

CHAPTER 143 DISPUTE RESOLUTION REVIEW BY THE APPEALS PANEL

28 TAC §§143.2 – 143.5

1. INTRODUCTION. The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division) adopts amendments to §§143.2 – 143.5 concerning Dispute Resolution Review By The Appeals Panel. Section 143.3 and §143.4 are adopted with changes to the proposed text published in the July 31, 2009 issue of the *Texas Register* (34 TexReg 5030). Section 143.2 and §143.5 are adopted without changes and will not be published. *

In accordance with Government Code §2001.033(1), the Division's reasoned justification for these rules is set out in this order, which includes the preamble, which in turn includes the rules. The preamble contains a summary of the factual basis of the rules, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were in support of or in opposition to adoption of the rules, and the reasons why the Division agrees or disagrees with some of the comments and recommendations.

No request for public hearing was received. The public comment period closed August 31, 2009.

2. REASONED JUSTIFICATION. These amendments are necessary to implement statutory provisions of House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005; and HB 4545, enacted by the 81st Legislature, Regular

Session, effective September 1, 2009. HB 7 amended Chapter 410, Subchapter E of the Labor Code by amending §§410.201, 410.203, and 410.204. HB 4545 amended Chapter 410, Subchapter E of the Labor Code by amending §410.252.

The legislature amended §§410.201, 410.203, and 410.204 after considering recommendations made by the Sunset Advisory Commission Staff Report on the Texas Workers' Compensation Commission, April 2004 (Report). The Report concluded that the majority of the Appeals Panel workload involved writing decisions that simply affirmed the hearing officers' decisions.

The amendments to §§410.201, 410.203 and 410.204 made three changes regarding the Appeals Panel. First, Labor Code §410.201 was amended to provide that appeals judges, in a three-member panel, shall conduct administrative appeals proceedings. Second, §410.203 was amended to only allow the Appeals Panel to issue decisions if the Appeals Panel is reversing or remanding a decision of a hearing officer. The amendment to §410.203 also required the Appeals Panel to maintain a manual of precedent-establishing decisions. Section 410.203 further notes that the Appeals Panel may not remand a case more than once. Third, under §410.204, the decision of the hearing officer becomes final after 45 days if the Appeals Panel has not reversed and rendered or reversed and remanded the decision of the hearing officer thus eliminating the redundancy of issuing written decisions affirming the hearing officer's decision.

The amendments to §410.252(a) provided that a party could seek judicial review of the administrative decision by filing suit within 45 days after the Division mailed the decision

of the Appeals Panel to the party. The amendments further provided that the mailing date is considered to be the fifth day after the decision of the Appeals Panel was filed with the Division.

In response to written comments received from interested parties, the Division has changed some of the proposed language in the text of the rule as adopted. The changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

The Division received comments questioning the statutory basis for, and objecting to use of the term “deemed” in §143.3 and §143.4, without an explanation of how that term should be applied. As stated in detail below in the responses to comments under §143.3 and §143.4, the Division has implied authority under Labor Code §§402.061, 402.00111, 402.00128, and 410.204 to use “deemed” for Division communications.

The text in proposed §143.3(a)(3) is restructured and adopted to clarify that the hearing officer’s decision is deemed to have been received by the parties in accordance with §102.5 (relating to General Rules for Written Communications To and From the Commission) and §102.3 (relating to Computation of Time) of this title. The adopted text is more comprehensive rule language and is clearer than the proposed text. The adopted text conforms to Labor Code §410.202(a) and further provides direction to the Division so it knows and system participants understand when a request for review is due.

The Division has also added the words “or parties” to subsection (a)(4) of §143.3 as adopted because there may be more than one opposing party that must be served on the same day the request for review of the decision of the hearing officer by the Appeals Panel is filed with the Division.

Under subsection (d) of §143.3 as adopted, the words “for review by the appeals panel” are added after request in the first sentence for clarity. Likewise, the words “with the division” are added after the word “served” in the third sentence, for clarity.

