

**TITLE 28. INSURANCE**

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

**CHAPTER 110 - REQUIRED NOTICES OF COVERAGE**

**SUBCHAPTER A - CARRIER NOTICES  
AMENDED: §110.1, NEW: §110.7**

**SUBCHAPTER B - EMPLOYER NOTICES  
AMENDED: §110.101, NEW: §110.103 and §110.105**

**ADOPTION**

**1. INTRODUCTION.**

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §110.1 and §110.101 of this title (relating to Insurance Carrier Requirements for Notifying the Division of Insurance Coverage and Covered and Non-Covered Employer Notices to Employees, respectively) and adopts new §110.7 of this title (relating to Self-Insured Political Subdivision Requirements for Notifying the Division of Election to Provide Medical Benefits), §110.103 of this title (Employer Requirements for Notifying the Division of Non-Coverage), and §110.105 of this title (Employer Requirements for Notifying the Division of Termination of Coverage) of this title. The amendments to §110.1 and new §110.103 are adopted with changes to the proposed text published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1130) as corrected in the March 16, 2012, issue of the *Texas Register* (37 TexReg 1938). The amendments to §110.101 and new §110.7 and §110.105 are adopted with changes to the proposed text published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1130). These changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

In accordance with Government Code §2001.033, the Division's reasoned justification for these new and amended rules is set out in this order, which includes the preamble, which in turn

includes the rules. The reasoned justification is contained throughout the preamble, including the reasons why the new and amended rules are necessary; the factual, policy and legal bases for the new and amended rules; a summary of comments received from interested parties, names of the entities that commented and whether they were in support of or in opposition to the adoption of the rules, and the reasons why the Division agrees or disagrees with the comments and recommendations.

The Division published an informal draft of these new and amended rules on the Division's website for informal comment on November 8, 2011. The Division received five informal comments. The public comment period for these new and amended rules ended on March 26, 2012. The Division received eight public comments. No public hearing was requested or held for this proposal.

Simultaneous with the adoption of these new and amended rules, the Division has adopted new §160.1 and amendments to §160.2 and §160.3 of this title. These other new and amended rules relate to employer reports of injury to the Division and are published elsewhere in this issue of the *Texas Register*.

## **2. REASONED JUSTIFICATION.**

New §110.103 and §110.105 and the amendments to §110.1 and §110.101 concern the following reporting requirements the Texas Workers' Compensation Act (Act) places upon employers: (1) the requirement to notify the Division when the employer elects not to obtain workers' compensation insurance coverage (Labor Code §406.004); (2) the requirement to notify the Division when the employer terminates workers' compensation insurance coverage (Labor Code §406.007); and (3) the requirement to notify each employee on whether or not the employer has workers' compensation insurance coverage (Labor Code §406.005). These new and amended rules reorganize, update, and clarify the language and requirements associated with

these reporting requirements and are necessary in order to ensure that the Division and employees obtain timely and accurate workers' compensation insurance coverage information from employers. These new and amended rules are also necessary to improve system participant understanding and provide consistency with current practices concerning these reporting requirements. These changes do not substantively affect or otherwise change any reporting requirements in Labor Code Chapter 406 and associated Division rules that apply to insurance carriers.

Additionally, this adoption also adds new §110.7, requiring a self-insured political subdivision that provides medical benefits to its employees in accordance with Labor Code §504.053(b)(2) to notify the Division when it elects to provide medical benefits in that manner. This requirement streamlines the collection of this medical benefit delivery information with other proof of coverage information already reported by political subdivisions to the Division.

Finally, other amendments are adopted to correct non-substantive typographical, grammatical, and punctuation errors in the current rule text; to re-letter and renumber rule text; and to make nonsubstantive updates in terminology such as changing "commission" to "division."

**§110.1.**

Prior to the adoption of the amendments to §110.1, this rule governed various reporting requirements placed upon insurance carriers and employers. The adopted amendments to §110.1 primarily remove provisions from this rule relating to an employer's notice to the Division of non-subscriber status and when an employer terminates workers' compensation insurance coverage. These employer duties are now recodified in Subchapter B of this chapter as new §110.103 and §110.105. This recodification of these two employer reporting requirements into their own respective rules is necessary in order to more clearly delineate these reporting requirements. Additionally, these rules are better located in Subchapter B of Chapter 110, which is titled "Employer Notices." The Division also amended these recodified rules which are more fully

discussed below. The remaining provisions in §110.1 will continue to govern various reporting requirements placed upon insurance carriers such as proof of coverage reporting and notice of cancellation or nonrenewal by an insurance company.

Other amendments to §110.1 are adopted for the purpose of updating and clarifying the terminology used in this rule. The adopted amendments to §110.1(a) and throughout this section add the language “workers’ compensation” before “insurance policy.” These adopted amendments are necessary in order to clarify that the term “insurance policy” means a workers’ compensation insurance policy as opposed to any other type of insurance policy.

The adopted amendments to §110.1(b) add the language “workers’ compensation” to the defined term “insurance coverage information.” These adopted amendments are necessary in order to clarify that the term “insurance coverage information” means workers’ compensation insurance coverage information as opposed to any other type of insurance coverage information.

The adopted amendments to §110.1(c) provide that this rule applies to an insurance company, certified self-insurer, workers’ compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision. These adopted amendments are necessary in order to clarify what entities are subject to the reporting requirements in this rule. Additionally, the adopted amendments to this subsection clarify that: certified self-insurers are also subject to Chapter 114 of this title (relating to Self-Insurance), self-insurance groups are also subject to Chapter 5, Subchapter G, Division 2 of this title (relating to Group Self-Insurance Coverage), and self-insured political subdivisions are also subject to §110.7 of this title (relating to Self-Insured Political Subdivision Requirements for Notifying the Division of Election to Provide Medical Benefits). These adopted amendments are necessary to provide clarification of the applicability of other requirements, accomplished through specifically referencing other Division rules.

The adopted amendments in §110.1(d) state that an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision shall submit to the Division, or its designee, workers' compensation insurance coverage information in the form and manner prescribed by the Division. These adopted amendments are necessary in order to clarify what information entities are required to submit to the Division.

The adopted amendments in §110.1(e) set out the specific entities that are subject to the notice of coverage and notice of cancellation or nonrenewal of coverage requirements currently in this subsection. These adopted amendments are necessary in order to update and harmonize the rule with the statutory language in Labor Code Chapter 406, Subchapter A. Specifically, the adopted amendments to §110.1(e)(1) clarify that an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision are required to report workers' compensation coverage information to the Division within 10 days after the effective date of coverage and annually thereafter no later than 10 days after the anniversary date of coverage. This paragraph is intended to include coverage reporting when a political subdivision moves from self-insurance to a policy, or from a policy to self-insurance, and when a political subdivision moves from individual self-insurance to a pool, or vice-versa. This amended paragraph is consistent with current reporting practices under §110.1(e), except for reporting by political subdivisions, which will now have to report no later than 10 days after the coverage change, instead of current practice of 30 days prior to any change in coverage. This change is necessary to give political subdivisions additional time to report changes, and the Division believes extending this reporting time will not change the effectiveness or efficiency of the Division's information collection and utility to interested parties.

The adopted amendments to §110.1(e)(2) - (4) govern insurance company reporting requirements in Labor Code §406.008 when the company cancels or does not renew coverage. The adopted amendments clarify that this obligation is placed upon insurance companies as opposed to insurance carriers in general. These adopted amendments are also necessary to update and harmonize terminology in this rule with the statutory language in Labor Code §406.008.

The adopted amendments in §110.1(f) are necessary to clarify that these provisions apply in situations involving an insurance company's cancellation or non-renewal of a policy. Similar provisions regarding effective date of a termination of a policy are recodified in §110.105(c), which applies in situations involving an employer's termination of a policy. There may be situations where both of these provisions are implicated; and in such cases, the party that terminates or cancels the policy first controls.

The adopted amendments in §110.1(g) replace the term "insurance carrier" with "insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, or political subdivision." This adopted amendment sets out the specific types of entities that are subject the notice of claim administration contact information requirements in this subsection. These adopted amendments are necessary in order to update and harmonize the terminology in this rule with statutory language in Labor Code §406.006.

The adopted amendments in §110.1(h) replace the term "insurance carrier" with "insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, or political subdivision." These adopted amendments are necessary in order to clarify the types of insurance carrier entities that may utilize a servicing agent when processing and filing coverage information under this rule.

Adopted §110.1(j) provides a January 1, 2013 effective date for this rule. This adopted amendment is necessary in order to provide additional time to those affected by the changes to implement these changes.

**§110.7.**

Adopted new §110.7 delineates specific reporting requirements for a self-insured political subdivision to notify the Division when it elects, in accordance with Labor Code §504.053(b)(2), to provide medical benefits to its injured employees or the injured employees of the members of the pool by directly contracting with health care providers or by contracting through a health benefits pool established under Local Government Code Chapter 172. Section 110.7(a) adds a definition of health plan for clarity of term usage in this rule. Section 110.7(b) provides applicability of this rule to self-insured political subdivisions electing to provide medical benefits pursuant to Labor Code §504.053(b)(2). Section 110.7(c) states the notice of method of providing employee benefits required by subsection (b) of the section shall be filed in writing or electronically, in the form and manner prescribed by the Division, and lists relevant data elements that the notice shall include. Section 110.7(d) provides a December 31, 2012 reporting deadline for self-insured political subdivisions that provide medical benefits in accordance with Labor Code §504.053(b)(2) as of the effective date of this rule. Section 110.7(e) provides a reporting deadline of not later than the 30<sup>th</sup> day after the date the political subdivision begins to provide medical benefits for political subdivisions providing medical benefits in the manner described by Labor Code §504.053(b)(2) after the effective date of this rule. Section 110.7(f) provides a self-insured political subdivision shall notify the Division of any change in the information required by this section not later than the 30<sup>th</sup> day after the date of the change.

