uses language the general public, including individuals with limited English proficiency, can readily understand because the language is concise and well-organized.

[Senate Bill 14](#), 89th Legislature, Regular Session (2025) added a plain language requirement for the text of the proposed rules, to the extent practical, to Section 2001.024. This requirement was effective September 1, 2025. (excerpt below)

Sec. 2001.024. CONTENT OF NOTICE.

- (a) The notice of a proposed rule must include: ...
- (2) the text of the proposed rule, except any portion omitted under Section [2002.014](#), prepared in a manner to indicate any words to be added or deleted from the current text and, to the extent practicable, written in plain language; ...
- (e) For purposes of Subsection (a)(2), the text of 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.

Both provisions use the same explanation of plain language: the summary or the text of the proposed rule is written using language the general public, including individuals with limited English proficiency, can readily understand because the language is concise and well-organized.

In summary, a state agency must draft all rules and rule summaries in plain language with direct short sentences, an active voice, and common vocabulary whenever possible.

5.3. Writing Tips.

Below are some general tips for drafting effective rules:

- Use active voice, action words, and present tense.
- Use simple and common words where possible, recognizing where technical or legal words are necessary.
- Use consistent terminology throughout the rules.
- Use short sentences, short paragraphs, and short rule sections (where possible).
- Cut unnecessary words, phrases, or provisions.
- Use a list format to separate multiple items and use parallel structure for items in a list.
- Organize rules in a logical manner for the audience.
- Review and edit draft rules multiple times before the final version, and if possible, have multiple people review the draft rules.
- When reviewing a poorly written rule, consider repealing the old rule and adding a new rule in its place rather than amending the current rule.

5.4. Format of the Preambles and the Rules Text

5.4.1. Consistency Across Agencies.

To promote transparency, understanding, and predictability for the public when reviewing state agency proposed rules, TREO has provided a proposed rules notice template for state agencies to use as an example. A template has also been provided for the adopted rules notice. A state agency should tailor these templates to reflect the statutory requirements that apply to each agency. (See Chapters 8 and 9 and Appendices E and F-3.)

5.4.2. Secretary of State / *Texas Register* Formatting Requirements

Pursuant to Texas Government Code, Section 2002.017, the Secretary of State has adopted rules regarding the formatting and filing of proposed and adopted rules for publication. The Secretary of State has created guides to assist state agencies in fulfilling these requirements and has posted a publication schedule for the *Texas Register*. Each state agency is required to have at least one agency liaison who is responsible for formatting and filing the proposed and adopted rules notices according to the Secretary of State requirements. (Texas Government Code, Section 2002.021). Links to these resources are provided under Section 5.5.

5.5. Chapter 5 Resources.

- 1) Texas Government Code, Chapter 2002, *Texas Register* and Administrative Code
<https://statutes.capitol.texas.gov/?tab=1&code=GV&chapter=GV.2002&artSec=>
- 2) Secretary of State, *Texas Register* Rules, 1 Texas Administrative Code, Chapter 91
https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=91&interface=VIEW_TAC&part=4&title=1
 - [Subchapter A](#). General.
 - [Subchapter C](#). Rulemaking.
- 3) Secretary of State Website, *Texas Register*
<https://www.sos.state.tx.us/texreg/index.shtml>
- 4) Secretary of State Website, Texas Administrative Code
<https://www.sos.state.tx.us/tac/index.shtml>
- 5) Secretary of State, General Information for Agency Liaisons (main page)
<https://www.sos.state.tx.us/texreg/liaisons.shtml>
- 6) Secretary of State, Liaison Center Filing Guide
<https://www.sos.state.tx.us/texreg/liaisonsguide.shtml>

- 7) Secretary of State, Complete Liaison Filing Guide / *Texas Register* Liaison Guide (PDF)
<https://www.sos.state.tx.us/texreg/guides/complete-liaison-guide.pdf>
- 8) 2026 *Texas Register* Publication Schedule
<https://www.sos.state.tx.us/texreg/pub2026.pdf>

Chapter 6. Economic Analysis of Proposed Rules.

6.1. Purpose.

Texas Government Code, Section 465.0053, as added by [Senate Bill 14](#), Section 2, 89th Legislature, Regular Session (2025), required TREO to prepare and publish a Regulatory Economic Analysis Manual (manual). The manual must identify and describe the best practices for a state agency related to specific economic elements that must be addressed when an agency proposes rules.

6.2. Regulatory Economic Analysis Manual.

TREO has developed a manual that addresses the economic elements required for proposed rules under Texas Government Code, [Chapters 2001](#), [2006](#), and [2007](#), in addition to the select economic elements prescribed under Texas Government Code, Section 465.0053. The agency should use the Regulatory Economic Analysis Manual and its Appendix A when addressing the required economic elements of a proposed rulemaking.

The manual provides background information on the statutory requirements related to rulemaking economic analyses. It provides guidance for: (a) identifying, quantifying, and analyzing the economic impact of the proposed rules; (b) completing the Rulemaking Economic Analysis Form (see Appendix A of the manual); and (c) addressing each of the economic elements in the proposed rules preamble. The manual also includes best practices and resources for obtaining economic data.

Chapter 7. Reviews.

7.1. Office of the Governor Review.

7.1.1. Overview.

Certain state agencies must incorporate the process set forth in the letter sent by OOG Chief of Staff Luis Saenz to State Agency Heads dated June 22, 2018, (**Appendix C**), and reaffirmed and continued for all state agencies as prescribed in the letter from the OOG Chief of Staff Luis Saenz to State Agency Heads dated August 27, 2019 (**Appendix D**).

Under this review process, the state agency will:

- 1) complete the Proposed Rulemaking Memorandum template that was attached to the OOG letter;
- 2) provide the notice of the proposed rules (preamble and text) that the agency intends to submit to the *Texas Register*;
- 3) attach a copy of the agency's analyses for the various economic elements required under Texas Government Code, [Chapters 2001](#), [2006](#), and [2007](#) (see Chapter 6, Economic Analysis, in this guide; and the separate Regulatory Economic Analysis Manual and its Appendix A, Rulemaking Economic Analysis Form Template); and
- 4) send the information to the agency's assigned OOG Policy Advisor.

A state agency should establish processes and designate staff for completing and submitting the OOG Proposed Rulemaking Memorandum and supporting documents and for responding to the feedback from the OOG on the proposed rules and/or the proposed rules preambles.

7.2. Regulatory Compliance Division Review.

7.2.1. Overview.

Section 7.2 applies only to those state agencies subject to the review under Texas Occupations Code, [Chapter 57](#), Subchapter C.

The review under this section is an additional, separate review from the review under Section 7.1, as described in Letter from OOG Chief of Staff Luis Saenz to State Agency Heads dated August 27, 2019 (**Appendix D**).

[Senate Bill 1995](#), 86th Legislature, Regular Session (2019), authorized the creation of a division within the Office of the Governor to review certain state agency rule changes for market-competition purposes. This review is for a limited number of agencies that are governed

by regulated entities or market participants. The bill was passed in response to the U.S. Supreme Court's decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* and subsequent guidance issued by the Federal Trade Commission.

The Regulatory Compliance Division of the Office of the Governor is responsible for conducting a review of an affected agency's proposed rules that affect or may affect market competition. Background information about this review is located at:

<https://gov.texas.gov/organization/regulatory-compliance>

The Regulatory Compliance Division has issued guidance regarding this review that includes a list of the affected agencies. This guidance is located at:

<https://gov.texas.gov/uploads/files/organization/regulatory-compliance/Regulatory-Compliance-Division-Guidance-For-Affected-State-Agencies.pdf>

An affected agency submitting its rules for the market competition review must use the Rule Submission Memorandum Template located at:

<https://gov.texas.gov/uploads/files/organization/regulatory-compliance/Regulatory-Compliance-Division-Rule-Submission-Memorandum-Template.pdf>

7.2.2. Best Practices.

An agency that has questions about this review should visit the webpages listed above or contact the Regulatory Compliance Division.

Chapter 8. Notice of Proposed Rules and Public Comments.

8.1. Purpose.

This chapter provides background information and guidance for: (a) providing notice of proposed rules to the public and other interested parties; and (b) soliciting, handling, and addressing public comments and information relating to the costs, benefits, and effects of the proposed rules. This chapter also includes best practices and resources.

8.2. Notice Requirements.

Authority: Texas Government Code, Sections 2001.023, 2001.024, and 2001.025; Texas Government Code, [Chapter 2002](#), Subchapter B; Texas Administrative Code, [Chapter 91](#). See also Texas Government Code, Section 2001.0045, 2001.022, 2001.0221, and 2001.0225; Texas Government Code, Section 2006.002; and Texas Government Code, Sections 2007.003, 2007.042, and 2007.043.