The text in §143.4(a)(3) is restructured and adopted to clarify that the appellant’s appeal is deemed received in accordance with §102.5 (relating to General Rules for Written Communications To and From the Commission), §102.4 (relating to General Rules for Non-Commission Communications) and §102.3 (relating to Computation of Time) of this title. The adopted text conforms to Labor Code § 410.202(b), reminds system participants of applicable rules pertaining to deemed receipt, and provides additional guidance regarding non-agency communications.

The Division has also removed the word “appellant” and replaced it with the words “other party or parties” to subsection (a)(4) of §143.4 as adopted. The other party or parties are the proper participants to be served so they can respond to the appellant’s request for review by the Appeals Panel.

The Division has reformatted subsection (c) of §143.4 regarding responding to a request for review by the Appeals Panel to track the parallel provisions of §143.3(d) to the

extent possible based on the suggestion of a commenter. The text in §143.4(c) as adopted is changed to the format used in §143.3(d) as adopted. In the first sentence, the words “request for review by the appeals panel” are replaced with “response to the appellant’s request with the division”, the word “appealing” is replaced with “responding”, and the words “hearing officer’s decision” are replaced with “appellant’s request”. In the third sentence, the word “request” is replaced with “response” and the words “hearing officer’s decision” are replaced with “appellant’s request”. However, §143.4(c) as adopted retains proposal language which removed “or timely served” because the Division has no method of knowing when the other party actually receives a response; further, the Division does not use the “other party” receipt date to calculate a timely response. As adopted, a response made under §143.4(c) shall be presumed timely filed if it meets the listed conditions under this section.

Proposed §143.4(d) has been deleted from the adopted text because its substance has been incorporated in §143.4(c) as adopted.

3. HOW THE SECTIONS WILL FUNCTION.

Section 143.2 clarifies the actions the Appeals Panel may take in reviewing the decision of a hearing officer. The section is adopted as proposed.

Section 143.3 delineates the process a party must follow to appeal a decision of a hearing officer. The section is adopted with changes.

Section 143.4 sets forth the process that the party responding to a request for review by the Appeals Panel must follow to respond to the request. The section is adopted with changes.

Section 143.5 sets forth the procedures for the Appeals Panel for issuing a decision on the appeal. The section is adopted as proposed.

4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSES.

Summaries of the comments and agency responses are as follows:

General Comment: Commenter suggests an online posting of the date the Appeals Panel reviewed the hearing officer's decision which may be accessed by the appealing party and a precedent manual of precedent-establishing decisions that is also publicly posted.

Agency Response: The Division acknowledges the suggestions. A specific date of review of the hearing officer's decision cannot be identified as the review process begins upon receipt of the appeal and continues until final processing. The Division maintains a precedent manual of precedent-establishing decisions, the Appeals Panel Decision Manual (APDM), which has been on a dedicated page of the Division website since its inception in 2005. Two versions of the APDM are maintained on the page, an HTML version and a searchable Word version. The HTML version is at <http://www.tdi.state.tx.us/wc/idr/documents/apdmanual.html>. The word version is at <http://www.tdi.state.tx.us/wc/idr/documents/apdmword.doc>. The Division maintains an index of redacted Appeals Panel Decision by year which can be found on a dedicated page

of the Division website. The HTML version is at <http://www.tdi.state.tx.us/wc/admindecisions.html#apd>.

General Comment: Commenter states that a hearing officer's decision will become final after 45 days regardless of whether a notice is sent or not, and that the lack of a response implies that no revision or remand to a hearing officer's decision was made. Commenter states several unrepresented injured employees, in response to an appeal sent to the Appeals Panel, received a response of "not appealed timely." Inquiry was made to the Division regarding this response. Commenter states that the injured employees were informed that the response did not indicate an untimely appeal but rather that the hearing officer's decision became final. Commenter suggests that unrepresented injured employees should receive a plain language notice explaining why the appeal had no merits.

Agency Response: The Division disagrees. Commenter is essentially requesting that a decision be issued by the Appeals Panel affirming the hearing officer's decision. HB 7 mandated that the Appeals Panel will no longer issue decisions which affirm the decision of the hearing officer, and the suggestion disregards legislative intent by having the Appeals Panel explain why the decision is affirmable. Either a notice or a written decision is sent to the parties after review of an appeal. A written decision is issued and sent to the parties when the hearing officer's decision contains a reversible error. The Appeals Panel issues notices that the decision of the hearing officer became final when the decision by the hearing officer does not contain reversible error. The Appeals Panel also issues written notices for appeals that are untimely which explain why the appeal is not timely and

therefore that the Appeals Panel does not have jurisdiction to address the merits of the appeal.

