

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

#### CHAPTER 18. GENERAL RULES

##### CONCERNING REPORTS

###### 1 TAC §18.31

The Texas Ethics Commission (the TEC) proposes amendments to TEC rules in Chapter 18. Specifically, the TEC proposes amendments to §18.31, regarding Adjustments to Reporting Thresholds.

Section 571.064(b) of the Government Code requires the TEC to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the TEC's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The TEC first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2026, to apply to contributions and expenditures that occur on or after that date.

Natalie McDermon, Interim General Counsel, has determined that for the first five-year period the rule amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended rule.

The General Counsel has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefit will be consistency and clarity in the TEC's rules that set out reporting thresholds. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rule.

The General Counsel has determined that during the first five years that the proposed amended rule is in effect, they will: not create or eliminate a government program; not require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in

fees paid to the agency; expand, limit, or repeal an existing regulation; not increase or decrease the number of individuals subject to the rules' applicability; or not positively or adversely affect this state's economy.

The TEC invites comments on the proposed amended rule from any member of the public. A written statement should be emailed to [public\\_comment@ethics.state.tx.us](mailto:public_comment@ethics.state.tx.us), or mailed or delivered to James Tinley, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the TEC concerning the proposed amended rule may do so at any Commission meeting during the agenda item relating to the proposed amended rule. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the TEC's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

The amendments are proposed under Texas Government Code §571.062, which authorizes the TEC to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the TEC to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rule affects Title 15 of the Election Code.

###### *§18.31. Adjustments to Reporting Thresholds.*

(a) Pursuant to section 571.064 of the Government Code, the reporting thresholds are adjusted as follows:

~~Figure 1: 1 TAC §18.31(a)~~

~~[Figure 1: 1 TAC §18.31(a)]~~

~~Figure 2: 1 TAC §18.31(a)~~

~~[Figure 2: 1 TAC §18.31(a)]~~

~~Figure 3: 1 TAC §18.31(a)~~

~~[Figure 3: 1 TAC §18.31(a)]~~

Figure 4: 1 TAC §18.31(a) (No change.)

Figure 5: 1 TAC §18.31(a) (No change.)

(b) The changes made by this rule apply only to conduct occurring on or after the effective date of this rule.

(c) The effective date of this rule is January 1, 2026 [2025].

(d) In this section:

- (1) "CEC" means county executive committee;
- (2) "DCE" means direct campaign expenditure-only filer;
- (3) "GPAC" means general-purpose political committee;
- (4) "MPAC" means monthly-filing general-purpose political committee;
- (5) "PAC" means political committee;
- (6) "PFS" means personal financial statement;
- (7) "SPAC" means specific-purpose political committee;

and

(8) "TA" means treasurer appointment.

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

Filed with the Office of the Secretary of State on June 13, 2025.

TRD-202502006

Natalie McDermon

Interim General Counsel

Texas Ethics Commission

Earliest possible date of adoption: July 27, 2025

For further information, please call: (512) 463-5800



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 129. STUDENT ATTENDANCE

##### SUBCHAPTER AA. COMMISSIONER'S RULES

###### 19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning the student attendance accounting handbook. The proposed amendment would adopt by reference the *2025-2026 Student Attendance Accounting Handbook*. The handbook provides student attendance accounting rules for school districts and charter schools.

**BACKGROUND INFORMATION AND JUSTIFICATION:** TEA has adopted its student attendance accounting handbook (SAAH) in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update §129.1025 to refer to the most recently published SAAH.

Each annual SAAH provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. TEA distributes FSP resources under the procedures specified in each current SAAH. The final version of the SAAH is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to §129.1025 would adopt by reference the SAAH for the 2025-2026 school year. The proposed handbook, including a change document with a comprehensive list of proposed changes, is available on the TEA website at <https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accounting-handbook>.

Significant changes to the *2025-2026 Student Attendance Accounting Handbook* would include the following.

###### *Section 1, Overview*

Texas Education Code (TEC), Chapter 48, specifically §48.008, establishes the requirements for adopting an attendance accounting system and reporting attendance accounting data through Texas Student Data System Public Education Infor-

mation Management (TSDS PEIMS). The following changes implement reporting requirements for attendance and funding.

The description of Section 12 of the handbook would be revised to include virtual and hybrid instruction in courses and programs offered by the Texas Virtual School Network (TXVSN).

###### *Section 2, Audit Requirements*

TEC, Chapter 48, specifically §48.004, establishes the requirements for violation of presenting reports that contain false information. TEC, §48.004, authorizes the commissioner of education to require audit reports to be submitted for review and analysis. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Student identification data elements would be revised to include gender codes, English as a Second Language (ESL) program types (Section 6), gifted/talented indicators (Section 8), and Pregnancy-Related Services (PRS) indicators (Section 9), where applicable. In items 22 and 23 of the list of required data items, Student Detail Reposts would be revised to include full-time equivalent (FTE) calculations for all special programs. Special program documentation would be updated to include proof of service (for example, a doctor's note for pregnancy notification).

###### *Section 3, General Attendance Requirements*

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation. The following changes would implement reporting requirements for attendance and funding.

Language would be revised to state that districts offering full-day prekindergarten (pre-K) for eligible four-year-olds must provide 75,600 operational minutes. Language would be revised to state that average daily attendance (ADA) code 0 Enrolled, Not in Membership applies to students in private or non-district early childhood programs receiving district services (e.g., speech therapy) and private school students (ages 5-21 years old) receiving special education through an individualized services plan. Language would be added to state that a student with a disability may receive special education services through age 21 if the district determines they met Texas criteria after earning a diploma elsewhere. The district must evaluate the transcript and confirm funding eligibility. Language listing the conditions used to determine if a student should have assigned the StudentCharacteristic 02 (Immigrant) element code for TSDS PEIMS reporting purposes would be revised. Contact information for noncompliance reporting would be updated. Language would be revised to state that a student is ineligible for ADA if assigned out of school suspension on the first day of school. Language would be revised to state that a student experiencing homelessness or a student who is in foster care should be admitted temporarily for 30 days, even if acceptable evidence of vaccination is not available. Language would be added to state that, beginning in the 2026-2027 school year, district calendars must include extra minutes or makeup days for at least two missed days due to bad weather or health and safety concerns. Language would be revised to state that a student should not be withdrawn if the student is being excused from attendance due to a serious or life-threatening illness. Language would be updated to specify that waiver rules that apply to the whole district now apply also to individual campuses. Language would be revised to address campus closures due to unforeseen circumstances.

#### *Section 4, Special Education*

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for special education to account for attendance and funding.

The ADA eligibility code for private or homeschool students between the ages of 5-21 years would be revised. Language concerning instructional setting codes would be updated for clarification. Language concerning reporting requirements for students reported with instructional setting code 00 would be updated. Language would be revised to correct requirements for placing a student receiving special education services in a homebound setting. Language would be revised to clarify the eligible ADA code for students receiving special education services who are five years of age or older and being served in a homebound setting. Language would be revised to provide additional guidelines for instructional setting codes, and A/B block schedule. Language referencing the attribution code for the Texas School for the Deaf, speech therapy, and Special Education Program Services 23, 24, and 25 would be updated to align with the new Texas Education Data Standards (TEDS). Language would be revised to state that, starting in the 2025-2026 school year, special education and related services for eligible children with disabilities aged three through five would be provided through Early Childhood Special Education (ECSE), and not in kindergarten. Revisions would be made to codes, examples, and special education terminology to align with TEDS.

#### *Section 5, Career and Technical Education (CTE)*

TEC, Chapter 48, including §48.106, authorizes funding for career and technical education (CTE) in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes would implement reporting for CTE to account for attendance and funding.

As specified in section 5.10, Documentation, a requirement would be added that local education agencies (LEAs) must maintain documentation showing a minimum of 45 minutes per day for each CTE course. Clarifications would be made to areas concerning CTE course state-weighted funding, how CTE contact hours are earned, and continuing CTE contact hours for students participating in paid or unpaid work-based instruction. Text concerning contracting with other entities to provide CTE courses would be removed. The term "service id" would be replaced with "course code," and the section would include a reference to the singular training plan form. In addition, the proposed new language would add a requirement for student reports to be recorded using the TSDS PEIMS Course Transcript Entity when they complete a semester of a course. Updates would be made to TAC links in the footnotes and a course name, and new examples and references to those would be included.

#### *Section 6, Bilingual/English as a Second Language (ESL)*

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following

changes would implement reporting for bilingual and special language programs to account for attendance and funding.

