TITLE 28. INSURANCE

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

CHAPTER 180 – MONITORING AND ENFORCEMENT

SUBCHAPTER A. GENERAL RULES FOR ENFORCEMENT
28 TAC §§180.1, 180.3, 180.4, 180.5, 180.8, 180.9 and 180.10
SUBCHAPTER B. MEDICAL BENEFIT REGULATION
28 TAC §180.27

ADOPTION

1. INTRODUCTION.

The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §§180.1, 180.3, 180.5, 180.8, and 180.27, relating to Definitions, Compliance Audits, Access to Workers' Compensation Related Records and Information, Notices of Violation; Notices of Hearing; Default Judgments, and Restoration, respectively, and adopts new §§180.4, 180.9, and 180.10, relating to On-Site Visits, Proposals for Decision, and Ex Parte Emergency Cease and Desist Orders, respectively. The amendments to §180.1 and 180.3, and new §180.4 and §180.10 are adopted with changes to the proposed text as published in the September 23, 2011, issue of the *Texas Register* (36 TexReg 6238). These changes are more fully discussed below. These changes do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. The amendments to §§180.5, 180.8, and 180.27 and new §180.9 are adopted without changes to the proposed text as published in the September 23, 2011, issue of the *Texas Register* (36 TexReg 6238), and these sections will not be republished.

In accordance with Government Code §2001.033(a)(1), the Division's reasoned justification for these rules is set out in this order, which includes the preamble. The

preamble contains a summary of the factual basis of the rules, a summary of comments received from interested parties, the names of entities who commented and whether they were in support of or in opposition to the adoption of the rule, and the reasons why the Division agrees or disagrees with the comments and recommendations.

The Division published an informal draft of the proposed amendments and new rules on the Division's website for informal comment on July 8, 2011. There were 11 informal comments received. Following formal proposal of the amendments and new rules, the Division conducted a public hearing on October 17, 2011. The public comment period closed October 24, 2011. The Division received 9 formal public comments.

2. REASONED JUSTIFICATION.

These adopted amendments and new rules implement statutory changes in House Bill (HB) 2605, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011 (HB 2605) that impact the Division's system monitoring and enforcement authority under the Texas Workers' Compensation Act (Act). Specifically, these legislative changes relate to: (1) the Commissioner's authority to issue the final decision in Division enforcement cases in which a proposal for decision is sent to the Commissioner from the State Office of Administrative Hearings (SOAH); (2) the Commissioner's authority to ex parte issue emergency cease and desist orders; and (3) the Division's authority to conduct announced and unannounced on-site visits when reviewing the operations of a person regulated by the Division. These adopted rules also contain changes that clarify and update existing rules in this chapter in accordance with the provisions of Labor Code, Title 5 and provide the Division with greater flexibility when performing system monitoring and enforcement activities under the Act.

First, HB 2605 amended Labor Code §402.073 to require an administrative law judge (ALJ) at SOAH who presides over an enforcement hearing under Labor Code §415.034 to propose a decision to the Commissioner for final consideration and decision by the Commissioner. Newly adopted §180.9 contains these new provisions that expand the Commissioner's authority to issue decisions in all Division enforcement cases heard at SOAH. This adopted section also contains necessary provisions moved from §180.27(a) – (c) related to the issuance of final orders by the Commissioner that describe the effects of sanctions. The changes to this adopted rule are necessary to update, organize, and clarify the rule.

The amendments to Labor Code §402.073 by HB 2605 are also reflected in amendments to adopted §180.8 that relate to the informal disposition by default of enforcement cases and motions to set aside default orders and reopen the record. The adopted amendments to §180.8 conform the rule to reflect the Commissioner's expanded authority as the final decision-maker in all Division enforcement cases heard at SOAH. These adopted amendments to §180.8 also clarify the procedures that the charged party who has defaulted must follow when seeking to set aside the default order and reopen the record and the procedures are adopted in accordance with applicable provisions in Government Code, Chapter 2001, Subchapter F. Specifically, the adopted amendments clarify the timeframe within which a motion to set aside a default order and reopen the record must be filed with the Division. These adopted amendments clarify that such motions must be filed with the Division's Chief Clerk of Proceedings prior to the time the Commissioner's order becomes final as provided by Government Code, Chapter 2001, Subchapter F, specifically, Government Code §2001.144. These adopted amendments also state that a motion to set aside a default order and reopen the record is not a motion for rehearing pursuant to

provisions of Government Code, Chapter 2001, Subchapter F. A motion for rehearing is required in order to exhaust administrative remedies for purposes of judicial review. Even after the Commissioner has entered a default order and the case has been dismissed from the SOAH docket, the charged party who has defaulted may still file a motion for rehearing under Government Code, Chapter 2001, Subchapter F, specifically, Labor Code §2001.146.

Second, HB 2605 amended Labor Code §414.005 to expand the authority of the Division to conduct on-site visits to the person's premises, including unannounced on-site visits, when reviewing the operations of a person regulated by the Division. These amendments require the Commissioner by rule to prescribe the procedures to be used for on-site visits, including specifying the types of records subject to inspection during the on-site visits.

Adopted §180.4 prescribes the procedures the Division will follow when conducting announced and unannounced on-site visits and specifies the types of records that are subject to inspection during the on-site visit. The adopted procedures are designed to provide system participants with notice of the procedures the Division will use to conduct on-site visits. This includes written notice of when and where the Division will conduct these visits and, unless the visit is unannounced, 10 day written notice to the participant of when and where the on-site visit will occur. These procedures are also designed to allow for an on-site visit to be conducted in the most efficient, time-effective, and least intrusive manner possible. These procedures further these goals because they provide the system participant with written notice that will specify the alleged violation(s) that is the subject of the visit, the types of records that must be made available during the visit, and the date, time, location, and conditions of the visit. The written notice will also provide the system participant with contact information for the Division staff representative who the system participant can contact if the

system participant has any questions about the visit. The written notice will also require the system participant to designate a general contact person who will assist the Division during the on-site visit. Providing this information pertaining to the on-site visit to the system participant will allow the system participant to understand the issues and parameters of the visit. Designating contact persons for both the Division and the system participant will allow the parties to better coordinate on the various issues that may arise during the visit such as the location and production of the records requested by the Division.

Further, as required by HB 2605, adopted §180.4 specifies the types of records that will be subject to inspection during an on-site visit. The Division has included in this list records that are routinely created and maintained by the various system participants in the workers' compensation system and that are relevant to the various types of investigations and other system monitoring activities routinely conducted by the Division. For example, included in this list are claim files, payment records, and billing records. These are records that are routinely created and maintained by system participants in the course of their participation in the workers' compensation system. Further, these types of records contain information that is relevant to investigations and monitoring activities routinely conducted by the Division, such as investigating and monitoring compliance with statutes and rules governing health care provider billing and reimbursements by insurance carriers.

