

**Office of the Governor  
Regulatory Compliance Division**

**Guidance to Affected State Agencies on Division’s Policies and Procedures  
Updated December 7, 2021**

Subchapter C, Chapter 57, Texas Occupations Code, establishes and governs the functions of the Regulatory Compliance Division (“division”). The division’s rules at 1 TAC §§5.201-5.213 outline the requirements for submitting proposed rules to the division and detail the division’s practices for reviewing proposed rules. The division provides the following guidance to state agencies regarding its policies and procedures.

**Affected State Agencies**

The following state agencies are subject to the division’s rule review process. The division will not review rules proposed by state agencies not included on this list.

- Texas State Board of Public Accountancy
- Texas Appraiser Licensing and Certification Board
- Texas Board of Architectural Examiners
- Texas Behavioral Health Executive Council
- Texas Board of Chiropractic Examiners
- State Board of Dental Examiners
- Texas Board of Professional Engineers and Land Surveyors
- Finance Commission of Texas
- Texas Commission on Fire Protection
- Texas Funeral Service Commission
- Texas Board of Professional Geoscientists
- Texas Commission on Law Enforcement
- Texas Medical Board
  - Texas State Board of Acupuncture Examiners
  - Texas Board of Medical Radiologic Technology
  - Texas Physician Assistant Board
  - Texas Board of Respiratory Care
- Texas Department of Motor Vehicles
- Texas Board of Nursing
- Texas Board of Occupational Therapy Examiners
- Texas Optometry Board
- Texas State Board of Pharmacy
- Texas Board of Physical Therapy Examiners
- Texas State Board of Plumbing Examiners
- Texas Real Estate Commission
- Council on Sex Offender Treatment
- State Board of Veterinary Medical Examiners

## **Submission of Proposed Rule to Division**

A state agency that is subject to the division's rule review process is required to submit a proposed rule to the division if: (1) the state agency has self-determined that the proposed rule affects market competition; or (2) the division has identified the proposed rule as possibly affecting market competition. As established in Section 57.105(d), Texas Occupations Code, a rule affects market competition if it creates a barrier to market participation in the state or results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.

Proposed rules required to be submitted to the division include new rules, rule amendments, and rule repeals, as well as rules that a state agency proposes to readopt, readopt with amendments, or repeal pursuant to a quadrennial rule review under Section 2001.039, Texas Government Code.

A state agency is not required to submit, and the division will not review, emergency rules.

### *Division-Identified Rules and Pre-Review Information Requests*

If the division identifies a proposed rule as possibly affecting market competition and requires submission of the proposed rule to the division for review, the division will notify the state agency in writing no later than the last day of the public comment period provided for the proposed rule in the *Texas Register*. The division will send this notification to the state agency head, the presiding officer of the governing body of the state agency, and, if different from those individuals, the certifying official named in the *Texas Register* for the proposed rule.

In some circumstances, the potential effects of a proposed rule are not ascertainable from the explanation and text of the proposed rule as published in the *Texas Register*. When deciding whether to direct a state agency to submit a proposed rule to the division for review, the division may request information from the state agency relating to the proposed rule. The division will make such a request in writing to the state agency head and, if different, the certifying official, and the state agency must respond in writing. A state agency is not required to disclose privileged or confidential information in response to a division request. Both division requests for information and state agency responses may be subject to disclosure under the Texas Public Information Act.

### Timing of Submission

A state agency may submit a proposed rule to the division at any time after the proposed rule is published in the *Texas Register*. For a division-identified rule, the state agency may submit the proposed rule at any time after receiving notification from the division.

A state agency may submit to the division a rule undergoing a quadrennial rule review under Section 2001.039, Texas Government Code, after the notice of the rule review is published in the *Texas Register*, if the state agency intends to readopt the rule without amendments. If the state

agency intends to amend or repeal the rule, the state agency should submit the rule to the division after publication of the proposed amendments or repealer in the *Texas Register*.

There is no deadline by which a state agency must submit a proposed rule to the division. However, a state agency may not finally adopt or implement a proposed rule that is required to be submitted to the division until the division has completed its review of the proposed rule and issued a determination letter on the proposed rule.

#### **Timing of Rule Submissions**

Type of Rule	Earliest Time to Submit	Requirement to Submit
Agency self-identified	Proposed rule published in <i>Texas Register</i>	Before the proposed rule may be finally adopted or implemented
Division-identified	Division notification received by agency	
Quadrennial rule review	Notice of rule review published in <i>Texas Register</i> or publication of proposed amendment or repealer	

#### Contents of Submission

A state agency must submit a proposed rule to the division using the rule submission memorandum template, which is available on the division’s website. A state agency may submit a separate rule submission memorandum for each proposed rule or may submit a single rule submission memorandum for multiple related proposed rules. The division may consolidate the review of related rules at its discretion. A state agency should not significantly alter the format of the template and, when answering the included questions, should focus on the specific aspects of the proposed rule that affect market competition.

