

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 104: General Provisions--Rulemaking

Title 28 TAC §104.1

1. INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (division) adopts amendments to 28 TAC §104.1, concerning contents of rulemaking petitions. Section 104.1 is adopted without changes to the proposed text published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8867). There was not a request for public hearing submitted to the division.

In accordance with Government Code §2001.033, the division's reasoned justification for the sections is set out in this order, which includes the preamble. The following paragraphs include a detailed section by section description and reasoned justification for all amendments to §104.1.

2. REASONED JUSTIFICATION. The Texas Department of Insurance, Division of Workers' Compensation (division) adopts amendments to §104.1, concerning contents of rulemaking petitions, to implement House Bill (HB) 763, 84th Legislature, Regular Session (2015). HB 763 amended Government Code §2001.021 by defining an interested person, for purposes of §2001.021, as a resident of Texas, a business entity located in Texas, a Texas governmental subdivision, or a public or private organization located in Texas that is not a state agency. If a state agency requires a signed petition, HB 763 also amended Government Code §2001.021 to require 51 percent of the total number of signatures be from Texas residents.

Section 104.1 addresses **Contents of Rulemaking Petitions**. The division amended §104.1(a) by deleting "any person" and adding "an interested person under Government Code, §2001.021(d)." The amendment is necessary to implement HB 763 and align the division's rules regarding contents of rulemaking petitions with statutory changes provided in Government Code §2001.021. The division amended §104.1(a) by deleting "these rules" and adding "the Texas Administrative Code, Title 28, Part 2." The non-substantive amendment is necessary to specify the rules that may be petitioned to the division for change and to ensure the section conforms to current agency style. The division also made a non-substantive correction to punctuation in §104.1(a) by deleting the comma separating the words "letter" and "that."

The division amended §104.1(a)(7) by deleting "the petitioner's signature." This amendment lessens the burden to the public for submitting rulemaking petitions in accordance with the right to do so described in Government Code §2001.021(a). Section 104.1(a)(7) was also amended to add "a statement that the petitioner is an interested person under Government Code, §2001.021(d)." The amendment is necessary to implement HB 763 by asking the petitioner to confirm they are a resident of Texas, a business entity located in Texas, a Texas governmental subdivision, or a public or private organization located in Texas that is not a state agency. The amendment helps to ensure the requirements set out under Government Code, §2001.021(d) are met.

The division amended §104.1(c) by deleting "executive director of the commission" and adding "commissioner." The division amended §104.1(c) by deleting the phrase "[c]opies of the petition will be forwarded to each commissioner." These amendments are necessary to reflect the current organizational structure of the division. The division also amended §104.1(c) by deleting "or" and adding "or by email to rulecomments@tdi.texas.gov" to specify the email address interested persons must use if submitting a rulemaking petition by electronic means. This amendment makes it easier for

interested persons to submit rulemaking petitions and encourages public participation in the rulemaking process.

The division amended §104.1(d) to reflect a change in the agency's name by deleting "commission" and adding "division."

The division amended the Chapter 104 heading, the §104.1 title, §104.1(a), and §104.1(d) to delete the term "rule-making" and add the term "rulemaking" for consistency with current agency style.

3. SUMMARY OF COMMENTS. The division did not receive any comments on the proposed amendments to §104.1.

4. STATUTORY AUTHORITY. The amendments are adopted under the authority of Labor Code §402.061, concerning adoption of rules; Labor Code §402.00111, concerning the relationship between commissioner of insurance and commissioner of workers' compensation; separation of authority; rulemaking; Government Code §2001.021, concerning petitions for adoption of rules; and Labor Code §401.021, concerning application of other acts.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary for the implementation and administration of the Texas Workers' Compensation Act.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Government Code §2001.021(b) provides that a state agency shall prescribe the form for a petition by rule and the procedure for its submission, consideration, and disposition.

Labor Code §401.021 states, in part, that a proceeding, hearing, judicial review, or enforcement of a commissioner order, decision, or rule is governed by Government Code Chapter 2001, Subchapter B.

5. TEXT.

§104.1 Contents of Rulemaking Petitions

(a) Changes or additions to the Texas Administrative Code, Title 28, Part 2 may be petitioned by an interested person under Government Code, §2001.021(d). Rulemaking petitions shall be in the form of a letter that contains the following:

- (1) a brief statement summarizing the proposed section;
- (2) the text of the proposed section, in the exact form proposed for adoption;
- (3) a statement setting forth the statutory reference that authorizes the proposed rule;
- (4) a suggested effective date;
- (5) any other matter which may be required by law;
- (6) the petitioner's name, mailing address, and telephone number; and
- (7) a statement that the petitioner is an interested person under Government Code,

§2001.021(d).

(b) The petitioner may also include a cost-benefit analysis, estimating the public benefit expected as a result of adoption of the proposed section, and the probable economic cost to persons required to comply with the proposed section. This provision is optional.

(c) The petition shall be filed with the commissioner by personal delivery, certified mail, or by email to rulecomments@tdi.texas.gov.

(d) Within 60 days after the petition is submitted, the division shall either initiate rulemaking procedures, or shall deny the petition and provide the petitioner with reasons for denial in writing.

10. CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on _____, 2016.

Marisa Lopez Wagley
Acting General Counsel
Texas Department of Insurance, Division of
Workers' Compensation

The commissioner adopts amendments to §104.1.

W. Ryan Brannan
Commissioner of Workers' Compensation

COMMISSIONER'S ORDER NO. _____

ATTEST:

X

Marisa Lopez Wagley
Acting General Counsel
Texas Department of Insurance, Division of Workers' Compensation

COMMISSIONER'S ORDER NO. _____