Third, HB 2605 enacted Labor Code §415.0211 which authorizes the Commissioner to ex parte issue an emergency cease and desist order if the Commissioner believes a person regulated by the Division is engaging in conduct violating a law, rule, or order and the Commissioner believes that the alleged conduct will result in harm to the health, safety, or welfare of another person. This statute provides the procedure whereby the person affected by the emergency cease and desist order is to be served with the order and the procedure for

contesting the order at SOAH. This statute also gives the Commissioner the final decision making authority in the appeal of an emergency cease and desist order following a proposal for decision from SOAH.

Newly adopted §180.10 provides the procedures involved for the Division's ex parte emergency cease and desist orders. This new rule incorporates into its provisions Labor Code §415.0211 provisions that set out the legal standard that governs the issuance of an ex parte emergency cease and desist order, the manner in which a person subject to the order may request a hearing at SOAH to contest the order, the time frames in which the request for hearing must be made and hearing must be held, and the Commissioner's authority to issue the final order following the hearing and a proposal for decision issued from the ALJ at SOAH to the Commissioner. Adopted §180.10 also enacts provisions that are designed to provide the person who is the subject of the order with notice of the charges and of the acts, methods, or practices the person is ordered to immediately cease and desist from. For example, this order will contain the name of the person against whom the order is issued; the alleged conduct the Commissioner believes the person is engaging in that is a violation that will result in harm to the health, safety, or welfare of another person; a reference to the specific statute, rule, or order found to have been violated; and a statement of the legal authority and jurisdiction under which the order is issued. This adopted rule is also designed to provide the person subject to the order with notice of how to appeal the order. This adopted rule will require the order to contain a reference to the time limit for requesting a hearing to contest the order, a reference to the statute or statutes in which the time limit is contained, and a statement that the burden of requesting the hearing is on the person against whom the order is issued. This adopted rule also provides that in a hearing before SOAH, the person requesting the hearing is entitled to show cause why the order should not be

affirmed and the burden of proof is on the Division to show why the order should be affirmed. Newly adopted §180.10 is consistent with Labor Code §415.0211.

In addition to the amendments and new rules adopted pursuant to the requirements of HB 2605, these adopted rules make changes in this chapter that clarify and update existing rules in accordance with the provisions of Labor Code, Title 5 and that provide the Division with greater flexibility when performing system monitoring and enforcement activities under the Act.

First, adopted amendments in §180.1 delete text that stated that compliance audits are conducted using a census or statistical sampling. Census and statistical sampling could require a large amount of data, records, and information for auditing from the system participant subject to the audit, which can increase audit costs for system participants and prolong the length of the audit unnecessarily. The Division has removed this text in order to give the Division greater flexibility in selecting the sample size when performing compliance audits. It will also allow the Division to continue to conduct census or statistical sampling when warranted as well as perform other types of compliance audits as resources permit. Additionally, the results of census or statistical sampling were necessary in the past in determining the amount of a penalty to impose under the Division's repealed penalty matrix because census and statistical sampling ensured that the findings of the audit were representative of overall performance in the area being audited. The rules that pertained to the penalty matrix were superseded by legislative amendments in House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005 (HB 7). Therefore, those provisions that related to census and statistical sampling are no longer necessary.

Adopted amendments to §180.3 delete provisions that relate to the publication of a final audit report on the Division's internet website when there is a subsequent follow-up

audit. The deletion of this text will provide the Division flexibility when deciding whether to publish a final audit report on the Division's website or when to remove a published audit report from its website. Additionally, the deleted text is no longer necessary because an additional follow-up audit may not always be performed; or, if one is performed, it may not be sufficiently similar to the initial audit.

Adopted amendments permit the Division to specify the format and manner in which a system participant must make available to the Division workers' compensation related records and information requested by the Division. Common examples of the manner of transmission the Division would specify might include hand delivery, transmission by mail, and transmission by electronic means such as fax and email. Common examples of a format the Division would specify might include hardcopies of the information and electronic formats such as Excel spreadsheets. Allowing the Division to specify the format and manner in which information and records must be provided during a particular compliance audit, investigation, or other monitoring activity will allow the Division to conduct a particular audit, investigation, or other monitoring activity in the most efficient and accurate manner possible, thereby minimizing audit costs and reducing unnecessary intrusion for the subject of the audit. There may be circumstances surrounding a particular audit, investigation, or monitoring activity where one manner of transmission or format is preferable over another. For example, if the Division's receipt of the information is time critical, an electronic transmission would be preferable over transmission by mail. Additionally, if during an audit the Division is requesting large amounts of similar data that relates to multiple workers' compensation claims, an electronic format such as an Excel spreadsheet containing the requested data would be preferable over hard copies of records containing the data.

Finally, these adopted rules are intended to provide clarity to the rules contained in this chapter. For example, the adopted amendments provide more clarity as to the meaning of the terms "compliance audit" and "conviction" as those terms are used in Chapter 180. This adoption also deletes defined terms that are no longer used in Chapter 180. To conform to current nomenclature this adoption also makes changes in terminology such as changing the term "rules" to "division rule," "audit" to "compliance audit," and "commission" to "division."

The Division has changed some of the proposed language in the text of the rule as adopted in response to public comments received.

The Division received a comment recommending that the Division make a non-substantive grammatical correction to the definition for "agent" in adopted §180.1(3). In response to this comment, the Division deleted the second "with" in the first sentence of the definition.

Another comment stated that proposed §180.4(d) would preclude any on-site visit because merely observing can be interference. In response to this comment and to clarify the intent of this provision the Division modified adopted §180.4(d) to state that an on-site visit must not disturb a health care provider's actual provision of health care to a patient.

The Division also received a comment stating that proposed §180.4(e)(3) and (g) contradict each other. In response the Division has adopted the text in §180.4(g) which states that the person subject to an on-site visit shall make available to the Division in the format and manner specified by the Division all records specified in the written notice. Adopted subsection (g) also provides that the written notice may specify for inspection any records related to the person's participation in the workers' compensation system including those records listed in subsection (g)(1) – (14). The Division also clarified §180.4(g)(13) by

replacing "DWC forms" with "division forms" This change was not in response to a comment and is a non-substantive clarification.

The Division received a comment that there must be some credible evidence or a complaint or other independent information upon which to reasonably base the belief and any resultant cease and desist order. In response to this comment the Division added the language "upon application by division staff" to adopted §180.10(a) to clarify that the Commissioner's decision to issue a cease and desist order is based on the information included in the application provided to the Commissioner. In practice, this application is also attached to any cease and desist order issued to allow the affected person to see the information that was used as a basis for the Commissioner's decision.

The Division received comments stating that the burden of proof in a hearing contesting an emergency cease and desist order should be on the Division and not on the person contesting the emergency cease and desist order at SOAH. In response, the Division adopted language in §180.10(d) that provides that in a hearing before SOAH the person requesting the hearing is entitled to show cause why the order should not be affirmed and the burden of proof is on the Division to show why the order should be affirmed. Also, the word "affected" has been added to the word "person" in adopted subsection (c) of this rule to be consistent with the language used in adopted §180.10(b)(5). This change is not in response to comment and is a clarifying and non-substantive change.