Language would be updated in this section to align with recently revised commissioner's rules as well as the TSDS PEIMS data descriptions. Language would be revised to state that a district may offer a bilingual program beyond required grade levels or before reaching the minimum emergent bilingual (EB) student requirement. Language would be revised to state that English for speakers of other languages (ESOL) programs I and II must be taught by certified teachers with ESL or bilingual certification. Language would be revised to state that each student in a bilingual or ESL program, or under an alternative methods descriptor, must be identified with the appropriate descriptor in the attendance accounting system. Language would be revised to state that bilingual/ESL eligible days must be removed if a student is in a disciplinary setting for over five days without receiving equivalent services from a certified teacher. Language would be updated to clarify exit procedures, monitoring of reclassified students, Home Language Survey (HLS) requirements, and Texas English Language Proficiency Assessment System (TELPAS) scores to align with recently revised commissioner's rules as well as the TSDS PEIMS data descriptions. Language would be revised to state that a district must promptly record the appropriate bilingual, ESL, or alternative method descriptor once a student meets eligibility requirements.

#### *Section 7, Prekindergarten (Pre-K)*

TEC, Chapter 29, Subchapter E, establishes special general parameters for pre-K programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for pre-K to account for attendance and funding.

Language would be revised to reflect student eligibility for free public pre-K. Language would be revised to state that a district must submit required documentation to the Texas Department of Agriculture (TDA) to qualify a student for the Nation School Lunch Program (NSLP) and code an eligible pre-K student as economically disadvantaged for state compensatory education funding. Examples in section 7.6.1 would be updated.

#### *Section 8, Gifted/Talented*

TEC, Chapter 29, Subchapter A, establishes parameters for non-traditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for gifted/talented to account for attendance and funding.

Language regarding enrollment and withdrawal procedures and examples to align with TEDS would be updated.

#### *Section 9, Pregnancy-Related Services (PRS)*

TEC, Chapter 48, including §48.104, authorizes funding under certain circumstances for students who are pregnant. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for PRS to account for attendance and funding.

Language would be revised to state that Student Detail Reports must include a PRS indicator for all students served in the PRS

program and eligible for state funding. Language regarding test administration procedures when a student is in a compensatory education home instruction (CEHI) program setting would be clarified.

#### *Section 10, Alternative Education Programs (AEPS) and Disciplinary Removals*

TEC, Chapter 48, specifically §48.270, establishes the requirements for violation of presenting reports that contain false information. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes would implement reporting for audit requirements to account for attendance and funding.

Language would be revised to update TSDS PEIMS reporting elements, to update out of school suspension policies to align with the preferred terminology, and to clarify that TEC, Chapter 37, provides statutory discipline requirements, and the TEDS provides reporting guidelines.

#### *Section 11, Nontraditional Programs*

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for nontraditional programs to account for attendance and funding.

Language would be revised to clarify campus wide school calendar requirements concerning Additional Days School Year (ADSY) and to state that the ADSY waiver follows the same requirements as the missed school day waiver.

#### *Section 12, Virtual, Remote, and Electronic Instruction*

TEC, Chapter 30A, establishes the general parameters for TXVSN. TEC, §30A.153, authorizes funding for TXVSN for the FSP under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for TXVSN to account for attendance and funding.

Revisions would be made to add the expansion of the TXVSN program and course catalog to include Grades 6-12; to outline enrollment, funding eligibility, and successful course completion requirements; to describe expansion of TXVSN online schools (OLS) to Grades 3-8 and 9-12; and to specify that student enrollment in TXVSN courses or OLS programs does not prevent a district from serving students in special programs like special education, CTE, bilingual/ESL, or PRS, nor from receiving weighted funding if all program requirements are met. Language would be revised to state that a school district or open-enrollment charter school must not require a student to enroll in an electronic course. Clarification would be made regarding remote synchronous instruction and the application for remote homebound or remote conferencing waivers for both general education students and students receiving special education services. Language concerning schools with TXVSN waivers or approved remote or hybrid dropout recovery programs for on campus online courses would be clarified.

#### *Glossary*

Definitions would be updated along with the link to the TSDS PEIMS webpage. A link would be added to the Every Student Succeeds Act (ESSA) webpage.

**FISCAL IMPACT:** Amy Copeland, chief school finance officer and associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand and limit an existing regulation. The proposed changes to the *2025-2026 Student Attendance Accounting Handbook* would amend requirements and provide clarity regarding student attendance accounting procedures. In some instances, the proposed changes would add information, and in some instances, information would be removed.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Copeland has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to continue to inform the public of the existence of annual publications specifying attendance accounting procedures for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposal. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not

require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins June 27, 2025, and ends July 28, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 27, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §7.055(b)(35), which states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by TEC, Chapter 48; TEC, §12.251, which states the definition of adult high school charter school programs; TEC, §25.001, which states that a school district must allow for an active duty member of the armed forces of the United States to be allowed 90 days to provide proof of residency; TEC, §25.0344, which states that a parent serving as a peace officer or service member may request a transfer to a district and campus of their choice; TEC, §25.081, which states that, for each school year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(g), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, which provides purposes for which a school district shall excuse a student from attending school; TEC, §28.02124, which states that a parent may request that a student repeat a course for high school credit; TEC, §29.081, which states that attendance accounting and FSP funding for Optional Flexible School Day Program (OFSDP) participation may be generated through a remote or hybrid dropout recovery education program; TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC, §29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, which states that, subject to the limitation imposed under TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under TEC, Chapter 48, or in accordance with the terms of a charter granted under TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course. TEC, §30A.153(d), authorizes the commissioner to adopt rules necessary to imple-

ment the section, including rules regarding student attendance accounting; TEC, §48.004, which states that the commissioner shall adopt rules, take action, and require reports consistent with TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, which states that average daily attendance (ADA) is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under TEC, §25.081(a), divided by the minimum number of days of instruction. TEC, §48.005(m), authorizes the commissioner to adopt rules necessary to implement the section. Subsections (m-1) and (m-2) address virtual or remote instruction-related funding; TEC, §48.102, which states that for each student in ADA in a special education program under TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student in ADA in a special education program under TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied 2.41; TEC, §48.105, which states that for each student in ADA in a bilingual education or special language program under TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, which states that for each full-time equivalent student in ADA in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a Pathways in Technology Early College High School (P-TECH) school under TEC, §29.556; or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education; TEC, §48.108, which states that for each student in ADA in Kindergarten-Grade 3, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B; TEC, §48.109, which states that for each student in the gifted and talented category, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.07 for each school year or a greater amount provided by appropriation. If by the end of the 12th month after receiving

an allotment for developing a program a district has failed to implement a program, the district must refund the amount of the allotment to the agency within 30 days. Not more than five percent of a district's students in ADA are eligible for funding under this section. If the state funds exceed the amount of state funds appropriated in any year for the programs, the commissioner shall reduce the districts tier one allotment. If funds are less than the total amount appropriated for the school year, the commissioner shall transfer the remainder to any program. After each district has received allotted funds for this program, the State Board of Education may use up to \$500,000 of the funds allocated under this section for other programs; TEC, §48.270, which states that when, in the opinion of the agency's director of school audits, audits or reviews of accounting, enrollment, or other records of a school district reveal deliberate falsification of the records, or violation of the provisions of TEC, Chapter 48, through which the district's share of state funds allocated under the authority of this chapter would be, or has been, illegally increased, the director shall promptly and fully report the fact to the State Board of Education, the state auditor, and the appropriate county attorney, district attorney, or criminal district attorney; and TEC, §49.204, which states that a school district with a local revenue in excess of entitlement may reduce the district's local revenue level by serving nonresident students who transfer to the district and are educated by the district but who are not charged tuition.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§7.055(b)(35), 12.251, 25.001, 25.0344, 25.081, 25.0812, 25.087, 28.02124, 29.081; 29.0822, 30A.153, 48.004, 48.005, 48.102, 48.103, 48.104, 48.105, 48.106, 48.108, 48.109, 48.270, and 49.204.

§129.1025. *Adoption by Reference: Student Attendance Accounting Handbook.*

(a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, §48.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.

(b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2025-2026 [~~2024-2025~~] are described in the official Texas Education Agency (TEA) publication 2025-2026 [~~2024-2025~~] *Student Attendance Accounting Handbook*, which is adopted by this reference as the agency's official rule. A copy of the 2025-2026 [~~2024-2025~~] *Student Attendance Accounting Handbook* is available on the TEA website with information related to financial compliance. The commissioner will amend the 2025-2026 [~~2024-2025~~] *Student Attendance Accounting Handbook* by reference and amend this subsection, as needed.

(c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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

Filed with the Office of the Secretary of State on June 16, 2025.  
TRD-202502020

Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency  
Earliest possible date of adoption: July 27, 2025  
For further information, please call: (512) 463-9526

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**TITLE 22. EXAMINING BOARDS**

**PART 15. TEXAS STATE BOARD OF PHARMACY**

**CHAPTER 291. PHARMACIES**  
**SUBCHAPTER A. ALL CLASSES OF PHARMACIES**

**22 TAC §291.9**

The Texas State Board of Pharmacy proposes amendments to §291.9, concerning Prescription Pick Up Locations. The amendments, if adopted, allow a pharmacist or pharmacy to deliver prescription drugs by means of a contract carrier and certain prescription drugs by use of unmanned aircraft systems.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to improve medication access, delivery choice, and health outcomes for Texas citizens. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do limit an existing regulation;
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas

78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 29, 2025.