This new rule is necessary in order to provide a process that will allow the Division to effectively gather information concerning the method by which self-insured political subdivisions provide medical benefits in accordance with Labor Code §504.053(b)(2). Labor Code §504.018(a)

requires a political subdivision to notify the Division of the method by which its employees will receive benefits, the approximate number of employees covered, and the estimated amount of payroll. Much of the information required under Labor Code §504.053(b)(2) is already reported to the Division. This new rule requires only the information required by §504.018(a) that is not already reported to the Division.

**§110.101.**

The adopted amendments to §110.101 relate to employer notice requirements under Labor Code §406.005. Labor Code §406.005 requires an employer to notify each employee as required by that section whether or not the employer has workers' compensation insurance coverage. This statute requires the employer to notify a new employee of the existence or absence of workers' compensation insurance coverage at the time the employee is hired. This statute also requires an employer to post a notice in the workplace of whether the employer has workers' compensation insurance coverage. The Commissioner is authorized by this section to adopt rules relating to the form and content of the notice.

The adopted amendments to §110.101(a) are necessary to track statutory language, eliminating the terms "covered" and "non-covered" from the text of the rule and replacing the terms with a directional pointer to the definition of an employer in Labor Code §406.001 as it applies to this chapter.

The adopted amendments to §110.101(a)(2) - (3) are necessary to conform the time deadlines for employers to provide notice to employees with the Labor Code requirements under §406.005(d). Specifically, §110.101(a)(2) provides that employers whose workers' compensation insurance coverage is terminated or cancelled shall provide notice to employees of their workers' compensation status not later than the 15<sup>th</sup> day after the date on which the termination or cancellation takes effect. Section 110.101(a)(3) provides that employers who obtain workers' compensation insurance coverage shall provide notice to employees of their workers'

compensation status not later than the 15<sup>th</sup> day after the date on which the coverage takes effect.

These changes to timing requirements are necessary to harmonize rule language and related requirements with statutory language and timing requirements in Labor Code §406.005(d).

The adopted amendments to §110.101(a)(5) replace “certified self-insurer” with “self-insurance as provided by the Texas Workers’ Compensation Act” to clarify that this rule covers both certified self-insureds and employers in a self-insurance group; accordingly these terms are subsequently updated through the remainder of this rule. Labor Code Chapter 407A which allows for group self-insurance coverage by employers was added to the Act after the initial adoption of §110.101. Therefore, these adopted amendments are necessary to update this rule and clarify that employers in a self-insurance group are subject to the requirements of Labor Code §406.005 and this rule. The adopted amendments to §110.101(a)(5) also insert “workers’ compensation insurance” before “coverage” in order to clarify that coverage refers to workers’ compensation insurance coverage as opposed to other types of coverage.

The adopted amendments to §110.101(b)(2) recodify and clarify former requirements contained in former §110.101(b)(2) and (3) to provide one subsection prescribing when employers terminating workers’ compensation insurance coverage must post required notice to employees. Amendments to §110.101(b)(2) replace previous language concerning opting out of coverage and cancellation of coverage with language concerning terminating and termination of coverage. These amendments are necessary to track applicable statutory requirements and language. The adopted amendments also change the time when an employer who terminates workers’ compensation insurance coverage must post the required notice that reflects the change in coverage status. The previous rule required the new posted notice to be provided at the time the employer notifies the insurance carrier of the termination. The adopted amendments require the new posted notice to be provided at the time the termination of coverage takes effect. This

adopted amendment is necessary because it will ensure that the posted notices will at all times provide the employees with accurate information regarding the employer's workers' compensation insurance coverage status. This adopted amendment is also necessary in order to more closely align this rule with Labor Code §406.005 which requires an employer to revise the notice when the information contained in the notice is changed.

The adopted amendments to §110.101(b)(3) remove employer notice requirements, now contained in §110.103(b)(2), and provide posted notice requirements for self-insurers who withdraw from self-insurance. The adopted amendments require an employer who withdraws from self-insurance to post a notice reflecting the change in coverage status at the time the withdrawal takes effect. This adopted amendment is necessary because it will ensure that the posted notices will at all times provide the employees with accurate information regarding the employer's workers' compensation insurance coverage status. This adopted amendment is also necessary in order to more closely align this rule with Labor Code §406.005 which requires an employer to revise the notice when the information contained in the notice is changed.

The adopted amendments to §110.101(c) provide that on or after effective date of the rule, which under subsection (g) of this rule is January 1, 2013, notices shall contain the specific text in this rule. This adopted amendment is necessary in order to provide a clear transition date for employers to comply with the changes this rule makes to the contents of the personal and posted notices required by this rule.

The adopted amendments to §110.101(d) insert "workers' compensation insurance" before "coverage" in order to clarify that coverage refers to workers' compensation insurance coverage as opposed to other types of coverage.

The adopted amendments to §110.101(e) update the language in the statutorily mandated employee notices. In order to maintain consistency between previous and new posting notices

and to minimize costs associated with updating posted notices, the Division instituted a moderate reduction in the mandated font size to ensure that the new information on the posted notice may be contained on 8.5 x 11 piece of paper. The adopted amendments to paragraphs (1) and (2) of this subsection update the required notices for employers insured through a commercial insurance company and those employers who become certified self-insurers under Labor Code Chapter 407. The adopted amendments to paragraph (4) of this subsection update the notice for employers not covered by workers' compensation insurance coverage. The notice updates for paragraphs (1), (2), and (4) of this subsection include: (1) the removal of the undefined term illness from the posting notice and replacing it with occupational disease, a term defined in Labor Code §401.011, which is necessary to provide increased accuracy of information communicated to employees through the posting notices; (2) contact information for the Division and the Office of Injured Employee Counsel, which is necessary to provide more updated information; and (3) the removal of unnecessary terminology such as "protect." The adopted amendments also enact a new paragraph (3) which provides a new employee notice posting for use by employers who are members of a self-insurance group. The notice in paragraph (3) provides notice to employees that the employer provides workers' compensation insurance coverage as a member of a self-insurance group under Labor Code Chapter 407A and provides the same information as the notices prescribed in paragraphs (1) and (2). As stated, Labor Code Chapter 407A was added to the Act after the original adoption of this rule; thus, this amendment is necessary to update this rule to allow for a posting notice tailored for use by employers in a self-insurance group.

The adopted amendments to §110.101(f) update administrative violation language to conform to current statutory language and to be consistent with other similar provisions throughout Division rules.

New §110.101(g) provides a January 1, 2013 effective date for this rule. This adopted amendment is necessary in order to provide additional time to those affected by the changes to implement these changes.

**§110.103.**

Adopted new §110.103 relates to required notices by non-subscribing employers under Labor Code §406.004. Labor Code §406.004 requires an employer who does not obtain workers' compensation insurance coverage to notify the Division in writing, in the time and as prescribed by Commissioner rule, that the employer elects not to obtain coverage. This statute provides that the Commissioner shall prescribe forms to be used for the employer notification and shall require the employer to provide reasonable information to the Division about the employer's business. Labor Code §406.004(d) requires this notice to be filed with the Division in accordance with Labor Code §406.009 which authorizes the Commissioner to adopt rules as necessary to enforce Labor Code Chapter 406, Subchapter A, and to establish the form, manner, and procedure for the transmission of information to the Division.

Section 110.103 encompasses statutorily mandated reporting requirements for non-subscribing employers and is primarily a recodification of rule language removed from §110.1. In addition to a recodification, the Division amended this rule, a principal new element of which is the provision of new reporting timelines in response to employer requests for more clarity and ease in complying with the statutorily mandated notification of non-coverage.

Section 110.103(a) recodifies former §110.1(c) - (d) and requires employers electing not to obtain workers' compensation insurance coverage (non-subscribers) to provide the Division with notice of non-coverage in the form and manner prescribed by the Division. Section 110.103(a)(1) and (2) are a recodification of former §110.1(e)(1)(A) and (B) and set out the frequency and reporting triggers of when an employer must provide notice of non-coverage to the Division. The

reporting procedures in subsection (a) will apply to notices by non-subscribing employers submitted before January 1, 2013.

Section 110.103(b) prescribes the applicability of this subsection and delineates the new reporting timelines for non-subscribers, which will apply to a notice submitted on or after January 1, 2013. The delayed effective date for the new reporting timelines by the Division is based on non-subscriber input given during the development of these rules. The delayed effective date is necessary to facilitate the transition to statutory compliance by non-subscribing employers and is anticipated to allow non-subscribers ample time to alter business practices or develop business practices that ensure their compliance with this statutorily mandated reporting duty.

Section 110.103(b)(1) provides a new annual reporting period for notices of non-coverage to the Division, to be annually between February 1st and not later than April 30th of each calendar year. Additionally, §110.103(b)(1) defines that notice provided by April 30th satisfies the reporting requirement under this subsection from May 1st of the same year through April 30th of the subsequent year. This new static reporting period for all non-subscribers coupled with delineated notice period is in response to non-subscriber comment received by the Division during the development of these rules. Prior to rule proposal, multiple stakeholders expressed a desire for a change from the current annual notice requirement based on the original filing date or hiring a new employee subject to the Act. Instead, non-subscribers requested both a static reporting period and a defined period covered by the notice to provide ease of compliance with this statutorily mandated reporting requirement. Under this new annual reporting requirement some non-subscribing employers may have to file twice in short succession, having a filing remaining before the end of 2012 under the current filing timeline in §110.103(a) for notices submitted to the Division before January 1, 2013, and having a new filing due to meet the February 1 - April 30<sup>th</sup> deadline contained

in the new filing timeline in §110.103(b). Once these employers make their annual filing under the new filing timeline, they will be on the new §110.103(b) annual schedule thereafter.

