

## CHAPTER 165. REJECTED RISK: INJURY PREVENTION SERVICES

### §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 shall provide a listing of the policyholders requiring accident prevention services (Rejected Risk employers) to the Texas Workers' Compensation Commission's Division of Worker's Health and Safety (the division). This list shall include 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 the Texas Insurance Code, art. 5.76-3, § 8(c) or § 8(d), whose corporate office is located outside the state of Texas shall, upon receipt of notification by the Texas Mutual Insurance Company of the requirement to 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 shall be mailed to the Texas Mutual Insurance Company at the appropriate address.

*The provisions of this §165.1 adopted to be effective April 25, 1999, 24 TexReg 3092; amended to be effective March 14, 2001, 26 TexReg 2034; amended to be effective September 12, 2004, 29 TexReg 8610 .*

### §165.2. Safety Consultation.

- (a) Policyholders who have not had an accident prevention plan developed and implemented in the last six months prior to notification shall, not later than 30 days following the effective date of the policy, or receipt of notice of identification as a Rejected Risk employer, whichever occurs later, complete a safety consultation using a source approved by the division pursuant to §164.9 and §164.10 of this title (relating to Approval of Professional Sources for Safety Consultations; and Removal From the List of Approved Sources). The consultation may be provided by:
  - (1) the Texas Workers' Compensation Commission's Division of Workers' Health and Safety (the division);
  - (2) the Texas Mutual Insurance Company; or
  - (3) another professional source.
- (b) Policyholders who have had an accident prevention plan developed and implemented within the six months prior to notification of their identification as a Rejected Risk employer must obtain division review of the plan for adequacy, to include an on-site visit.
- (c) The division shall provide the Texas Mutual Insurance Company with a list of approved professional sources. If the Texas Mutual Insurance Company elects not to provide the policyholder with safety consultation and accident prevention plan development services, the Texas Mutual Insurance Company shall include a copy of the list with the notification letter to the policyholder. If the Texas Mutual Insurance Company elects to provide such services, the list will be provided to the policyholder by the Texas Mutual Insurance Company at the request of the policyholder.

- (d) The safety consultant, identified in subsection (a) of this section, shall visit the policyholder's work place, review existing safety programs, conduct a walk through at each appropriate job site to include a hazard exposure survey, and prepare a program review report. The report shall be in a written format prescribed by the commission.
- (e) The initial program review report must be delivered to the division of Workers' Health and Safety no later than 30 days after the policyholder receives the notice of identification. An extension of 30 days may be obtained from the division for good cause.
- (f) The safety consultants identified in subsection (a) of this section may charge the employer for consultations provided under this section.

*The provisions of this §165.2 adopted to be effective April 25, 1999, 24 TexReg 3092; amended to be effective September 12, 2004, 29 TexReg 8610 .*

**§165.3. Formulation and Components of Accident Prevention Plan.**

- (a) Policyholders who have not had an accident prevention plan developed in the last six months prior to notification will, within 30 days of the date of the safety consultant's initial report, develop an accident prevention plan. This plan will be consistent with established state safety and health codes and with accepted industry practices. The accident prevention plan shall be developed with the assistance of an Approved Professional Source as defined in §164.9 of this title (relating to Approval of Professional Sources for Safety Consultations), and shall be in the format prescribed by the commission. The policyholder shall submit the completed accident prevention plan, developed and signed by the policyholder and the Approved Professional Source, to the division. The Approved Professional Source's signature on the accident prevention plan cover sheet certifies that the accident prevention plan meets the format prescribed by the commission. The format shall include the following components and specify the individual responsible for each, by position or title:
  - (1) a management component with a written safety policy statement and assignment of responsibilities and authority;
  - (2) analysis component which includes a review of safety program documentation, existing operations, and injury trends. The analysis will be used to evaluate the effectiveness of the existing programs and to detect existing or potential trends. The analysis component will contain a statement as to the interval between the accomplishment of the analyses;
  - (3) a safety program recordkeeping system component;
  - (4) a safety and health education and training component with a statement as to the interval between training sessions;
  - (5) a safety audit/inspection component with a statement as to the interval between safety audits/inspections;
  - (6) an accident investigation component to identify the cause factors of injuries, and plan and record corrective actions; and
  - (7) a component to ensure review and revision of the safety program when changes in operations, equipment, or employee activities are determined or anticipated, to ensure continued effectiveness of the program requirements. This component also includes the periodic review and revisions of the safety program including a statement as to the interval (minimum of annually) between reviews.
- (b) Policyholders who have had an accident prevention plan developed and implemented within the six months prior to notification as a Rejected Risk Employer and verified and approved by the Texas Mutual Insurance Company or the Texas Workers' Compensation Commission's Division of Workers' Health and Safety (the division) will continue implementation of the plan and obtain an inspection by the division as provided in §165.6 of this title (relating to Follow-up Inspection by the Division).

- (c) Reference material for the development of an accident prevention plan may be obtained from the division.
- (d) An implementation time line, not to exceed three months after the formulation of the plan, shall be developed and included with the plan.
- (e) If the policyholder disagrees with any or all of the plan, the policyholder shall sign the accident prevention plan cover sheet and attach a statement containing the specific reasons for disagreement to the plan and what alternative measures the policyholder proposes to meet the objectives of the program. The division will review the areas of disagreement and notify the policyholder and the safety consultant of the decision on each area of the disagreement.
- (f) The policyholder's signature is understood to exclude those areas of the plan for which a disagreement has been attached to the plan, pending review by the division or a formal appeal.
- (g) If the division finds it is practical to do so, the division may direct the policyholder to begin implementation of any or all parts of the plan that are not subject to the policyholder's disagreement. The time lines specified in the plan shall remain in effect for those parts of the plan the policyholder is directed to implement.
- (h) The policyholder shall be responsible for filing the accident prevention plan that has been reviewed by the Approved Professional Source and signed as meeting the criteria in subsection (a) of this section with the division no later than 30 days after completion of the safety consultation and no later than 90 days after the policyholder received notification of identification as a Rejected Risk employer. Delays requested for good cause may be granted by the division.