The proposed rules notice requirements are contained in multiple statutes and in the Secretary of State's administrative rules. Below are highlights of those requirements.

8.2.1. Required Elements.

A state agency must prepare and publish a formal notice of proposed rulemaking. While a majority of the notice requirements are included in Texas Government Code, [Chapter 2001](#), additional notice requirements are located in Texas Government Code, [Chapter 2006](#) and [Chapter 2007](#).

At a minimum, the notice must:

- (1) provide an explanation and summary of the proposed rules;
- (2) address the economic impact of the proposed rules on state and local governments, regulated persons, small and micro-businesses, and rural communities;
- (3) address the public benefits of the proposed rules;
- (4) provide a government growth impact statement;
- (5) request public comments on the proposed rules;
- (6) request information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis;
- (7) specify the legal authority for the proposed rules; and
- (8) include the text of the proposed rules.

Depending on the agency or the particular proposed rules, the notice may also include:

- (1) a local employment impact statement;
- (2) information on the "one-for-one requirement" for rules increasing costs to regulated persons;

- (3) an economic impact statement and regulatory flexibility analysis for rules having an adverse effect on small businesses, micro-businesses, or rural communities;
- (4) a regulatory analysis of major environmental rules; and
- (5) a private property takings impact assessment.

The agency must give at least 30 days' notice of its intention to adopt the rules before adoption. The notice of the proposed rules must be filed with the Secretary of State for publication in the *Texas Register*, and the notice becomes effective when published.

For more information about each of the required elements listed above, see Appendix E, Proposed Rules Notice Template, in this guide. Also, see the separate Regulatory Economic Analysis Manual for additional information regarding the economic elements of the proposed rules notice. For additional information regarding the statutory authority requirements, see Section 8.2.2. Statutory Authority Requirements.

8.2.2. Statutory Authority Requirements.

Authority: Texas Government Code, Section 2001.024(a)(3), (a)(3)(A), (a)(3)(B), and (a)(3)(C); and Section 2001.033(a)(2).

The APA requires the proposed rules notice and the adopted rules notice to state the statutory authority for the rules. The requirements for these two notices are similar, but they are not the same.

- The proposed rules notice requires a statement of statutory or other authority that includes the section or article of the code affected and, if applicable, the bill number of the legislation that enacted the statutory authority under which the rules are proposed. These particular elements are not included in the adopted rules notice.
- The adopted rules notice requires a restatement of the statutory authority that includes a statement of how the agency interprets the provisions as authorizing or requiring the rules. This particular element is not included in the proposed rules notice.

Sec. 2001.024. CONTENT OF NOTICE.

(a) The notice of a proposed rule must include: ...

(3) a statement of the statutory or other authority under which the rule is proposed to be adopted, including:

(A) a concise explanation of the particular statutory or other provisions under which the rule is proposed;

(B) the section or article of the code affected;

(C) if applicable, the bill number for the legislation that enacted the statutory authority under which the rule is proposed to be adopted if the legislation was enacted during the four-year period preceding the date notice of the proposed rule is given; and ...

Sec. 2001.033. STATE AGENCY ORDER ADOPTING RULE.

(a) A state agency order finally adopting a rule must include: ...

(2) a concise restatement of the particular statutory provisions under which the rule is adopted and of how the agency interprets the provisions as authorizing or requiring the rule; and ...

As a best practice, a state agency should consider including all of the statutory authority requirements under Texas Government Code, Section 2001.024(a)(3) and Section 2001.033(a)(2) in both the proposed rules notice and in the adopted rules notice. While not required, it may be beneficial to the public and to regulated persons to state upfront in the proposed rules notice how the agency interprets the statutory provisions as authorizing or requiring the rules, rather than waiting until the adoption notice to do so. It also makes it easier for an agency when preparing the notices if the same statutory authority information is included in both notices. (See Appendix E, Proposed Rules Notice Template, and Appendix F-3, Adopted Rules Notice Template.)

8.2.3. Secretary of State Requirements.

The Secretary of State has its own statutory and rule requirements for filing and publishing proposed rules in the *Texas Register*. (See Texas Government Code, [Chapter 2002](#), Subchapter B; Rules 1 Texas Administrative Code, [Chapter 91](#).) In addition, the Secretary of State has issued guidelines for state agencies for formatting and submitting proposed rules for publication and has posted a chart with the filing and publication deadlines. (See Section 8.11, Resources.)

Terminology Differences Between the APA and the Secretary of State Rules

Under the APA, a state agency must prepare a proposed rules notice for any proposed rules published in the *Texas Register*. (Texas Government Code, Sections 2001.023 and 2001.024). In its rules, the Secretary of State separates the proposed rules notice into the preamble and the rule text in its discussion of the rule filing requirements. The term “preamble” is not used in the APA.

The preamble contains all of the narrative, non-rule text information. (1 Texas Administrative Code Section 91.2.)

Rule §91.2. Definitions.

(9) Preamble--A narrative introduction to a notice of rulemaking that conforms to the requirements of the Government Code, Sections 2001.024, 2001.033, and 2001.034, for proposed, adopted, and emergency rules. Two or more rulemaking documents may have a single or “common” preamble, as long as they share the same chapter and fiscal note.

It is worth noting this difference in terminology when reviewing the APA requirements and the Secretary of State rule filing requirements. This same terminology applies to adopted rules and emergency rules.

8.3. Notice by Mail and Additional Methods of Notice.

8.3.1. Notice by Mail.

Authority: Texas Government Code, Section 2001.026

In addition to the official publication of the proposed rules in the *Texas Register*, a state agency must mail the notice of a proposed rule to each person who has made a timely written request of the agency for advance notice of its rulemaking proceedings.

Since many agencies post the proposed rules notice on their agency websites or post links to the proposed rules notice in the *Texas Register*, this provision may not be used as frequently today, but the requirement remains in effect.

8.3.2. Additional Methods of Notice.

In addition to the official publication of the proposed rules in the *Texas Register*, a state agency should consider posting the proposed rules on its website or posting a link to the *Texas Register* so the public can review the proposed rules. A state agency may also want to send GovDelivery emails to subscribers to give notice about the proposed rules. These additional efforts promote transparency and public involvement in the rulemaking process.

8.4. Notice to Primary Bill Authors and Sponsors.

Authority: Texas Government Code, Section 2001.0261

8.4.1. Requirements.

If the bill that enacted the statutory authority for the proposed rules was enacted during the last four years, the state agency is required to provide notice of the proposed rules to the primary bill author and the primary bill sponsor, if the members are still in office.

The notice of proposed rules must be sent to the Capitol email addresses of the primary bill author and the primary bill sponsor. The notice of the proposed rules is required to be sent no later than three days after the proposed rules are filed with the Secretary of State.

Sec. 2001.0261. NOTICE TO CERTAIN PERSONS.

(a) This section applies only to a rule that is proposed to be adopted by a state agency under statutory authority that:

- (1) specifically authorizes the agency to adopt the rule; and
- (2) became law during the preceding four-year period.

(b) A state agency shall provide, not later than the third day after the date the agency files notice with the secretary of state as required under Section [2001.023](#), notice of a proposed rule to the primary author and the primary sponsor of the legislation that enacted the

statutory authority under which the proposed rule is to be adopted, if the primary author or primary sponsor is a current member of the legislature.

(c) The state agency shall provide the notice required under Subsection (b) electronically to the person's designated Capitol e-mail address or to another e-mail address provided by the person to the agency for the purpose of receiving the notice.

(d) Failure to provide the notice required under Subsection (b) does not invalidate a rule adopted by a state agency or an action taken by the agency under that rule.

8.4.2. Implementation.

As best practices for implementing Texas Government Code, Section 2001.0261, a state agency should:

- Develop a process for determining and identifying which proposed rules are subject to the requirements of Texas Government Code, Section 2001.0261 and must be sent to the primary author and primary sponsor of the bill that enacted the underlying statutory authority for the proposed rules.
- To promote transparency and provide greater notice to the primary bill authors and sponsors regarding implementation of their bills, an agency should provide notice of all proposed rules that are implementing bills that were passed in the last four years, regardless of the source of the statutory rulemaking authority (the bill itself and/or existing statutes).
- Develop an internal process for sending an email directly to the primary bill author and sponsor at their Capitol email addresses no later than the third day after the date the agency filed the proposed rules notice with the Secretary of State.
 - Develop internal procedures, templates, and deadlines.
 - Identify agency staff who will be involved and specify their responsibilities.
 - Develop methods for verifying which members are still in office, gathering Capitol email addresses, and maintaining alternative addresses as provided.
- Develop a template email notice to the primary bill authors and sponsors.
 - Address the email directly to the primary bill author and sponsor and consider copying their Chiefs of Staff.
 - Cite to Texas Government Code, Section 2001.0261 as the reason for sending the email to the primary bill author and sponsor.
 - Identify the particular bill that was enacted in the last four years and explain that the proposed rules are implementing or are a result of that particular bill.
 - Attach the proposed rules notice (preamble and text) that was submitted to the Secretary of State to the email. Inform the primary bill author and sponsor that these are unofficial proposed rules and that the official published version will have different formatting and may include technical or editorial changes made by the Secretary of State staff.