Section 110.103(b)(2) provides that a non-subscriber must also submit notice to the Division of non-coverage status not later than the 30th day after the date the non-subscriber hired its first employee subject to the Act, unless this due date is covered by the notice provided in new §110.103(b)(1) and the employer submits the notice within that time period. This provision is necessary in order to provide the Division with non-subscribing data regarding new employers that elect to non-subscribe. Additionally, §110.103(b)(2) partially removes, recodifies, and expands former §110.1(e)(3), now providing that all non-subscribers shall provide a notice of non-coverage not later than the 10th day, instead of within 30 days as formerly required, after receipt of a Division request for the information. This new, shortened response time provides one clear, consistent response deadline for all non-subscribers.

Section 110.103(b)(3) provides notice of filing with the Division in writing or electronically and delineates specific information required in the notice to provide clarity to non-subscribers as to the specific notice content required in compliance with this statutorily mandated reporting requirement. The data elements in this rule are consistent with data elements non-subscribers already report to the Division on current Division forms. Delineating the required data elements in this rule is also necessary in order to ensure that the Division receives all the information in an employer report.

Section 110.103(c) requires employers to accurately file notices, and this section also explains that a notice is considered filed with the Division when the notice contains all the data elements specified under subsection (c), and is received by the Division. This adopted rule is necessary in order to ensure that the Division obtains timely and accurate notices.

**§110.105.**

Adopted new §110.105 relates to required notices of termination of coverage by employers under Labor Code §406.007. Labor Code §406.007 requires an employer who terminates workers' compensation insurance coverage to file a written notice with the Division by certified mail not later than the 10th day after the date on which the employer notified the insurance carrier to terminate the coverage. This notice must include a statement certifying the date that notice was provided or will be provided to affected employees under Labor Code §406.005. Labor Code §406.007(b) requires the notice to be filed with the Division in accordance with Labor Code §406.009 which authorizes the Commissioner to adopt rules as necessary to enforce Labor Code, Chapter 406, Subchapter A, and to establish the form, manner, and procedure for the transmission of information to the Division.

Section 110.105 is largely a recodification of requirements deleted from former §110.1, with these provisions consistent with practices under the previous rule and providing clarity in the manner in which these reports may be provided to the Division.

Section §110.105(a) requires an employer who terminates workers' compensation insurance to file written notice of the termination with the Division not later than the 10<sup>th</sup> day on which the employer notified the insurance carrier under Labor Code §406.007.

Section §110.105(b) provides the employer shall file notice of termination required by subsection (a) by certified mail or electronically on the form prescribed by the Division and also delineates the specific data elements that must be in the notice, replacing former "form and manner" language from former §110.1(d). This new rule is necessary in order to specify the manner in which an employer may submit this notice to the Division. This new rule also delineates the data elements that must be included in the notice which is necessary in order to ensure that the Division obtains all the required information in a report from an employer.

Subsection (c) provides the effective date of termination when an employer terminates coverage and is consistent with Labor Code §406.007.

Subsection (d) updates language to ensure all system participants are cognizant of the fact that workers' compensation insurance coverage shall be extended until the date on which the termination of coverage takes effect and that the employer remains obligated for premiums due for that period. This provision is also consistent with Labor Code §406.007.

Subsection (e), a recodification of previous §110.1(l), specifies (1) that in the event of an employer switching workers' compensation insurance carriers, the original policy is considered cancelled as of the date the new coverage takes effect; and (2) requires employers to notify the prior insurance carrier of the original policy's cancellation date in writing within 10 days of the effective date. This is a provision concerning original policy cancellation dates when an employer switches workers' compensation insurance carriers. This recodification is to maintain applicability to both insurance carriers and employers now that related requirements are in separate rules.

New §110.105(f) provides a January 1, 2013 effective date for this rule. This adopted amendment is necessary in order to provide additional time to those affected by the changes to implement these changes.

The Division has adopted these new and amended rules with changes to the text as originally proposed, most of which were made in response to public comment on the proposal. First, the Division made several changes in §110.1. In response to comment, the Division changed the language in §110.1(b) from "and, if so, information about the means of workers' compensation insurance coverage used" to "and, if so, information about the method of workers' compensation insurance coverage used." This change makes rule text consistent with terminology in Labor Code §406.003 which is titled "Methods of Obtaining Coverage." The Division also added new §110.1(j) which provides a January 1, 2013 effective date for this rule. This adopted

amendment is necessary in order to provide additional time to those affected by the changes to implement these changes.

The Division also made several changes in §110.7 in response to public comment. First, the Division in §110.7(a) added a definition of “health plan” as “a political subdivision contracting with health care providers under Labor Code §504.053(b)(2)” to provide clarity of the term as used and in anticipation of future related inquiries. The Division in response to comment also removed the July 1, 2012 effective date for this rule and deleted former §110.7(c) which read “A self-insured political subdivision that provides medical benefits to its injured employees in the manner described by Labor Code §504.053(b)(2) as of the effective date of this section shall provide the notice required by this section not later than the 30th day after the effective date of this section.” The Division replaced the deleted text with “A self-insured political subdivision that provides medical benefits to its injured employees in the manner described by Labor Code §504.053(b)(2) as of the effective date of this section shall provide the notice required by this section not later than December 31, 2012.” Also, deleting the July 1, 2012 effective date will cause this rule to be effective 20 days after it is filed with the Secretary of State. These changes will provide a longer and more manageable implementation window for affected self-insured political subdivisions. The Division also re-lettered §110.7 to reflect these changes.

The Division also made several changes to the text in §110.101 as proposed. In response to comment, the Division changed language in §110.101(b)(2) from “by the employer who is terminating workers’ compensation insurance coverage, at the time the employer notifies the insurance carrier of the termination” to “by the employer who is terminating workers’ compensation insurance coverage, at the time the employer’s termination of coverage takes effect. . .” In addition, the Division in tandem also changed text in §110.101(b)(3) from “by the self-insurer as provided by the Act, who is withdrawing from self-insurance, at the time the division is notified of

the withdrawal” to “by the self-insurer as provided by the Act, who is withdrawing from self-insurance, at the time the withdrawal takes effect.” The Division made these changes to ensure that employees obtain the most accurate and up-to-date information regarding their employer’s workers’ compensation insurance coverage status and to more closely align this rule with Labor Code §406.005(c) which requires an employer to revise the notice when the information contained in the notice is changed.

Additionally, the Division, in response to comment, updated the posting notices contained in §110.101(e)(1) - (3) from “You can obtain OIEC’s assistance by contacting your local Division field office or by calling 1-866-EZE-OIEC (1-866-393-6432)” to “You can obtain OIEC’s assistance by contacting an OIEC customer service representative in your local Division field office or by calling 1-866-EZE-OIEC (1-866-393-6432).” The Division amended this language for clarity but notes that under either language draft, an injured employee will be contacting and connecting with the same resources.

Also in response to comment, the Division modified the text in §110.101(c) to state that on or after the effective date of this rule, notices shall contain the specific text required by this rule. The Division also added new §110.101(g), providing a January 1, 2013 effective date for this rule. This adopted amendment is necessary in order to provide additional time to those affected by the changes to implement these changes.

The Division also made changes in the text of §110.103. Specifically, the Division proposed subsection (c) as follows “. . . required by this section is considered timely filed with the division only when it contains all of the data elements specified under subsection (b) of this section, contains accurate information, and is received by the division.” The Division changed this language to read as follows “. . . required by this section is considered filed with the division only when it accurately contains all of the data elements specified under subsection (b) of this section

and is received by the division.” The adopted non-substantive amendments prevent any potential for confusion as to when a report of injury must be filed by the employer.

Finally, the Division made changes to §110.105 that were not in response to comment. Specifically, the Division added §110.105(f), adding a January 1, 2013 effective date for this rule. This adopted amendment is necessary in order to provide additional time to those affected by the changes to implement these changes and is also consistent with the effective date of amended §110.1 which previously contained the reporting requirements for employers who terminate a workers' compensation insurance policy.

### **3. HOW THESE SECTIONS WILL FUNCTION.**

#### **Section 110.1**

Section 110.1 updates requirements for an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision to notify the Division of Workers' Compensation insurance coverage information. This section contains detailed explanations of commonly used terminology in the section, including approved workers' compensation insurance policy, workers' compensation insurance coverage information, and claim administration contact. This section requires an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision to submit to the Division, or its designee, workers' compensation insurance coverage information in the form and manner prescribed by the Division.

This section prescribes specific provisions for when workers' compensation insurance coverage information shall be provided to the Division, for specific covered groups: by an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision within 10 days after the effective date of coverage and annually thereafter no later than 10 days after the anniversary date of coverage; by the

insurance company, 30 days prior to the date on which cancellation or non-renewal becomes effective if the insurance company cancels the workers' compensation insurance coverage, does not renew the workers' compensation insurance coverage on the anniversary date, or cancels a binder before it issues a workers' compensation insurance policy; by the insurance company, 10 days prior to the date on which the cancellation becomes effective if the insurance company cancels an employer's workers' compensation insurance coverage in accordance with Labor Code §406.008(a)(2); or by the insurance company within 10 days after receiving notice of the effective date of termination from the covered employer because the employer switched workers' compensation insurance carriers. This also sets out when a cancellation or non-renewal of a workers' compensation insurance policy by an insurance company will take effect.