A state agency should submit to the division as a single, combined PDF: (1) the rule submission memorandum; (2) the proposed rule preamble and text as published in the PDF version of the *Texas Register*; and (3) the language of any amendments to the proposed rule that the state agency intends to adopt. This document will be made available to the public on the division’s website while the proposed rule is under review.

In addition to the above, a state agency must also submit copies of the state agency’s administrative records regarding the proposed rule, which include any documents, communications, or information created, received, or consulted by the state agency that were material to the development of the proposed rule; any information or comments that the state agency received from the public regarding the proposed rule; and any other information that the state agency considers relevant to the division’s review. A state agency is not required to submit any privileged or confidential information to the division. Appendix 1 contains a rule submission checklist for state agencies to use when preparing to submit a proposed rule to the division for review.

All of the documents that comprise a proposed rule submission to the division may be subject to disclosure under the Texas Public Information Act.

### *Request for Expedited Review*

The rule submission memorandum template provides an opportunity for a state agency to request an expedited review of a proposed rule if the state agency can show an extraordinary circumstance or the need to meet a statutory or administrative deadline. If the division grants a request for expedited review of a proposed rule, the division may provide for a shorter public comment period on the proposed rule of no less than 10 days and will work with the state agency to accommodate timing needs for the review's completion.

### Means of Submission

A state agency may send a proposed rule submission to the division by email, mail, or hand delivery at the following addresses.

#### *Email Address*

[RegulatoryCompliance@gov.texas.gov](mailto:RegulatoryCompliance@gov.texas.gov)

#### *Mailing Address*

Office of the Governor  
Attn: Regulatory Compliance Division  
P.O. Box 12428  
Austin, Texas 78711-2428

#### *Delivery Address*

Office of the Governor  
Attn: Regulatory Compliance Division  
State Insurance Building  
1100 San Jacinto  
Austin, Texas 78701

### Confirmation of Submission

The division will provide formal confirmation of the receipt of a proposed rule submission to a state agency in writing within 10 business days. The confirmation will inform the state agency of the period during which the division will accept public comments on the proposed rule, and grant or deny any request for expedited review. The division will also assign a rule review number to each submission and indicate the assigned number in the confirmation (for example, RCD Rule Review #2020-001). The division will send the confirmation to the state agency head, the presiding officer of the governing body of the state agency, and, if different from those individuals, the person who submitted the proposed rule to the division.

## **Review of Proposed Rule by Division**

Pursuant to Section 57.106(a), Texas Occupations Code, the division will conduct a thorough, independent review of each proposed rule submitted to the division to determine if the effect of the proposed rule on market competition is consistent with state policy as established by the state agency's governing statute and whether the proposed rule promotes a clearly articulated and affirmatively expressed policy as established by the legislature to displace competition with government action.

In conducting a review, the division may request additional information from the state agency or require the state agency to conduct an analysis of the possible implications of the proposed rule. The division will make such requests in writing and a state agency must respond in writing. A state agency is not required to disclose privileged or confidential information in response to a division request. Both division requests and state agency responses may be subject to disclosure under the Texas Public Information Act.

The division may also hold public hearings while conducting a review.

### Public Comments

For each review, the division will solicit and consider written public comments. The public comment period will begin once the rule submission memorandum is made available on the division's website, which will be no later than the 10th business day after the division receives the proposed rule submission. Unless the division has approved a state agency's request for expedited review, the public comment period on a proposed rule will run for 30 days. If the division grants a request for expedited review, the public comment period will be no less than 10 days. The division may, but is not required to, consider public comments received outside of the public comment period.

The division will provide notice on its website and through email when the division is accepting public comments on a proposed rule and instructions for submitting public comments. Interested persons may subscribe to receive email notifications on the division's website.

### Supplemental Information

While a proposed rule is under review, a state agency must provide to the division copies of any administrative records regarding the proposed rule created, received, or consulted by the state agency after submission of the proposed rule to the division; any information or comments received from the public following the submission; and any additional amendments that the division intends to adopt that were not included in the original proposed rule submission. Depending on the amount and significance of any supplementation, the division may require an updated rule submission memorandum, re-open or extend the division's public comment period, or restart the 90-day review period. The division encourages early and open communication if a state agency plans to supplement its submission or has concerns about amendments to a proposed rule.

## **Determination on Proposed Rule by Division**

The division will complete its review of a proposed rule and issue a determination letter that either approves or rejects the proposed rule within 90 days. The division will send the determination letter to the state agency head, the presiding officer of the governing body of the state agency, and, if different from those individuals, the person who submitted the proposed rule to the division. The determination letter will also be made available to the public on the division's website.

The division will include in the determination letter an explanation of the division's reasons for approving or rejecting the proposed rule, including a discussion of the division's determination regarding the consistency of the proposed rule with applicable state policy. If the division rejects a proposed rule, the division will include either precise or general instructions for revising the proposed rule to be consistent with applicable state policy. Precise revision instructions will describe specifically how the state agency can amend the proposed rule to be consistent with state policy. General revision instructions will offer guidance on one or more options a state agency may pursue to conform the proposed rule to state policy.