- Inform the primary bill author and sponsor of the filing date, the upcoming publication date, and the process for submitting public comments.
- Provide an agency point of contact if the primary bill author and sponsor have questions.

8.5. Plain Language Summary.

Authority: Texas Government Code, Section 2001.023(c) and (d)

8.5.1. Preparation and Translation of the Summary.

A state agency is required to prepare a plain language summary of the proposed rules. A “summary is written in plain language if it uses language the general public, including individuals with limited English proficiency, can readily understand because the language is concise and well-organized.” (Texas Government Code, Section 2001.023(d)).

The plain language summary must be translated into Spanish. A state agency should determine the best resources for translating the summaries into Spanish – in-house staff, a third-party translation service, or publicly available translation tools (e.g. Google Translate, etc.). Consideration should be given regarding agency resources and the accuracy of the translations.

A state agency should consider whether additional information will be included or provided with the plain language summary. An agency may consider adding the request for public comments and the request for information related to the cost, benefit, or effect of the proposed rules to the plain language summary in a combined notice.

8.5.2. Website Posting and Other Methods of Distribution.

The English and Spanish versions of the plain language summary must be posted on the agency’s website at the same time (on the same day) that the proposed rules are filed with the Secretary of State. (Texas Government Code, Section 2001.023(c)).

- This posting is at least 11 days before the proposed rules are published in the *Texas Register* due to the *Texas Register* filing deadlines and publication schedule (1 Texas Administrative Code, Section 91.6, Publication Deadlines).
- While the public will have access to the summary of the proposed rules, the public will not have access to the full notice of the proposed rules or the text of the proposed rules for at least another 11 days.
- A state agency should consider ways to assist the public in accessing the proposed rules (preamble and text) once they are published in the *Texas Register*. These ways could include providing instructions for navigating the *Texas Register* or posting additional or updated website notices.

In addition to posting the plain language summary on its website, an agency may also want to distribute the plain language summary by GovDelivery email. The website posting and the GovDelivery emails would be sent the same day that the proposed rules are filed with the Secretary of State. The GovDelivery emails would provide an additional way to provide notice to the public regarding the proposed rules. An agency may have other methods of communicating with interested parties that it may want to use to provide notice about the proposed rules.

8.6. Request for Public Comments and for Information Related to the Cost, Benefit, or Effect of the Proposed Rules.

Authority: Texas Government Code, Sections 2001.024(a)(7), 2001.024(a)(8), 2001.029, and 2001.033

8.6.1. Existing and New Requests.

A state agency is required to request public comments on the proposed rules and to request information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis.

[Senate Bill 14](#), Section 4, 89th Legislature, Regular Session (2025) added the new request for information under Texas Government Code, Section 2001.024(a)(8) as a separate item from the existing request for public comments under Texas Government Code, Section 2001.024(a)(7).

Sec. 2001.024. CONTENT OF NOTICE.

(a) The notice of a proposed rule must include: ...

(7) a request for comments on the proposed rule from any interested person;

(8) a request for information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person; ...

These two requests must be included in the proposed rules notice. While these two requests are listed separately under the APA, any information submitted in response to these two requests would fall under the broad meaning of “public comments” and should be considered as “public comments” under Texas Government Code, Sections 2001.029 and 2001.033. (See Section 8.9.)

8.6.2. Incorporating the New Request into Agency Communications

A state agency may also want to include the new request for information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis, into any agency communications in which the agency is requesting public comments on the proposed rules. These communications may include agency website postings or GovDelivery emails to subscribers. Depending on how the agency drafts its plain language summary of the proposed rules (see Section 8.5.), the agency may include the new request in the plain language summary.

8.7. Public Comment Submission and Timing.

Authority: Texas Government Code, Sections 2001.023, 2001.024, and 2001.029

8.7.1. Methods of Submission.

A state agency must instruct the public on how to submit public comments on the proposed rules and responses to the requested information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. An agency may allow comments and requested information to be submitted electronically on the agency's website, by email, by facsimile, by mail, or by other agency-prescribed methods. This information must be included in the proposed rules notice. (See Appendix E, Proposed Rules Notice Template.)

8.7.2. Timing of Submissions.

Authority: Texas Government Code, Sections 2001.023(a) and 2001.029(a)

The APA has two provisions that inform the time period for submitting public comments.

Texas Government Code, Section 2001.029(a) states that an agency must give all interested persons a reasonable opportunity to submit comments, and Texas Government Code, Section 2001.023(a) states that an agency must give at least 30 days' notice of its intention to adopt rules before it adopts the rules. The APA sets a minimum notice period for adoption, but it does not set a minimum public comment period.

Sec. 2001.023. NOTICE OF PROPOSED RULE.

(a) A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule.

Sec. 2001.029. PUBLIC COMMENT.

(a) Before adopting a rule, a state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing. ...

While the APA does not require a minimum number of days for a public comment period, many agencies have established a public comment period of at least 30 days as the standard practice. For purposes of this guide, a 30-day public comment period is recommended as the minimum comment period for a non-emergency rulemaking.

Publication of the proposed rules notice in the *Texas Register* begins the public comment period. If the comment period ends on a weekend or a holiday, the comment period is extended until the next working business day. The proposed rules notice should specify the deadline for submitting public comments.

Any member of the public may submit comments on the proposed rules. There are no Texas residency requirements for a person to submit public comments on the proposed rules.

8.8. Public Hearing on the Proposed Rules.

Authority: Texas Government Code, Section 2001.029(b)

A state agency must conduct a public hearing before it adopts rules if the public hearing is requested by 25 or more people, a governmental subdivision or agency, or an association with at least 25 members. This request may be submitted during or after the public comment period.

Sec. 2001.029. PUBLIC COMMENT.

(b) A state agency shall grant an opportunity for a public hearing before it adopts a substantive rule if a public hearing is requested by:

- (1) at least 25 persons;
- (2) a governmental subdivision or agency; or
- (3) an association having at least 25 members.

8.8.1. Scheduling the Public Hearing.

A state agency may proactively incorporate a notice of a public hearing as part of its proposed rules notice. The state agency does not have to wait for a request for a public hearing. An agency may take a proactive approach if it thinks a public hearing would be useful for a particular rulemaking, or if the agency regularly receives requests for public hearings on its proposed rulemakings. The agency can proactively schedule the public hearing into the agency's overall rulemaking timeline. The agency may want to consider the best time for holding the hearing – whether during the public comment period or after the public comment period ends.

8.8.2. Conducting the Public Hearing.

If a public hearing is held, a state agency should determine who will handle and conduct the public hearing. In some cases, the hearing may be conducted by the governing board or its designee; in others, the agency staff may conduct the hearing. A hearing is an opportunity to receive oral public comments on the proposed rules.

Tasks for administering the hearing would include preparing, publishing, and posting the notices for the public hearing; coordinating and handling the logistics for the hearing; providing sign-in or witness sheets for persons providing comments at the hearing; facilitating and presiding over the hearing; gathering public comments (both written and oral); and preparing a record of the hearing.

8.8.3. Comments Received During the Public Hearing.

If there is a public hearing on the proposed rules, the written and oral public comments received during the public hearing must be summarized with agency responses. (See Section 8.10.)

8.9. Define and Handle Public Comments.

Authority: Texas Government Code, Sections 2001.024(a)(7), 2001.024(a)(8), 2001.029, and 2001.033

8.9.1. Defining Public Comments.

The term “public comments” is not a specifically defined term in the APA, but rather it is explained in several sections of the APA. The language is not consistent across these sections, but it results in a broad meaning of “any written or oral information submitted regarding the proposed rules.” (Emphasis added in the provisions below.)

Sec. 2001.024. CONTENT OF NOTICE.

- (a) The notice of a proposed rule must include: ...
- (7) a request for comments on the proposed rule from any interested person;
- (8) a request for information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person; ...

Sec. 2001.029. PUBLIC COMMENT.

- (a) Before adopting a rule, a state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing.
- (b) A state agency shall grant an opportunity for a public hearing before it adopts a substantive rule if a public hearing is requested by:
 - (1) at least 25 persons;
 - (2) a governmental subdivision or agency; or
 - (3) an association having at least 25 members.
- (c) A state agency shall consider fully all written and oral submissions about a proposed rule.