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

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

*§291.9. Prescription Pick Up Locations.*

(a) No person, firm, or business establishment may have, participate in, or permit an arrangement, branch, connection or affiliation whereby prescriptions are solicited, collected, picked up, or advertised to be picked up, from or at any location other than a pharmacy which is licensed and in good standing with the board.

(b) A pharmacist or pharmacy by means of its employee or by use of a common or contract carrier [(e.g., U.S. Mail)], at the request of the patient, may:

(1) pick up prescription orders at the:

(A) office or home of the prescriber;

(B) residence or place of employment of the person for whom the prescription was issued; or

(C) hospital or medical care facility in which the patient is receiving treatment; and

(2) deliver prescription drugs to the:

(A) office of the prescriber if the prescription is:

(i) for a dangerous drug; or

(ii) for a single dose of a controlled substance that is for administration to the patient in the prescriber's office;

(B) residence of the person for whom the prescription was issued;

(C) place of employment of the person for whom the prescription was issued, if the person is present to accept delivery; or

(D) hospital or medical care facility in which the patient is receiving treatment.

(c) A pharmacist or pharmacy by use of unmanned aircraft systems (i.e., "drones"), at the request of a patient or patient's agent, may deliver prescription drugs, excluding controlled substances or sterile compounded preparations, to a selected delivery location mutually agreed upon by the patient and the pharmacist using the pharmacist's professional judgment.

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

Filed with the Office of the Secretary of State on June 16, 2025.

TRD-202502030

Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: July 27, 2025

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

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**22 TAC §291.12**

The Texas State Board of Pharmacy proposes amendments to §291.12, concerning Delivery of Prescription Drugs. The amendments, if adopted, allow and specify requirements for delivery of prescription drugs by contract carriers and unmanned aircraft systems.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to improve medication access, delivery choice, and health outcomes for Texas citizens. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

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

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

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

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

(6) The proposed amendments do limit an existing regulation;

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

(8) The proposed amendments would have a de minimis impact on this state's economy.

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 29, 2025.

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

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

*§291.12. Delivery of Prescription Drugs.*

(a) Applicability. This section applies to the delivery of prescription drugs by a pharmacy licensed by the board as a Class A, Class A-S, Class E, or Class E-S pharmacy.

(b) Definitions.

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

(2) Contract carrier--A person or entity who provides to industrial customers, pursuant to the terms of a bilateral agreement, the transportation of property for compensation in the normal course of business.

(c) [(b)] Delivery by common or contract carrier. A pharmacy may deliver prescription drugs by use of a common or contract carrier [(e.g., U.S. Mail)] as provided in §291.9 of this title (relating to Prescription Pick Up Locations) on request of the patient or patient's agent. [Common carrier means a person or entity who holds out to the general public a willingness to provide transportation of property from place to place for compensation in the normal course of business.] A pharmacy that delivers prescription drugs by use of a common or contract carrier providing a same-day courier service is not subject to subsection (c) [(b)] of this section and shall comply with subsection (d) [(e)] of this section.

(1) Standards. The pharmacy shall ensure that all prescription drugs are delivered to the patient or patient's agent in accordance with nationally recognized standards, such as those of the manufacturer or the United States Pharmacopeia. The pharmacy is responsible for any problems in the delivery of a prescription drug by a contract carrier.

(2) Packaging. The pharmacy shall ensure that prescription drugs are packaged in commercially available tamper evident packaging.

(3) Temperature. The pharmacy shall ensure that any prescription drug delivered by a common or contract carrier is packaged in a manner that maintains a temperature range appropriate for the drug. This may include, without limitation, use of temperature tags, time temperature strips, insulated packaging, gel ice packs, or a combination of these as necessary.

(4) Irregularity in delivery. The pharmacy shall provide a method by which a patient or patient's agent can notify the pharmacy as to any irregularity in the delivery of the patient's prescription, to include but not be limited to:

- (A) timeliness of delivery;
  - (B) condition of the prescription drug upon delivery;
- and
- (C) failure to receive the proper prescription drug.

(5) Refusal to deliver. The pharmacy shall refuse to deliver by common or contract carrier a prescription drug which in the professional opinion of the dispensing pharmacist may be clinically compromised by delivery by common or contract carrier.

(d) [(e)] Delivery by pharmacy employee or common or contract carrier providing a same-day courier service. A pharmacy may deliver prescription drugs by means of its employee or a common or contract carrier providing a same-day courier service as provided in §291.9 of this title on request of the patient or patient's agent.

(1) Standards. The pharmacy is responsible for any problems in the delivery of the prescription drug.

(2) Temperature. The prescription drug shall be maintained within the temperature range allowed by the United States Pharmacopeia or recommended by the manufacturer until the delivery has been received by the patient or patient's agent.

(e) Delivery by unmanned aircraft systems (i.e., "drones"). A pharmacy may deliver prescription drugs, excluding controlled substances or sterile compounded preparations, by use of a common or contract carrier providing an unmanned aircraft system delivery service as provided in §291.9 of this title on request of the patient or patient's agent.

(1) Standards. Unmanned aircraft systems shall maintain appropriate federal registration and comply with all state and federal laws and rules. The pharmacy shall ensure that all prescription drugs are delivered to the patient or patient's agent in accordance with nationally recognized standards, such as those of the manufacturer or the United States Pharmacopeia. The pharmacy is responsible for any problems in the delivery of the prescription drug.

(2) The pharmacist-in-charge is responsible for developing written policies and procedures regarding prescription drug delivery in accordance with this subsection to be used by pharmacy personnel to include, but not be limited to, the following:

(A) training pharmacy personnel engaged in preparing and packaging prescription drugs for delivery;

(B) packaging prescription drugs for delivery;

(C) verification of the correct recipient and delivery address;

(D) maintaining the confidentiality of prescription records;

(E) secure transfer of prescription drugs from the pharmacy;

(F) provision of patient counseling;

(G) remediation of errors in delivery or adverse events; and

(H) recordkeeping.

(3) Packaging. The pharmacy shall ensure that prescription drugs are packaged in commercially available tamper evident packaging.

(4) Temperature. The pharmacy shall ensure that any prescription drug delivered by a common or contract carrier providing an unmanned aircraft system delivery service is packaged in a manner that maintains a temperature range appropriate for the drug. This may include, without limitation, use of temperature tags, time temperature strips, insulated packaging, gel ice packs, or a combination of these as necessary.

(5) Records. The pharmacy shall document each change in the chain of custody of a prescription drug, including departure of the prescription drug from the pharmacy, transfer to the person or entity fulfilling delivery, and delivery to the patient.

(6) Confirmation of presence at selected delivery location. The pharmacy shall receive confirmation from the patient or patient's agent that the patient or patient's agent is present at the selected delivery location before unmanned aircraft system delivery is initiated.

(7) Security. The pharmacy must ensure that delivery is made to a reasonably secure location at the selected delivery location that minimizes the opportunity for unauthorized access to prescription drugs and confidential prescription records.

(f) [(d)] All deliveries. A pharmacy that delivers prescription drugs by common or contract carrier, [or] by pharmacy employee or [by a] common or contract carrier providing a same-day courier service, or

by common or contract carrier providing an unmanned aircraft system delivery service shall also comply with the following:

(1) Counseling information. The pharmacy shall comply with the requirements of §291.33(c)(1)(F) of this title (relating to Operational Standards).

(2) Notification of delivery. The pharmacy shall notify the patient or patient's agent of the delivery of a prescription drug.

(3) Compromised delivery. If a pharmacist determines a prescription drug is in any way compromised during delivery, the pharmacy shall replace the drug or arrange for the drug to be replaced, either by promptly delivering a replacement to the patient or by promptly contacting the prescriber to arrange for the drug to be dispensed to the patient by a pharmacy of the patient's or patient's agent's choice.

(4) Records. The pharmacy shall maintain records for two years on the following events:

(A) when a prescription drug was sent and delivered to the patient or patient's agent; and

(B) patient complaints regarding compromised deliveries, which may be documented in the patient profile.

(5) Controlled substances. A pharmacy shall comply with all state and federal laws and rules relating to the delivery of controlled substances.

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

Filed with the Office of the Secretary of State on June 16, 2025.

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Daniel Carroll, Pharm.D.

Executive Director

Texas State Board of Pharmacy

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



## 22 TAC §291.17

The Texas State Board of Pharmacy proposes amendments to §291.17, concerning Inventory Requirements. The amendments, if adopted, remove inventory notarization requirements.