Finally, the word "calendar" has been deleted in §180.3(c)(2) and §180.4(e)(1) because unless the term "working days" or "business days" is used calendar days is meant. These changes are not in response to comment and are non-substantive changes intended to make these rules consistent with other Division rules, including §102.3(b).

3. HOW THE SECTION(S) WILL FUNCTION.

Section 180.1 sets forth the definitions for terms used in Chapter 180 of this title. The adopted amendments to this section are necessary in order to provide clarity to defined terms. The adopted amendments clarify the definition of terms such as "compliance audit" and "conviction" and delete defined terms that are no longer used in Chapter 180.

Section 180.3 sets out the Division's process for compliance audits. The adopted amendments to this section are necessary in order to make clarifying changes in terminology used in this section, and to provide the Division with flexibility when deciding whether to publish a final audit report on the Division's website.

Section 180.4 sets out the Division's process for on-site visits. This new adopted rule is necessary to implement legislative changes in HB 2605 that authorize the Division to conduct on-site visits when reviewing the operations of a person regulated by the Division. This adopted rule prescribes the procedures to be used for both announced and unannounced on-site visits and specifies the types of records subject to inspection.

Section 180.5 sets forth requirements for the Division's access to workers' compensation related records and information. The adopted amendments to this section are necessary to clarify terminology used in this section. The amendments are also necessary to provide the Division with flexibility in determining the manner and format in which information requested by the Division must be provided to the Division.

Section 180.8 establishes the Division's procedures for issuing notices of violation, notices of hearing, and processing default judgments. The adopted amendments to this section are necessary to clarify terminology used in this section. The adopted amendments clarify that the Commissioner issues the final order in Division enforcement cases heard at

SOAH. The amendments are also necessary to clarify the process a charged party must follow when filing a motion to set aside a default order and reopen the record.

Section 180.9 sets out the process for the final adjudication by the Division of proposals for decision from SOAH. This new rule conforms to legislative changes in HB 2605 that expand the Commissioner's authority to issue the final order in all Division enforcement cases heard at SOAH. The adopted rule also makes amendments designed to clarify the Division's processes when issuing an order following a proposal for decision.

Section 180.10 sets out the Division's process for ex parte emergency cease and desist orders. This new adopted rule is necessary because it sets out the process the Division will follow in the issuance of an ex parte emergency cease and desist order. This adopted rule prescribes the contents of an emergency cease and desist order, sets out the procedures for appealing an emergency cease and desist order, and sets out how a party may request a stay of an emergency cease and desist order.

Section 180.27 sets out the Division's process for restoration of doctor practice privileges removed under Labor Code §408.0231. The amendments to this section are necessary to delete provisions in this rule that relate to proposals for decision in Division enforcement cases heard at SOAH. These deleted provisions are recodified and amended in newly adopted §180.9.

4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE TO COMMENTS.

§180.1: A commenter states that the Division is proposing a new definition for "compliance audit" in which the requirement that the audits are conducted using a census or statistical sampling is deleted. The commenter does not agree with removing this statistical sampling because it may result in skewed results. The commenter is concerned that removal of the statistical sampling or census requirement will move the Division away from independence

and objectivity in an audit and towards more of an investigative function. The commenter believes that the Division confuses the difference between a compliance audit and an on-site visit and requests that the language requiring the use of a census or statistical sampling not be removed from the definition.

Agency Response: The Division clarifies that one of its functions under the Act, specifically Labor Code Chapter 414, is to conduct investigations relating to alleged violations of the Act, Division rules or Commissioner orders and decisions. The procedures for compliance audits are contained in adopted §180.3 and the procedures for on-site visits (both announced and unannounced) are contained in adopted §180.4. The Division disagrees that it is necessary to retain the "census or statistical sampling" language in the definition of "compliance audit." "Census or statistical sampling" could require a large amount of data, records, and information for auditing from the system participant subject to the audit. The Division has removed this text in order to give the Division greater flexibility in selecting the sample size when performing compliance audits. It will also allow the Division to continue to conduct census or statistical sampling when warranted as well as other types of compliance audits as resources permit. Additionally, the results of census or statistical sampling were necessary in the past in determining the amount of a penalty to impose under the Division's repealed penalty matrix because census and statistical sampling ensured that the findings of the audit were representative of overall performance in the area being audited. However, the rules that pertained to the penalty matrix were superseded by legislative amendments in House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005 (HB 7). Therefore, those provisions that related to census and statistical sampling are no longer necessary.

§180.1: A commenter states that in the context of the proposed rules the definition for "agent" is overly broad, vague, and confusing. The commenter states as an example a situation where an insurance carrier contracts with a telephone company such as AT&T to provide telephone services so that the insurance carrier can meet the requirements of the Division's rules. The commenter states that under §180.1(4), AT&T would be an agent of the insurance carrier to fulfill duties under the Division rules.

Agency Response: The Division disagrees that the definition of "agent" in §180.1 is overly broad, vague, or confusing. As adopted, §180.1(3) defines "agent" as "[a] person with whom a system participant utilizes or contracts for the purpose of providing claims service or fulfilling duties under Labor Code, Title 5 and rules. This definition is clear and provides the public with sufficient notice as to who is considered an agent. The Division disagrees with the commenter that AT&T would be considered an agent of the insurance carrier under the circumstances described by the commenter. Section 180.1(3) is intended to cover only those persons who are acting on the behalf of the system participant for the purpose of providing claims service or fulfilling a duty imposed on the system participant by Labor Code, Title 5 or rules. Under the circumstances described by the commenter, AT&T is not an "agent" as defined by §180.1(3) because AT&T is merely providing a service to the insurance carrier and not acting on behalf of the insurance carrier for the purpose of providing claims service or fulfilling a duty imposed upon the insurance carrier by Labor Code, Title 5 and Division rules.

§180.1: A commenter states that the Division should strike the first "with" in the definition for "agent" because the definition is not grammatically correct as written.

Agency Response: The Division agrees with the commenter that there is a grammatical error in the first sentence of the definition of "agent." The Division has corrected this error by striking the second "with" in the first sentence of this definition.

§180.3 General Comment

A commenter supports proposed §180.3, especially retaining in this rule notice requirements for compliance audits. The commenter appreciates the Division's efforts to clarify the difference between on-site visits and compliance audits. The commenter also supports retaining in this rule language regarding claim files and other workers' compensation records. Finally, the commenter accepts the Division's explanation and examples regarding "format and manner" and supports that change.

Agency Response: The Division appreciates the supportive comment.

§180.3: A commenter disagrees with "the Division's decision to remove the language from §180.3 in its earlier [informal] proposal providing for unannounced compliance audits." The commenter believes that "there are instances where the nature of the alleged violation would justify an unannounced audit" and "§180.3 should continue to provide the Division with the authority to conduct an unannounced compliance audit."