Sec. 2001.033. STATE AGENCY ORDER ADOPTING RULE.

- (a) A state agency order finally adopting a rule must include:
 - (1) a reasoned justification for the rule as adopted consisting solely of:
 - (A) a summary of comments received from parties interested in the rule that shows the names of interested groups or associations offering comment on the rule and whether they were for or against its adoption; ...
 - (C) the reasons why the agency disagrees with party submissions and proposals; ...

While the request for comments on the proposed rules and the request for information related to the cost, benefit, or effect of the proposed rules are listed separately under Texas Government Code, Section 2001.024(a), any information submitted in response to these two requests would fall under the broad meaning of “public comments” as reflected in the sections above.

A state agency should include any information received regarding the proposed rules as “public comments.”

- The public comments may include comments submitted in response to Texas Government Code, Section 2001.024(a)(7) and information submitted in response to Texas Government Code, Section 2001.024(a)(8).
- The public comments may be written or oral.
- The public comments may be submitted during the comment period or during a public hearing.
- The public comments may address the text of the proposed rules, or the information contained in the preamble of the proposed rules.

An agency should take a broad inclusive view to “public comments” related to the proposed rules.

8.9.2. Submissions that are Not Public Comments.

While “public comments” has a broad meaning, any information submitted that is not related to the proposed rules may not be counted as “public comments.” Depending on the methods available for submitting public comments, members of the public or regulated persons may use the rulemaking submission methods (e.g., rulemaking-specific emails or online forms) to submit questions or information that are not related to the proposed rules. An agency should consider these comments on a case-by-case basis.

Examples:

- Questions about the status of the person’s license application or renewal.
- Submission of licensing documents.
- Customer service or compliance type questions that are not related to the proposed rules.
- Spam messages and other junk mail.

While these submissions may not be considered public comment under the APA, the state agency should have a policy or procedure for handling or closing out these submissions. If appropriate, the submission may be forwarded to other agency personnel to handle as a non-rulemaking matter (e.g., questions regarding the status of a license application).

8.9.3. Submissions after the Public Comment Period Ends.

As previously discussed, a state agency must provide interested parties a reasonable opportunity to provide public comments on the proposed rules, and the standard practice is a 30-day public comment period, with the deadline specified in the proposed rules notice.

An agency should consider how to categorize or handle comments that are submitted after the comment period closes or that are submitted later in the rulemaking process (e.g. public hearings, advisory board meetings, or meetings of the policy board or commission where the proposed rules are being considered for adoption). An agency should have a policy on whether or not these types of comments will be accepted and considered.

8.10. Summarize and Respond to the Public Comments.

Authority: Texas Government Code, Sections 2001.024(a)(7), 2001.024(a)(8), 2001.029, and 2001.033

A state agency must fully consider, summarize, and respond to all public comments; explain why the agency agrees or disagrees with the comments; and indicate what changes were made in response to the comments, if any. The summaries and responses to the public comments are included in the adoption order and justification and in the adopted rules notice that is published in the *Texas Register*. (See Chapter 9.)

8.10.1. Summarize the Public Comments.

A state agency must summarize all public comments received (written and oral). Any information received regarding the proposed rules will be considered as public comments.

All public comments (written and oral) must be addressed.

- Comments may be organized by commenter, by rule section, or by issue, depending on the proposed rules and comments received.
- Each individual comment may be summarized, or similar comments may be grouped together and summarized.
- The summaries must show the names of interested groups or associations.
- The summaries must state whether the persons are for or against the rules, if that information is included in the comments.

If an agency has advisory boards or committees that meet during or after the public comment period, any written and oral public comments received at those meetings must be included and addressed.

If the agency holds a public hearing on the proposed rules during or after the public comment period, the written and oral public comments received during the public hearing must be included and addressed. (See Section 8.8.)

The summaries of the comments are included in the adoption order and justification and in the adopted rules notice that is published in the *Texas Register*. (See Chapter 9)

8.10.2. Respond to the Public Comments

A state agency must respond to all public comments (written and oral). Any information received

regarding the proposed rules will be considered as public comments. (See Section 8.9.)

A state agency's response to a public comment must state:

- (1) whether the agency agrees or disagrees with the comment;
- (2) the reasons why the agency disagrees with the comment; and
- (3) whether the agency made any changes to the proposed rules as a result of the comment.

In developing a response to a public comment, an agency should consult with staff as needed, including legal counsel, program specialists, financial staff, communications staff, or others, depending on the nature of the comments and the level of expertise needed to respond to the comments.

The agency's responses to the public comments are not sent directly to the persons who submitted the comments. The responses to the comments are included in the adoption order and justification and in the adopted rules notice that is published in the *Texas Register*. (See Chapter 9.)

8.10.3. Changes to the Proposed Rules in Response to the Public Comments.

A state agency may make changes to the proposed rules as a result of the comments received, within certain parameters.

. Changes may be made in response to comments, but if the changes affect different persons, address different subjects, or otherwise exceed the scope of the published proposal, the agency should provide an additional opportunity for public comment before adoption. An agency should consult its legal counsel about whether additional changes may be made to the proposed rules.

If the recommended changes to the proposed rules are substantive changes that the agency agrees are needed, but that go beyond what is allowed to be made in the current rulemaking, the agency may either:

- withdraw the proposed rules and republish them with the changes for a second comment period; or
- proceed with the current proposed rules without the changes and address the changes in a future rulemaking.

A state agency should also be mindful about making any changes to the proposed rules in response to comments that may affect the economic analysis of the proposed rules. Changes to the proposed rules may also require an update to the economic analysis.

8.11. Chapter 8 Resources.

- 1) Texas Government Code, Chapter 2001, Administrative Procedure Act Subchapter A, General Provisions, and Subchapter B, Rulemaking
<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2001.htm>

- 2) Texas Government Code, Chapter 2002, *Texas Register* and Administrative Code
<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2002.htm>
- 3) Texas Government Code, Chapter 2006, Agency Actions Affecting Small Business and Rural Communities
<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2006.htm>
- 4) Texas Government Code, Chapter 2007, Governmental Action Affecting Private Property Rights
<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2007.htm>
- 5) OAG Administrative Law Handbook 2022, Rulemaking Chapter
https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/general-oag/adminlaw_hb.pdf
- 6) Secretary of State Website, *Texas Register*
<https://www.sos.state.tx.us/texreg/index.shtml>
- 7) Secretary of State Website, Texas Administrative Code
<https://www.sos.state.tx.us/tac/index.shtml>
- 8) Secretary of State, *Texas Register* Rules, 1 Texas Administrative Code, Chapter 91
https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=91&interface=VIEW_TAC&part=4&title=1
- 9) Secretary of State, General Information for Agency Liaisons (includes guidelines for state agencies for formatting and filing proposed rules for publication; and publication schedules)
<https://www.sos.state.tx.us/texreg/liaisons.shtml>

Chapter 9. Adoption Requirements.

9.1. Adoption Order / Notice Requirements.

Authority: Texas Government Code, Sections 2001.033 and 2002.017; and 1 Texas Administrative Code, Section 91.36

A state agency must prepare an adoption order for all adopted rules.

The adoption order must contain a reasoned justification for the adopted rules that includes the following elements:

- a summary of public comments;
- the factual basis for the rule that demonstrates the rational connection between facts and the rule text; and
- the reasons why the agency disagrees with the comments or proposed suggestions.

The adoption order must also include:

- a restatement of the statutory authority for the rules and of how the agency interprets the provisions as authorizing or requiring the rule; and
- a certification that the adopted rule has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

NOTE: The APA uses the terminology adoption “order” in Section 2001.033, but the document published in the *Texas Register* is an adoption “notice.” This guide makes a distinction between an “adoption order” signed by the agency’s governing board or authorized chief executive and the “adoption notice” published in the *Texas Register*. This guide incorporates and uses both documents to comply with the statutory language, and both documents contain the same information required under Section 2001.033.

9.2. Statutory Authority Requirements.

Authority: Government Code, Section 2001.024(a)(3), (a)(3)(A), (a)(3)(B), and (a)(3)(C); and Section 2001.033(a)(2)).

The APA requires the proposed rules notice and the adopted rules notice to state the statutory authority for the rules. The requirements for these two notices are similar, but they are not the same.

- The proposed rules notice requires a statement of statutory or other authority that includes the section or article of the code affected and, if applicable, the bill number of the legislation that enacted the statutory authority under which the rules are proposed. These particular elements are not included in the adopted rules notice.

- The adopted rules notice requires a restatement of the statutory authority that includes a statement of how the agency interprets the provisions as authorizing or requiring the rules. This particular element is not included in the proposed rules notice.

