

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 1. OFFICE OF THE GOVERNOR

CHAPTER 5. GENERAL ADMINISTRATION

SUBCHAPTER C. REGULATORY

COMPLIANCE DIVISION

1 TAC §§5.206, 5.209 - 5.211, 5.213

The Regulatory Compliance Division of the Office of the Governor ("Division") proposes amendments to 1 TAC §§5.206, 5.209, 5.210, and 5.213, concerning the Division's procedure for reviewing a supplemental amendment to a previously reviewed proposed rule. The Division also proposes a new rule at 1 TAC §5.211, concerning the Division's ability to request information from a state agency when deciding whether to direct the state agency to submit a proposed rule for review.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW RULE

The Division is responsible for conducting an independent review of certain state agencies' proposed rules that affect market competition under Texas Occupations Code, Chapter 57, Subchapter C. Pursuant to Texas Occupations Code §57.105(c), during a review of a proposed rule, the Division already requires a state agency to provide to the Division any amendments to the proposed rule that the state agency intends to adopt. The Division reviews those amendments in conjunction with the text of the proposed rule as published in the *Texas Register* and issues a determination letter approving or disapproving the proposed rule, as intended to be amended. It has been brought to the Division's attention that state agencies occasionally need or desire to further amend a proposed rule after the Division has issued a determination letter on the proposed rule. The proposed amendments to 1 TAC Chapter 5, Subchapter C, create a procedure for state agencies to provide to the Division additional amendments to a previously reviewed proposed rule and to be issued an addendum to the determination letter regarding the permissibility of adopting and implementing the additional amendments.

The proposed amendments to §5.206 authorize the provision of an additional amendment to the Division so long as it does not include a change that would require the rule to be re-proposed in the *Texas Register*. At its discretion, the Division may review the additional amendment and issue an addendum to the determination letter addressing the amendment, or it may require the amendment be resubmitted as a new submission. The proposed amendments to §5.209 set out the procedures and timeline for issuing an addendum to a determination letter. The proposed amendments to §5.210 explain how a state agency may adopt and implement a proposed rule if an addendum is issued, and

the proposed amendments to §5.212 require that any addenda issued by the Division be maintained on the Division's website.

Pursuant to Texas Occupation Code §57.106(g), the Division may initiate a review of a proposed rule if the Division has reason to believe that the proposed rule may have an anticompetitive market effect. However, the potential effects of a proposed rule are not always ascertainable from the explanation and text of the proposed rule published in the *Texas Register*. When deciding whether to initiate a review, Texas Occupations Code §57.106(h)(1) allows the Division to consider evidence or communications that are submitted in writing from an identified person. The proposed new §5.111 makes clear that the Division may request information from a state agency to determine whether a proposed rule affects competition. Such information must be made in writing by identified agency personnel and will be made available to the public.

FISCAL NOTE

Erin Bennett, Director, Regulatory Compliance Division, has determined that during each year of the first five years in which the proposed amendments and new rule are in effect, there will be no expected fiscal impact on state and local governments as a result of enforcing or administering the proposed amendments and new rule.

Ms. Bennett does not anticipate any measurable effect on local employment or the local economy as a result of the proposed amendments and new rule.

PUBLIC BENEFIT AND COSTS

Ms. Bennett has also determined that during each year of the first five years in which the proposed amendments and new rule are in effect, the public benefits anticipated as a result of the proposed amendments and new rule are reduced delays in state agency rulemaking due to minor amendments to previously reviewed proposed rules and increased efficiency in the Division's identification of proposed rules that may have an anticompetitive market effect.

Ms. Bennett has determined there are no measurable anticipated economic costs to persons required to comply with the proposed amendments and new rule.

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

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Bennett has determined that during each year of the first five years in which the proposed amendments and new rule are in effect, the proposed amendments and new rule:

- 1) will not create or eliminate a government program;
- 2) will not require the creation of new employee positions or the elimination of existing employee positions;
- 3) will not require an increase or decrease in future legislative appropriations to the Office of the Governor;
- 4) will not require an increase or decrease in fees paid to the Office of the Governor;
- 5) do include the creation of a new regulation;
- 6) will expand, limit, or repeal existing regulations;
- 7) will not increase or decrease the number of individuals subject to the applicability of the rules; and
- 8) will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT

The Division has determined that no private real property interests are affected by the proposed amendments and new rule, and the proposed amendments and new rule do not restrict, limit, or impose a burden on an owner's rights to the owner's private real property that would otherwise exist in the absence of government action. As a result, the proposed amendments and new rule do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

SUBMISSION OF COMMENTS

Written comments regarding the proposed amendments and new rule may be submitted to Erin Bennett, Director, Regulatory Compliance Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711 or by email to RegulatoryCompliance@gov.texas.gov with the subject line "Division Rules." The deadline for receipt of comments is 5:00 p.m., Central Time, on October 2, 2021. All requests for a public hearing on the proposed amendments and new rule, submitted under the Administrative Procedure Act, must be received by the Division no more than fifteen (15) days after the notice of the proposed amendments and new rule has been published in the *Texas Register*.

