

**SUBCHAPTER A. RULES OF PRACTICE AND PROCEDURE****Division 2. Rule Making Procedures.****28 TAC §1.208****SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES****28 TAC §1.415****SUBCHAPTER L. RULES OF PRACTICE AND PROCEDURE FOR INDUSTRY-WIDE  
BENCHMARK RATE PROCEEDINGS****28 TAC §§1.1301 – 1.1306**

**1. INTRODUCTION.** The Commissioner of Insurance (Commissioner) adopts the repeal of §1.208, concerning rule making procedures; §1.415, concerning assessment of maintenance taxes and fees; and Subchapter L, §§1.1301 – 1.1306, concerning rules of practice and procedure for industry-wide benchmark rate proceedings. The repeal of §§1.208, 1.415, and 1.1301 – 1.1306 is adopted without change to the proposal published in the February 24, 2012 issue of the *Texas Register* (37 TexReg 1129). The repeal of §1.207 has been withdrawn elsewhere in this issue.

**2. REASONED JUSTIFICATION.** Government Code §2001.004(1) specifies that, in addition to other requirements under law, a state agency shall adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The Department proposed to repeal §1.207, concerning posting and updating a list of public petitions for rulemaking, because the Department does not receive such petitions with frequency and because the information is otherwise available. However, based upon a comment that the posting and updating of this list continues to serve a valuable public participation and transparency purpose, the Department has decided not to

repeal §1.207 at this time. This change does not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. The Department received no other comments on the proposed repeals.

The repeal of §1.208, related to regular meetings of the Commissioner, is necessary because the public has multiple ways of contacting the Commissioner without a need for bi-weekly public meetings solely to allow persons to speak to the Commissioner on issues within the Commissioner's jurisdiction. The public regularly uses mail and e-mail to bring issues to the attention of the Commissioner or the Commissioner's Ombudsman. Additionally, the repeal of §1.208 will free the Department's staff and facility resources for more efficient use.

The repeal of §1.415 is necessary because the maintenance tax surcharge levied under this section only applies for 1999 and supports bonds that have been paid. Also, §1.415 implements Insurance Code art. 5.76-5, which was repealed under House Bill 2017, SECTION 18, 79th Regular Legislative Session, effective April 1, 2007. Currently applicable maintenance taxes are addressed in other sections of the Insurance Code.

The repeal of Subchapter L, §§1.1301 – 1.1306, is necessary because these sections implement Insurance Code art. 5.101(a) and (d), and art. 5.101 expired on December 1, 2004, pursuant to §7 of the article.

**3. HOW THE SECTIONS WILL FUNCTION.** The adoption of the repeal will result in the removal of obsolete provisions from the Texas Administrative Code.

The repeal of §1.208 results in the removal of an outdated requirement concerning regular Commissioner meetings in recognition of more common practices used by the public to bring issues to the attention of the Commissioner.

The repeal of §1.415 results in the removal of an obsolete requirement concerning a maintenance tax surcharge levy.

The repeal of Subchapter L, §§1.1301 – 1.1306, results in the removal of obsolete requirements concerning rules of practice and procedure for industry-wide benchmark rate proceedings.

#### **4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

##### **Section 1.207**

**Comment:** A commenter states its opposition to the repeal of §1.207 because the commenter asserts that public notice of issues under consideration for rulemaking promotes transparency and public understanding of the regulatory process. The commenter states that repeal would frustrate the public's ability to participate in this process. Instead, the commenter asks the Department to consider modernizing the rule to allow the Department to maintain the list of petitions on the Department website. The commenter asserts that such revision would be easier to administer and permit more efficient use of Department resources. The commenter also asserts that the revision would improve transparency and understanding of the regulatory process and improve public access to the information.

**Agency Response:** The Department agrees that posting and maintaining a list of public petitions for rulemaking may continue to serve public participation and transparency purposes. In response to this comment, the Department has decided not to repeal §1.207 at this time. The Department agrees that modernizing the requirement to provide for maintaining the list on the Department's website could be beneficial, and the Department will consider this option for future rulemaking to permit additional opportunity for public comment on the concept.

#### **5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL**

For: None.

Against: Office of Public Insurance Counsel.

**6. STATUTORY AUTHORITY.** The repeal of §§1.208, 1.415, and 1.1301 – 1.1306 is adopted pursuant to Insurance Code §2054.006 and §36.001, and Government Code §2001.004(1).

Section 2054.006 authorizes the Commissioner to regulate the Texas Mutual Insurance Company, previously referred to as the Texas Workers' Compensation Insurance Fund, to the same extent that the Commissioner may regulate a mutual insurance company.

Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

Government Code §2001.004(1) specifies that, in addition to other requirements under law, a state agency shall adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

## **7. TEXT.**

### **SUBCHAPTER A. RULES OF PRACTICE AND PROCEDURE**

#### **Division 2. Rule Making Procedures.**

##### **§1.208. Regular Commissioner Meetings.**

### **SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES**

##### **§1.415. Maintenance Tax Surcharge for the Texas Workers' Compensation Insurance Fund, 1999.**

### **SUBCHAPTER L. RULES OF PRACTICE AND PROCEDURE FOR**

#### **INDUSTRY-WIDE BENCHMARK RATE PROCEEDINGS**

##### **§1.1301. Scope.**

##### **§1.1302. Definitions.**

##### **§1.1303. Recommendations for Benchmark Rate Changes.**

##### **§1.1304. Proposed Rule to Change the Benchmark Rates.**

##### **§1.1305. Procedures for Hearing on the Departments Proposed Rule.**

##### **§1.1306. Adoption of Benchmark Rates.**

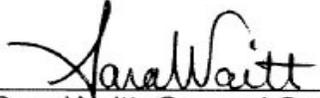
12-0396

TITLE 28. INSURANCE  
Part I. Texas Department of Insurance  
Chapter 1. General Administration

Adopted Repeal  
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**CERTIFICATION.** This agency certifies that the adopted repeal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on April 19, 2012.

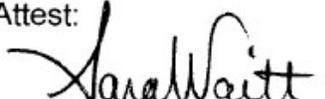
  
Sara Waitt, General Counsel  
Texas Department of Insurance

**IT IS THEREFORE THE ORDER** of the Commissioner of Insurance that the repeal of §1.208; §1.415; and Subchapter L, §§1.1301 – 1.1306, specified herein, concerning rule making procedures, assessment of maintenance taxes and fees, and rules of practice and procedure for industry-wide benchmark rate proceedings, respectively, is adopted.

**AND IT IS SO ORDERED.**

  
ELEANOR KITZMAN  
COMMISSIONER OF INSURANCE

Attest:

  
Sara Waitt, General Counsel  
Texas Department of Insurance

COMMISSIONER'S ORDER NO. 12-0396