This section also requires an insurance company, a certified self-insurer, a workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision to file a notice with the division of their designated claim administration contact not later than the 10th day after the date on which the coverage or claim administration agreement takes effect.

Finally, this section provides that an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision may elect to have a servicing agent process and file all coverage information, but the insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, or political subdivision remains responsible for meeting all filing requirements of this rule.

### **Section 110.7**

Section 110.7 provides notice requirements to the Division for self-insured political subdivisions electing to provide medical benefits pursuant to Labor Code §504.053(b)(2). This section adds a definition of a health plan and delineates the applicability of this rule to self-insured

political subdivisions electing to provide medical benefits pursuant to Labor Code §504.053(b)(2). Additionally, the notice required under this rule must be filed in writing or electronically, in the form and manner prescribed by the Division, and include all the data elements listed in §110.7(c). This section provides a compliance date of December 31, 2012 for political subdivisions that provide medical benefits in accordance with Labor Code §504.053(b)(2) as of the section's effective date. This section provides a compliance date of not later than the 30<sup>th</sup> day after the date a political subdivision, subject to this rule, begins to provide the medical benefits in accordance with Labor Code §504.053(b)(2) after the effective date of this section. Finally, this section requires a self-insured political subdivision to notify the Division of any change in the information required by this section not later than the 30<sup>th</sup> day after the date of the change.

### **Section 110.101**

Section 110.101 requires an employer, as defined by Labor Code §406.001, to provide to each employee written notice of workers' compensation insurance coverage status. This notice must be provided to an employee at the time of hire. This section also requires an employer whose workers' compensation insurance coverage is terminated or cancelled to provide each employee with written notice of the coverage status not later than the 15<sup>th</sup> day after the date on which the termination or cancellation takes effect. An employer who obtains workers' compensation insurance coverage shall provide each employee with written notice of coverage status not later than the 15<sup>th</sup> day after the date on which the coverage takes effect. This subsection prescribes the content that must be in each notice.

Section 110.101 also requires employers to post notices in the workplace to inform employees about the employer's workers' compensation insurance coverage status. This section specifies the locations within the workplace in which these notices must be posted and when the notice must be posted. This section also provides the specific text that must be in the posted

notice for employers insured through a commercial insurance company, employers who self-insure, and employers who do not have workers' compensation insurance coverage.

### **Section 110.103**

Section 110.103 covers employer requirements for notifying the Division of non-coverage. For notices of non-coverage submitted before January 1, 2013, this section requires the notice to be provided the earlier of the following: (1) 30 days after receiving a Division request for the filing of a notice of non-coverage and annually thereafter on the anniversary date of the original filing; or (2) 30 days after hiring an employee who is subject to coverage under the Act, and annually thereafter on the anniversary date of the original filing. These notices must be filed in the form and manner prescribed by the Division.

For notices of non-coverage required to be submitted on or after January 1, 2013, this section requires a notice of non-coverage to be filed annually between February 1st and not later than April 30<sup>th</sup> of each calendar year, covering a reporting period requirement from May 1<sup>st</sup> of the same year through April 30<sup>th</sup> of the subsequent year. A notice of non-coverage shall also be provided not later than the 30<sup>th</sup> day after the date the non-subscriber hired its first employee subject to the Act, unless this due date is covered by the aforementioned annual notice requirement and the employer submits the notice within that time period. Additionally, this section provides that a non-subscriber shall provide notice of non-coverage not later than the 10<sup>th</sup> day after receipt of a Division request for the information. This section provides that these notices may be provided in writing or electronically and lists the specific information required to be in the notice. Finally, this section requires employers to accurately file reports, and this section also explains that a notice is considered filed with the Division when the notice contains all the data elements specified under subsection (b), and is received by the Division.

### **Section 110.105**

Section 110.105 covers employer requirements for notifying the Division of termination of coverage. This section provides that an employer who terminates workers' compensation insurance coverage shall file written notice of the termination with the Division not later than the 10<sup>th</sup> day after the date on which the employer notified the insurance carrier to terminate coverage. Additionally, this notice may be filed by certified mail or electronically, on the form prescribed by the Division, and shall contain all data elements listed in §110.105(b). This section provides termination of coverage by an employer takes effect on the later of: (1) the 30<sup>th</sup> day after the date of filing the notice with the Division under this section; or (2) the cancellation date of the policy. This section provides that coverage shall be extended until the date on which the termination of coverage takes effect and the employer is obligated for premiums due for that period. Finally, notwithstanding the other provisions of this section, if an employer switches workers' compensation insurance carriers, the original policy is considered canceled as of the date the new coverage takes effect and employers shall notify the prior insurance carrier of the cancellation date of the original policy, in writing, within 10 days of the effective date.

#### **4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.**

**General:** Commenters support the Division's proposed rules and note their appreciation of the opportunity to discuss these rules prior to adoption.

**Agency Response:** The Division appreciates the supportive comments.

**General:** A commenter suggests amending the rule so that a filing is deemed received timely if all information is considered accurate by the Texas Department of Insurance, allowing consideration for non-material filing errors.

**Agency Response:** The Division disagrees with the recommended change to permit filings to be considered timely with inaccurate required data. Although the Division disagrees with the comments, it has made the clarifying changes by moving the placement of the word "accurately" to

earlier in this section and removing the word “timely” from the second sentence to clarify employers must meet the timeliness requirement under these rules as well as the accuracy requirement. The Division notes that the adopted language and policy continues to prohibit all filing errors for required information. No required information is immaterial. Parties subject to Division rules are responsible for accurately reporting to ensure the Division receives quality data.

**§110.1(b):** A commenter suggests that it would be clearer if the language in §110.1(b) were changed from “and, if so, information about the means of workers’ compensation insurance coverage used” to “and, if so, the type of workers’ compensation that is provided.”

**Agency Response:** The Division agrees that the aforementioned language could be clearer but disagrees with the commenter’s suggested text. To make this language consistent with the title of Labor Code §406.003, Method of Obtaining Coverage, the Division has changed subsection (b) as proposed to the following: “and, if so, information about the method of workers’ compensation insurance coverage used.”

**§110.7:** A commenter suggests that the effective date of July 1, 2012 to begin filing the DWC-20SI is not compatible with the majority of their membership fund coverage dates, which begin and renew on September 1<sup>st</sup> annually. The commenter subsequently requests an extension of the effective date or a waiver until October 1, 2012 to avoid filing hundreds of coverage documents twice and to ensure system technicians have time to perfect the form population process.

Another commenter states the submission requirements of this rule are burdensome as it requires political subdivision pools to file a DWC 20SI form within 30 days after the effective date of the rule, July 31, 2012, solely for purposes of identification and to re-file a DWC 20SI form when each pool member is renewed. The commenter requests that the rule not require the additional

paper filing of numerous DWC 20SIs within 30 days of the effective date, and that the rule be changed to add a transition for including the information on the DWC 20SI. The commenter suggests three options to accomplish this. First, allow a political subdivision using the Labor Code §504.053(b)(2) to include the direct contracting entity information on the DWC 20SI provided at the next renewal date. Second, add a one-time electronic transition form that would simply include the new Labor Code §504.053(b)(2) contact information within 30 days of effective date. Third, create a one-time form for political subdivisions, including the carrier name and the name and contact information of the entity directly contracting under Labor Code §504.053(b)(2). A political subdivision in existence as of the effective date of this rule would file this form within 30 days of the effective date of the rule. A political subdivision not in existence as of the effective of the rule would file this form within 30 days of existence. Thereafter a filing would only be made as the result of any changes.

**Agency Response:** The Division agrees additional time is needed to phase in these new requirements. The Division also agrees with the commenters that this new reporting process should not result in political subdivisions subject to the new rule having to file two notices in a short period of time as described by the commenters. The Division has deleted the July 1, 2012 effective date from this rule which will cause the rule to be effective 20 days after it is filed with the Secretary of State. The Division also has changed subsection (d) to read as follows: "A self-insured political subdivision that provides medical benefits to its injured employees in the manner described by Labor Code §504.053(b)(2) as of the effective date of this section shall provide the notice required by this section not later than December 31, 2012." This effective date and extended compliance date provides additional time for procedural implementation and will allow political subdivisions described by the commenters to avoid having to file two notices within a short period of time.

**§110.7:** A commenter suggests that subsection (d) should be changed to require a self-insured political subdivision subject to this rule to provide notice not later than the 30<sup>th</sup> day before the political subdivision begins to provide benefits. Commenter believes that this approach is consistent with statute and would result in a smooth transition for political subdivisions providing medical benefits.

**Agency Response:** The Division disagrees with the commenter's recommendation. This rule is designed to provide the Division with information as to the method the political subdivision uses to provide medical benefits to its injured employees so that the Division may use this information to process official action requests (e.g., requests to change treating doctors, requests for Required Medical or Designated Doctor examinations, etc.) on individual claims and resolve claim disputes. This rule is not intended to implement or affect continuity of treatment of injured workers under Labor Code §504.053(d)(4).

**§110.7:** A commenter agrees with the Division's need to obtain contact information on political subdivisions electing to provide benefits under Labor Code §504.053(b)(2); however, the commenter believes the simplest way to get this information is on a single form filed once, preferably electronically. The commenter suggests this form would only be updated when changes in the health plan occur, similar to what is done with trading partners.