General Comment: Commenters opine that it is very important that Division hearing officers refrain from developing new public policy or interpretations of the law that are implemented for the first time at contested case hearing (CCH) proceedings. Since HB 7 has taken away the Appeals Panel's power to affirm, commenters think stakeholders will not be notified if a change of position or procedural issue is implemented for the first time at a CCH. Commenters suggest that the Division issue public bulletins announcing any changes in its interpretation and implementation of laws.

Agency Response: The Division recognizes the commenter's concerns. However, the issue raised is beyond the scope of the rules presently discussed. The issuance of public bulletins to explain why a hearing officer's decision is affirmable would disregard legislative intent by having the Appeals Panel explain why the decision is affirmable.

General Comment: Commenter believes that the extended timeframe for the Appeals Panel to issue decisions, having been extended from 30 to 45 days, will allow the Appeals Panel to publish consistent decisions.

Agency Response: The Division agrees.

General Comment: Commenter contends that contested case hearing and Appeals Panel decisions fail to meet the requirements of the Administrative Procedure Act and the Texas Constitution, and that Appeals Panel decisions fail to provide any findings of fact or conclusions of law that detail how the decision was reached.

Agency Response: The Division disagrees. The discussion of contested case hearing decisions is beyond the scope of this rulemaking. The Labor Code does not require Appeals Panel decisions to include findings of fact and conclusions of law.

General Comment: Commenter recommends allowing an appellant the opportunity to submit a reply brief which Texas civil litigation allows in every other aspect. Commenter submits a proposal for rule language and further states that it would not oppose a page limitation.

Agency Response: The Division disagrees. Section 410.202 only provides for a party who wants to dispute the decision of a hearing officer to do so by filing a written appeal and which allows the other party or parties to file a written response. The Labor Code makes no provision for replies to responses. There is currently no page limitation on either the appeal or the response.

General Comment: Commenter states that the proposed rules repeat statutory language frequently and that the statutory language should be removed.

Agency Response: The Division disagrees. There are many times in which the use of statutory language makes a rule more complete and easier to use and understand. That is true in these rules where the statutory language is repeated.

§143.3

Comment: Commenter states *Combined Specialty Insurance Company v. Deese*, 266 S.W.3d 653 (Tex. App.-Dallas 2008, no pet.) raised concerns that are not addressed by these rules. Specifically, commenter states the court in *Deese* notes the purpose of §143.3(e) is to: establish a clear date of receipt to act as a trigger for Appeals Panel action;

to serve the parties' convenience by allowing the parties to file a document by mailing it within the same time period as the parties could file in person; and to maintain a firm outer deadline for receipt of documents by the Division. Commenter further states the court in *Deese* was concerned by the possibility of an appeal being found untimely due to issues with the postal service, and held that the piece of paper which was mailed to the Division by the 15th day need not be the same piece of paper that was received by the Division on or before the 20th day but rather an appeal is considered timely if an identical copy is received by the 20th day.

Agency Response: The Division agrees that the *Deese* court held if a party timely mailed its request for review and the request or an identical copy is received by the Division within twenty days after the party received the hearing officer's decision, the appeal is considered timely because compliance with rule has been shown. However, no rule revision is necessary because the language of the rule does not contradict the holding in *Deese*.

Comment: Commenter requests that the rule or the preamble make clear that the presumption of timeliness can be rebutted and to provide how the parties can rebut that presumption.

Agency Response: The Division disagrees. It is incumbent on the parties to establish jurisdiction and the timeliness of the appeal at the time the appeal is filed.

Comment: Commenters recommend several changes to existing rules. The recommendations were as follows:

Define "clearly and concisely".

Specify consequences for failing to write clearly and concisely.

State the elements that must be included in an agency dispute resolution decision.

Define what constitutes “service on the other party on the same day”.

