

TITLE 28. INSURANCE

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

CHAPTER 104: GENERAL PROVISIONS

Title 28 TAC §104.1

1. INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (division) proposes amendments to 28 TAC §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 Rule-Making 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.

2. FISCAL NOTE. Dirk Johnson, TDI-DWC General Counsel, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal impact to state or local governments that provide workers' compensation coverage as a result of enforcing or administering the amendments. There will be no measurable effect on local employment or the local economy as a result of the proposed amendments. Government Code §2001.024(4), concerning content of notice, requires an explanation of any additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule. Any economic costs to those state and local governments that provide workers' compensation coverage are discussed below.

3. PUBLIC BENEFIT/COST NOTE. Mr. Johnson has also determined that, for each of the first five years amended §104.1 is in effect, the public benefits anticipated as a result of the proposed amendments include aligning §104.1 with the current statute and providing more guidance on the requirements for submitting a rulemaking petition to the division.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL. Mr. Johnson anticipates that, for each of the first five years amended §104.1 is in effect, there will be no costs to persons required to comply with the proposed amended section because the proposal only aligns the division's rules with the amendments to Government Code §2001.021 found in HB 763. Costs to persons who must comply with the proposed section result from the enactment of HB 763 and not from the adoption, enforcement, or administration of the proposed section.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES. Government Code §2006.002(c) provides that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

In accordance with Government Code §2006.002(c), the division has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses because the rulemaking petition process is voluntary. In addition, the proposed rule is necessary to implement statutory requirements. Therefore, in accordance with Government Code §2006.002(c), a regulatory flexibility analysis is not required.

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 Monday, January 11, 2016. 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 Workers' Compensation 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 amendments are proposed 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.

8. TEXT.

Chapter 104. General Provisions--Rulemaking [Rule-making]

§104.1. Contents of Rulemaking [Rule-Making] Petitions.

(a) Changes or additions to the Texas Administrative Code, Title 28, Part 2 [~~these rules~~] may be petitioned by an interested person under Government Code, §2001.021(d). [~~any person.~~] Rulemaking [Rule-making] petitions shall be in the form of a letter[~~s~~] 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). [~~the petitioner's signature.~~]

(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 [~~executive director of the commission~~] by personal delivery, [~~or~~] certified mail, or by email to rulecomments@tdi.texas.gov. [~~Copies of the petition will be forwarded to each commissioner.~~]

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

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.

Issued at Austin, Texas, on _____, 2015.

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Dirk Johnson
General Counsel
Texas Department of Insurance,
Division of Workers' Compensation