Sec. 2001.024. CONTENT OF NOTICE.

- (a) The notice of a proposed rule must include: ...
 - (3) a statement of the statutory or other authority under which the rule is proposed to be adopted, including:
 - (A) a concise explanation of the particular statutory or other provisions under which the rule is proposed;
 - (B) the section or article of the code affected;
 - (C) if applicable, the bill number for the legislation that enacted the statutory authority under which the rule is proposed to be adopted if the legislation was enacted during the four-year period preceding the date notice of the proposed rule is given; and ...

Sec. 2001.033. STATE AGENCY ORDER ADOPTING RULE.

- (a) A state agency order finally adopting a rule must include: ...
 - (2) a concise restatement of the particular statutory provisions under which the rule is adopted and of how the agency interprets the provisions as authorizing or requiring the rule; and ...

As a best practice, a state agency should consider including all of the statutory authority requirements under Texas Government Code, Section 2001.024(a)(3) and Section 2001.033(a)(2) in both the proposed rules notice and in the adopted rules notice. While not required, it may be beneficial to the public and to regulated persons to state upfront in the proposed rules notice how the agency interprets the statutory provisions as authorizing or requiring the rules, rather than waiting until the adoption notice to do so. It also makes it easier for an agency when preparing the notices if the same statutory authority information is included in both notices. (See Appendix E, Proposed Rules Notice Template, and Appendix F-3, Adopted Rules Notice Template.)

9.3. Prepare Rulemaking Documents for the Agency's Governing Board.

A state agency with a governing board or commission, (governing board) must consider and adopt the proposed rules at a public meeting. The designated agency staff shall prepare the meeting agenda caption for the rules and the necessary rulemaking documents for the public meeting of the governing board.

Depending on the agency, these documents may include:

- an executive summary of the proposed rules, the process and any issues, the public comments received, and any recommended changes to the published proposed rules;
- a copy of the published proposed rule text with redline changes showing any recommended changes to the published proposed rules (as applicable);
- an adoption order and adoption justification for the rules; and
- copies of all public comments received.

The adoption order will be signed by the agency's governing board or authorized official upon adoption of the proposed rules. The adoption justification for the rules may be included in the adoption order itself or be a separate document that is incorporated into the order by reference. Due to the length of the adoption justification, an agency may want to use the incorporated by reference method. This guide provides templates for the adoption order and the adoption justification as separate documents, and the adoption justification is incorporated by reference.

After the rules are adopted, the adoption order and the adoption justification are used to create the adopted rules notice that is published in the *Texas Register*.

The Secretary of State website includes filing instructions and other resources for state agencies.

See Appendix F-1, Adoption Order Template; Appendix F-2, Adoption Justification Template; and Appendix F-3, Adopted Rules Notice Template.

9.4. Consider and Vote on the Proposed Rules at an Open Meeting.

A state agency with a governing board must consider and adopt the proposed rules at an open meeting. Depending on the agency, the designated agency staff may present the proposed rules to the agency's governing board at the open meeting. Staff may answer questions for the governing board, report on any advisory board recommendations, explain any changes made to the proposed rules as published, and make staff recommendations regarding the adoption of the proposed rules.

Depending on the agency, additional written or oral public comments may be submitted at the open meeting. The governing board may or may not make any changes to the proposed rules based on the additional public comments. The additional public comments and any changes to the proposed rules should be addressed in the adoption order and justification in the adoption notice that is published in the *Texas Register*.

The governing board will consider all the information provided. The governing board may or may not accept the recommendations from the public, the advisory boards, or agency staff, and may or may not make additional changes to the proposed rules as published. The governing board will act on the proposed rules by either adopting the proposed rules (with or without changes), tabling the proposed rules, or sending the proposed rules back to agency staff for further action.

If the governing board adopts the proposed rules, then it signs the adoption order with the incorporated adoption justification. These documents will be retained by the agency.

9.5. Prepare and File the Adopted Rules Notice.

After the agency's governing board adopts the rules and signs the adoption order, the agency staff prepare the adopted rules notice for the *Texas Register*. The notice includes the adoption preamble and the adopted rule text. (See Appendix F-3, Adopted Rules Notice Template.)

The agency staff use the information contained in the adoption order and the adoption justification to create the adopted rules notice.

- For the most part, the same text that was included in the adoption justification will be included in the adopted rules notice, unless public comments were received and/or rule changes were made by the agency's governing board at adoption.
- If written or oral public comments on the proposed rules are received before or during the open meeting, the agency summarizes those comments and prepares responses that will be included in the adopted rules notice.
- If the governing board makes changes to the proposed rules at adoption, a summary of those changes is included and the rule text is amended to reflect those changes in the adopted rules notice.
- Information regarding the governing board's action and vote on the proposed rules is included in the adopted rules notice.

The agency files the adopted rules notice with the Secretary of State for publication in the *Texas Register*. The adopted rules take effect 20 days after the date on which they are filed with the Secretary of State unless a later date is requested or required by statute, specified in the rule, or required by federal mandate.

9.6. Publication in the *Texas Register* and Additional Methods of Notice.

The adopted rules notice is published in the "Adopted Rules" section of the *Texas Register*. If changes were made to the proposed rules as published, the adopted rule text will be republished in the *Texas Register*. If no changes were made, then the adopted rule text will not be republished in the *Texas Register*. Either way, the text of the adopted rules will be incorporated into the TAC. If a conflict exists, the official text of a rule is the text on file with the secretary of state and not the text published in the *Texas Register* or on file with the issuing state agency. (Texas Government Code, Section 2001.037.)

In addition to the official publication of the adopted rules notice in the *Texas Register*, a state agency should consider additional methods to provide notice to the public about the adopted rules.

- Post an adoption notice on the agency's website or provide a link to the *Texas Register* so the public can review the adopted rules notice.
- Provide a link to the Texas Administrative Code so the public can review the text of the adopted rules once they are effective.
- Send GovDelivery emails to subscribers to give notice about the adopted rules.

These additional efforts promote transparency and public involvement in the rulemaking process.

9.7. Chapter 9 Resources.

- 1) Texas Government Code, Chapter 2001, Administrative Procedure Act
Subchapter A, General Provisions, and Subchapter B, Rulemaking
<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2001.htm>
- 2) Texas Government Code, Chapter 2002, *Texas Register* and Administrative Code
<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2002.htm>
- 3) OAG Administrative Law Handbook 2022, Rulemaking Chapter
https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/general-oag/adminlaw_hb.pdf
- 4) Secretary of State Website, *Texas Register*
<https://www.sos.state.tx.us/texreg/index.shtml>
- 5) Secretary of State Website, Texas Administrative Code
<https://www.sos.state.tx.us/tac/index.shtml>
- 6) Secretary of State, *Texas Register* Rules, 1 Texas Administrative Code, Chapter 91
https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=91&interface=VIEW_TAC&part=4&title=1
- 7) Secretary of State, General Information for Agency Liaisons
(includes guidelines for state agencies for formatting and filing adopted rules for publication; and publication schedules)
<https://www.sos.state.tx.us/texreg/liaisons.shtml>

Chapter 10. Other Rule-Related Activities and Processes.

10.1. Purpose.

This chapter discusses other rule-related activities and processes beyond standard rulemakings, and it provides best practices, where possible. These rule-related activities include: (1) four-year rule review, rulemaking petitions, and emergency rulemaking, which are prescribed under Government Code, [Chapter 2001](#) (APA); and (2) negotiated rulemaking, which is prescribed under Government Code, [Chapter 2008](#).

10.2. Four-Year Rule Review.

10.2.1. Overview.

Texas Government Code, Section 2001.039 requires a state agency to review its rules every four years to assess the continued justification of its entire body of rules. The agency must determine whether the rules should be repealed, readopted, or readopted with amendments. The statute requires an agency to assess whether the reasons for initially adopting or readopting the rules continue to exist.

When a rule chapter is due for review, an agency publishes a Notice of Intent to Review in the *Texas Register*, notifying the public that the chapter is under review and seeking public comments on the rules. The agency reviews the rules in accordance with the statute and any other agency requirements and determines whether the rules should be repealed, readopted, or readopted with amendments. If any necessary rule changes are identified during the review process, these changes must be proposed through the standard rulemaking process.

10.2.2. Mandatory Review and Assessment.

Texas Government Code, Section 2001.039 establishes a recurring, mandatory obligation for every state agency to assess the continued justification of its entire body of rules. Texas law directs each state agency to review its rules at least once every four years. The agency's review shall consider whether to readopt, readopt with amendments or repeal the rule as a result of the review. The agency's review must include an assessment of whether the reasons for initially adopting the rules continue to exist. This assessment ensures that regulations do not continue without justification, requiring each agency to regularly verify the necessity of its existing rules.