Assure that the Appeals Panel actually reads the appeal.

Agency Response: The Division disagrees. The Appeals Panel reviews each request for review and response filed with the Division. The sufficiency of an appeal is determined on a case by case basis according to the facts presented. A written decision is issued by the Appeals Panel if reversible error is found in the hearing officer’s decision which explains the error. No rule revision is necessary.

§143.3 and §143.4

Comment: Commenter points to a discrepancy between §143.3 and §143.4. Specifically, §143.3 states “timely filed or timely served” but §143.4 does not contain “timely served.”

Agency Response: The Division disagrees that there is a discrepancy. The Division removed “or timely served” from §143.4(c) as part of the proposed rule change because the Division has no method of knowing when the other party actually receives a response. Further, the Division does not use the “other party” receipt date to calculate a timely response.

Comment: Commenter suggests that §143.4(c) parallel §143.3(d).

Agency Response: The Division agrees that §143.4(c) and 143.3(d) be changed to the extent possible to make them parallel and has made those changes.

Comment: Commenters object to the use of the word “deemed” when referring to the date of receipt of communications in §§143.3(a)(3), 143.4(a)(3) and §143.4(c)(1)-(2).

Commenters assert that there is no statutory authority for using “deemed” and therefore “deemed” should be removed.

Agency Response: The Division disagrees. Labor Code §402.061 vests the Commissioner with the power and authority to promulgate rules as necessary for the implementation and enforcement of the Texas Workers’ Compensation Act (Act). Section 402.00111 also provides the Commissioner rulemaking authority. Further, §402.00128 grants general powers to the Commissioner including prescribing the form, manner and procedure for the transmission of information to the Division. The Appeals Panel which reviews each appeal has the express duty conferred under §410.204 of the Act to issue a written decision not later than the 45th day after the date on which the written response to the request for the appeal is filed. Therefore, there must be a mechanism for the Division to start the 45 day deadline in the appeals process. A party has 15 days after deemed receipt of the hearing officer’s decision as the adopted rule requires in §143.3(a)(3). If the Division had no means by which to deem receipt of the appeal pursuant to §102.5, and §102.3, the Division would never know when a request for review is due. The appeals process then progresses through the whole continuum from the request for review to a written response using deemed receipt when referring to the date of receipt of communications in §143.4(a)(3) and §143.4(c) (1) - (2) to the written decision and completing the end date of the 45-day deadline of the appeals process. *Trinity Universal Insurance Company v. Day*, 155 S.W.3d 337 (Tex.App.—El Paso 2004, pet. denied) held that the deemed date of receipt under §102.5(d) was applicable in determining the timeliness of an appeal.

Comment: Commenter further states that even if the Division had statutory authority for its deemed receipt provision, the Appeals Panel has no fact finding authority that would allow it to determine by the great weight of evidence if a party actually received the contested case decision under §143.3(a)(3) at another date.

Agency Response: The Division disagrees. The Appeals Panel, as with any other judicial body, must always determine its jurisdiction. Section 410.169 provides that in the absence of a timely appeal the decision of the hearing officer becomes final.

Comment: Commenter recommends a specific time limit in §143.3(b) and §143.4(b) for the Division to provide a copy of the request for review and of the response to the parties within “three business days” instead of “expeditiously” when it is not clear that the party or parties have been served.

Agency Response: The Division disagrees. It is inappropriate for the Division to adopt by rule its internal procedure or processes. It is the customary practice for the Division to distribute a copy of the request for review and the response to the parties on the next business day after the document was filed when it is not clear that the party or parties have been served.

§143.5

Comment: Commenter states that proposed §143.5(c) conflicts with Labor Code §410.204(a) and is therefore void.

Agency Response: The Division disagrees. Filing an Appeals Panel decision with the Division instead of the Commissioner is tantamount to filing with the Commissioner. This action is a permissible delegation of authority under the Act pursuant to §402.00128.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For, without changes: None.

For, with changes: Insurance Council of Texas, Office of Injured Employee Counsel, Work Injury Assistance Center of Texas, John D. Pringle, Property and Casualty Insurers Association of America, Texas Mutual Insurance Company

Against: Flahive, Ogden & Latson.