Agency Response: The Division disagrees with including in adopted §180.3 language providing for unannounced compliance audits. A "compliance audit" is an "official examination of compliance with one or more duties under the Act or rules." These types of audit are formal, preplanned audits and prior notice to the system participant has traditionally been provided pursuant to §180.3. Provisions that would allow the Division to conduct unannounced compliance audits are not necessary because the Division has the authority

pursuant to Labor Code §414.005 and adopted §180.4 to conduct unannounced on-site visits when reviewing the operations of a person regulated by the Division.

§180.3: A commenter states that §180.3 provides that the Division shall conduct compliance audits of the workers' compensation records of system participants and their agents for compliance with the Act and the Division's rules. The commenter further states that the term "workers' compensation records" appears to be set out in proposed rule 180.4(g). The commenter states that the definition of "workers' compensation records" as applied to proposed §180.3 is in conflict with the attorney-client and attorney work product privileges and §180.3 is invalid.

Agency Response: The Division clarifies that §180.3 governs compliance audits conducted by the Division and §180.4 governs on-site visits conducted by the Division. The provisions in §180.4(g) apply to documents requested during on-site visits conducted by the Division. The provisions in §180.4 do not limit the documents that can be requested during a compliance audit under §180.3. Further, the Division disagrees that §180.3 is invalid because it conflicts with the attorney-client privilege or attorney work product privilege. Should a system participant assert the attorney-client or attorney work product privilege during a compliance audit, the Division will address the asserted privilege in accordance with the applicable law related to the attorney-client or attorney work product privilege.

§180.3(b): A commenter believes that the Division has no legal authority to conduct an audit at any system participant's office and would be trespassing in conducting an on-site audit unless the system participant consents to the audit. The commenter states that consent may be actual, apparent, implied or legal, and that legal consent may be an easement or a

license. The commenter states that since chiropractors, doctors, lawyers, nurses, pharmacists, physical therapists, and occupational therapists do not hold licenses from the Division, there is no legal consent for conducting an audit on their premises.

Agency Response: The Division disagrees that there is no legal authority for the Division to conduct an audit at a system participant's office. The Division notes that most compliance audits will not be conducted at a system participant's premises; however, if a compliance audit does include an on-site visit the Division will comply with the procedures in adopted §180.4 which is adopted pursuant to the statutory authority in Labor Code §414.005 as amended by HB 2605.

§180.3(d)(1): A commenter states that proposed §180.3(d)(1) requires that a system participant designate a general contact person who shall provide reasonable access to requested personnel. Commenter states that the Division has no legal authority to compel access to a person's home or office and cites Government Code § 311.016(2) which defines "shall" as imposing a duty to do some act and states that courts have consistently interpreted the word "shall" to be a mandatory directive.

Agency Response: The Division disagrees that it lacks the authority granted in adopted §180.3(d)(1). The Division notes that most compliance audits will not be conducted at a system participant's premises; however, if a compliance audit does include an on-site visit the Division will comply with the procedures in adopted §180.4 which is adopted pursuant to the statutory authority in Labor Code §414.005 as amended by HB 2605.

§180.3(h): A commenter disagrees with the decision to make publishing of the final audit report discretionary on the Division's website. This commenter states that any educational

benefit will be lost if the existence of an audit demonstrating noncompliance is not made public, and that the publication of audits illustrating non-compliance is one of the primary reasons for conducting such an audit. The commenter believes that the system works best when system participants have access to complete information and that goal will be undermined if the results of the original audit demonstrating noncompliance are not published.

Agency Response: The Division disagrees with the recommendation to publish all final audit reports. Publishing final audit reports on the Division's website has always been discretionary and the adopted amendments give the Division more flexibility in determining when to publish an audit report on its website. However, publication on the Division's website is not the only avenue in which the public may access a final audit report.

§180.3(j) and (k): A commenter states that proposed §180.3(j) and (k) would deprive a system participant of due process of law by denying a hearing before payment must be made for costs associated with a compliance audit.

Agency Response: The Division disagrees. As stated in this adopted rule, the Division has the authority to require payment of expenses in connection with audits to the extent permitted by the Act and Division rules. The Division has statutory authority to require payment of expenses in connection with audits under different provisions of the Labor Code, including §413.015(b) and (c) and §414.004(c). Labor Code §413.015(b) and (c) require the Commissioner by rule to require insurance carriers pay for the expense of reviews and audits performed by the Division of the payments made by insurance carriers for charges for medical services provided under the Act. Labor Code §414.004(c) requires insurance carriers, other than governmental entities, to pay the reasonable expenses, including travel

expenses, of an auditor who audits the workers' compensation records at the office of the insurance carrier. Nothing prohibits an auditee from contacting the Division to discuss the bill or seek clarification.

§180.3 and §180.4: Commenters suggest that the Division should clarify the criteria for the selection of an unannounced or announced visit and the scope of each type of visit. A commenter opines that HB 2605 requires that §180.3 and §180.4 separate announced from unannounced powers to more clearly enhance system participant understanding of Division expectations and authority. A commenter believes that §180.4 should contain an explanation of the circumstances under which unannounced visits will occur, and that unannounced visits be used sparingly and with the goals of cost-control and efficiency in mind. Commenters believe that the authority to conduct an unannounced on-site visit should be limited, and that any unannounced visit is an "extraordinary remedy" that might set a "dangerous precedent." A commenter believes that unannounced visits should be limited to circumstances in which there is egregious conduct, or there is a probability of imminent harm to workers or to the general public. A commenter states that such a limitation should include cases where workers will be harmed or there is fraud. A commenter suggested language be added that provides that an on-site visit be conducted "pursuant to evidence of a pattern or practice of violations of the Texas Workers' Compensation Act or adopted rules of the Texas Workers' Compensation Commission" to ensure that an on-site visit is not based on one alleged violation of a benign or merely administrative nature.

Agency Response: The Division disagrees. The Division declines to provide criteria for the selection of an unannounced or announced visit or to adopt the recommendations of the commenters in the adopted rules because the decision to conduct an announced or

unannounced on-site visit will be determined on a case by case basis. Labor Code §414.005(b) states that "As often as the commissioner considers necessary, the commissioner or the investigation unit may review the operations of a person regulated by the division, including an agent of the person performing functions regulated by the division, to determine compliance with this subtitle." The Division disagrees that the adopted rules, specifically §180.3 and §180.4 are unclear regarding the procedures for conducting compliance audits, announced on-site visits, or unannounced on-site visits. The Division has provided procedures in the adopted rules that clarify the differences between compliance audits, announced on-site visits, and unannounced on-site visits. The Division also generally agrees with the philosophy behind the goals of cost-control and efficiency. Including these recommendations may have the adverse consequence of unduly limiting the Division's authority to conduct an on-site visit when necessary under the circumstances existing at the time. Whether to conduct an on-site visit and, if so, whether the visit should be announced or unannounced should be determined by the facts and circumstances surrounding the alleged violations.