**Agency Response:** The Division disagrees with using a single form for collecting contact information for the entity directly contracting for health care services under Labor Code §504.053(b)(2) in a manner similar to what is done with trading partners. The Division has adopted the form used by self-insured political subdivisions to report proof of coverage information under §110.1 of this title to be used for reporting the information required under this rule because

self-insured political subdivisions already utilize this form and that form already gathers information required under this adopted rule such as the name, address, and federal employer identification number of the political subdivision, and the political subdivision's contact information. Additionally, the Division notes that it is continually working towards utilizing the most updated technological methods for collecting information electronically; however, at this time the Division does not have the capacity for this type of electronic reporting. The rule has been changed to allow for the Division to specify the form and manner for this information to be reported to the Division either in writing or electronically so that if the Division becomes able to accept this information electronically in the future, additional rulemaking would not be necessary to implement electronic reporting of this information. The Division also notes that this rule provides an initial filing date of December 31, 2012 for political subdivisions providing medical benefits in accordance with Labor Code §504.053(b)(2) as of the effective date and a 30-day filing deadline for political subdivisions that begin to provide medical benefits in that manner after the effective date of this rule. The Division also notes that this rule requires a self-insured political subdivision to report any changes in the reported information not later than the 30<sup>th</sup> day after the date of the change.

**§110.7:** A commenter notes that the use of "health plan" is confusing and is used in the Texas Insurance Code generally in reference to group health insurance. The commenter adds that this term is used nowhere in Labor Code Chapter 504, the underlying statutory authority for this rule, and suggests replacement with the following language: "entity contracting with health care providers." The commenter requests if the Division chooses to use the term "health plan," the Division provide a definition clarifying this term as the name and contract information for the entity directly contracting under Labor Code §504.053(b)(2) or the Local Government Chapter 172 pool.

**Agency response:** The Division disagrees with the commenter to replace the term “health plan” with “entity contracting with health care providers.” However, the Division agrees with commenter that adding a definition of the term “health plan” will add clarity to this rule. The Division therefore has added the following language in adopted subsection (a), “A health plan, for purposes of this section, is defined as a political subdivision contracting with health care providers under Labor Code §504.053(b)(2).” The Division does not need the name and contact information for the entity to be included in the definition of a health plan because this information is required under §110.7(c)(3) and (4).

**§110.101(a):** A commenter suggests that a subsection (a)(2) be added, to require an employer to notify their employees of coverage status in writing whenever an employee reports an injury or the employer has actual knowledge of a potential claim, to read as follows: “shall be provided at the time an employee reports an injury to the employer or at the time an employer has actual knowledge of a potential claim.”

**Agency Response:** The Division declines to make this suggested change and points the commenter to the various types of notices already mandated by Labor Code §406.005 and this rule that provide employees with information about the employers workers' compensation insurance status. Labor Code §406.005 enumerates the statutory requirements for providing notice of coverage status to an employee. Under the statute and this rule, employees are personally notified at the time of hire and of any subsequent changes within 15 days of a change in coverage status. Additionally, the statute and this rule requires employers to post notices at conspicuous locations in the employer's place of business as necessary to provide reasonable notice to the employees of the employer's workers' compensation insurance coverage status.

Employers are also required to revise these posted notices when the information contained therein has changed.

**§110.101(b)(2):** A commenter recommends §110.101(b)(2) be amended to include that the notice must be provided at the time the employer notifies the insurance carrier of the termination or no later than 10 days prior to the policy termination or cancellation effective date. The commenter explains this would allow for those employers who, for some reason, have to delay the anticipated date of termination or cancellation of their policy and/or may have provided a significant lead time/notice to the carrier. The commenter adds that allowing for notice to be posted 10 days prior to the cancellation or termination of a policy would cause less confusion to the employees.

**Agency Response:** The Division disagrees with the recommendation because the posted notices are not designed to be predictive; rather the posted notices are designed to provide an employer's current workers' compensation coverage status. The Division notes that in response to other comments the Division did change this section to require an employer who terminates a workers' compensation insurance policy to provide the new posted notice at the time the termination takes effect.

**§110.101(b)(2) and (3):** A commenter states that the proposed rule partially addresses a previous concern regarding personal notice to employees. The proposed rule addresses this concern by requiring an employer to notify employees in writing of the termination of coverage not later than the 15<sup>th</sup> day after the date on which the termination or cancellation of coverage takes effect. The commenter notes the proposed rule also requires notice to be posted when coverage is terminated and recommends this posting requirement be amended to be consistent with the personal notice

requirement, allowing notice to be posted not later than the 15<sup>th</sup> day after the date the termination or cancellation takes place.

**Agency Response:** The Division disagrees with the commenter that the proposed rule required notice to be posted when coverage is terminated. The proposal included existing rule language which required notice to be posted upon notification, which was prior to termination or cancellation. Additionally, the Division also disagrees with adopting the 15-day posting notice requirement recommended by commenter. However, the Division agrees notices should not be required to be posted prior to the effective date of the termination of coverage. The Division has therefore changed the text in §110.101(b)(2) and (3) to require an employer who terminates a workers' compensation policy or withdraws from self-insurance to post the applicable notice at the time the termination or withdrawal, as applicable, takes effect. This adopted rule ensures that employees will receive accurate and up-to-date information regarding the employer's current workers' compensation coverage status. The adopted rule also more closely aligns with statutory requirements contained in Labor Code §406.005(c) which requires an employer to revise the posted notice when the information contained in the notice is changed.

**§110.101(c):** A commenter opines that some deadline should be added for replacing notices posted prior to July 1, 2012 and for updating notices when the information regarding coverage status, insurance carrier information, safety violations hotline number or third party administrator changes should be provided. Without the addition of a deadline, the commenter adds this rule does not seem to be enforceable.

**Agency Response:** The Division agrees that clarification is necessary with regard the deadline for replacing posted notices required under the previous rule with the new posted notices. The Division therefore has added an effective date of January 1, 2013 for this rule and has modified the

text in §110.101(c) to state that “on or after the effective date of this rule, notices shall contain the specific text required by this rule. Thus, effective January 1, 2013, employers must begin using the notices required by this rule. The Division, however, disagrees that a deadline does not exist for employers to update notices when the information regarding coverage status, insurance carrier information, or third party administrator changes should be provided. This rule clearly requires that notices shall be updated to reflect current information. Additionally, Labor Code §406.005(c) provides clear guidance on this issue, requiring an employer to revise notices when the information contained therein is changed. The Division notes that this adoption removes “safety violation hotline information” from §110.101(c) because this hotline number is prescribed in §110.101(e).

**§110.101(e)(1):** A commenter suggests that the work-related injury is the critical element of the notice and should be mentioned first, recommending the following language be added: “In the event of a work related injury or occupation disease [name of employer] has workers’ compensation insurance coverage from [name of commercial insurance company].”

**Agency response:** The Division disagrees with this recommendation, as it would not substantially improve the notice for employees. The “Coverage” section of the notice is intended to inform all employees of the employer’s status regarding workers’ compensation insurance coverage.

**§110.101(e)(1) - (3):** A commenter disagrees with the deletion of the phrase “and assist in resolving disputes about a claim” from the text of the notices. The commenter notes that the Office of Injured Employee Counsel’s (OIEC) duties to injured employees are greater than merely explaining their rights and responsibilities under the worker’ compensation system. The commenter states OIEC’s statutory responsibilities are to assist and advocate on behalf of Texas’ injured employees.

**Agency response:** The Division agrees that OIEC's statutory responsibilities are to advocate on behalf of injured employees as a class and to assist individual injured employees as set forth in Labor Code §404.101. However, the Division disagrees with the recommendation as it is not necessary to be included in the posted notice. The Division clarifies that injured employees are provided a separate notice relaying an injured worker's rights and responsibilities in the Texas workers' compensation system under the requirement in §120.2 with more detailed information concerning OIEC's mission and statutory responsibilities.

**§110.101(e)(1), (2), and (3):** A commenter believes that the last sentence under "EMPLOYEE ASSISTANCE" should be changed to read as follows, "You can obtain OIEC's assistance by contacting an OIEC customer service representative in your local field office by calling 1-866-EZE-OIEC (1-866-393-6432)." The commenter further states this will add clarity that the Division and OIEC are separate agencies and eliminate the step of calling the Division to contact OIEC.

**Agency response:** The Division agrees to add the suggested language for clarity, with a slight modification in the suggested language by adding "or" after "office", but notes that this does not eliminate an extra step in the injured employee's process, as injured employees will be calling the same number in either scenario, thus reaching the same resources.

**§110.101(e)(4):** A commenter suggests for clarity changing the sentence that reads: "In addition, you may have rights under the common law of Texas should you have an on the job injury or occupational disease" to read "In addition, you may have rights under the common law of Texas if you have an injury or occupational disease that is work related."

**Agency response:** The Division disagrees to make the suggested change because the commenter's suggestion does not provide any additional clarity to this employer notice, but rather

simply substitutes “on the job injury or occupational disease” with “injury or occupational disease that is work related.”

**§110.103:** A commenter states that the rules appear to identify numerous, overlapping triggers for the filing of a notice of non-coverage that do not appear to be “or” dates, but rather would require more than one annual filing.

