

**CHAPTER 164 HAZARDOUS EMPLOYER PROGRAM**  
**28 TAC §§164.1 - 164.12 and §§164.14 - 164.18**

**1. INTRODUCTION.** The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division), adopts the repeal of 28 Texas Administrative Code §§164.1 - 164.12 and §§164.14 - 164.18, concerning the Hazardous Employer Program. This repeal is adopted without changes to the proposal as published in the July 10, 2009, issue of the *Texas Register* (34 TexReg 4624) and will not be republished.

**2. REASONED JUSTIFICATION.** Under the Hazardous Employer Program, the Division's predecessor, the Texas Workers' Compensation Commission (TWCC), was required to identify employers as hazardous based on criteria established by the TWCC. The public employers identified as hazardous were required to develop accident prevention plans and the Division's predecessor, TWCC, was required to conduct follow-up inspections. Employers classified as hazardous were entitled to request a safety consultation from the TWCC. Each employer identified had the right to administrative review of the findings of the TWCC and to request a hearing to contest the findings of the TWCC.

The rules are adopted for repeal because the statutory authority for the rules, Labor Code Chapter 411, Subchapter D, was repealed by House Bill (HB) 7, enacted by the 79<sup>th</sup> Legislature, Regular Session, effective September 1, 2005.

The Division continues to provide other safety services such as safety training and educational materials, United States Department of Labor Occupational Safety and Health

Administration (OSHA) compliance consultations, Resource Center Library, Safety Violations Hotline, data collection and analysis, and inspections of workers' compensation insurance carriers' loss control activities, pursuant to Labor Code Chapter 411.

**3. HOW THE SECTIONS WILL FUNCTION.** The adoption of the repeal will remove outdated and inapplicable state requirements. Resources for improving and maintaining safe work conditions are and will continue to be provided through the Division through federally and state funded workplace safety programs.

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

Comment: One commenter stated that they support the proposed repeal.

Response: The Division appreciates the support.

**5. NAMES OF THOSE COMMENTS FOR AND AGAINST THE PROPOSAL.**

For without changes: Insurance Council of Texas

Against: None

**6. STATUTORY AUTHORITY.** The repeal is adopted pursuant to Labor Code §402.00111 and §402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the Commissioner of Workers' Compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

No other code, statute or article is affected by this rule or action.

**7. TEXT.**

§164.1. Criteria for Identifying Hazardous Employers.

§164.2. Notice to Hazardous Employers.

§164.3. Safety Consultation for Public Employers.

§164.4. Formulation of Accident Prevention Plan for Public Employers.

§164.5. Follow-up Inspection for Public Employers by the Division.

§164.6. Report of Follow-up Inspection, Public Employers.

§164.7. Removal of Public Employers from Hazardous Employer Status.

§164.8. Continuation of Hazardous Employer Status, Public Employers.

§164.9. Approval of Professional Sources for Safety Consultations.

§164.10. Removal from the List of Approved Professional Sources.

§164.11. Request for Safety Consultation from the Division.

§164.12. Reimbursement of Division for Services Provided to Hazardous Employer.

§164.14. Values Assigned for Computation of Hazardous Employer Identification.

§164.15. Administrative Reviews and Hearings Regarding Identification as a Hazardous Employer.

§164.16. Removal of Private Employers from Hazardous Employer Status.

§164.17. Availability of OSHCON Services.

§164.18. Severability.

**8. CERTIFICATION.** This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas on October 1, 2009.

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

**IT IS THEREFORE THE ORDER** of the Commissioner of Workers' Compensation that the repeal of 28 TAC §§164.1 - 164.12 and §§164.14 - 164.18, concerning the Hazardous Employer Program, is adopted.

**AND IT IS SO ORDERED.**

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ROD BORDELON  
COMMISSIONER OF WORKERS' COMPENSATION

ATTEST:

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Dirk Johnson  
General Counsel

COMMISSIONERS ORDER NO. \_\_\_\_\_