*The provisions of this §165.3 adopted to be effective April 25, 1999, 24 TexReg 3092; amended to be effective September 12, 2004, 29 TexReg 8610 .*

**§165.4. Request for Safety Consultation From the Division.**

- (a) A policyholder notified as a Rejected Risk employer may request that the division perform the safety consultation.
- (b) The request shall be in writing on the form prescribed by the commission and may be delivered to the Texas Workers' Compensation Commission's Division of Workers' Health and Safety (the division) by mail, in person, by facsimile, or by electronic transmission. The form shall include:
  - (1) the policyholder's name, address, and telephone number;
  - (2) the name of the contact person at the policyholder's place of business; and
  - (3) the date the policyholder received notice of identification as a Rejected Risk employer.
- (c) The division shall notify each policyholder who requests services whether the division has accepted or rejected the request. The notice shall be in writing and shall be made within three working days of the date the commission received the request.

*The provisions of this §165.4 adopted to be effective April 25, 1999, 24 TexReg 3092.*

**§165.5. Reimbursement of Division for Services Provided to Rejected Risk Employers.**

- (a) A policyholder shall be required to reimburse the Texas Workers' Compensation Commission's Division of Workers' Health and Safety (the division) for the services the division renders when:
  - (1) the policyholder requested services under §165.4 of this title (relating to Request for Safety Consultation from the Division) and the division provides the consultation and formulates an accident prevention plan for the policyholder;

- (2) the division conducts a follow-up inspection of the policyholder's premises under §165.6 of this title (relating to Follow-up Inspection by the Division); or
  - (3) the division investigates accidents at the policyholder's worksite(s) while the policyholder is in the rejected risk program.
- (b) The commission shall bill the policyholder as listed in the commission's approved fee schedule.
  - (c) The commission shall provide the policyholder with an itemized statement each month. The payment is due 30 days after the billing date.

*The provisions of this §165.5 adopted to be effective April 25, 1999, 24 TexReg 3092.*

**§165.6. Follow-up Inspection of the Policyholder's Premises by the Division.**

- (a) The Texas Workers' Compensation Commission's Division of Workers' Health and Safety (the division) shall conduct a follow-up inspection to ensure compliance with, and effectiveness of, the accident prevention plan developed in response to a safety consultation required by the Texas Insurance Code, Article 5.76-3, §8(c). This inspection shall be conducted at the policyholder's premises. The inspection shall be conducted not earlier than 90 days or later than six months after the date the accident prevention plan is submitted to the division.
- (b) The inspection shall be conducted and completed during normal work hours.
- (c) The policyholder shall allow the division access to the policyholder's premises, including remote job sites, and employees during normal work hours to conduct the follow-up inspection. A policyholder who without good cause refuses to allow the division access to the policyholder's premises may be served with an order of the commission demanding such access. Failure to comply with the commission order will subject the policyholder to penalties and sanctions as provided in the Texas Insurance Code and the Texas Labor Code.
- (d) The division may require the presence of the professional source consultant that conducted the hazard survey or assisted with the accident prevention plan development during the follow-up inspection. If the professional source is required during the inspection, the division will coordinate that requirement with the policyholder and the professional source, at the policyholder's expense.
- (e) At the time of the inspection, the division may consider as evidence of compliance information which includes, but is not limited to, visual verification, written policies and procedures, attendance rosters for training programs, employee interviews, and purchase orders or receipts for equipment or services necessary to support the accident prevention plan.

*The provisions of this §165.6 adopted to be effective April 25, 1999, 24 TexReg 3092; adopted to be effective June 5, 2003, 28 TexReg 4294.*

**§165.7. Report of Follow-Up Inspection.**

- (a) As soon as practical, but not later than 30 days from the date of the follow-up inspection, the policyholder, the safety consultant, and the Texas Mutual Insurance Company, shall be provided copies of the follow-up inspection report by the division.
- (b) The report shall be in writing and shall specify whether the policyholder has, or has not, implemented the accident prevention plan or other acceptable corrective measures approved by the division.
- (c) If the policyholder is found not to have implemented the accident prevention plan, the report shall also contain a list of the specific areas of the accident prevention plan which have not been implemented.
- (d) Failure or refusal to implement the accident prevention plan is an administrative violation with penalty not to exceed \$5,000 for each day of non-compliance. The Texas Workers' Compensation Commission's Division

of Workers' Health and Safety (the division) shall refer the matter to the Commission's Division of Compliance and Practices to pursue the administrative violation if:

- (1) the policyholder fails or refuses to implement the accident prevention plan or approved alternative measures;
- (2) the policyholder does not cancel coverage within 30 days after the date of the division's determination of such failure or refusal; and
- (3) the Texas Mutual Insurance Company notifies the division that it will not cancel the coverage.

*The provisions of this §165.7 adopted to be effective April 25, 1999, 24 TexReg 3092; amended to be effective September 12, 2004, 29 TexReg 8610 .*

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