**Agency Response:** The Division disagrees. Under these rules subsection (a) is a continuation of the previous non-subscriber rule for notices submitted to the Division before January 1, 2013. Subsection (b) is the revised rule for notices submitted by non-subscribing employers to the Division on or after January 1, 2013. Under adopted subsection (b)(1), each non-subscribing employer whose employees are not exempt from workers' compensation insurance coverage under the Act shall submit a notice of non-coverage to the Division annually between February 1<sup>st</sup> and April 30<sup>th</sup> of each calendar year. Under adopted subsection (b)(2), a non-subscribing employer shall submit a notice of non-coverage not later than the 30<sup>th</sup> day after the date the employer hired its first employee subject to the Act, unless this due date falls within the same period described by subsection (b)(1) and the employer submits the notice within that period. Adopted subsection (b) also includes an additional reporting requirement which is not later than the 10<sup>th</sup> day after receipt of a Division request for the information. Under this new annual reporting requirement some non-subscribing employers may have to file twice in short succession, having a filing remaining before the end of 2012 under the current filing timeline in §110.103(a) for notices submitted to the Division before January 1, 2013, and having a new filing due to meet the February 1<sup>st</sup> - April 30<sup>th</sup> deadline contained in the new filing timeline in §110.103(b). Once these employers make their annual filing under the new filing timeline, they will be on the new §110.103(b) annual schedule thereafter.

**§110.103:** A commenter expresses their concern about the enforceability of §110.103 and suggests the following language be added to §110.103(d) to ensure the enforceability of this rule: “Failure to provide notice as required in this rule is an administrative violation.”

**Agency Response:** The Division disagrees and declines to make this change. This language and authority for related administrative violations is provided in Labor Code §406.005(e) which states that “an employer commits an administrative violation if the employer fails to comply with this section.” Additionally, under Labor Code §415.021 the Commissioner has authority to enforce refusal to comply with a rule through assessment of administrative penalties. Therefore, the commenter’s suggested provision is not necessary.

**§110.103 and §110.105:** A commenter suggests that the Division actively pursue coordinating its awareness and/or notice efforts with other Texas government agencies. This will decrease non-subscriber compliance reporting problems and increase Texas employer awareness of reporting responsibilities. The commenter suggests government agencies, such as the Texas Workforce Commission and Comptroller of Public Accounts, as examples of agencies with which the Division could coordinate.

**Agency Response:** The Division agrees that coordinating awareness efforts with other state agencies, to the extent possible and practicable, is a crucial and necessary step to fully inform all Texas employers of reporting responsibilities. The Division has already reached out to several agencies and associated websites, including the Texas Workforce Commission, Office of the Governor, Texas Comptroller, the Official Website of the State of Texas (texas.gov), and Secretary of State in its information dissemination efforts related to these rules. These agencies have

already updated their websites to direct employers to TDI-DWC and information regarding employer reporting requirements.

**§110.105:** A commenter expresses their concern about the enforceability of §110.105 and suggests that the following language be added as §110.105(f) to ensure its enforceability: "Failure to provide notice as required in this rule is an administrative violation."

**Agency Response:** The Division disagrees and declines to make this change. This language and authority for related administrative violations is provided in Texas Labor Code §406.009(e) which states that "an employer commits an administrative violation if that person fails to comply with Subsection (d)." Additionally, under Labor Code §415.021 the Commissioner has authority to enforce refusal to comply with a rule through assessment of administrative penalties. Therefore, the commenter's suggested provision is not necessary.

#### **5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.**

**For, with changes:** Insurance Council of Texas, Texas Healthcare Foundation, Texas Alliance of Responsible Nonsubscribers, Texas Association of School Boards, Inc., an individual.

**Neither for nor against, with changes:** Texas Alliance of Nonsubscribers and Office of Injured Employee Counsel, an individual.

### **SUBCHAPTER A - CARRIER NOTICES 28 TAC §110.1 and §110.7**

#### **6. STATUTORY AUTHORITY.**

The amendments are adopted under Labor Code §§406.006, 406.008, 406.009, 504.018, 504.053(b)(2), 401.024, 406.001, 504.001, 402.00128(b)(10), 402.00128(b)(12), and under the general authority of §402.061.

Labor Code §406.006 provides, in relevant part, that an insurance company from which an employer has obtained workers' compensation insurance coverage, a certified self-insurer, a workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision shall file notice of coverage and claim administration contact information with the Division not later than the 10<sup>th</sup> day after the date on which the coverage or claim administration agreement takes place, unless the Commissioner adopts a rule establishing a later date for filing. Labor Code §406.008 provides timelines for when an insurance company that cancels or does not renew a policy of workers' compensation must deliver notice of the cancellation or nonrenewal to the employer and the Division. Additionally, Labor Code §406.008 requires the notice required under this section to be filed with the Division and determines failure of the insurance company to give notice as required by this section extends the policy until the date on which the required notice is provided to the employer and the Division. Labor Code §406.009 requires the Division to collect and maintain the information required under Labor Code Chapter 406, Subchapter A, adopt rules as necessary to enforce that subchapter, and monitor compliance with the requirements contained therein. Labor Code §504.018 requires a political subdivision to notify the Division of the method by which its employees will receive benefits, the approximate number of employees covered, and the estimated amount of payroll, and to notify its employees of the method by which the employees will receive benefits and the effective date of the coverage. Labor Code §504.053(b)(2) authorizes a self-insured political subdivision that does not provide medical benefits through a workers' compensation health care network certified under Insurance Code Chapter 1305 to provide medical benefits to its employees by directly contracting with health care providers or by contracting through a health benefits pool established under Chapter 172, Local Government Code. Labor Code §401.024 provides the Commissioner the authority to permit or require the use of electronic transmission to transmit information. Labor Code §406.001 provides the definition of

employer, for purposes of Labor Code Chapter 406, Subchapter A as a person who employs one or more employees. Labor Code § 504.001 provides the definition of a political subdivision. Labor Code §402.00128(b)(10) authorizes the Commissioner or the Commissioner's designee to prescribe the form, manner, and procedure for the transmission of information to the Division. Labor Code §402.00128(b)(12) authorizes the Commissioner or the Commissioner's designee to exercise other powers and perform other duties as necessary to implement and enforce Labor Code Title 5. Labor Code §402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of Labor Code Title 5, Subtitle A.

**7. TEXT.**

**§110.1. *Insurance Carrier Requirements for Notifying the Division of Insurance Coverage.***

(a) An approved workers' compensation insurance policy, as referenced in Labor Code §401.011(44)(A), includes a binder, which serves as evidence of a temporary agreement that legally provides workers' compensation insurance coverage until the approved insurance policy is issued or the binder is canceled.

(b) As used in this section, "workers' compensation insurance coverage information" includes information regarding whether or not an employer has workers' compensation insurance coverage and, if so, information about the method of workers' compensation insurance coverage used.

(c) This rule applies to an insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision. Certified Self-Insurers are also subject to requirements specified in Chapter 114 of this title (relating to Self-Insurance). Self-Insurance Groups are also subject to requirements specified in Chapter 5, Subchapter G, Division 2 of this title (relating to Group Self-Insurance Coverage). Self-insured political subdivisions are also subject to requirements specified in §110.7 of this title (relating to

Self-Insured Political Subdivision Requirements for Notifying the Division of Election to Provide Medical Benefits).

(d) An insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision shall submit to the division, or its designee, workers' compensation insurance coverage information in the form and manner prescribed by the division. The division may designate and contract with a data collection agency to collect and maintain insurance coverage information.

(e) Workers' compensation insurance coverage information for insured Texas employers shall be provided to the division in accordance with subsection (d) of this rule as follows:

(1) by the insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and political subdivision, within 10 days after the effective date of coverage or endorsement and annually thereafter no later than 10 days after the anniversary date of coverage;

(2) by the insurance company, 30 days prior to the date on which cancellation or non-renewal becomes effective if the insurance company cancels the workers' compensation insurance coverage, does not renew the workers' compensation insurance coverage on the anniversary date, or cancels a binder before it issues a workers' compensation insurance policy;

(3) by the insurance company, 10 days prior to the date on which the cancellation becomes effective if the insurance company cancels an employer's workers' compensation insurance coverage in accordance with Labor Code, §406.008(a)(2); or

(4) by the insurance company, within 10 days after receiving notice of the effective date of termination from the covered employer because the employer switched workers' compensation insurance carriers.

(f) Cancellation or non-renewal of a workers' compensation insurance policy by an insurance company takes effect on the later of:

(1) the end of the workers' compensation insurance policy period; or

(2) the date the division and the employer receive the notification from the insurance company of coverage cancellation or non-renewal and the later of:

(A) the date 30 days after receipt of the notice required by Labor Code, §406.008(a)(1);

(B) the date 10 days after receipt of the notice required by Labor Code, §406.008(a)(2); or

(C) the effective date of the cancellation if later than the date in paragraph (1) or (2) of this subsection.

(g) "Claim administration contact" as it applies to this chapter is the person responsible for identifying or confirming an employer's coverage information with the division. An insurance company, a certified self-insurer, a workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision shall file a notice with the division of their designated claim administration contact not later than the 10th day after the date on which the coverage or claim administration agreement takes effect. A single administration address for the purpose of identifying or confirming an employer's coverage status shall be provided. If the single claims administration contact address changes, the new address shall be provided to the division at least 30 days in advance of the change taking effect. This information shall be filed in the form and manner prescribed by the division.

(h) An insurance company, certified self-insurer, workers' compensation self-insurance group under Labor Code Chapter 407A, and a political subdivision may elect to have a servicing agent process and file all coverage information, but the insurance company, certified self-insurer,

workers' compensation self-insurance group under Labor Code Chapter 407A, or political subdivision remains responsible for meeting all filing requirements of this rule.

(i) Notwithstanding the other provisions of this section, if an employer switches workers' compensation insurance carriers, the original policy is considered canceled as of the date the new coverage takes effect. Employers shall notify the prior insurance carrier of the cancellation date of the original policy, in writing, within 10 days of the effective date.

(j) This section is effective January 1, 2013.