Daniel Carroll, Pharm.D., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Dr. Carroll has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be less restrictive regulations that allow pharmacy staff to spend more time serving the pharmacy's patients. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

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

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

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

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

(6) The proposed amendments do limit an existing regulation;

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

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

Written comments on the amendments may be submitted to Eamon D. Briggs, Deputy General Counsel, Texas State Board of Pharmacy, 1801 Congress Avenue, Suite 13.100, Austin, Texas 78701-1319, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 29, 2025.

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

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

### §291.17. *Inventory Requirements.*

(a) General requirements.

(1) The pharmacist-in-charge shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person(s).

(2) The inventory shall be maintained in a written, typewritten, or printed form. An inventory taken by use of an oral recording device must be promptly transcribed.

(3) The inventory shall be kept in the pharmacy and shall be available for inspection for two years.

(4) The inventory shall be filed separately from all other records.

(5) The inventory shall be in a written, typewritten, or printed form and include all stocks of all controlled substances on hand on the date of the inventory (including any which are out-of-date).

(6) The inventory may be taken either as of the opening of business or as of the close of business on the inventory date.

(7) The inventory record shall indicate whether the inventory is taken as of the opening of business or as of the close of business on the inventory date. If the pharmacy is open 24 hours a day, the inventory record shall indicate the time that the inventory was taken.

(8) The person(s) taking the inventory shall make an exact count or measure of all controlled substances listed in Schedule II.

(9) The person(s) taking the inventory shall make an estimated count or measure of all controlled substances listed in Schedules III, IV, and V, unless the container holds more than 1,000 tablets or capsules in which case, an exact count of the contents must be made.

(10) The inventory of Schedule II controlled substances shall be listed separately from the inventory of Schedules III, IV, and V controlled substances.

(11) If the pharmacy maintains a perpetual inventory of any of the drugs required to be inventoried, the perpetual inventory shall be reconciled on the date of the inventory.

(b) Initial inventory.

(1) A new Class A, Class A-S, Class C, Class C-S, or Class F pharmacy shall take an inventory on the opening day of business. Such inventory shall include all stocks of all controlled substances (including any out-of-date drugs).

(2) In the event the Class A, Class A-S, Class C, Class C-S, or Class F pharmacy commences business with no controlled substances on hand, the pharmacy shall record this fact as the initial inventory.

(3) The initial inventory shall serve as the pharmacy's inventory until the next May 1, or until the pharmacy's regular general physical inventory date, at which time the Class A, Class A-S, Class C, Class C-S, or Class F pharmacy shall take an annual inventory as specified in subsection (c) of this section.

(c) Annual inventory.

(1) A Class A, Class A-S, Class C, Class C-S, or Class F pharmacy shall take an inventory on May 1 of each year, or on the pharmacy's regular general physical inventory date. Such inventory may be taken within four days of the specified inventory date and shall include all stocks of all controlled substances (including out-of-date drugs).

(2) A Class A, Class A-S, Class C, Class C-S, or Class F pharmacy applying for renewal of a pharmacy license shall include as a part of the pharmacy license renewal application a statement attesting that an annual inventory has been conducted, the date of the inventory, and the name of the person(s) taking the inventory.

(3) The person(s) taking the annual inventory and the pharmacist-in-charge shall indicate the time the inventory was taken (as specified in subsection (a)(7) of this section) and shall sign and date the inventory with the date the inventory was taken. ~~[The signature of the pharmacist-in-charge and the date of the inventory shall be notarized within three days after the day the inventory is completed, excluding Saturdays, Sundays, and federal holidays.]~~

(d) Change of ownership.

(1) A Class A, Class A-S, Class C, Class C-S, or Class F pharmacy that changes ownership shall take an inventory on the date of the change of ownership. Such inventory shall include all stocks of all controlled substances (including any out-of-date drugs).

(2) Such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer.

(3) Transfer of any controlled substances listed in Schedule II shall require the use of official DEA order forms (Form 222).

(4) The person(s) taking the inventory and the pharmacist-in-charge shall indicate the time the inventory was taken (as specified in subsection (a)(7) of this section) and shall sign and date the inventory with the date the inventory was taken. ~~[The signature of the pharmacist-in-charge and the date of the inventory shall be notarized within three days after the day the inventory is completed, excluding Saturdays, Sundays, and federal holidays.]~~

(e) Closed pharmacies.

(1) The pharmacist-in-charge of a Class A, Class A-S, Class C, Class C-S, or Class F pharmacy that ceases to operate as a pharmacy shall forward to the board, within 10 days of the cessation of operation, a statement attesting that an inventory of all controlled substances on hand has been conducted, the date of closing, and a statement attesting the manner by which the dangerous drugs and controlled substances possessed by such pharmacy were transferred or disposed.

(2) The person(s) taking the inventory and the pharmacist-in-charge shall indicate the time the inventory was taken (as specified in subsection (a)(7) of this section) and shall sign and date the inventory with the date the inventory was taken. ~~[The signature of the pharmacist-in-charge and the date of the inventory shall be notarized within three days after the day the inventory is completed, excluding Saturdays, Sundays, and federal holidays.]~~

(f) Additional requirements for Class C and Class C-S pharmacies.

(1) Perpetual inventory.

(A) A Class C or Class C-S pharmacy shall maintain a perpetual inventory of all Schedule II controlled substances.

(B) The perpetual inventory shall be reconciled on the date of the annual inventory.

(2) Annual inventory. The inventory of the Class C or Class C-S pharmacy shall be maintained in the pharmacy. The inventory shall include all controlled substances located in the pharmacy and, if applicable, all controlled substances located in other departments within the institution. If an inventory is conducted in other departments within the institution, the inventory of the pharmacy shall be listed separately, as follows:

(A) the inventory of drugs on hand in the pharmacy shall be listed separately from the inventory of drugs on hand in the other areas of the institution; and

(B) the inventory of drugs on hand in all other departments shall be identified by department.

(g) Change of pharmacist-in-charge of a pharmacy.

(1) On the date of the change of the pharmacist-in-charge of a Class A, Class A-S, Class C, Class C-S, or Class F pharmacy, an inventory shall be taken. Such inventory shall include all stocks of all controlled substances (including any out-of-date drugs).

(2) This inventory shall constitute, for the purpose of this section, the closing inventory of the departing pharmacist-in-charge and the beginning inventory of the incoming pharmacist-in-charge.

(3) If the departing and the incoming pharmacists-in-charge are unable to conduct the inventory together, a closing inventory shall be conducted by the departing pharmacist-in-charge and a new and separate beginning inventory shall be conducted by the incoming pharmacist-in-charge.

(4) The incoming pharmacist-in-charge shall be responsible for notifying the board within 10 days, as specified in §291.3 of this title (relating to Required Notifications), that a change of pharmacist-in-charge has occurred.

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

Filed with the Office of the Secretary of State on June 16, 2025.  
TRD-202502032



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER G. CIGARETTE TAX

##### 34 TAC §3.102

The Comptroller of Public Accounts proposes amendment to §3.102, concerning applications, definitions, permits, and reports. The comptroller amends this section to address age requirements for obtaining a cigarette permit.

The comptroller amends subsection (f), to add that the comptroller will not issue a permit to an applicant that is under the age of 21.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute and Comptroller practice. There would be no significant economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

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

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

The amendment implements Tax Code, Chapter 154 (Cigarette Tax) and Health and Safety Code, Chapter 161 (Public Health Provisions).

§3.102. *Applications, Definitions, Permits, and Reports.*

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

(1) Agency--The Comptroller of Public Accounts of the State of Texas or the comptroller's duly authorized agents and employees.

(2) Bonded agent--A person in this state who is a third-party agent of a manufacturer outside this state and who receives cigarettes in interstate commerce and stores the cigarettes for distribution or delivery to distributors under orders from the manufacturer.

(3) Cigar--A roll of fermented tobacco that is wrapped in tobacco and the main stream of smoke from which produces an alkaline reaction to litmus paper.

(4) Cigarette--A roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) that is not a cigar.

(5) Commercial business location--The entire premises occupied by a permit applicant or a person required to hold a permit under Tax Code, Chapter 154 (Cigarette Tax). A commercial business location cannot include a residence or a unit in a public storage facility.

(6) Consumer--A person who possesses cigarettes for personal consumption.

(7) Distributor--A person who:

(A) is authorized to purchase, for the purpose of making a first sale in this state, cigarettes in unstamped packages from manufacturers who distribute cigarettes in this state and to stamp cigarette packages;

(B) ships, transports, imports into this state, acquires, or possesses cigarettes and makes a first sale of the cigarettes in this state;

(C) manufactures or produces cigarettes; or

(D) is an importer.

(8) Engage in business--A person engaging either directly or through a representative, in any of the following activities:

(A) selling cigarettes in or into this state;

(B) using a warehouse or another location to store cigarettes; or

(C) otherwise conducting through a physical presence cigarette-related business in this state.