A determination letter issued by the division is not subject to appeal.

### Effect of Approval

If the division issues a determination letter approving a proposed rule, the state agency may finally adopt and implement the proposed rule. The state agency may make technical and nonsubstantive changes to the language of the proposed rule and may make other amendments to the proposed rule that do not affect market competition or that promote market competition.

The division's approval of a proposed rule does not preclude subsequent legal challenges to the rule.

### Effect of Rejection

#### *Precise Instructions for Revision*

If the division issues a determination letter rejecting a proposed rule that provides precise revision instructions, the state agency may finally adopt and implement the proposed rule if it adheres to those instructions. For example, if the division instructs a state agency that eliminating Subsection (a) would render the remaining proposed rule language consistent with state policy, the state agency may finally adopt and implement the proposed rule only if it eliminates Subsection (a). In this scenario, the state agency may still make technical and nonsubstantive changes to the language of the proposed rule, including provisions of the rule affected by the division's precise revision instructions. The state agency may also make other amendments to the proposed rule that do not affect market competition or that promote market competition.

Alternatively, a state agency may decline to revise a proposed rule in accordance with the division's precise instructions and propose different amendments to address the deficiencies

identified by the division. In this case, before the state agency may finally adopt or implement the proposed rule, it must re-propose the rule in the *Texas Register* and resubmit the new proposed rule to the division for review and approval.

### *General Instructions for Revision*

If the division has issued a determination letter rejecting a proposed rule that provides general revision instructions, the state agency may not finally adopt or implement the proposed rule. The state agency must re-propose the rule in the *Texas Register* with amendments to address the deficiencies identified by the division and resubmit the new proposed rule to the division for review and approval prior to adoption or implementation.

### Post-Review Supplementation and Determination Letter Addendum

After the division has issued a determination letter approving a proposed rule or disapproving a proposed rule with precise instructions, a state agency may provide to the division an amendment to the proposed rule that the state agency intends to adopt but did not previously provide to the division, if the amendment does not include a change to the proposed rule that would require the rule to be re-proposed in the *Texas Register*. At its discretion, the division may issue an addendum to the determination letter addressing the supplemental amendment to the proposed rule or require the state agency to resubmit the proposed rule and amendment as a new submission. The division will issue any addendum to the original determination letter not later than the 30th day after the division's receipt of the supplemental amendment.

### **Limitation of Division Review to Public Information**

When assessing whether to require a state agency to submit a proposed rule to the division or conducting a review of a proposed rule, the division may only consider information or communications that are submitted to the division in writing from an identified person and made available to the public, submitted in a public hearing, or generally known to the public.

### **Note on Budget and Policy Division Rule Review Process**

The rule review process described above and conducted by the Regulatory Compliance Division for proposed rules that affect market competition is separate from, and in addition to, the rule review process conducted by the Office of the Governor's Budget and Policy Division. Prior to publication in the *Texas Register*, state agencies must submit all proposed rules to their assigned budget and policy advisor.

## Appendix 1:

### Office of the Governor Regulatory Compliance Division Rule Submission Checklist

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Prior to submitting a proposed rule to the Regulatory Compliance Division, please ensure completion of the following:

- ✓ Fill out the Rule Submission Memorandum Template. A state agency may submit a separate rule submission memorandum for each proposed rule or may submit a single rule submission memorandum for multiple related proposed rules.
- ✓ Attach a copy of the proposed rule as it appeared in the *Texas Register*. Use the PDF format of the *Texas Register* as it appears on the Secretary of State's website. Include only pages related to the rule, including the preamble.
- ✓ Provide copies of the administrative record. This includes any nonprivileged and nonconfidential documents, communications, or information created, received, or consulted by a state agency that are material to the development of the proposed rule, and any information or comments that the state agency received from the public regarding the proposed rule. *The administrative record must be supplemented throughout the review.*

Common administrative record items include: public comments; petitions for rulemaking; documents considered in public hearings; meeting transcripts of significant discussions; data compiled by the state agency; and reports and studies by national organizations, or links to those reports and studies. A state agency may provide links to webpages if administrative record items are already publicly available.

For proposed rules going through the quadrennial rule review process, the rule submission memorandum and/or administrative record should provide the division with enough context to understand why the rule was originally adopted and any significant amendments. However, a state agency is not expected to produce all historical records relating to the rule.

- ✓ Provide a copy of any amendments to the proposed rule. This includes any language that was not included in the version of the proposed rule published in the *Texas Register*. *Additional amendments may be provided throughout the review.*

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In addition to the above items, a state agency may provide any other nonprivileged and nonconfidential information that may be relevant or useful to the division's review of the proposed rule.

*All submitted information may be subject to disclosure under the Texas Public Information Act.*