**§110.7. Self-Insured Political Subdivision Requirements for Notifying the Division of Election to Provide Medical Benefits.**

(a) A health plan, for purposes of this section, is defined as a political subdivision contracting with health care providers under Labor Code §504.053(b)(2).

(b) A political subdivision as defined by Labor Code §504.001(3) that self-insures either individually or collectively and that pursuant to Labor Code §504.053(b)(2) elects to provide medical benefits to its injured employees by directly contracting with health care providers or by contracting through a health benefits pool established under Local Government Code Chapter 172 shall provide to the division notice of the method by which its employees will receive medical benefits. Political subdivisions are also subject to requirements specified in §110.1 of this title (relating to Insurance Carrier Requirements for Notifying the Division of Insurance Coverage).

(c) The notice of the method by which its employees will receive medical benefits required by subsection (b) of this section shall be filed with the division in writing or electronically and in the form and manner prescribed by the division. The notice shall include:

(1) the name, address, and the federal employer identification number (FEIN) of the political subdivision;

- (2) the political subdivision's contact information;
- (3) the name of the health plan elected under Labor Code §504.053(b)(2) for the political subdivision;
- (4) the contact information for the health plan elected under Labor Code §504.053(b)(2); and
- (5) the beginning and ending date(s) of the election under subsection (b) of this section, as applicable.

(d) A self-insured political subdivision that provides medical benefits to its injured employees in the manner described by Labor Code §504.053(b)(2) as of the effective date of this section shall provide the notice required by this section not later than December 31, 2012.

(e) A self-insured political subdivision that begins to provide medical benefits to its injured employees in the manner described by Labor Code §504.053(b)(2) after the effective date of this section shall provide the notice required by this section not later than the 30th day after the date the political subdivision begins to provide the medical benefits in that manner.

(f) A self-insured political subdivision shall notify the division of any change in any information required by this section not later than the 30th day after the date of the change.

**SUBCHAPTER B - EMPLOYER NOTICES**  
**28 TAC §§ 110.101, §110.103 and §110.105**

**6. STATUTORY AUTHORITY.**

The amendments and new rule are adopted under Labor Code §§406.004, 406.005, 406.007, 406.008, 406.009, 411.081, 401.024, 406.001, 402.00128(b)(10), 402.00128(b)(12), and under the general authority of §402.061.

Labor Code §406.004 provides notification requirements for employers who do not obtain workers' compensation insurance coverage. Labor Code §406.005 requires an employer to post coverage information at the employer's place of business to provide reasonable notice to

employees. Additionally this section requires employers to notify each employee as to their workers' compensation status, specifically requiring new employees to be notified of the existence or absence of workers' compensation insurance coverage at the time the employee is hired. Labor Code §406.007 requires an employer who terminates workers' compensation insurance coverage obtained under the Texas Workers' Compensation Act to file a written notice with the Division by certified mail not later than the 10<sup>th</sup> day after the date on which the employer notified the insurance carrier to terminate the coverage. Labor Code §406.008 provides timelines for when an insurance company that cancels or does not renew a policy of workers' compensation must deliver notice of the cancellation or nonrenewal to the employer and the Division. Additionally, Labor Code §406.008 requires the notice required under this section to be filed with the Division and determines failure of the insurance company to give notice as required by that section extends the policy until the date on which the required notice is provided to the employer and the Division. Labor Code §406.009 requires the Division to collect and maintain the information required under Labor Code Chapter 406, Subchapter A, adopt rules as necessary to enforce that subchapter, and monitor compliance with the requirements contained therein. Labor Code §411.081 requires employers to provide posted notice of the telephone hotline in the manner prescribed by the Division. Labor Code §401.024 provides the Commissioner the authority to permit or require the use of electronic transmission to transmit information. Labor Code §406.001 provides the definition of employer, for purposes of Labor Code Chapter 406, Subchapter A as a person who employs one or more employees. Labor Code §402.00128(b)(10) authorizes the Commissioner or the Commissioner's designee to prescribe the form, manner, and procedure for the transmission of information to the Division. Labor Code §402.00128(b)(12) authorizes the Commissioner or the Commissioner's designee to exercise other powers and perform other duties as necessary to implement and enforce Labor Code Title 5. Labor Code §402.061 provides that the Commissioner

shall adopt rules as necessary for the implementation and enforcement of Labor Code Title 5,  
Subtitle A.

**7. TEXT.**

**§110.101. *Covered and Non-Covered Employer Notices to Employees.***

(a) In addition to the posted notice required by subsection (e) of this section, employers, as defined by Labor Code §406.001, shall notify their employees of workers' compensation insurance coverage status, in writing. This additional notice:

(1) shall be provided at the time an employee is hired, meaning when the employee is required by federal law to complete both a W-4 form and an I-9 form or when a break in service has occurred and the employee is required by federal law to complete a W-4 form on the first day the employee reports back to duty;

(2) shall be provided to each employee, by an employer whose workers' compensation insurance coverage is terminated or cancelled, not later than the 15<sup>th</sup> day after the date on which the termination or cancellation of coverage takes effect;

(3) shall be provided to each employee, by an employer who obtains workers' compensation insurance coverage, not later than the 15<sup>th</sup> day after the date on which coverage takes effect, as necessary to allow the employee to elect to retain common law rights under Labor Code Chapter 406;

(4) shall include the text required in the posted notice; and

(5) if the employer is covered by workers' compensation insurance (subscriber) or becomes covered, whether by commercial insurance or through self-insurance as provided by the Texas Workers' Compensation Act (Act), shall include the following statement: "You may elect to retain your common law right of action if, no later than five days after you begin employment or within five days after receiving written notice from the employer that the employer has obtained

workers' compensation insurance coverage, you notify your employer in writing that you wish to retain your common law right to recover damages for personal injury. If you elect to retain your common law right of action, you cannot obtain workers' compensation income or medical benefits if you are injured."

(b) Notices required to be posted by this rule shall be posted:

(1) by the non-subscribing employer as provided in subsection (c) of this section;

(2) by the employer who is terminating workers' compensation insurance coverage, at the time the employer's termination of coverage takes effect, unless a new policy will maintain continuous coverage in which case the employees will be notified at the time the new workers' compensation insurance policy takes effect;

(3) by the self-insurer as provided by the Act, who is withdrawing from self-insurance, at the time the withdrawal takes effect;

(4) by the employer who becomes covered either by a workers' compensation insurance policy or through self-insurance as provided by the Act, at the time coverage or certification takes effect; and

(5) by the employer whose workers' compensation insurance policy is canceled by the insurance carrier, at the time the cancellation becomes effective if no new workers' compensation insurance policy is obtained.

(c) On or after the effective date of this rule, notices shall contain the specific text required by this rule. Any time the information regarding workers' compensation insurance coverage status, insurance carrier, or third party administrator changes, the notice shall be updated to reflect current information.

(d) An employer who recruits an employee in Texas to perform services outside of Texas, actually hires outside of Texas, and has notices of workers' compensation insurance coverage

posted conspicuously at the place of hire and at the business location where the employee will perform services, is not required to provide the additional notice required in subsection (a) of this section to the employee.

(e) Employers shall post notices in the workplace to inform employees about workers' compensation issues as required by this rule. These notices shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where each employee is likely to see the notice on a regular basis. The notices shall be printed with a title in at least 26 point bold type, subject in at least 18 point bold type, and text in at least 16 point normal type, and shall include ENGLISH, SPANISH, and any other LANGUAGE common to the employer's employee population. The text for the notices shall be the text provided by the division on the sample notice without any additional words or changes.

(1) Employers insured through a commercial insurance company shall post the following notice:

Figure: 28 TAC §110.101(e)(1)

"NOTICE TO EMPLOYEES CONCERNING WORKERS'  
COMPENSATION IN TEXAS"

**COVERAGE:** [Name of employer] has workers' compensation insurance coverage from [name of commercial insurance company] in the event of work-related injury or occupational disease. This coverage is effective from [effective date of workers' compensation insurance policy]. Any injuries or occupational diseases which occur on or after that date will be handled by [name of commercial insurance company]. An employee or a person acting on the employee's behalf, must notify the employer of an injury or occupational disease not later than the 30th day after the date on which

the injury occurs or the date the employee knew or should have known of an occupational disease, unless the Texas Department of Insurance, Division of Workers' Compensation (Division) determines that good cause existed for failure to provide timely notice. Your employer is required to provide you with coverage information, in writing, when you are hired or whenever the employer becomes, or ceases to be, covered by workers' compensation insurance.

**EMPLOYEE ASSISTANCE:** The Division provides free information about how to file a workers' compensation claim. Division staff will answer any questions you may have about workers' compensation and process any requests for dispute resolution of a claim. You can obtain this assistance by contacting your local Division field office or by calling 1-800-252-7031. The Office of Injured Employee Counsel (OIEC) also provides free assistance to injured employees and will explain your rights and responsibilities under the Workers' Compensation Act. You can obtain OIEC's assistance by contacting an OIEC customer service representative in your local Division field office or by calling 1-866-EZE-OIEC (1-866-393-6432).

**SAFETY VIOLATIONS HOTLINE:** The Division has a 24 hour toll-free telephone number for reporting unsafe conditions in the workplace that may violate occupational health and safety laws. Employers are prohibited by law from suspending, terminating, or discriminating against any employee because he or she in good faith reports an alleged occupational health or safety violation. Contact the Division at 1-800-452-9595."