(9) Export warehouse--A person in this state who receives cigarettes in unstamped packages from manufacturers and stores the cigarettes for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(10) First sale--Except as otherwise provided in this section;

(A) the first transfer of possession in connection with a purchase, sale, or any exchange for value of cigarettes in or into this state, which includes:

(i) the sale of cigarettes by:

(ii) a distributor in or outside this state to a distributor, wholesaler, or retailer in this state; and

(iii) a manufacturer in this state who transfers the tobacco products in this state; and

(iv) does not include:

(I) the sale of cigarettes by a manufacturer outside this state to a distributor in this state;

(II) the transfer of cigarettes from a manufacturer outside this state to a bonded agent in this state;

(III) the sale of cigarettes by a manufacturer, bonded agent, distributor, or importer to an interstate warehouse in this state; or

(IV) the transfer of cigarettes by an interstate warehouse in an interstate warehouse transaction;

(B) the first use or consumption of cigarettes in this state; or

(C) the loss of cigarettes in this state whether through negligence, theft, or other unaccountable loss. First sale also includes giving away cigarettes as promotional items.

(11) Importer--A person who ships, transports, or imports into this state cigarettes manufactured or produced outside the United States for the purpose of making a first sale in this state.

(12) Interstate warehouse--A person in this state who receives unstamped cigarettes from a manufacturer, bonded agent, distributor, or importer and stores the cigarettes exclusively for an interstate warehouse transaction.

(13) Interstate warehouse transaction--The sale or delivery of cigarettes from an interstate warehouse to a person located in another state who is licensed or permitted by the other state to affix that state's cigarette stamps or otherwise pay the state's excise tax on cigarettes as required.

(14) Manufacturer--A person who manufactures, fabricates, or assembles cigarettes, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes, for sale or distribution.

(15) Manufacturer's representative--A person employed by a manufacturer to sell or distribute the manufacturer's stamped cigarette packages.

(16) Permit--Any agency license, certificate, approval, registration, or similar form of permission required by law to buy, sell, stamp, store, transport, or distribute cigarettes. A permit includes a vending machine decal.

(17) Permit holder--A person who has been issued a bonded agent, interstate warehouse, distributor, importer, export warehouse, manufacturer, wholesaler, or retailer permit under Tax Code, §154.101 (Permits).

(18) Place of business--

(A) a commercial business location where cigarettes are sold;

(B) a commercial business location where cigarettes are kept for sale or consumption or otherwise stored;

(C) a vehicle from which cigarettes are sold; or

(D) a vending machine from which cigarettes are sold.

(19) Retailer--A person who engages in the business of selling cigarettes to consumers. The owner of a cigarette vending machine is a retailer.

(20) Stamp--Includes only a stamp that:

(A) is printed, manufactured, or made by authority of the comptroller;

(B) shows payment of the tax imposed by Tax Code, §154.021 (Imposition and Rate of Tax);

(C) is consecutively numbered and uniquely identifiable as a Texas cigarette tax stamp; and

(D) is not damaged beyond recognition as a valid Texas tax stamp.

(21) Wholesaler--A person, including a manufacturer's representative, who sells or distributes cigarettes in this state for resale. A wholesaler is not a distributor.

(b) Permits required.

(1) To engage in business as a distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, interstate warehouse, or retailer, a person must apply for and receive the applicable permit from the comptroller. The permits are not transferable. A new application is required if a change in ownership occurs (sole ownership to partnership, sole ownership to corporation, partnership to limited liability company, etc.). Each legal entity must apply for its own permit(s). All permits issued to a legal entity will have the same taxpayer number. Tax Code, §154.501(a)(2) (Penalties), provides that a person who engages in the business of a bonded agent, interstate warehouse, distributor, importer, manufacturer, export warehouse, wholesaler, or retailer without a valid permit is subject to a penalty of not more than \$2,000 for each violation. Tax Code, §154.501(c), provides that a separate offense is committed each day on which a violation occurs.

(2) Each distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, interstate warehouse, or retailer shall obtain a permit for each place of business owned or operated by the distributor, importer, manufacturer, wholesaler, bonded agent, interstate warehouse, or retailer. A new permit shall be required for each physical change in the location of the place of business. Correction or change of street listing by a city, state, or U.S. Post Office shall not require a new permit so long as the physical location remains unchanged.

(3) Permits are valid for one place of business at the location shown on the permit. If the location houses more than one place of business under common ownership, an additional permit is required for each separate place of business. For example, each retailer who operates a cigarette vending machine shall place a retailer's permit on the machine.

(4) A vehicle from which cigarettes are sold is considered to be a place of business and requires a permit. A motor vehicle permit is issued to a distributor or wholesaler holding a current permit. Vehicle permits are issued bearing a specific motor vehicle identification number and are valid only when physically carried in the vehicle having the corresponding motor vehicle identification number. Vehicle permits may not be moved from one vehicle to another. No cigarette permit is required for a vehicle used only to deliver invoiced cigarettes.

(5) The comptroller may issue a combination permit for cigarettes and tobacco products to a person who is a distributor, importer, manufacturer, wholesaler, bonded agent, interstate warehouse, or retailer as defined by Tax Code, Chapter 154 and Chapter 155 (Cigars and Tobacco Products Tax). A person who receives a combination permit pays only the higher of the two permit fees.

(6) The comptroller will not issue a permit for a residence or a unit in a public storage facility because cigarettes may not be stored at such places.

(7) A permit is not required for a research facility that possesses and only uses cigarettes for experimental purposes.

(8) A person who engages in the business of selling cigarettes for commercial purposes who provides a roll-your-own machine that is available for use by consumers must obtain a manufacturer's, distributor's and a retailer's permit.

(9) The comptroller may not issue a distributor's permit and an interstate warehouse permit to the same location.

(10) A person who engages in the business of importing cigarettes from a foreign country into Texas is required to be permitted as a cigarette distributor.

(c) Sales and purchase requirements for permit holders. Except for retail sales to consumers, cigarettes may only be sold or distributed by and between permit holders as provided by this section. A permit holder may engage in the following business activities:

(1) A manufacturer outside this state who is not a permitted distributor may sell cigarettes only to a permitted distributor or interstate warehouse.

(2) A permitted distributor may sell cigarettes only to a permitted distributor, wholesaler, or retailer. A permitted distributor who manufactures or produces cigarettes in this state may sell those cigarettes to a permitted interstate warehouse.

(3) A permitted importer may sell cigarettes only to a permitted interstate warehouse, distributor, wholesaler, or retailer.

(4) A permitted wholesaler may sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(5) A permitted retailer may sell cigarettes only to the consumer and may purchase cigarettes only from a permitted distributor or wholesaler.

(6) A permitted export warehouse may sell cigarettes only to persons authorized to sell or consume unstamped cigarettes outside the United States.

(7) A manufacturer's representative may sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(8) A permitted interstate warehouse may sell cigarettes only in an interstate warehouse transaction. An interstate warehouse may not make an intrastate sale of cigarettes without written authorization by the comptroller.

(d) Permit period.

(1) Bonded agent, interstate warehouse, distributor, importer, manufacturer, wholesaler, and motor vehicle permits expire on the last day of February of each year.

(2) Retailer permits expire on the last day of May of each even-numbered year.

(e) Permit fees. An application for a bonded agent, interstate warehouse, distributor, manufacturer, wholesaler, motor vehicle, or retailer permit must be accompanied by the appropriate fee. The permit fee payment must be made in cash, by money order, check, or credit card.

(1) The permit fee for a bonded agent is \$300.

(2) The permit fee for an interstate warehouse is \$300.

(3) The permit fee for a distributor is \$300.

(4) The permit fee for a manufacturer with representation in Texas is \$300.

(5) The permit fee for a wholesaler is \$200.

(6) The permit fee for a motor vehicle is \$15.

(7) The permit fee for a retailer permit is \$180.

(8) No permit fee is required to obtain an importer or an export warehouse permit.

(9) A \$50 fee is assessed for failure to obtain a permit in a timely manner.

(10) The comptroller prorates the permit fee for new permits according to the number of months remaining in the permit period. If a permit will expire within three months of the date of issuance, the comptroller may collect the prorated permit fee for the current permit period and the total permit fee for the next permit period.

(11) A person issued a permit for a place of business that permanently closes before the permit expiration date is not entitled to a refund of the permit fee.

(f) Permit issuance, denial, suspension, or revocation.

(1) The comptroller shall issue a permit to a distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, interstate warehouse or retailer if the comptroller receives an application and any applicable fee, believes that the applicant has complied with Tax Code, §154.101, and determines that issuing the permit will not jeopardize the administration and enforcement of Tax Code, Chapter 154.

(2) If the comptroller determines that an existing permit should be suspended or revoked or a permit should be denied because of the applicant's prior conviction of a crime and the relationship of the crime to the license, the comptroller will notify the applicant or permittee in writing by personal service or by mail of the reasons for the denial, suspension, revocation, or disqualification, the review procedure provided by Occupations Code, §53.052 (Judicial Review), and the earliest date that the permit holder or applicant may appeal the denial, suspension, revocation, or disqualification.

