

Chapter 57 – REQUEST FOR CASE FOLDERS AND CERTIFICATIONS OF ACTIONS OF THE BOARD
Repeal 28 Texas Administrative Code (TAC) §§57.5, 57.10 and 57.15

1. INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (division) proposes the repeal of 28 TAC §57.5, concerning request for copies or statistical information, 28 TAC §57.10, concerning written request for public information and 28 TAC §57.15, concerning telephone request for public information.

Government Code §2001.039 requires a state agency to review and consider re-adoption, re-adoption with amendments, or repeal of its rules no later than the fourth anniversary of the rule effective date. In compliance with Government Code §2001.039, the division reviewed and considered all sections in Chapter 57 and determined that a repeal of the chapter is necessary because the sections are duplicative of other statutes governing requests for public information. A notice of the proposed rule review of Chapter 57, Request For Case Folders and Certifications of Actions of the Board, was published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7597). The division did not receive comments on the review. The adopted rule review of Chapter 57 was published in the November 11, 2016, issue of the *Texas Register* (41 TexReg 9029).

The division proposes the repeal of 28 TAC §§57.5, 57.10 and 57.15, which were adopted to be effective November 20, 1977 (2 TexReg 4322), because those sections are outdated and no longer necessary since other statutes and rules currently govern requests for public information and access to division records. Title 28 TAC §§57.5, 57.10, and 57.15 pertain to requests for records compiled by the Industrial Accident Board, and the purpose of these rules was to ensure compliance with Texas Civil Statutes Article 8307 §9, §9(a) and Article 6252-§17a, known as the Open Records

Act. However, during the 71st Legislature, 2nd Called Session, the former Texas Civil Statutes Article 8307 §9, and §9(a) were repealed and the Industrial Accident Board became the Texas Workers' Compensation Commission and the Texas Workers' Compensation Act was enacted in Chapter 1 of the Texas Civil Statutes Article 8308. After the repeal of Article 8307, the Texas Civil Statutes Article 8307 §9(a), which provided for confidentiality of records and fraudulent claims, was re-codified in Articles 8308-2.31 through 8308-2.34 and Article 8308-10.04. Subsequently, the 73rd Legislature repealed Article 8308 and the statute was re-codified in Labor Code Chapter 402. The Texas Civil Statutes Article 8307 §9, which provided for certified copies of records and fees, was re-codified to the Labor Code §502.063. The 73rd Legislature also repealed Texas Civil Statutes Article 6252-§17a and the statute was re-codified in the Government Code Chapter 552, known as the Public Information Act. Thus, historical changes in the Texas workers' compensation system along with statutory repeals and re-codifications have resulted in latter statutory authority governing the request for public information.

The subject matter addressed by 28 TAC §§57.5, 57.10, and 57.15 is currently governed by Government Code Chapter 552, known as the Public Information Act; Labor Code §402.081, concerning division records; Labor Code §402.090, concerning statistical information; Labor Code §402.087, concerning information available to prospective employers; 1 TAC Chapter 70, concerning Cost of Copies of Public Information; and 28 TAC §108.1, concerning charges for copies of public information. Every section of Chapter 57 proposed for repeal has a more recent statutory or regulatory analogue, which articulates the law governing access to division records and requests for public information. Specifically, 28 TAC §57.5 addresses requests for certified copies or statistical information and rules regarding fees for those requests. Labor Code §402.081 relates to division records, including providing copies and certification of records. Labor Code §402.090 relates to the

release of statistical information. Additionally, 28 TAC §108.1 addresses charges for copies of public information and 1 TAC Chapter 70 addresses Cost of Copies of Public Information. Title 28 TAC §57.10 addresses written requests for public information from prospective employers and 28 TAC §57.15 addresses telephone requests for public information from prospective employers. Labor Code §402.087 relates to written and telephone requests of information available to prospective employers. The division proposes repeal of 28 TAC §§ 57.5, 57.10, and 57.15 because these rules are no longer necessary.

2. FISCAL NOTE. Mr. Joseph McElrath, Executive Deputy Commissioner of Business Process, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal impact to state or local governments because of the proposal. There will be no measurable effect on local employment or the local economy because of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Mr. McElrath also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated because of the proposed repeal is the elimination of obsolete administrative regulations. There will be no economic cost to persons required to comply with the proposed repeal.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), the division has determined that the proposed repeal will not have an adverse economic effect on small or micro business because it is simply a repeal of obsolete rules. Therefore, in accordance with the

Government Code §2006.002(c), the division is not required to prepare a regulatory flexibility analysis.

5. TAKINGS IMPACT ASSESSMENT. The division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on January 2, 2017. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rulecomments@tdi.texas.gov or by mail to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of General Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. If a hearing is held, the division will consider written comments and public testimony presented at the hearing.

7. STATUTORY AUTHORITY. The repeal is proposed under Government Code §2001.039, Labor Code §402.00111 and §402.061.

Government Code §2001.039 requires state agencies to review and consider re-adoption, re-adoption with amendments or repeal of its rules no later than the fourth anniversary of the rule effective date. Labor Code §402.00111 requires the commissioner of workers' compensation to exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Labor Code §402.061 requires the commissioner of workers' compensation to adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

No other codes, statutes, or articles are affected by this proposal.

8. TEXT

§57.5. Request for Copies or Statistical Information.

§57.10. Written Request for Public Information.

§57.15. Telephone Request for Public Information.

9. CERTIFICATION. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of
Workers' Compensation