

CHAPTER 165. REJECTED RISK: INJURY PREVENTION SERVICES
28 TAC §165.1

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §165.1, concerning Identification and Notification of Certain Policyholders Insured by the Texas Mutual Insurance Company Acting as the Insurer of Last Resort. Section 165.1 implements Texas Insurance Code §§2054.354, 2054.504, and 2054.507.

EXPLANATION. Amending §165.1 is necessary to add Texas Mutual Insurance Company's (Texas Mutual) physical address, update obsolete Insurance Code references, and make updates for plain language and agency style. Section 165.1 requires Texas Mutual to give DWC a list of policyholders that need accident prevention services, including policyholders they insure as the insurer of last resort. It also requires policyholders who must get a safety consultation and are located outside of Texas to give information to Texas Mutual.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Health & Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Landrum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Landrum expects that enforcing and administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Insurance Code §§2054.354, 2054.504, and 2054.507 and are current and accurate, which promotes transparent and efficient regulation.

Ms. Landrum expects that the proposed amendments will not increase the cost to comply with Insurance Code §§2054.354, 2054.504, and 2054.507 because they do not impose requirements beyond those in the statute or that exist in the current rule.

Section 2054.354 provides that Texas Mutual must develop statistical and other information to allow it to distinguish between its writings in the voluntary market and as the insurer of last resort. Section 2054.504 requires certain policyholders insured under Subchapter H to get a safety consultation. Section 2054.507 states that, if a safety consultant identifies a hazardous condition or practice, an accident plan must be developed for the policyholder. Therefore, these policyholders must submit information to Texas Mutual, and Texas Mutual must submit information to DWC to establish data for Texas Mutual acting as the insurer of last resort.

The amendments add Texas Mutual's physical address, so policyholders required to get a safety consultation and whose offices are outside of Texas know where to send information. The amendments also update Insurance Code references, so the public can find the applicable laws. As a result, the cost associated with the requirement that Texas Mutual, acting as the insurer of last resort, identify and notify DWC of certain policyholders requiring accident prevention services, or the requirement that

policyholders subject to a safety consultation must send Texas Mutual information, does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments make editorial changes, changes to update obsolete references, and updates for plain language and agency style only. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments make editorial changes, changes to update obsolete references, and updates for plain language and agency style only. They do not change the people the rule affects or impose additional costs.

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

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on February 21, 2023. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, TX 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, TX 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

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STATUTORY AUTHORITY. DWC proposes §165.1 under Insurance Code §§2054.354, 2054.504, and 2054.507 and Labor Code §§402.00111, 402.00116, and 402.061.

Insurance Code §2054.354 provides that Texas Mutual must develop statistical and other information to allow Texas Mutual to distinguish between their writings in the voluntary market and as the insurer of last resort.

Insurance Code §2054.504 requires certain policyholders insured under Subchapter H to get a safety consultation.

Insurance Code §2054.507 requires that, if a safety consultant identifies a hazardous condition or practice, an accident plan will be developed for the policyholder.

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.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Section 165.1 implements Insurance Code §§2054.354, 2054.504, and 2054.507, which were amended to apply to Texas Mutual by HB 3458, 77th

Legislature, Regular Session (2001) and recodified by HB 2017, 79th Legislature, Regular Session (2005).

TEXT.

§165.1. Identification and Notification of Certain Policyholders Insured by the Texas Mutual Insurance Company Acting as the Insurer of Last Resort

(a) The Texas Mutual Insurance Company must [~~shall~~] provide the division a list [~~a listing~~] of the policyholders requiring accident prevention services (rejected risk employers) [~~(Rejected Risk employers) to the Texas Workers' Compensation Commission's Division of Worker's Health and Safety (the division)~~]. This list must [~~shall~~] include rejected risk employers that meet the criteria in Texas Insurance Code Chapter 2054, Subchapters H and K [~~those employers identified by the Texas Mutual Insurance Company through application of the criteria found in the Texas Insurance Code, art. 5.76-3, §8, and art. 5.76-4~~].

(b) A policyholder subject to Texas Insurance Code §2054.504 [~~the Texas Insurance Code, art. 5.76-3, §8(c) or §8(d)~~], whose corporate office is located outside [~~the state~~] of Texas must, on [~~shall, upon~~] receipt of notification by the Texas Mutual Insurance Company of the requirement to get [~~obtain~~] a safety consultation as a condition of insurance, provide the Texas Mutual Insurance Company the following information:

(1) the name and title of the senior official in Texas with the authority to commit funds and to establish policy, procedures, and actions required to implement the

accident prevention plan and address the exposures identified in the hazard exposure survey;

(2) the official's mailing address; and

(3) the official's business telephone number.

(c) Information required by subsection (b) of this section must ~~[shall]~~ be mailed to the Texas Mutual Insurance Company at 2200 Aldrich Street, Austin, Texas 78723-3474 ~~[the appropriate address]~~.

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

Issued in Austin, Texas, on January 2, 2023



Kara Mace
Deputy Commissioner for Legal Services
TDI, Division of Workers' Compensation