§§180.3, 180.4, and 180.5: The commenter states that the Division may not conduct any unannounced on-site visit for the purpose of conducting an audit, inspection, and obtaining records. A commenter opines that these proposed rules are invalid because the law allowing for unannounced visits is unconstitutional under both the Fourth Amendment to the United States Constitution and the Texas Constitution, Article. I, §9 and §29. Commenter states that the legislature had no authority to permit unannounced visits, and provides numerous Texas and Federal court cases regarding rights to privacy. The commenter states that because

these proposed rules are based on the statute which is unconstitutional, the rules fall with the statute.

Agency Response: The Division disagrees that the adopted rules pertaining to unannounced visits are invalid because they are based on a statute that violates Article 1, §9 and §29, of the Texas Constitution and the Fourth Amendment to the United States Constitution. Labor Code §414.005 allows the Commissioner or the investigation unit, as often as the Commissioner considers necessary, to review the operations of a person regulated by the Division, including an agent of the person, to determine compliance with the Act. This statute authorizes the Division to conduct an on-site visit to the person's premises during this review and the on-site visit may be unannounced. During an on-site visit the person must make available to the Division all records relating to the person's participation in the workers' compensation system. Further, this statute requires the Commissioner by rule to prescribe the procedures to be used for announced and unannounced on-site visits including specifying the types of records subject to inspection. This rule is adopted pursuant to this legislative directive. Labor Code §414.005 and these rules adopted thereto provide for reasonable on-site visits and inspections and do not violate the state and federal constitutional provisions cited by commenter. Pursuant to this statute and these adopted rules only persons regulated by the Division and their agents could be subject to an on-site visit, and an on-site visit will only involve laws and regulations under the Act. The adopted rules define the scope of an on-site visit and limit the discretion of the Division's staff conducting the visit. For example, the adopted rule requires prior or contemporaneous written notice of the visit, and this notice will specify the date, time, location, and conditions of the visit, the alleged violations that are the subject of the visit, and the types of records that must be made available to the Division during the visit.

§180.3(e) and §180.5(a): A commenter states that proposed §180.3(e) and §180.5(a) should be limited to compelling production of documents in a format in which they already exist. The commenter states that any requirement that a system participant provide information to the Division in a format prescribed by the Commissioner is limited to the extent of the Commissioner's subpoena power, which is limited to records or information that is within the "possession, custody or control" as used in the Texas Rules of Civil Procedure. The commenter recommends §180.3(e) read as follows: "System participants shall make available for review any records or information contained in §180.5 (relating to Workers' Compensation Related Records and Information) that is the subject of the compliance audit in an available format and accessible manner specified by the division."

Agency Response: The Division disagrees that §180.3(e) and 180.5(a) should be limited to compelling production of documents in a format in which they already exist. The Division also disagrees that the Commissioner's authority to prescribe a format is limited to the extent of the Commissioner's subpoena power. Labor Code §402.00128 lists the general powers and duties of the Commissioner. Specifically, Labor Code §402.00128(b)(10) grants the Commissioner broad authority to prescribe the form, manner, and procedure for the transmission of information to the Division. This authority is distinct from the Commissioner's authority to issue subpoenas to compel the production of documents which is granted by Labor Code §402.00128(b)(3). Furthermore, this authority to specify the format in which information must be transmitted to the Division pursuant to §180.3(e) and 180.5(a) furthers the legislative goals in Labor Code §402.021(a) allowing the Division to "promptly detect and appropriately address acts or practices of noncompliance with [the Texas Workers'

Compensation Act] and rules adopted under [the Act]" as provided in Labor Code §402.021(b)(7).

§180.4 General Comment

A commenter initially had concerns that on-site visits would disrupt a physician's practice. The commenter states that the Division addressed these concerns in the formal proposal. The commenter does not oppose participants providing information during an on-site visit in the "format and manner" specified by the Division, as long as the format and manner specified are reasonable and strongly supports this change.

Agency Response: The Division appreciates the supportive comment. The Division notes that in response to other comments the Division has clarified the intent of §180.4(d). Adopted §180.4(d) states that an on-site visit must not disturb a health care provider's actual provision of health care to a patient.

§180.4: A commenter states that with regard to "on-site audit without notice" under §180.4, this proposal is not workable for carriers and suggests a minimum 10-day written notice be provided to carriers in advance of a visit. The commenter suggests that such notice include the specific purpose of the visit, any data which may be requested, and the format in which that data should be provided by the carrier.

Agency Response: The Division disagrees with providing a minimum 10-day written notice in advance of an unannounced on-site visit. HB 2605 gives the Division the authority to conduct an unannounced on-site visit when reviewing the operations of a regulated person, and requiring a minimum 10-day written notice in advance of an unannounced visit as suggested by the commenter would render the visit an announced visit.

The Division notes that this adopted rule requires written notice by the Division for both announced and unannounced visits. The written notice will specify the alleged violation(s) that is the subject of the on-site visit, the types of records that must be available during the on-site visit, and the format in which the system participant subject to the on-site visit must make requested information available to the Division.

§180.4(b): A commenter states that it appears the only system participants that the Division may conduct announced on-site visits to the person's premises are workers' compensation insurance carriers. As support for this argument, the commenter states that chiropractors, doctors, lawyers, nurses, pharmacists, pharmacies and physical therapists are regulated by other state agencies. The commenter appears to argue that the Division does not have the statutory authority to subject these persons to an announced on-site visit because the Division does not "regulate" these persons. Therefore, the commenter states that the announced on-site visits and the records subject to inspection rules are in violation of law and invalid.

The commenter further states that proposed §180.4(b) provides that when reviewing the operations of a system participant to determine compliance with the Act or Division rules, the Division may conduct on-site visits to the system participant's premises. The commenter cites the definition of "system participant" in §180.1(25) and states that "[u]nder this broad definition lawyers who represent doctors, employers, health care providers and injured workers are system participants." The commenter states that the Division lacks authority to conduct on-site audits whether announced or unannounced of chiropractors, doctors, lawyers, nurses, pharmacists and pharmacies, physical and occupational therapists. Finally,

the commenter states that the "Division should clarify specifically what professions it contends it can regulate under proposed rule 180.4."

Agency Response: The Division disagrees that it lacks authority to conduct on-site visits to the premises of the persons and entities listed by commenter. The Division regulates lawyers, health care providers, and other system participants to the extent of their participation in the Texas workers' compensation system and in accordance with Labor Code, Title 5, Division rules, and other applicable laws and rules. For example, Labor Code Chapter 415 contains statutory provisions applicable to insurance carriers, health care providers, and representatives of injured employees that set out prohibited acts the commission of which would constitute an administrative penalty. This chapter authorizes the Commissioner to assess an administrative penalty against a person who commits an administrative violation. The Commissioner may also impose any sanctions or other remedy authorized by the Act. The Division also disagrees that the rule is unclear as to which professions it contends it can regulate. The rule clearly applies to all system participants and that term is defined in adopted §180.1(25). Additionally, other state agencies do not have the authority to monitor and enforce the Act and Division rules. The Act places that authority directly on the Commissioner of Workers' Compensation and the Division. The Division will work with other state agencies to investigate potential violations and may make additional referrals to those agencies in conjunction with the Division's own enforcement actions as necessary if potential violations under the purview of those agencies are identified.

