

**Office of the Governor  
Regulatory Compliance Division**

**Guidance to Affected State Agencies on Division's Policies and Procedures  
November 18, 2019**

The Regulatory Compliance Division provides the following guidance to state agencies regarding the division's policies and procedures.

**Affected State Agencies**

Only the following state agencies are required to submit proposed rules to the Regulatory Compliance Division.

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 required to submit proposed rules to the Regulatory Compliance Division must submit to the division, before final adoption, any proposed rule that (1) the state agency has determined

affects market competition relating to a business, occupation, or profession for which the state agency issues a license; or (2) the division has identified as possibly affecting market competition relating to a business, occupation, or profession for which the state agency issues a license. A rule affects market competition if it would create a barrier to market participation in the state or result in higher prices or reduced competition for a product or service provided by or to a license holder in the state.

A state agency is required to submit to the division before final adoption all proposed rules affecting market competition, including new rules, rule changes, rule repeals, and rules that the agency proposes to readopt or repeal after a review under Section 2001.039, Texas Government Code.

#### Timing of Submission and Notification

A state agency may submit a proposed rule to the division beginning on the date that the rule is published in the *Texas Register*.

There is no deadline by which a state agency must submit a proposed rule to the division, but the state agency must obtain the approval of the division before finally adopting a rule that the state agency has determined affects market competition or that the division has identified as possibly affecting market competition.

If the division identifies a proposed rule for submission to the division, the division will notify the state agency head and the presiding officer of the governing body of the state agency in writing that the rule is subject to division review not later than the last day of the public comment period provided for the rule in the *Texas Register*.

#### Content of Submission

A state agency must submit a proposed rule to the division using the rule submission memorandum template prescribed by the division. The state agency's rule submission memorandum will be made available to the public on the division's webpage while the rule is under the division's review.

In addition to the rule submission memorandum, a state agency must submit to the division copies of all of the state agency's administrative records regarding the proposed rule, including any information or comments that the state agency received from the public, and any other information that the state agency considers relevant to the division's review of the rule.

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

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

The Regulatory Compliance Division will commence its review of a proposed rule on the date that the completed proposed rule submission is received by the division. The division will notify the state agency head and the presiding officer of the governing body of the state agency in writing of the commencement of the division's review.

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 its review, the division may request information from the state agency that submitted the proposed rule or require the state agency to conduct an analysis of the possible implications of the proposed rule. The division may also hold public hearings.

### Public Comments

In conducting its review, the division will accept and consider written public comments on the proposed rule received by the division. The division will provide notice on the division's webpage that the division is accepting public comments on a proposed rule and instructions for submitting public comments on the proposed rule.

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

Not later than the 90<sup>th</sup> day after the date the division receives a completed rule submission from a state agency, the division will issue a determination letter approving the proposed rule or rejecting the proposed rule.

The division will include in its 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 rule with applicable state policy. If the division rejects a proposed rule, the division will include in its determination letter instructions for revising the rule to be consistent with applicable state policy.

The division will send the determination letter to the state agency head and the presiding officer of the governing body of the state agency and make the determination letter available to the public on the division's webpage.

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

#### Effect of Approval

If the division has issued a determination letter approving a proposed rule, the state agency may adopt the rule. The division's approval of the rule does not preclude subsequent legal challenges to the rule.

#### Effect of Rejection

If the division has issued a determination letter rejecting a proposed rule, the state agency may not adopt the rule. If the state agency revises the rule according to the division's instructions in the division's determination letter, the state agency must republish the rule in the *Texas Register*, resubmit the proposed rule to the division, and be issued a determination letter approving the proposed rule before the rule may be adopted.

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

When deciding whether to direct 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 policy advisor within the Office of the Governor for that rule review process, which is unaffected by the establishment of the Regulatory Compliance Division.