(3) The comptroller will not issue a permit for an applicant who is under the age of 21.

(g) Reports.

(1) Manufacturer reports must be filed on or before the 25th day of each month for transactions that occurred during the preceding month.

(2) All cigarette distributor and wholesaler reports and payments must be filed on or before the 25th day of each month for transactions that occurred during the preceding month.

(3) All wholesaler and distributor reports of sales to retailers required by the comptroller under Tax Code, §154.212 (Reports by Wholesalers and Distributors of Cigarettes), shall be filed in accordance with §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

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

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

### 34 TAC §3.344

The Comptroller of Public Accounts proposes amendments to §3.344, concerning telecommunications services.

The comptroller amends subsection (h)(4) related to how service providers determine local tax for mobile telecommunication services by adding language to conform to Tax Code, §151.061 (Sourcing of Charges for Mobile Telecommunication Services). The comptroller further amends subsection (h)(4) to memorialize policy outlined in STAR Accession No. 202410001M (October 2, 2024).

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by providing guidance to taxpayers and auditors in determining if a taxpayer has exercised due diligence related to sourcing of local taxes for mobile telecommunications. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant economic cost to the public.

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

These amendments are proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), 321.306 (Comptroller's Rules), 322.203 (Comptroller's Rules), and 323.306 (Comptroller's Rules) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation), as well as taxes, fees, and other charges that the comptroller administers under other law.

The proposal implements Tax Code, §151.061 (Sourcing of Charges for Mobile Telecommunication Services).

#### §3.344. Telecommunications Services.

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

(1) Basic local exchange telephone service--The provision by a telephone company of each access line and each dial tone to a fixed location for sending and receiving telecommunications in the telephone company's local exchange network. Services are considered basic irrespective of whether the customer has access to a private or party line, or whether the customer has limited or unlimited access. The term does not include international, interstate, or intrastate long-distance telecommunications services or mobile telecommunications services.

(2) Internet--Collectively the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to the protocol, to communicate information of all kinds by wire or radio.

(3) Internet access service--A service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. The term does not include telecommunications services. See §3.366 of this title (relating to Internet Access Services).

(4) Interstate long-distance telecommunication service--A telecommunication service that originates in one state, crosses state lines, and terminates in another state.

(5) Intrastate long-distance telecommunications service--A telecommunication service that originates and terminates within one state, but crosses the boundaries on subdivisions or jurisdictions within the state.

(6) Mobile telecommunications service--The provision of a commercial mobile radio service, as defined in 47 C.F.R. 20.3 of the Federal Communications Commission's (FCC) regulations in effect on June 1, 1999 under the Mobile Telecommunications Sourcing Act (4 U.S.C. §§116-126). The term includes cellular telecommunications services, personal communications services (PCS), specialized mobile radio services, wireless voice over Internet protocol services, and paging services. The term does not include telephone prepaid calling cards or air-ground radio telephone services as defined in 47 C.F.R. 22.99 of FCC regulations in effect on June 1, 1999.

(7) Pay telephone coin sent--Telecommunications service paid for by the insertion of coins into a coin-operated telephone.

(8) Place of primary use--The physical street address that is representative of where a customer primarily uses a mobile telecommunications service. That location must be either the customer's residential street address or the customer's primary business street address that is within the licensed service area of the service provider. The individual or entity that contracts with the service provider is the customer. If the individual or entity that contracts with the service provider is not the end user, then the physical street address where the end user primarily uses the service determines the customer's place of primary use. For example, a business owner who is located in Austin, Texas establishes mobile telecommunication service accounts for employees who are located in other cities. One employee does business from his home in Dallas, Texas. Two other employees work at an office that is located in Houston, Texas. Another employee works at an office that is located in New Orleans, Louisiana. The home street address of the employee in Dallas is the place of primary use for that cellular phone account. The place of primary use for the two Houston employees is the street address of the Houston office. The place of primary use for the employee in Louisiana is the street address of the New Orleans office.

(9) Prepaid telecommunications service--A wireless or wire telecommunications service for which the provider requires a

customer to prepay the full amount prior to provision of the service. The term does not include the sale or use of a telephone prepaid calling card as defined in paragraph (15) of this subsection. A card, pin number, access code or similar device that allows a user to access only a specific network, or that is intended for use with a specific user account or device (e.g., to add more minutes to an existing account) is a prepaid telecommunications service and is taxed as the sale of a telecommunications service. Local sales tax is collected as explained in subsection (h) of this section.

(10) Private communication service--A telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(A) As it relates to private communication service, the term "communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(B) As it relates to private communication service, the term "customer channel termination point" means the location where the customer either inputs or receives the communications.

(11) Seller--Any person who sells telecommunications services including a hotel, motel, owner or lessor of an office, residential building or development that contracts and pays for telecommunications services for resale to guests or tenants.

(12) Taxable service--A telecommunications service or other taxable service listed in Tax Code, §151.0101.

(13) Telecommunications services--The electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data, or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, Voice over Internet Protocol (VoIP), or any other method now in existence or that may be devised, including but not limited to long-distance telephone service. The term includes mobile telecommunications services and prepaid telecommunications services. The term does not include:

(A) the storage of data or other information for subsequent retrieval or the processing, or reception and processing, of data or information intended to change its form or content;

(B) the sale or use of a telephone prepaid calling card;

(C) Internet access service; or

(D) pay telephone coin sent.

(14) Telephone company--A person who owns or operates a telephone line or telephone in this state and charges for its use.

(15) Telephone prepaid calling card--A card or other item, including an access code, that represents the right to access telecommunications services, other than prepaid telecommunications services as defined in paragraph (9) of this subsection, through multiple devices, regardless of the network providing direct service to the device used, for which payment is made in incremental amounts and before the call or transmission is initiated. For example, a calling card that allows a user to access a long distance telecommunications network for the purpose of making international calls through a pay phone is a telephone prepaid calling card. The sale of a telephone prepaid calling card is taxed as the sale of tangible personal property.

(16) Voice over Internet Protocol (VoIP)--A telecommunication service where a phone call is transmitted over a data network.

The term "Internet Protocol" is a catchall phrase for the protocols and technologies of encoding a voice call that allow the voice call to be slotted in between data on a data network, including the Internet, a company's Intranet, or any other type of data network.

(b) Taxable telecommunications services. The total amount charged for a taxable telecommunications service is subject to sales tax. Sales tax is due on a charge for the following:

(1) basic local exchange telephone services;

(2) enhanced services such as metro service, extended area service, multiline hunting, and PBX trunk;

(3) auxiliary services such as call waiting and call forwarding;

(4) intrastate long-distance telecommunications services;

(5) interstate long-distance telecommunications services that are both originated from, and billed to, a telephone number or billing or service address within Texas such that if a call originates in Texas and is billed to a Texas service address, the charge is taxable even if the invoice, statement, or other demand for payment is sent to an address in another state;

(6) mobile telecommunications services for which the place of primary use is located in Texas;

(7) telegraph services that are both originated from, and billed to, a person within Texas;

(8) a telecommunications service paid for by the insertion of tokens, credit or debit card into a coin-operated telephone located in Texas;

(9) subject to subsection (e) of this section, the lease, rental, or other charges for telecommunication equipment including separately stated installation charges. Separately stated charges for labor to install wiring will not be taxable if the wiring is installed in new structures or residences in such manner as to become a part of the realty. Separately stated charges for labor to install wiring in existing nonresidential real property are taxable. See §3.291 and §3.357 of this title (relating to Contractors; Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance) for additional information. If charges for the installation of wiring and charges for the equipment are not separated, the total charge will be treated as a sale and installation of tangible personal property. Equipment sold by a telecommunications service provider is subject to sales or use tax and is not taxed as part of the telecommunications service if the service provider separately invoices the sale of the equipment. The sale of equipment is not separately invoiced if it is identified on the same bill, receipt or invoice as the sale of the telecommunications service, even if it is identified as a separate line item on the same bill, receipt, or invoice;

(10) installation of telecommunications services, including service connection fees;

(11) private communication services. Taxable receipts include the channel termination charge imposed at each channel termination point within this state, the total channel mileage charges imposed between channel termination points or relay points within this state, and an apportionment of the interoffice channel mileage charge that crosses the state border. An apportionment on the basis of the ratio of the miles between the last channel termination point in Texas and the state border to the total miles between that channel termination point and the next channel termination point in the route will be accepted. If there is a single charge for a private communication service in which the customer has channel termination points both inside and outside of Texas, the apportionment can also be determined by dividing the num-

ber of customer channel termination points in Texas by the total number of customer channel termination points to establish the percentage of the charge subject to state sales tax for Texas. Other apportionment methods may be used by the seller if first approved in writing by the comptroller;

(12) charges that are passed through to a purchaser for federal, state, or local taxes or fees that are imposed on the seller of the telecommunications service rather than on the purchaser. Such charges are a cost or expense of the seller and are included in the total price subject to sales tax; and

(13) prepaid wireless telecommunications services as defined by subsection (a)(9) of this section when the purchase is made in person at a Texas business or is made by telephone or the Internet and the purchaser's primary business address or residential address is in Texas.