10.2.3. Required Procedures.

The four-year rule review is structured as a multi-step process designed to solicit internal and external input, to provide for a thorough review and assessment of the existing rules, and to issue an official determination that is published in the *Texas Register*. (See Government Code, Section 2001.039 and the Secretary of State rules at 1 Texas Administrative Code, [Chapter 91](#), Subchapter D, Rule Review)

For rule reviews, the “procedures of this subchapter relating to the original adoption of a rule apply to the review of a rule and to the resulting repeal, readoption, or readoption with amendments of the rule, except as is otherwise provided by this subsection.” (Texas Government Code, Section 2001.039(d)) (emphasis added). This subsection states that “[publishing] the Texas Administrative Code citation to a rule under review satisfies the requirements of the Code relating to publishing the text of the rule unless the agency readopts the rule with amendments as a result of the review.”

Proposed notice under Texas Government Code, Section 2001.023 applies to the Notice of Intent to Review, but the contents of the proposed rule notice under 2001.024 do not apply to the Notice of Intent to Review.

The procedures for readoption as a result of the rule review are the adoption provisions under Texas Government Code, Section 2001.033, State Agency Order Adopting Rule.

A state agency's review of a rule must also include an assessment of whether the reasons for initially adopting the rule continue to exist.

For rules that have been identified for amendment or repeal, the agency will need to publish proposed rules proposing amendments or repeal using the standard rulemaking process.

10.2.4. Public Notice and Comment Period.

The process is formally initiated when the agency publishes a Notice of Intent to Review its rules in the *Texas Register*. This publication serves to notify stakeholders and the public regarding the specific rules that are currently under review and to seek public comments on those rules.

The agency must allow a reasonable opportunity for the public to submit comments, and the agency must give at least 30 days’ notice of its intention to adopt rules before it adopts the rules. The notice is effective upon publication of the Notice of Intent to Review in the *Texas Register*. The APA sets a minimum notice period for adoption, but it does not set a minimum public comment period. While the APA does not require a minimum number of days for a public comment period, many agencies have established a public comment period of at least 30 days as the standard practice. For purposes of this guide, a 30-day public comment period is recommended.

The agency must accept and fully consider all written and oral public comments regarding the continued need and justification of the rules under review. This step ensures transparency and provides a formal opportunity for stakeholders and the public to provide comments and to inform the agency's final determination.

Even though not required by statute, an agency may also use the public comment period strategically by soliciting public comments on whether specific rules should be simplified or eliminated.

10.2.5. Agency Assessment of Initial Reasons for Adoption and Other Changes.

The agency reviews the rules in accordance with the Texas Government Code, Section 2001.039 and any other agency requirements.

Reasons for Initially Adopting the Rules

Under Texas Government Code, Section 2001.039, the agency must review its rules and determine if the reasons for initially adopting or readopting the rules continue to exist; whether the rules are still necessary; and whether the rules should be readopted, readopted with amendments, or repealed. This review would include a review of the current rules, the current statutes, and any relevant legislative history.

Other Changes

Even though the statute only specifies the assessment of whether the reasons for initially adopting the rule continue to exist, an agency should consider incorporating a broader, proactive review into the four-year rule review process.

This broader review includes an internal, comprehensive review of the rules by agency staff and divisions that are tied to a particular rule chapter.

- The agency should be looking for rules that: (1) are not in alignment with the current statutes; (2) do not reflect the agency's current policies, procedures, or practices; (3) do not reflect the current industry practices; (4) need to be simplified, streamlined, or rewritten for any reason; (5) are unnecessarily burdensome; or (6) are obsolete or no longer necessary for any reason.
- The agency should identify if there are any requirements in the statute that prevent making needed changes or updates in the rules or if there are any FAQs, technical bulletins, or other documents posted on the agency website that need to be included in the rules.
- Finally, the agency should analyze any available data that may identify rules that need to be added, amended, or repealed.

10.2.6. Final Determination and Actions Resulting from Review.

After the agency reviews and considers the public comments received in response to the Notice of Intent to Review, and after the agency's internal review and assessment of the rules, the agency will make a final determination. The agency must determine whether the rules should be readopted, readopted with amendments, or repealed.

If any necessary rule changes are identified during the rule review process, these changes must be proposed through a notice using the standard rulemaking process under the APA. This proposed

rulemaking may occur while the rule review process remains open or after the rule review process concludes. If the standard rulemaking process begins after the rule review process concludes, the standard rulemaking should begin promptly after the rule review concludes. The proposed rulemaking notice should reference the four-year rule review and any relevant findings from that review.

10.2.7. Documentation and Publication of the Final Determination.

The agency will document its final determination in a rule review adoption order (adoption notice) that is published in the *Texas Register*. This notice is the public record of the agency's findings regarding a rule's ongoing necessity.

The published adoption notice must include an assessment of whether the reasons for adopting the rules continue to exist; provide the reasons for the agency's decision; and summarize and respond to the comments received. This ensures that the agency's assessment and determination are publicly documented with supporting rationale. Publication of the adoption notice concludes the four-year rule review process.

10.2.8. Rule Review Schedule and Records.

Effective management of the four-year rule review process is critical to ensure timely compliance. An agency should adopt a systematic approach by maintaining and following a rolling four-year review schedule to manage deadlines. While not required by the APA, posting the four-year rule review schedule on the agency's website enhances transparency.

While the published adoption notice provides a brief statement of the reasons, an agency should retain clear internal records documenting the entire assessment and determination process for each rule. This thorough documentation is critical for future legislative or oversight reviews such as the Sunset Review process. By satisfying the requirements of Texas Government Code, Section 2001.039, an agency meets its statutory obligation while also advancing the policy goal of maintaining leaner, clearer regulations.

10.2.9. Future Agency Action.

An agency should use the four-year rule review process to further efforts to make Texas regulations less burdensome. An essential part of an agency's regulatory reduction process is ensuring follow-up has occurred to repeal or amend any rules that were identified during the four-year rule review process. When considering whether the reasons for a rule continue to exist, an agency should consider the framework in the Regulatory Reduction Guide for reducing rules.

10.2.10. Best Practices.

The following are some best practices that agencies may want to consider and implement regarding agency processes, personnel, and forms related to the four-year rule review.

1) A state agency should develop an internal written process for four-year rule reviews.

- The written process should address the timing and scheduling of the reviews; the agency personnel involved in the reviews; the legal and substantive requirements of the reviews; soliciting and addressing comments from the public, stakeholders, and agency staff; the readoption of the rules by the agency's governing board or commission; and the timing for publishing any proposed rules resulting from the rule review.
- As part of this process, the agency should:
 - notify the public of the Texas Administrative Code chapters that are under review;
 - solicit input from the public and evaluate the public comments received;
 - solicit input from agency staff to identify any necessary rule changes;
 - evaluate the data collected by the agency to determine the need for certain rules;
 - analyze whether the reasons for initially adopting the rules continue to exist;
 - review each rule to determine whether it is obsolete, whether it reflects current legal and policy considerations, and whether it reflects current agency procedures; and
 - determine whether the rules should be readopted, readopted with amendments, or repealed.

2) A state agency should develop a schedule for reviewing all rule chapters under the agency's jurisdiction.

- Depending on the number of rule chapters, an agency may wish to separate the rule chapters into groups and space the reviews out or do them all at once. An agency with multiple rule chapters may want to review a quarter of the agency's rule chapters every year.
- Develop a schedule taking into consideration any times during the year when it may not be possible or ideal for the agency to conduct the reviews.
- Develop a schedule that starts the rule review process far in advance of the four-year deadline.
- Identify a person or division to be responsible for maintaining the schedule of rule reviews. The designated person/division tracks all the rule chapters and the four-year rule review deadlines and is responsible for keeping the reviews on schedule.

3) A state agency should identify a person or division that will be responsible for leading, conducting, and documenting the four-year rule reviews.

4) A state agency should develop processes for conducting and documenting the reviews.

- An agency may develop and conduct different types of review in order to gather the necessary information and evaluate the rules. For example, an agency may conduct a separate legal review and division review as part of the rule review process for each rule chapter.
 - Legal Review - Review by the General Counsel's Office to determine whether the reasons for initially adopting the rules continue to exist; whether the rules are still necessary; and whether the rules should be readopted, readopted with amendments, or repealed. This legal review would include a review of the current rules, the current statutes, and any relevant legislative history.
 - Staff Review - Review by the General Counsel's Office and the agency's staff to determine whether any updates need to be made to the current rules. The updates may be new rules, amendments to existing rules, or repeal of existing rules. The information may be obtained by completing internal comment forms, gathering and analyzing data, and holding internal meetings. (See item #6.)
- An agency should develop a method and template(s) for documenting the reviews of each rule chapter. For example, the General Counsel's Office may draft memos memorializing the reviews and the results of the reviews.

