Office of the Governor
Regulatory Compliance Division

Guidance to Affected State Agencies on Division’s Policies and Procedures
Updated October 9, 2020

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 Heath 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

If the division identifies a proposed rule as possibly affecting market competition and requires submission of the proposed rule to the division, 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 who certified the proposed rule for filing with the Texas Register.

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

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### 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. 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 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.

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

**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.

**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.