(c) Nontaxable or exempt charges. Sales tax is not due on charges for:

(1) interstate long-distance telecommunications services that are not both originated from, and billed to, a telephone number or billing or service address within Texas. Records must clearly distinguish between taxable and exempt long-distance services;

(2) broadcasts by commercial radio or television stations licensed or regulated by the FCC. See §3.313 of this title (relating to Cable Television Service and Bundle Cable Service) for the tax status of cable television services;

(3) telecommunications services purchased for resale;

(4) telegraph services that are not both originated from and billed to a person within Texas;

(5) mobile telecommunications services for which the place of primary use is located outside of Texas;

(6) charges for federal, state, or local taxes or fees that are imposed on the purchaser rather than on the seller of the telecommunications service. For example, no sales tax is due on a separately stated charge for federal excise tax or for 9-1-1 Emergency Service Fee and 9-1-1 Equalization Surcharge because these taxes or fees are imposed on the purchaser and are not a cost of doing business of the seller; and

(7) telecommunications services exclusively provided or used for the navigation of machinery and equipment exclusively used or employed on a farm or ranch in the building or maintaining of roads or water facilities or in the production of:

(A) food for human consumption;

(B) grass;

(C) feed for animal life; or

(D) other agricultural products to be sold in the regular course of business.

(E) The purchaser must be an agricultural registrant and provide the seller with an agricultural exemption certificate.

(F) This paragraph is effective September 1, 2015, and applies to telecommunication services provided after this date.

(d) Billing and records requirements. If any nontaxable charges are combined with and not separately stated from taxable telecommunications service charges on the purchaser's bill or invoice from a provider of telecommunications services, the combined charge is subject to tax unless the service provider can identify the portion of the charges that are nontaxable through the provider's books and records kept in the regular course of business. If the nontaxable

charges cannot reasonably be identified, the charges from the sale of both nontaxable services and taxable telecommunications services are attributable to taxable telecommunications services. The provider of telecommunications services has the burden of proving nontaxable charges.

(e) Resale of tangible personal property. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(1) Transfer of tangible personal property to the care, custody and control of the purchaser. A telecommunications service provider may claim a resale exemption on the purchase of tangible personal property that is transferred by the telecommunications service provider to the care, custody, and control of the purchaser. A telecommunications service provider must collect sales tax on charges for such items.

(2) Wireless voice communication devices. A person may claim a resale exemption on the purchase of a cell phone or other wireless voice communication device as an integral part of a taxable service, regardless of whether there is a separate charge for the wireless voice communication device or whether the purchaser is the provider of the taxable telecommunications service, if payment for the service is a condition for receiving the wireless voice communication device. For example, if a person signs a contract for the purchase of telecommunications services at the location of a retailer and the retailer sells the person a cell phone as a condition of entering the contract for the telecommunications services that will be provided by someone other than the retailer, the retailer can purchase the cell phone tax free with a properly completed resale certificate.

(f) Resale of a telecommunications service. See §3.285 of this title.

(1) Sales tax is not due on the charge by one telephone company to another for providing access to a local exchange network. The telecommunications service provider must collect sales tax from the final purchaser on the total charge for the taxable service including the charge for access.

(2) A telecommunications service may be purchased tax free for resale if resold by the purchaser as an integral part of a taxable service. The purchaser must give the service provider a properly completed resale certificate to purchase the telecommunications service tax free for resale. A telecommunications service is an integral part of a taxable service if the telecommunications service is essential to the performance of the taxable service and without which the taxable service could not be rendered. For example, an Internet access service provider (ISP) may give a resale certificate when purchasing the dedicated dial-up line services to be used by the ISP's customers. However, the ISP must pay sales tax when purchasing its own personal or business use of telecommunications services such as charges for its office phone lines, mobile telecommunications services for its traveling salespersons, or for a customer service call-center.

(3) A mobile telecommunications service provider may purchase roaming services from another mobile telecommunications service provider tax free for resale to its customers that are using the roaming services. For example, an out-of-state mobile telecommunications service provider purchases roaming services in Texas for resale to its out-of-state customers (i.e., persons who have a place of primary use outside Texas). To be exempt from sales tax, the out-of-state mobile telecommunications service provider must give the seller of the roaming services a resale certificate showing either a Texas sales tax permit number or the sales tax permit number or registration number issued by its home state. Effective for billing periods that begin on or after August 1, 2002, these out-of-state customers do not

owe Texas sales tax on roaming charges incurred while visiting or traveling through Texas.

(g) Taxable purchases. Subject to the provisions of subsections (e) and (f) of this section, a telecommunications service provider owes sales or use tax on all tangible personal property and services that are used to provide the service. See §3.346 of this title (relating to Use Tax), §3.281 of this title (relating to Records Required; Information Required), and §3.282 of this title (relating to Auditing Taxpayer Records).

(h) Local tax.

(1) Subject to the provisions of paragraph (2) of this subsection, jurisdictions that impose local sales and use taxes may repeal the local sales tax exemption on telecommunications services. See Publication 96-339 (Jurisdictions That Impose Local Sales Tax on Telecommunications Services) for a list of jurisdictions that impose local taxes on telecommunications services.

(2) Taxable interstate long-distance telecommunications are only subject to state sales tax. Local taxing jurisdictions may not repeal the local sales tax exemption on interstate long-distance telecommunications services.

(3) A seller of taxable telecommunications services, with the exception of mobile telecommunications services as explained in paragraph (4) of this subsection and prepaid wireless telecommunications services as explained in paragraph (6) of this subsection, must collect local sales taxes based on the location from which the telecommunications service originates. If the point of origin cannot be determined, the telecommunications service provider must collect local taxes based on the address to which the telecommunications service is billed.

(4) A seller of mobile telecommunications services must collect local sales taxes based on the place of primary use as defined in subsection (a)(8) of this section and per Tax Code, §151.061. The location from which a mobile telecommunications service originates does not determine whether the service is exempt or is subject to state or local sales tax.

(A) Local sales and use tax may be determined by using an electronic database as described in Tax Code, §151.061(a)(3). If neither the state nor a designated database provider provides an electronic database as described in Tax Code, §151.061(a)(3), then the seller of a mobile telecommunications service shall be held harmless from any tax, charge, or fee liability that is due only as a result of an assignment of a street address to an incorrect taxing jurisdiction.

(B) To be held harmless, the seller of a mobile telecommunications service must have exercised due diligence which includes demonstrating it has:

(i) expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

(ii) implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and

(iii) used all reasonable obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries including the comptroller's online Sales Tax Rate Locator and Publication 96-339, Jurisdictions that Impose Local Sales Tax on Telecommunications Services, or any subsequent or revised versions of the Locator or Publication.

(5) A seller of telephone prepaid calling cards is not selling a telecommunications service and must collect state and local sales or use tax on the sale of the cards in the same manner as sales of other tangible personal property.

(6) A seller of prepaid wireless telecommunications services as defined in subsection (a)(9) of this section must collect local tax based on the business address of the seller when the sale occurs in Texas in person. However, if the sale occurs over the telephone or Internet, tax is due if the primary business address of the purchaser or residential address of the purchaser is in Texas.

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

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Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

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



## SUBCHAPTER JJ. CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCTS REGULATION

### 34 TAC §3.1207

The Comptroller of Public Accounts proposes amendment to §3.1207, concerning e-cigarette retailer permits. The comptroller amends this section to address age requirements for obtaining an e-cigarette permit.

The comptroller amends subsection (f), to add that the comptroller will not issue a permit to an applicant that is under the age of 21.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute and Comptroller practice. There would be no significant economic cost to the public. The proposed amended rule would have no significant fiscal impact on small businesses or rural communities.

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

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

The amendment implements Health and Safety Code, Chapter 147 (E-Cigarette Retailer Permit) and Health and Safety Code, Chapter 161 (Public Health Provisions).

§3.1207. *E-cigarette Retailer Permits.*

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

(1) Commercial business location--The entire premises occupied by a permit applicant or a person required to hold a permit under Health and Safety Code, §147.0051 (E-cigarette Retailer Permit Required).

(2) E-cigarette--An electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device; or a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device described by this paragraph.

(A) The term "e-cigarette" includes:

(i) a device described by this paragraph regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and

(ii) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

(B) The term "e-cigarette" does not include a prescription medical device unrelated to the cessation of smoking.