6. STATUTORY AUTHORITY. The amendments are adopted under the Labor Code §§402.00111, 402.00128, 402.061, 410.201, 410.202, 410.203, 410.204, and 410.252(a). Section 402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.00128 vests general operational powers to the Commissioner including the authority to delegate and issue subpoenas. Section 402.061 authorizes the Commissioner to adopt rules as necessary for the implementation and enforcement of the Act. Section 410.201 provides that appeals judges, in a three-member panel, shall conduct administrative proceedings. Section 410.202 explains the mechanics of the request for appeal of the decision of a hearing officer, the time frames and the computation of time for both the party that appeals and the party that responds. Section 410.203 specifies that the appeals panel may reverse the decision of the hearing officer and render a new decision or reverse and remand for further consideration and development of evidence, with no more than one remand. Section 410.204 provides that the appeals panel must review each request and

issue a written decision on each reversed or remanded case which must be issued not later than the 45th day after the date on which the written response to the request for the appeal is filed with the Division. Section 410.252(a) authorizes a party to seek judicial review by filing suit not later than the 45th day after the date on which the Division mailed the party the decision of the appeals panel. For purposes of this section, the mailing date is considered to be the fifth day after the date the decision of the appeals panel was filed with the Division.

7. TEXT.

§143.2. Description of the Appeal Proceeding.

(a) To review the decision of the hearing officer, the appeals panel considers the appellant's request, the respondent's response, and the record of the benefit contested case hearing. The parties do not appear in person before the panel.

(b) The appeals panel may:

- (1) reverse the decision of the hearing officer and render a new decision; or
- (2) reverse the decision of the hearing officer and remand to the hearing officer for a second benefit contested case hearing, which shall be set as provided by §142.18 of this title (relating to Special Provisions for Cases on Remand from the Appeals Panel). The appeals panel may not remand a case more than once.

§143.3. Requesting the Appeals Panel to Review the Decision of the Hearing Officer.

(a) A party to a benefit contested case hearing who is dissatisfied with the decision of the hearing officer may request the appeals panel to review that decision. The request shall:

(1) be in writing;

(2) clearly and concisely rebut each issue in the hearing officer's decision that the appellant wants reviewed, and state the relief the appellant wants granted;

(3) be filed with the Chief Clerk of Proceedings in the division's central office in Austin not later than the 15th day after receipt of the hearing officer's decision. The hearing officer's decision is deemed to have been received by the parties in accordance with §102.5 (relating to General Rules for Written Communications To and From the Commission) and §102.3 (relating to Computation of Time) of this title. Requests that are timely submitted to a division location other than the Chief Clerk of Proceedings, such as a local field office of the division, will be considered timely filed and forwarded to the division's appeals panel for consideration, but this may result in delay in the processing of the request. Untimely requests, regardless of whether they are filed with the Chief Clerk of Proceedings in the division's central office or in a different division field office, do not invoke the jurisdiction of the appeals panel and will not be reviewed by the appeals panel;

(4) be served on the other party or parties on the same day filed with the division;
and

(5) contain a statement certifying that a copy has been served on the other party or parties in person, mailed by certified mail, return receipt requested, or transmitted by verifiable means. A certificate in substantially the following form shall be used: "I hereby certify that I have on this ____ day of _____, _____, served a copy of the attached request for appeal on _____ (state the name of the other party or parties on whom a copy was served) by _____ (state the manner of service)." _____ Signature

(b) If it is not clear from the request for review that the party has properly served a copy of the request on the other party or parties, the division will provide a copy of the request expeditiously.

(c) A party may make a conditional request for review by the appeals panel even if the overall contested case hearing decision is favorable. A timely request that indicates that the filing party seeks consideration only if the opposing party files a request for review will not be treated as a request for review unless an opposing party timely files a request. If an opposing party does file a timely request, the conditional request will be treated as a cross-appeal.