5) A state agency should develop a standardized notice and methods for soliciting input and comments from the public.

- Develop a standardized Notice of Intent to Review (NOI). The NOI must solicit public comments on the rule chapters under review.
 - The notice must identify which rules are under review.
 - The agency should ask for public input on whether the reasons for initially adopting the rules continue to exist and whether the rules should be readopted, readopted with amendments, or repealed. (These items reflect the statutory requirements.) The agency may also want to include additional questions in the notice for public input.
 - The agency may want to notify the public about any additional or expanded reviews that go beyond the statutory language, such as the agency is reviewing each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current agency procedures.
 - The NOI should specify that written comments regarding the review of the rules may be submitted electronically on the agency's website, by email, by facsimile, by mail, or by other agency authorized methods. The agency should allow comments to be submitted for at least 30 days after publication of the notice in the *Texas Register*.

- The NOI is required to be published in the *Texas Register*, but an agency should also consider posting this notice on the agency's website and/or sending this notice through GovDelivery subscriber emails. The agency may have additional methods for communicating with the regulated industry, stakeholders, and the public.
- The NOI may state whether, when, or how suggested rule changes will be taken under consideration.

6) A state agency should develop methods for soliciting input, comments, and data from the agency staff.

- Identify which staff are required to participate in the four-year rule review process. Core agency staff or divisions that are tied to a particular rule chapter should be involved.
- Consider developing a standardized form to gather input, comments, and data from division or program area as part of the four-year rule review process.
- Agency staff should review the current rule chapter and identify any rules that need to be added, amended, or repealed. The agency staff should look for rules that:
 - are not in alignment with the current statutes;
 - do not reflect the agency's current policies, procedures, or practices;
 - do not reflect the current industry practices;
 - need to be simplified, streamlined, or rewritten for any reason;
 - are unnecessarily burdensome; or
 - are obsolete or no longer necessary for any reason.
- As part of the rule review, an agency should also review:
 - whether there are any requirements in the underlying statute that prevent the agency from making the necessary rule changes. Statutory changes will need to be made in a future legislative session.
 - whether there is any information posted on the agency's website that relates to the rules under review (frequently asked questions, technical bulletins, or other guidance documents). An agency should determine whether this information is a restatement of information already included in the statute or rules or whether this information needs to be included in the rules in order to be enforceable.
- In addition, agency divisions or program areas should provide rule review data reports for the previous four fiscal years, to the extent that data is available.

- While this is not an APA statutory requirement, the Texas Sunset Commission has directed agencies undergoing Sunset review to perform more in-depth four-year rule reviews. This directive has been issued as a Sunset Management Action Item. The Texas Sunset Commission has instructed agencies to analyze the data that the agencies already collect as part of their operations and to determine whether the data indicates any rules that need to be updated or repealed.
 - An agency should determine which divisions or program areas have data that could be used in the rule review process. The director for each division or program area will identify the specific data reports to be generated and provided. The staff will provide an analysis or explanation of the data contained in the division or program area's data reports for the previous four fiscal years.
 - Agency staff should discuss the public comments, the internal staff comments, and the data provided and explain any information that demonstrates the need to modify the rules.
- 7) A state agency should develop a process for categorizing and addressing the public comments and the input, comments, and data from the agency staff.**
- Develop a process to review and categorize the public comments and the agency staff comments.
 - Consider categorizing the comments: (1) comments in support of or against readoption; (2) comments suggesting changes to the statute or changes to the rules that would first require statutory changes; (3) comments suggesting changes to the rules that can be made in a separate standard rulemaking; and (4) any unrelated comments.
 - Determine which comments: (1) may be addressed in support of or against readoption of the rule review; (2) may be closed out as unrelated; (3) will require a standard rulemaking in order to propose and adopt the rule changes; and (4) will require non-rulemaking actions, such as legislative changes or internal process changes.
- 8) A state agency's governing board, commission, or executive commissioner should readopt the rules chapters.**
- At a public meeting, the agency's governing board, commission, or executive commissioner readopts the rules in their existing form or takes no action.
 - Because the Notice of Intent to Review does not propose any specific changes and does not specify any reasons for any specific changes, and because the public has not received notice of any specific proposed rule changes based on the agency's review or the public comments received, the agency must use the standard

rulemaking process with a separate notice to adopt any rule changes as part of the rule review process.

If a standard rulemaking process will be used to propose amendments or repeals, the agency may leave the rule review open while the proposed amendments or repeals undergo the standard rulemaking process.

9) A state agency should develop a standardized adoption notice that completes the rule review process and identifies next steps, if any.

- Develop a standardized Rule Review Adoption Notice in compliance with the Secretary of State's rules and procedures. The adoption notice should:
 - address the rule chapters that were under review.
 - address the public comments that were received and what actions were taken by the agency or will be taken by the agency in the future in response to the public comments.
 - state the agency's determination regarding whether the reasons for initially adopting or readopting the rules continue to exist.
 - address any other requirements under Section 2001.039.
 - state that this notice completes the rule review process.
- The Adoption Notice is required to be published in the *Texas Register*, but an agency should also consider posting the adoption notice on the agency's website and/or sending this notice through GovDelivery subscriber emails. The agency may have additional methods for communicating with the regulated industry, stakeholders, and the public.
- The Adoption Notices should clearly state whether, when, or how suggested rule changes will be taken under consideration.

10) A state agency should ensure that any follow-up standard rulemakings occur in a timely manner in order to implement the changes identified during the rule review process.

- Develop a schedule, a process, and a tracking method to ensure timely completion of the rule changes resulting from rule review.

10.3. Rulemaking Petitions.

Authority: Texas Government Code, Section 2001.021

10.3.1. Overview.

Texas Government Code, Section 2001.021 provides that any interested person may petition an agency to request the adoption of a new rule or the repeal or amendment of an existing rule. This is known as a “rulemaking petition.” An “interested person” is defined as anyone who is: a Texas resident; a business entity located in Texas; a governmental subdivision in Texas; or a public or private organization that is not a state agency but is located in Texas.

This section of the APA requires a state agency to adopt rules specifying how to submit a rulemaking petition, including the form for the petition and the procedure for its submission, consideration, and disposition. If a state agency requires signatures for a petition, at least 51 percent of the total number of signatures required must be of residents of this state.

The agency has 60 days after the petition is submitted to either deny the petition in writing, stating its reasons, or to initiate a rulemaking concerning the requested rule.

10.3.2. Best Practices.

1) **A state agency must adopt rules as prescribed by Texas Government Code, Section 2001.021 specifying how an interested person may submit a rulemaking petition.**

- The rules may want to reiterate who is an “interested person” and who may submit a rulemaking petition.
- The rules should require any rulemaking petitions be submitted in writing.
- The rules should specify the contents of the rulemaking petition including any required information to be submitted.
 - This information is necessary for the agency to understand the issues and the reasons for the rulemaking petition.
 - This information is also necessary if the agency decides to initiate a rulemaking. As part of the proposed rules preamble, the agency will need to provide an explanation and justification for the proposed rules, the costs of the proposed rules on state and local governments, regulated persons, and small and micro-businesses, and the public benefits of the proposed rules.
 - Examples of elements that may be required in a written rulemaking petition:
 - the person's full name, mailing address, telephone number, and email address;
 - a statement explaining how the person qualifies as an "interested person";
 - a summary and explanation of the draft rule change;
 - the rationale and justification for the draft rule change or the reasons why the person believes the rulemaking is necessary;

- a statement addressing whether there would be a cost to anyone impacted by the draft rule change, if the cost information is known or readily available;
 - if proposing a new rule, the text of the new rule in the exact form that is desired to be adopted, with the new text underlined; and
 - if proposing an amendment or repeal, the specific section and text of the rule the person wants to change, with deletions crossed through and additions underlined.
- The rules should clearly state if a rulemaking petition will be denied in certain circumstances such as it is submitted by a person who does not qualify as an "interested person" or it does not contain the required information.
 - The rules should clearly state how the rulemaking petition must be submitted. Having specified formal methods and points of contact for submitting rulemaking petitions should help reduce or eliminate requests for rule changes being submitted through other means or contact points in the agency. It also helps provide internal structure for staff who may receive written or oral rule change suggestions.
 - The rules should clearly set out what actions will occur not later than 60 days after the date of the rulemaking petition submission. An agency must either: (1) deny the petition and state the reasons for the denial; or (2) initiate a rulemaking proceeding under Texas Government Code, Chapter 2001. The rules should address how the agency will notify the interested person about the agency's decision either way.