§180.4(d): A commenter states that health care providers and their patients have an expectation of privacy and non-workers' compensation patients have rights to keep their health care records and reports private. The commenter states that §180.4(d) would

preclude any on-site visit because merely observing can be interference. The commenter also states that the on-site visit would constitute a trespass.

Agency Response: The Division disagrees that all on-site visits involving a health care provider's premises will disturb a health care provider's provision of health care to injured employees. The intent of the rule as proposed was to prevent disturbing the actual provision of health care to a patient and not to prohibit an on-site visit at a health care provider's premises. In order to clarify this intent the Division has modified adopted §180.4(d) to state that an on-site visit must not disturb a health care provider's actual provision of health care to a patient. The adopted rule minimizes the likelihood of an unreasonable interference with a health care provider's provision of health care. The Division also disagrees that an on-site visit of a health care provider's premises would constitute a trespass because Labor Code §414.005 authorizes the Division to conduct an on-site visit to the premises of a person regulated by the Division.

§180.4(e): A commenter supports the proposed provision in §180.4(e)(2) which provides that the Division will specify in the written notice of on-site visit the alleged violation(s) that is the subject of the visit. The commenter strongly supports this change because it ensures that these visits will not be conducted without evidence of wrongdoing and the participant will be apprised of the alleged violations.

Agency Response: The Division appreciates the supportive comment.

§180.4(e)(2): A commenter states that because the Division must provide a written notice that contains the specific alleged violation that is the reason for each on-site visit, "each on-site visit must be precipitated by a reasonably-supported belief that certain facts exist that

would reasonably constitute a prima facie violation (i.e. that all of the factual and legal elements that constitute a violation under rule or statute are in existence at the time of the visit and that these elements are the sole supporting basis for the visit and make up the basis for the belief)." The commenter seeks a clarification of whether the specific alleged violation in the written notice will contain these written facts or only contain the alleged violation without the benefit of notice of the alleged supporting facts. The commenter states that arbitrary visits could occur if no facts are contained in the notice. The commenter believes that if facts are set out in the notice then the subject of the on-site visit may be able to explain the acts set out in the notice and avoid the need for the full visit.

Agency Response: The Division does not agree that the Division must show a "prima facie violation" because the statute does not require this standard prior to performing an on-site visit. Providing the person with the alleged violation(s) is sufficient information to define the scope of the on-site visit. Further, an on-site visit is an investigatory tool used to gather facts when the Division has reason to believe there may be a violation.

§180.4(e)(3) and (g): A commenter states that during an on-site visit the system participant shall make available to the Division in the format and manner specified by the Division all records relating to the person's participation in the workers' compensation system upon request. The commenter states there is no limit in proposed subsection (g) as to the records that must be made available either for announced or unannounced on-site visits and §180.4(e)(3) and (g) appear to contradict each other.

Agency Response: The Division agrees with the commenter that these two provisions need clarification. Proposed §180.4(g) was intended to specify the types of records that may be subject to on-site inspections conducted by the Division whereas proposed §180.4(e)(3) was

intended to provide the person subject to the on-site visit with notice of the types of records the person must make available to the Division during the particular on-site visit described in the written notice. In order to clarify this intent, the Division has changed the text proposed in §180.4(g) to provide that during an on-site visit the system participant shall make available to the Division in the format and manner specified by the Division all records specified in the written notice under §180.4(e). Adopted subsection (g) further provides that the written notice may specify for inspection any records related to the person's participation in the workers' compensation system including those records listed in subsection (g)(1) – (14).

§180.4(f): A commenter states that the designated contact person may be away from an office during an unannounced on-site visit and that based on the proposed rule as written, the system participant may be liable for an administrative violation merely because the contact person is away from the office. The commenter further states the proposed rule exceeds the Division's authority and amounts to a new or additional power for the purpose of administrative expediency, and that this subsection is invalid as it exceeds the agency's authority.

Agency Response: The Division disagrees that this adopted rule exceeds the Division's authority. Labor Code §414.005 authorizes the Division to conduct announced and unannounced on-site visits when reviewing the operations of a person regulated by the Division. This statute requires the Commissioner by rule to prescribe the procedures to be used for these on-site visits. This rule is adopted pursuant to this legislative authority. This adopted rule requires the person who is the subject of the on-site visit to designate a general contact person at the premises, and this contact person must provide access to requested personnel and information, respond to the needs of Division staff and to inquiries by Division

staff and be familiar with the system participant's procedures and recordkeeping systems that are related to the records and information requested during the on-site visit. Whether the Division pursues a violation will be determined under all the facts and circumstances existing at the relevant time.

§180.4(g): A commenter is concerned about the scope of information potentially required in this section. The commenter states that some of the information listed is not applicable to health care providers, and does not believe it would be appropriate for the Division to require a physician to provide payroll data to the Division. The commenter requests language similar to proposed §180.5, which requires that a system participant provide access to information "related to issues being reviewed or investigated," be placed in §180.4(g) to clarify that a participant will not be required to provide information unrelated to the specific issue under review.

Agency Response: The Division disagrees with commenter that clarification to this rule is necessary. The Division will determine what information is related to issues being reviewed during an on-site visit. The list in the adopted subsection (g) is not targeted toward any specific system participant. Not every item on the list will be required of every system participant; rather, the list contains records and information the Division may request on a case-by-case basis. If an on-site visit is conducted then the Division will provide written notice to the system participant which will describe the types of records that must be made available to the Division during the visit in accordance with adopted §180.4.

§180.4(g)(3), (4), (5), (6), (12), and (14): A commenter states that these rules violate the attorney-client privilege and work product doctrine.

Agency Response: The Division disagrees that §180.4(g)(3), (4), (5), (6), (12), and (14) violate the attorney-client privilege and attorney work product privilege. These rules describe records that are typically created and maintained by system participants, including health care providers and insurance carriers, in the course of their participation in the workers' compensation system. If a system participant asserts the attorney-client or attorney work product privilege in response to a Division request, the Division will address the asserted privilege in accordance with the applicable law related to the attorney-client or attorney work product privilege. The adopted rules conform to the applicable requirements of the statutes amended and added by HB 2605.

§180.5: A commenter states that the proposed rule is confusing as to whether copies can be provided to the Division or if access to the records is given, and then the Division can specify the format and manner of provision of the copies. The commenter thinks that the Division should set out in the proposed rule the manner and format of the copies.