(2) Employers who become certified self-insurers under Labor Code Chapter 407 shall post the following notice:

Figure: 28 TAC §110.101(e)(2)

"NOTICE TO EMPLOYEES CONCERNING WORKERS'  
COMPENSATION IN TEXAS"

**COVERAGE:** Effective on [effective date of certificate] [name of employer] has been certified by the Texas Department of Insurance, Division of Workers' Compensation (Division) as a self-insured employer providing workers' compensation insurance in the event of work-related injury or occupational disease. Claims for injuries or occupational diseases which occur on or after that date will be handled by [name of third party administrator]. An employee or a person acting on the employee's behalf, must notify the employer of an injury or occupational disease not later than the 30th day after the date on which the injury occurs or the date the employee knew or should have known of an occupational disease, unless the Division determines that good cause existed for failure to provide timely notice. Your employer is required to provide you with coverage information, in writing, when you are hired or whenever the employer becomes, or ceases to be, covered by workers' compensation insurance.

**EMPLOYEE ASSISTANCE:** The Division provides free information about how to file a workers' compensation claim. Division staff will answer any questions you may have about workers' compensation and process any

requests for dispute resolution of a claim. You can obtain this assistance by contacting your local Division field office or by calling 1-800-252-7031. The Office of Injured Employee Counsel (OIEC) also provides free assistance to injured employees and will explain your rights and responsibilities under the Workers' Compensation Act. You can obtain OIEC's assistance by contacting an OIEC customer service representative in your local Division field office or by calling 1-866-EZE-OIEC (1-866-393-6432).

**SAFETY VIOLATIONS HOTLINE:** The Division has a 24 hour toll-free telephone number for reporting unsafe conditions in the workplace that may violate occupational health and safety laws. Employers are prohibited by law from suspending, terminating, or discriminating against any employee because he or she in good faith reports an alleged occupational health or safety violation. Contact the Division at 1-800-452-9595."

(3) Employers who are a member of a self-insurance group under Labor Code Chapter 407A shall post the following notice:

Figure: 28 TAC §110.101(e)(3)

"NOTICE TO EMPLOYEES CONCERNING WORKERS'  
COMPENSATION IN TEXAS"

**COVERAGE:** Effective on [effective date of certificate] [name of employer] provides workers' compensation insurance coverage as a member of a self-insurance group under Labor Code Chapter 407A in

the event of work-related injury or occupational disease. Claims for injuries or occupational diseases which occur on or after that date will be handled by [name of third party administrator]. An employee or a person acting on the employee's behalf, must notify the employer of an injury or occupational disease not later than the 30th day after the date on which the injury occurs or the date the employee knew or should have known of an occupational disease, unless the Texas Department of Insurance, Division of Workers' Compensation (Division) determines that good cause existed for failure to provide timely notice. Your employer is required to provide you with coverage information, in writing, when you are hired or whenever the employer becomes, or ceases to be, covered by workers' compensation insurance.

**EMPLOYEE ASSISTANCE:** The Division provides free information about how to file a workers' compensation claim. Division staff will answer any questions you may have about workers' compensation and process any requests for dispute resolution of a claim. You can obtain this assistance by contacting your local Division field office or by calling 1-800-252-7031. The Office of Injured Employee Counsel (OIEC) also provides free assistance to injured employees and will explain your rights and responsibilities under the Workers' Compensation Act. You can obtain OIEC's assistance by contacting an OIEC customer service representative in your local Division field office or by calling 1-866-EZE-OIEC (1-866-393-6432).

**SAFETY VIOLATIONS HOTLINE:** The Division has a 24 hour toll-free telephone number for reporting unsafe conditions in the workplace that may violate occupational health and safety laws. Employers are prohibited by law from suspending, terminating, or discriminating against any employee because he or she in good faith reports an alleged occupational health or safety violation. Contact the Division at 1-800-452-9595."

(4) Employers who are not covered by workers' compensation (non-subscriber) shall post the following notice:

Figure: 28 TAC §110.101(e)(4)

"NOTICE TO EMPLOYEES CONCERNING WORKERS' COMPENSATION  
IN TEXAS"

**COVERAGE:** [Name of employer] does not have workers' compensation insurance coverage. As an employee of a non-covered employer, you are not eligible to receive workers' compensation benefits under the Texas Workers' Compensation Act. However, a non-covered (non-subscribing) employer can and may provide other benefits to injured employees. You should contact your employer regarding the availability of other benefits for a work-related injury or occupational disease. In addition, you may have rights under the common law of Texas should you have an on the job injury or occupational disease. Your employer is required to provide you with coverage information, in writing, when you are hired or whenever the employer becomes, or ceases to be, covered by workers' compensation insurance.

**SAFETY VIOLATIONS HOTLINE:** The Division has a 24 hour toll-free telephone number for reporting unsafe conditions in the workplace that may violate occupational health and safety laws. Employers are prohibited by law from suspending, terminating, or discriminating against any employee because he or she in good faith reports an alleged occupational health or safety violation. Contact the Division at 1-800-452-9595."

(f) Failure to post or to provide notice as required in this rule is an administrative violation.

(g) This section is effective January 1, 2013.

**§110.103. *Employer Requirements for Notifying the Division of Non-Coverage.***

(a) Applicability. This subsection applies to notices required to be submitted by non-subscribing employers to the division before January 1, 2013. An employer, as defined by Labor Code §406.001, that does not have workers' compensation insurance coverage (non-subscriber) and whose employees are not exempt from coverage under the Workers' Compensation Act (Act) shall provide the division a notice of non-coverage, in the form and manner prescribed by the division. The notice required by this subsection shall be provided, the earlier of the following:

(1) 30 days after receiving a division request for the filing of a notice of non-coverage and annually thereafter on the anniversary date of the original filing; or

(2) 30 days after hiring an employee who is subject to coverage under the Act, and annually thereafter on the anniversary date of the original filing.

(b) Applicability. This subsection applies to notices required to be submitted by non-subscribing employers to the division on or after January 1, 2013.

(1) A non-subscriber whose employees are not exempt from workers' compensation

insurance coverage under the Act shall submit a notice of non-coverage to the division annually between February 1st and not later than April 30th of each calendar year. The period of the notice shall cover from May 1st of the same year the notice is submitted through the end of April of the subsequent year.

(2) In addition to the notice required by paragraph (1) of this subsection, a non-subscriber shall submit to the division a notice of non-coverage not later than the 30th day after the date the employer hired its first employee who is subject to coverage under the Act, unless this due date falls within the same time period described by paragraph (1) of this subsection and the employer submits the notice within that time period. A non-subscriber shall also provide the division with a notice of non-coverage not later than the 10th day after receipt of a division request for the information.

(3) The notices required by paragraphs (1) and (2) of this subsection shall be filed with the division in writing or electronically in the form and manner prescribed by the division and shall contain:

(A) a statement that the employer does not have workers' compensation insurance coverage;

(B) a statement of whether the employer had a death, injuries that resulted in the injured employee's absence from work for more than one day, or knowledge of an occupational disease since the last report of no coverage;

(C) the employer's business name;

(D) the federal employer identification number (FEIN);

(E) the employer's business mailing address;

(F) the employer's business type;

(G) the employer's North American Industry Classification System (NAICS) code(s);

(H) additional business locations (including name, FEIN, and address concerning each additional location); and

(I) the date the form was completed and the name, title, telephone number, email address, and signature of the person providing the information required by this subsection.

(c) Employers are responsible for timely and accurate notice under this section. A notice required by this section is considered filed with the division only when it accurately contains all of the data elements specified under subsection (b) of this section and is received by the division.

**§110.105. *Employer Requirements for Notifying the Division of Termination of Coverage.***

(a) An employer, as defined by Labor Code §406.001, who terminates workers' compensation insurance coverage shall file written notice of the termination of coverage with the division not later than the 10th day after the date on which the employer notified the insurance carrier under Labor Code §406.007 to terminate the coverage.

(b) The employer shall file the notice of termination required by subsection (a) of this section by certified mail or electronically on the form prescribed by the division. The notice shall contain:

(1) a statement of no workers' compensation insurance coverage, including policy termination effective date, policy number, insurance company name, date the termination notice was sent to the insurance company, and date employees were or will be notified;

(2) a statement of whether the employer had a death, injuries that resulted in the injured employee's absence from work for more than one day, or knowledge of an occupational disease since the last report of no coverage;

(3) the employer business name;

- (4) the federal employer identification number (FEIN);
- (5) the employer's business mailing address;
- (6) the employer's business type;
- (7) the employer's North American Industry Classification System (NAICS) code;
- (8) additional business locations (including name, FEIN, and address concerning each additional location); and
- (9) the signature date and the name, title, telephone number, email address, and signature of the person providing the information required by this subsection.

(c) Termination of coverage by an employer takes effect on the later of:

- (1) the 30th day after the date of filing the notice with the division under this section;
- or
- (2) the cancellation date of the policy.

(d) Coverage shall be extended until the date on which the termination of coverage takes effect and the employer is obligated for premiums due for that period.

(e) Notwithstanding the other provisions of this section, if an employer switches workers' compensation insurance carriers, the original policy is considered canceled as of the date the new coverage takes effect. Employers shall notify the prior insurance carrier of the cancellation date of the original policy, in writing, within 10 days of the effective date.

(f) This section is effective January 1, 2013.

## **8. CERTIFICATION.**

This agency hereby certifies that this order has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on the 13<sup>th</sup> day of July, 2012.

X

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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 amendments to §110.1 and §110.101, and new §§110.7, 110.103, and 110.105 specified herein, are adopted.

AND IT IS SO ORDERED.

X

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ROD BORDELON  
COMMISSIONER OF WORKERS' COMPENSATION

ATTEST:

X

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Dirk Johnson  
General Counsel

COMMISSIONER ORDER NO.