(d) A request for review by the appeals panel shall be filed not later than the 15th day after the appealing party is deemed to have received the hearing officer's decision. Saturdays and Sundays and holidays listed in §662.003, Government Code, are not included in the computation of this 15-day period. A request made under this section shall be presumed to be timely filed or timely served with the division if it is:

(1) mailed on or before the 15th day after the date of deemed receipt of the hearing officer's decision, as provided in subsection (a) of this section; and

(2) received by the division not later than the 20th day after the date of deemed receipt of the hearing officer's decision.

§143.4. *Responding to a Request for Review by the Appeals Panel.*

(a) The other party shall respond to the appellant's request. The response shall:

(1) be in writing;

(2) clearly and concisely support each issue in the hearing officer's decision that the appellant has rebutted in the request, and state why the appellant's relief should not be granted;

(3) be filed with the Chief Clerk of Proceedings in the division's central office in Austin not later than the 15th day after receipt of the appellant's appeal. The appellant's appeal is deemed received in accordance with §102.5 (relating to General Rules for Written Communications To and From the Commission, §102.4 (relating to General Rules for Non-Commission Communications) and §102.3 (relating to Computation of Time) of this title. Responses that are timely submitted to a division location other than the Chief Clerk of Proceedings, such as a local field office of the division, will be considered filed timely and forwarded to the division's appeals panel for consideration, but this may result in delay in

the processing of the response. Untimely responses, regardless of whether they are filed with the Chief Clerk of Proceedings or in a different division office, will not be reviewed by the appeals panel;

(4) be served on the other party or parties on the same day filed with the division;
and

(5) contain a statement certifying that a copy has been served on the other party or parties in person, mailed by certified mail, return receipt requested, or transmitted by verifiable means. A certificate in substantially the following form shall be used: "I hereby certify that I have on this ____ day of _____, _____, served a copy of the attached response to a request for appeal on _____ (state the name of the other party or parties on whom a copy was served) by _____ (state the manner of service)."

Signature

(b) If it is not clear from the response that the party has properly served a copy of the response on the other party or parties, the division shall provide a copy of the response expeditiously.

(c) A response to the appellant's request with the division shall be filed not later than the 15th day after the responding party is deemed to have received the appellant's request. Saturdays and Sundays and holidays listed in §662.003, Government Code, are not

included in the computation of this 15-day period. A response made under this section shall be presumed to be timely filed with the division if it is:

(1) mailed on or before the 15th day after the date of deemed receipt of the appellant's request, as provided in subsection (a) of this section; and

(2) received by the division not later than the 20th day after the date of deemed receipt of the appellant's request.

§143.5. *Decision of the Appeals Panel.*

(a) Not later than the 45th day after the date the response was filed with the division, the appeals panel will issue its written decision, concluding with a separate paragraph stating words to the effect: "The true corporate name of the insurance carrier is (NAME IN BOLD PRINT) and the name and address of its registered agent for service of process is (NAME AND ADDRESS IN BOLD PRINT)", and file a copy with the division.

(b) If the appeals panel does not issue a written decision by the 45th day after the date the response was filed with the division, the hearing officer's decision becomes final, constitutes the decision of the appeals panel, and, for the purpose of establishing the time for seeking judicial review, is deemed filed with the division on that day.

(c) Not later than the seventh day after the appeals panel files its decision with the division, or a decision is deemed filed, as provided in subsection (b) of this section, the division shall

send to each party a copy of the decision, or a notice that the hearing officer's decision has become final and constitutes the decision of the appeals panel.

(d) A decision of the appeals panel that is not appealed for judicial review, as provided by the Texas Labor Code §410.252, et seq., becomes final on the 46th day after the division mailed the party the decision of the appeals panel. For purposes of this section the mailing date is considered to be the fifth day after the date the decision of the appeals panel was filed by the division.

(e) A decision of the appeals panel that is appealed for judicial review is binding on the parties for the duration of the judicial review.

8. CERTIFICATION. The agency hereby certifies that the adopted amendments and sections have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on November 19, 2009.

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

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that §§143.2 – 143.5 specified herein, concerning dispute resolution review by the appeals panel are adopted.

ROD BORDELON
Commissioner of Workers' Compensation

ATTEST:

Dirk Johnson
General Counsel

COMMISSIONER ORDER NO _____

* The rule text of §143.2 and §143.5 is contained in this document as a courtesy to system participants.