Agency Response: The Division disagrees and declines to set out in this rule the format and manner in which every conceivable document now and in the future is to be provided to the Division. The Division declines this recommendation because specifying a specific manner and format by rule may have unintended technological consequences such as formats becoming outdated or unsupported. The Division has historically attempted to work with system participants when requesting access to records or copies of records in order to minimize the intrusion to the system participant while obtaining the information the Division needs in a format that can be efficiently analyzed. The rule clearly requires access to the records and information requested by the Division and allows the Division to specify the format and manner in which the information must be provided to the Division.

§180.8(c) and (d): A commenter recommends that the notice of the hearing at SOAH include cautionary language explaining that the charged party has twenty days from the date of receipt of the hearing notice to file an answer or responsive pleading or risk being in default for failing to do so. The commenter opines that it is fairly exacting to establish a default based on the failure to answer and in order to mitigate the negative consequences of default, it is essential that charged parties be notified of the requirement to respond and the consequence of failing to do so.

Agency Response: The Division disagrees because the Division already includes this cautionary language in the Notice of Hearing and therefore it is not necessary to include it in the rule. Non-response to the Notice of Violation will trigger a hearing at SOAH and issuance of the Notice of Hearing. A party may be subject to a default judgment if the party does not file a written response to a Notice of Hearing or does not appear at the hearing. If the party defaults, the party may file a written motion to set aside the default order and reopen the record. A motion by the charged party to set aside the default order and reopen the record shall be granted by the Commissioner if the charged party establishes that the failure to file a written response or to attend the hearing was "neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident."

§180.8(e), (f), and (g): A commenter requests that this provision be modified to make clear that a party who appears at the hearing will not be in default because the party failed to file an answer. The harm associated with failing to file an answer can be corrected if the party appears and participates in the SOAH hearing. The commenter does not believe it is appropriate for the Division to seek informal disposition of an administrative violation due to

the failure to file an answer if the party appears at the hearing. Commenter says that "As it is proposed § 180.8(f) provides that the Division can seek informal disposition against a party who is in default either by failing to file an answer or by failing to appear at the hearing." Commenter believes that § 180.8(e) should be a revised to limit default only to those charged parties who fail to appear at the hearing.

Agency Response: The Division disagrees that these provisions should be modified. A party may be subject to a default judgment if the party does not file a written response to a Notice of Hearing or does not appear at the hearing. If a person fails to answer and the Division seeks informal disposition by default it will do so before the hearing date. If before the hearing date the Division has not sought informal disposition by default and the party appears at the hearing, the Division will not seek the informal disposition and the party may participate in the hearing. If the party defaults, the party may file a written motion to set aside the default order and reopen the record. A motion by the charged party to set aside the default order and reopen the record shall be granted by the Commissioner if the charged party establishes that the failure to file a written response or to attend the hearing was "neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident."

§180.10: A commenter agrees with the creation of a procedure for the Commissioner to issue an emergency cease and desist order in those instances where the Commissioner believes that a system participant is engaged in conduct that violates a law, rule, or order and further believes that the alleged conduct will result in harm to the health, safety, or welfare of another person. The commenter requests that this provision be modified to include a mechanism for a system participant to file a request for an emergency cease and desist order

when a system participant believes that the criteria for such an order exists. The commenter believes that the development of such a process would help ensure that the full benefit of this provision is recognized.

Agency Response: The Division disagrees that this rule should be modified to include a mechanism for a system participant to file a request for an emergency cease and desist order when a system participant believes that the criteria for such an order exist. The Division notes that a system participant may file a complaint with the Division pursuant to §180.2 and in that complaint request that an emergency cease and desist order be issued by the Commissioner. However, the Division's determination of whether to seek an emergency cease and desist order against a system participant must be determined on a case by case basis using the criteria laid out in adopted §180.10(a).

§180.10: A commenter states that the timeframes and burden of proof provisions may not provide carriers with an opportunity to gather sufficient information within the 10day time period to properly prepare a defense for the hearing. The commenter also states that once a motion for stay is submitted, it is not required that notice of the denial of the stay be given causing the carrier to move forward with defense in the event the stay is not granted. The commenter feels it appropriate to require notice of action on a motion for a stay.

Agency Response: Labor Code §415.0211(d) requires a hearing on an emergency cease and desist order to be held not later than the 10th day after the date the Commissioner receives the request for hearing, and this adopted rule is consistent with that statutory provision. However, Labor Code §415.0211(d) and this adopted rule provide that the parties may mutually agree on a later hearing date.

The Division also notes that in response to other comments, the Division has deleted proposed text in this rule that would have placed the burden of proof at this hearing on the party subject to the emergency cease and desist order and instead clarified that the burden of proof at this hearing is on the Division.

With regard to the commenter's comments regarding a request to stay an emergency cease and desist order, the Division notes the adopted rule provides for notice to the requesting party when the Commissioner grants the party's motion for stay. However, this adopted rule provides that a motion for stay is denied if not granted before the date of the show cause hearing. A provision requiring the Division to provide a notice of action in this circumstance is not necessary because this rule already deems a request for stay denied if not granted by the date of the show cause hearing.

§180.10: Commenters believe that the rule should state that the burden of proof in an ex parte emergency cease and desist order hearing should be on the Division.

Agency Response: The Division agrees and has adopted language in §180.10(d) that provides that in a hearing before SOAH, the person requesting the hearing is entitled to show cause why the order should not be affirmed and the burden of proof is on the Division to show why the order should be affirmed.

§180.10: A commenter states the term "emergency" should be clarified. Commenter opines that the general phrase "harm to the health, safety or welfare of another person" is overly-broad with respect to the emergency designation itself, which is not defined by the rule. The commenter believes that since the emergency order is in effect during any contest or stay request, a potentially unwarranted and significant ancillary harm may be incurred against the

ordered party and harm can be inflicted on the ordered person. The commenter states that the Division should consider further clarifying conduct and harm that rises to the level of an emergency, supporting the issuance of a cease and desist order under this provision.

Agency Response: The Division disagrees that the term "emergency" should be clarified for purposes of §180.10 or that it should clarify what conduct and harm would rise to the level of an emergency. Labor Code §415.0211 authorizes the Commissioner to ex parte issue an emergency cease and desist order if the Commissioner believes a person regulated by the Division is engaging in conduct that violates a law, rule or order and that the conduct will result in harm to the health, safety, or welfare of another person. This adopted rule mirrors this statutory provision, and this provision provides a sufficiently clear standard upon which to decide whether to issue an emergency cease and desist order. This statute provides the procedure whereby the person affected by the emergency cease and desist order is to be served with the order and the procedure for contesting the order at SOAH. This statute also gives the Commissioner the final decision making authority in the appeal of an emergency cease and desist order following a proposal for decision from SOAH. Labor Code §415.0211 requires the Commissioner to issue an order that "contains a statement of the charges." This adopted rule is consistent with the requirements of Labor Code §415.0211.