(3) E-cigarette retailer--A person who engages in the business of selling e-cigarettes to consumers, including a person who sells e-cigarettes to consumers through a marketplace.

(4) Marketplace--A physical or electronic medium through which persons other than the owner or operator of the medium make sales of taxable items. The term includes a store, Internet website, software application, or catalog.

(5) Marketplace provider--A person who owns or operates a marketplace and directly or indirectly processes sales or payments for marketplace sellers.

(6) Marketplace seller--A seller, other than the marketplace provider, who makes a sale of a taxable item through a marketplace.

(7) Permit holder--A person who obtains a permit under Health and Safety Code, §147.0052 (Issuance of Permit).

(8) Place of business--

(A) a commercial business location where e-cigarettes are sold;

(B) a commercial business location where e-cigarettes are kept for sale or consumption or otherwise stored; or

(C) a vehicle from which e-cigarettes are sold.

(b) Inapplicability. This section does not apply to a product that is:

(1) approved by the United States Food and Drug Administration for use in the treatment of nicotine or smoking addiction; and

(2) labeled with a "Drug Facts" panel in accordance with regulations of the United States Food and Drug Administration.

(c) E-cigarette retailer permits.

(1) Requirements.

(A) Beginning January 1, 2022, a person may not engage in business as an e-cigarette retailer in Texas without a permit issued by the comptroller.

(B) An e-cigarette retailer shall obtain a permit for each place of business owned or operated by the e-cigarette retailer.

(C) The comptroller may not issue a permit for a place of business that is a residence or a unit in a public storage facility.

(D) A marketplace seller shall obtain a permit for each marketplace where the seller makes sales of e-cigarettes.

(E) A marketplace provider shall obtain a permit when selling e-cigarettes on behalf of marketplace sellers.

(2) Application.

(A) The applicant shall complete Form AP-242, Texas Application for E-Cigarette Retailer Permit, or any successor to that form promulgated by the comptroller.

(B) The applicant shall accurately complete all information required by the application and provide the comptroller with any additional information the comptroller considers necessary.

(C) Each applicant that applies for a permit to sell e-cigarettes from a vehicle shall provide the make, model, vehicle identification number, registration number, and any other information concerning the vehicle the comptroller requires.

(D) All financial information provided under this section is confidential and not subject to Government Code, Chapter 552 (Public Information).

(d) Permit period; fees.

(1) An initial application and a renewal of an existing permit shall be accompanied by the permit fee.

(A) A permit issued under this section expires on the last day of May of each even-numbered year.

(B) The permit fee for the full two years is \$180. A new applicant permit fee is prorated according to the number of months remaining during the period that the permit is to be in effect.

(C) A person who holds an active cigarette or tobacco product permit under Tax Code, §§154.101 (Permits), 154.102 (Combination Permit) or 155.041 (Permits), for the same business location at the time of an application or renewal of an application, pays a reduced amount of one-half the retailer permit fee.

(2) A person who does not renew an e-cigarette retailer permit by the expiration of a current permit shall pay a late fee of \$50 in addition to the application fee for the permit.

(3) If a permit expires within three months from the date of issuance, the comptroller may collect the prorated permit fee amount for the remaining months of the current period and, with the consent of the permit holder, may collect the permit fee amount for the next permit period and issue permits for both periods.

(4) A person issued a permit for a place of business that permanently closes before the permit expiration date is not entitled to a refund of the permit fee.

(e) Payment for e-cigarette retailer permit.

(1) An applicant for a permit shall remit the required fee with the application.

(2) The payment shall be made in cash or by money order, check, or credit card.

(3) The comptroller may not issue a permit in exchange for a check until after the comptroller receives full payment on the check.

(f) Issuance of an e-cigarette retailer permit.

(1) The comptroller will issue a permit to an applicant if the comptroller:

(A) has received an application and fee;

(B) does not reject the application and deny the permit under subsection (h) of this section; and

(C) determines that issuing the permit will not jeopardize the administration and enforcement of Health and Safety Code, Chapter 147 (E-cigarette Retailer Permits).

(2) The permit will be issued for a designated place of business, except as provided by subsection (h) of this section.

(3) Permits for engaging in business as an e-cigarette retailer are non-assignable.

(4) The comptroller will not issue a permit for an applicant who is under the age of 21.

(g) Display of an e-cigarette retailer permit.

(1) A permit holder shall keep the permit on public display at the place of business for which the permit was issued.

(2) A permit holder who has a permit assigned to a vehicle shall post the permit in a conspicuous place on the vehicle.

(h) Denial of e-cigarette retailer permit. The comptroller may reject an application and deny a permit if the comptroller finds, after notice and opportunity for hearing:

(1) the premises where business will be conducted are not adequate to protect the e-cigarettes; or

(2) the applicant or managing employee, or if the applicant is a corporation, an officer, director, manager, or any stockholder who holds directly or through family or partner relationship 10% or more of the corporation's stock, or, if the applicant is a partnership, a partner or manager:

(A) has failed to disclose any of the information required by subsection (c)(2) of this section; or

(B) has previously violated provisions of Health and Safety Code, Chapter 147.

(i) Summary suspension of permit.

(1) The comptroller may suspend a permit holder's permit without notice or a hearing for the permit holder's failure to comply with this section if the permit holder's continued operation constitutes an immediate and substantial threat.

(2) If the comptroller summarily suspends a permit holder's permit, proceedings for a preliminary hearing before the comptroller or the comptroller's representative must be initiated simultaneously with the summary suspension. The preliminary hearing shall be set for a date

not later than the 10th day after the date of the summary suspension, unless the parties agree to a later date.

(3) To initiate a proceeding to summarily suspend a permit holder's permit, the comptroller shall serve notice on the permit holder informing the permit holder of the right to a preliminary hearing before the comptroller or the comptroller's representative and of the time and place of the preliminary hearing. The notice must be personally served on the permit holder or an officer, employee, or agent of the permit holder or sent by certified or registered mail, return receipt requested, to the permit holder's mailing address as it appears in the comptroller's records. The notice must state the alleged violations that constitute the grounds for summary suspension. The suspension is effective at the time the notice is served. If notice is served in person, the permit holder shall immediately surrender the permit to the comptroller. If notice is served by mail, the permit holder shall immediately return the permit to the comptroller upon receipt of the notice.

(4) At the preliminary hearing, the permit holder must show cause why the permit should not remain suspended pending a final hearing on suspension or revocation.

(5) Government Code, Chapter 2001, (Administrative Procedure), does not apply to a summary suspension under this section.

(6) Subsection (j) of this section governs the hearing for final suspension or revocation of a permit under this section.

(j) Final suspension or revocation of permit.

(1) The comptroller may revoke or suspend a permit holder's permit if the comptroller finds, after notice and the opportunity for a hearing, that the permit holder violated a provision of this section.

(2) If the comptroller intends to suspend or revoke a permit, the comptroller shall provide the permit holder with written notice that includes a statement:

(A) of the reason for the intended revocation or suspension; and

(B) that the permit holder is entitled to a hearing by the comptroller on the proposed suspension or revocation.

(3) The comptroller shall deliver the written notice by personal service or by mail to the permit holder's mailing address as it appears in the comptroller's records. Service by mail is complete when the notice is deposited with the United States Postal Service.

(4) If the permit holder requests a hearing, the comptroller will set a hearing date. The hearing on the revocation or suspension of the permit holder's permit is treated in the same manner as a hearing on the imposition of an administrative penalty for a violation of Health and Safety Code, §161.0901 (Disciplinary Action Against Cigarette, E-Cigarette, and Tobacco Product Retailers) and is governed by §1.21 of this title (relating to Cigarette, E-cigarette, Cigar, and Tobacco Tax Hearings).

(5) A permit holder may appeal the comptroller's decision to a district court in Travis County not later than the 30th day after the date the comptroller's decision becomes final.

(6) A person whose permit is suspended or revoked may not sell, offer for sale, or distribute e-cigarettes from the place of business to which the permit applied until a new permit is granted or the suspension is removed.

(k) Penalties.

(1) A person violates the provisions in this section if the person:

(A) engages in the business of an e-cigarette retailer without a permit; or

(B) is a person who is subject to a provision of this section and who violates the provision.

(2) A person who violates a provision of this section shall pay to the state a penalty set by the comptroller of not more than \$2,000 for each violation.

(3) Each day on which a violation occurs is a separate violation.

(4) The attorney general shall bring suit to recover penalties under this subsection.

(5) A suit under this subsection may be brought in Travis County or another county having jurisdiction.

(l) Failure to have a permit; offense.

(1) A person commits an offense if the person acts as an e-cigarette retailer; and:

(A) receives or possesses e-cigarettes without having a permit;

(B) receives or possesses e-cigarettes without having a permit posted where it can be easily seen by the public; or

(C) sells e-cigarettes without a permit.

(2) An offense under this subsection is a Class A misdemeanor.

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

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Comptroller of Public Accounts

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