STATUTORY AUTHORITY

The proposed amendments and new rule are proposed under Texas Occupations Code §57.107, which provides that the Division may adopt rules to carry out its functions under that subchapter.

CROSS REFERENCE TO STATUTE

Subchapter C, Chapter 57, Texas Occupations Code.

No other statutes, articles, or codes are affected by the proposed amendments or new rule.

§5.206. *Supplementation of Proposed Rule Submission.*

(a) While a proposed rule is being reviewed by the division, the state agency must provide to the division:

- (1) 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, including any information or comments received from the public after the submission; and

(2) any amendments to the proposed rule that the state agency intends to adopt and that were not included in the proposed rule submission.

(b) If a state agency supplements a proposed rule submission under subsection (a) of this section with a substantial amount of administrative records or with an amendment that significantly changes the proposed rule in nature or scope, the division may:

(1) require the submission of an updated rule submission memorandum;

(2) reopen [re-~~open~~] or extend the public comment period on the proposed rule; and

(3) deem the supplemented submission a new submission, including restarting the 90-day period for the division to issue a determination letter approving or rejecting the proposed rule.

(c) After the division has issued a determination letter approving a proposed rule or disapproving a proposed rule with precise instructions, the 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*.

(d) If a state agency supplements a proposed rule submission under subsection (c) of this section, the division may, at its discretion, issue an addendum to the determination letter addressing the amendment to the proposed rule, as provided in §5.209(e) of this subchapter, or require the state agency to re-submit the proposed rule and amendment as a new submission under §5.204 of this subchapter.

§5.209. *Determination by Division on Proposed Rule.*

(a) Not later than the 90th day after the postmark date of a state agency's mailed proposed rule submission or the date on which the division receives a state agency's hand delivered or emailed proposed rule submission, the division shall issue a determination letter approving or rejecting the proposed rule.

(b) The division shall 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 shall include in the determination letter instructions for revising the proposed rule to be consistent with applicable state policy. At its discretion, the division may provide either precise or general instructions for revising the proposed rule and must identify its instructions as such.

(c) The division shall send the determination letter to the state agency head, the presiding officer of the governing body of the state agency, and, if different from the state agency head or presiding officer, the agency staff or governing body member who submitted the proposed rule to the division, and shall make the determination letter available to the public on the division's website.

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

(e) The division may issue an addendum to a determination letter approving or rejecting an amendment to the proposed rule provided to the division under §5.206(c) of this subchapter. In issuing an addendum, the division shall follow the procedures in subsections (b) and (c) of this section and must issue the addendum not later than the 30th day after the division's receipt of the amendment.

§5.210. *Final Adoption and Implementation of Proposed Rule.*

(a) A state agency may finally adopt and implement a proposed rule required to be submitted to the division under §5.204 of this subchapter only if:

(1) the division issues a determination letter approving the proposed rule under §5.209 of this subchapter; or

(2) the division issues a determination letter rejecting the proposed rule under §5.209 of this subchapter with precise instructions for the revision of the proposed rule and the state agency revises the proposed rule according to the division's instructions.

(b) If an addendum to a determination letter is issued under §5.209(e) of this subchapter, the state agency may finally adopt and implement the proposed rule, as amended, if:

(1) the division issues an addendum approving the amendment; or

(2) the division issues an addendum rejecting the amendment with precise instructions for revision and the state agency revises the proposed rule, as amended, according to the division's instructions.

(c) ~~[(b)]~~ In adopting a proposed rule pursuant to ~~[subsection (a) of]~~ this section, a state agency may make technical and nonsubstantive changes to the language of the proposed rule and any amendments to the proposed rule reviewed by the division. For purposes of ~~subsections [subsection] (a)(2) and (b)(2)~~ of this section, a state agency may also make technical and nonsubstantive changes to the proposed rule when incorporating the division's precise instructions.

(d) ~~[(e)]~~ A rule finally adopted and implemented in accordance with subsection (a)(2) or (b)(2) of this section is deemed to have been approved by the division for purposes of Section 57.106(e) of the Texas Occupations Code.

§5.211. Division Information Requests.

When deciding whether to direct a state agency to submit a proposed rule to the division under §5.204(a)(2) of this subchapter, the division may request information from the state agency relating to the proposed rule. Any information provided in response to such a request must be submitted in writing from an identified agency staff or governing body member and will be made available to the public by the division.

§5.213. Division Website.

The division shall maintain a website on which the division makes available to the public:

(1) the rule submission memorandum for each proposed rule that is currently under review by the division;

(2) the deadline and instructions for submitting public comments on each proposed rule that is currently under review by the division;

(3) all determination letters issued by the division, including any addenda to determination letters issued by the division;

(4) a means through which any person may sign up to be notified when the division receives a proposed rule submission or issues a determination letter on any proposed rule; and

(5) a means through which any person may request publicly available documents not maintained on the division's website.

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 August 17, 2021.

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Erin Bennett

Director, Regulatory Compliance Division

Office of the Governor

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For further information, please call: (512) 463-8500