2) A state agency may consider developing an internal written process and templates for handling rulemaking petitions.

- The written process should address: monitoring any communications or designated portals for submitting rulemaking petitions; logging the petition and calendaring the 60-day deadline for a response; creating and maintaining the official retention folder for the petition and the response; identifying the agency staff involved in processing, handling, and responding to the petitions, both sufficient and deficient petitions; evaluating the procedural and substantive elements of the petition; approving or denying the petition (depending on the agency, board action may be needed); preparing and sending the response to the petition; and initiating a standard rulemaking, if applicable.
- The templates may include rulemaking petition responses for denying the rulemaking petition and for agreeing to initiate a rulemaking.
 - If the agency denies a petition, the denial letter should detail the reasons for the denial. An agency should be transparent in its reasons for the denial.

- If the agency decides to initiate a rulemaking, the agency will use the standard rulemaking process under Government Code, Chapter 2001. The proposed rules preamble should explain that the rulemaking is a result of a rulemaking petition.

3) A state agency should provide instructions to staff about what to do if they receive written or oral requests for rule changes.

- When a regulated person or any member of the public wants to suggest rule changes, staff should direct persons to the rulemaking petitions rule for instructions on how to submit rulemaking petitions.
- Staff should consult with the agency’s legal counsel on how to handle or treat any written or oral communications that do not follow or conform to the rulemaking petition rule.

4) A state agency should consider posting instructions on the agency’s website on how to submit rulemaking petitions.

- While the APA requires an agency to adopt a rulemaking petition rule, the agency may also want to consider posting instructions for submitting rulemaking petitions on the agency’s website, whether it be directing the public to the rulemaking petition rule itself or including the rule requirements on the agency website.

10.4. Emergency Rulemaking.

Authority: Texas Government Code, Section 2001.034

10.4.1. Overview.

Texas Government Code, Section 2001.034 authorizes agencies to adopt emergency rules without prior notice or hearing if the agency: “finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days’ notice.” An agency must identify and state the reasons for the emergency rules in writing. An emergency rule may be effective for no longer than 120 days and may be renewed once for no longer than 60 days. A permanent rule addressing the same subject may be adopted using the standard rulemaking process.

The emergency rules and the reasoned justification for them are published in the *Texas Register*, but the emergency rules are not incorporated into the Texas Administrative Code. The emergency rules will automatically expire after 120 days unless the agency files an extension notice with the Secretary of State. The emergency rules will automatically expire after the 60-day extension period. The only way for an agency to make the rules permanent is to propose and adopt the rules

through the standard rulemaking process, which includes notice to the public and an opportunity for public comment.

10.4.2. Best Practices.

1) A state agency should narrowly interpret the emergency rulemaking statute.

- The statute allowing for emergency rulemaking is limited, and it should be narrowly construed. An agency should rarely be in a position where it is necessary to use emergency rulemaking.

2) The emergency rulemaking exception to the standard rulemaking process should be narrowly construed. If the exception is used improperly, the resulting rule may be found invalid or ineffective **state agency should consult with its legal counsel to determine whether emergency rulemaking is permissible in a particular situation.**

- The facts surrounding the rulemaking will help determine whether the conditions in the statute for an emergency rulemaking can be met.
- An agency will have to explain its reasons and justification for the emergency rules, and this justification will be published in the *Texas Register* with the text of the emergency rules.

10.5. Negotiated Rulemaking.

Authority: Texas Government Code, [Chapter 2008](#)

10.5.1. Overview.

Texas Government Code, [Chapter 2008](#) provides the procedures for a state agency to participate in “negotiated rulemaking.” This formal process may be used to assist an agency in drafting proposed rules when the proposed rules are likely to be complex or controversial or to affect multiple interests.

This formal process includes:

- appointing a convener to assist the agency in determining whether it is advisable to proceed with a negotiated rulemaking. (Section 2008.052.)
- publishing notice of the agency’s intention to engage in negotiated rulemaking in appropriate media and in the *Texas Register*. (Section 2008.053(a))
- appointing a negotiated rulemaking committee, which is a temporary committee of representatives of affected interests that will establish procedures for conducting

negotiations and will attempt to arrive at a consensus on a proposed rule. (Section 2008.054 and Section 2008.056)

- appointing a qualified facilitator to preside over meetings and to assist the negotiated rulemaking committee. (Section 2008.055 and Section 2008.056)
- issuing a written report by the negotiated rulemaking committee to the agency, which: (a) contains the text of the proposed rule, if the committee reached a consensus; or (b) specifies the issues on which the committee reached consensus, the issues that remain unsolved, and any other information, recommendations, or materials that the committee considers important, if the committee did not reach a consensus. (Section 2008.056(d) and Section 2008.057.)
- based on the final report, proceeding with the standard rulemaking process under Texas Government Code, [Chapter 2001](#) to propose the rules developed as part of the negotiated rulemaking. (Section 2008.058 and Section 2008.053(b))

10.5.2. Best Practices.

1) A state agency may use negotiated rulemaking when appropriate.

This formal process may be used to assist an agency in drafting proposed rules when the proposed rules are likely to be complex or controversial or to affect multiple interests.

10.6. Chapter 10 Resources

- 1) Texas Attorney General Administrative Law Handbook, Rulemaking Chapter (2022)
https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/general-oag/adminlaw_hb.pdf
- 2) Texas Government Code, Chapter 2001, Administrative Procedure Act
<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2001.htm>
- 3) Texas Government Code, Chapter 2008, Negotiated Rulemaking
<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2008.htm>
- 4) Secretary of State Website, *Texas Register* Section
<https://www.sos.state.tx.us/texreg/index.shtml>
- 5) Secretary of State Website, Texas Administrative Code
<https://www.sos.state.tx.us/tac/index.shtml>

Chapter 11. Increasing Public Participation in the Rulemaking Process.

11.1. Purpose.

This chapter addresses a state agency providing educational information about the rulemaking process; informing the public about current rulemaking activities that are open for public comment; and providing guidance to the public about submitting public comments on agency rulemaking activities. This chapter provides suggestions.

11.2. Create a Rulemaking Webpage.

Create a page on the agency's website dedicated to rulemaking.

- Post links to the following information:
 - proposed rules that are open for public comment.
 - draft rules that are open for informal comments (informal rulemaking).
 - four-year rule reviews that are open for public comment.
 - instructions on how/where to submit public comments and the deadlines.
- Consider posting the following information:
 - explanation about rulemaking and the rulemaking process.
 - explanation of how to participate in the rulemaking process.
 - tips for submitting public comments on proposed rules, draft rules, and rule reviews.
 - explanation of how to submit a rulemaking petition.
 - the agency's rule review schedule.
 - explanation of how to stay informed and involved.
- Provide links to key sources:
 - [Texas Statutes](#)
 - [Texas Government Code, Chapter 2001](#) (APA)
 - [Texas Administrative Code \(TAC\)](#)
 - [Texas Register](#)

The webpage elements listed under the second category above are discussed in Sections 11.3 – 11.7.

11.3. Explain the Elements of Rulemaking and the Rulemaking Process.

- Explain the basic elements of rulemaking; provide information about the *Texas Register* and the Secretary of State; provide a brief, high-level summary of the APA requirements; and explain formal comments via the *Texas Register*.

- Explain informal rulemaking or informal comments on draft rules before they published in the *Texas Register*. Explain how an agency may solicit informal public and stakeholder input.

11.4. Explain How to Participate in the Process.

- Explain how a person can participate in the agency's rulemaking process. Explain why comments from the public and from stakeholders are important to the rulemaking process.
- Explain how, when, and where to submit public comments to the agency.
- Explain opportunities for submitting public comments during informal rulemaking and during formal rulemaking published in the *Texas Register*; requesting public hearings; providing input at advisory board/committee meetings, if applicable; submitting a rulemaking petition.

11.5. Provide Tips for Submitting Public Comments.

- Provide tips (not legal advice) for submitting public comments. This will help ensure that the agency can fully understand and consider each comment submitted.
- See **Appendix G**. Guidance to the Public on Submitting Public Comments. This guidance may be provided in whole or in part to the public, and it may be provided in a separate document or posted on the agency's rulemaking page. The agency may tailor the guidance to the agency's processes.

11.6. Explain How to Submit a Rulemaking Petition.

- A state agency is required to have rules implementing Government Code, Section 2001.021 (Petition for Adoption of Rules). Provide an explanation of how to submit a rulemaking petition by repeating the rule requirements and/or include a link to the agency's rule on submitting a rulemaking petition.

11.7. Explain How to Stay Informed and Involved.

- Use GovDelivery email subscriber lists. Encourage stakeholders and the public to sign up to receive notifications about rulemaking activities.