§180.10(a)(2): A commenter states that in subsection (a)(2) there is no standard of proof to support the belief set out in the rule. The commenter opines that there must be some credible evidence or a complaint or other independent information upon which to reasonably base the belief and any resultant order. The commenter states, "simply believing that a person is engaging in conduct that is a violation is not enough, there must be some basis for the belief and that basis should be set out in the rule, i.e., a complaint, document." The

commenter states "otherwise there is no safeguard in the rule to avoid unnecessary and disruptive site visits."

Agency Response: Although the commenter mentions "site visits" in this comment, the Division construes this comment as a comment on proposed §180.10(a)(2) regarding ex parte emergency cease and desist orders. The Division agrees that this rule should contain a provision that requires some information to be provided to the Commissioner upon which the Commissioner would base his belief and any resulting emergency ex parte cease and desist order. The Division did anticipate its process regarding ex parte emergency cease and desist orders to include a staff application to the Commissioner that requests an emergency cease and desist order and that sets out the reasons for that request. The Division therefore has added "upon application by division staff" to subsection (a) so that it reads "The commissioner ex parte may issue an emergency cease and desist order upon application by division staff if . . ."

§180.10(b): A commenter states that in subsection (b) the ex parte cease and desist orders should be required to contain information specifying what particular harm to the health, safety, or welfare will result absent the order. The commenter also states that without a date or time frame being required for any alleged conduct, there is a possibility of stale or otherwise un-actionable conduct being the basis for the ex parte order.

Agency Response: The Division disagrees. The cease and desist order will include a description of the alleged conduct that is a violation that the Commissioner believes will result in harm to the health, safety, or welfare of another person. This is sufficient to provide the person with notice of the basis upon which the order was issued. Further, the application by Division staff will be sent with the cease and desist order to the person who is the subject of

the order and will contain details behind the request and issuance of the cease and desist order. Labor Code §415.0211 authorizes the Commissioner to ex parte issue an emergency cease and desist order if the Commissioner believes a person regulated by the Division is engaging in conduct that violates a law, rule or order and that the conduct will result in harm to the health, safety, or welfare of another person. This statute provides the procedures whereby the person affected by the emergency cease and desist order is to be served with the order and the procedure for contesting the order at SOAH. This statute also gives the Commissioner the final decision making authority in the appeal of an emergency cease and desist order following a proposal for decision from SOAH. Labor Code §415.0211 requires the Commissioner to issue an order that "contains a statement of the charges." This adopted rule is consistent with the requirements of Labor Code §415.0211.

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

For, with changes: ACE Group; American Insurance Association; Insurance Council of Texas; Office of Injured Employee Counsel; Property Casualty Insurers Association of America; State Office of Risk Management; Texas Medical Association

Against: John D. Pringle, P.C.

6. STATUTORY AUTHORITY.

SUBCHAPTER A. GENERAL RULES FOR ENFORCEMENT

The amendments and new sections are adopted under Labor Code Chapter 414; Government Code Chapter 2001; Government Code §2001.056; Labor Code §§402.00111, 402.00114(a)(2), 402.00115, 402.00116(a) and (b), §402.00128(b), 402.021(b)(7) - (9), 402.061, 402.072(a), 402.073(b) and (c), 402.074, 414.003 - 414.005, 415.0211, and 415.034. Labor Code Chapter 414 pertains to the enforcement of compliance and practice

requirements, which includes monitoring duties, compilation and use of information, performance review of insurance carriers and the investigation unit. Government Code Chapter 2001 pertains to the administrative law governing minimum standards of uniform practice and procedures for state agencies and the judicial review of state agency actions. Government Code §2001.056 provides that unless precluded by law, an informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default. Labor Code §402.00111 provides that except as otherwise provided by Labor Code, Title 5, the Commissioner shall exercise all executive authority, including rulemaking authority, under Labor Code, Title 5. Labor Code §402.00114(a)(2) requires the Division to ensure that Labor Code, Title 5 and other laws regarding workers' compensation are executed. Labor Code §402.00115 requires the Division to efficiently implement Labor Code, Title 5 and Division rules. Labor Code §402.00116(a) provides that the Commissioner of Workers' Compensation is the Division's chief executive and administrative officer and shall administer and enforce Labor Code, Title 5, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the Division or the Commissioner. Labor Code §402.00116(b) provides that the Commissioner has the powers and duties vested in the Division by Labor Code, Title 5 and other workers' compensation laws of this state. Labor Code §402.00128(b) provides that the Commissioner or the Commissioner's designee may investigate misconduct; hold hearings; issue subpoenas to compel the attendance of witnesses and the production of documents; administer oaths; take testimony directly or by deposition or interrogatory; assess and enforce penalties established under Labor Code, Title 5; enter appropriate orders as authorized by Labor Code, Title 5; institute an action in the Division's name to enjoin the violation of Labor Code, Title 5; initiate an action under Labor Code §410.254 to intervene in a judicial proceeding; prescribe the form, manner, and

procedure for the transmission of information to the Division; correct clerical errors in the entry of orders; and exercise other powers and perform other duties as necessary to implement and enforce Labor Code, Title 5. Labor Code §402.021(b)(7) - (9) requires the workers' compensation system of this state to promptly detect and appropriately address acts or practices of noncompliance with the Act and rules adopted under the Act; effectively educate and clearly inform system participants of the person's responsibilities under the system and how to appropriately interact with the system; and take maximum advantage of technological advances to provide the highest levels of service possible to system participants and to promote communication among system participants. Labor Code §402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement the Act. Labor Code §402.072(a) states that the Division may impose sanctions against any person regulated by the Division under the Act. Labor Code §402.073(b) states that in a case in which a hearing is conducted by the State Office of Administrative Hearings under Labor Code §413.031 or Labor Code §413.055, the administrative law judge who conducts the hearing for the SOAH shall enter the final decision in the case after completion of the hearing. Labor Code §402.073(c) states that in a case in which a hearing is conducted in conjunction with Labor Code §§402.072, 407.046, 408.023, or 415.034, and in other cases under this subtitle that are not subject to Labor Code §402.073(b), the ALJ who conducts the hearing for the SOAH shall propose a decision to the Commissioner for final consideration and decision by the Commissioner. Labor Code §402.074 requires the Division to effectively implement statutory goals and the standards and requirements adopted under Labor Code, Title 5. Labor Code §414.003 requires the Division to compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons subject to monitoring under Labor Code, Chapter 414, that

violate the Act, Division rules, or an order or decision of the Commissioner, or otherwise adversely affects the workers' compensation system of this state. Labor Code §414.004 requires the Division to regularly review the workers' compensation records of insurance carriers to ensure compliance with the Act. Insurance carriers, their agents, and those with whom the insurance carrier has contracted with to provide, review, or monitor services under the Act are required by this statute to cooperate with the Division, make available to the Division any records or other information, and allow the Division access to the information at reasonable times at the person's offices. Labor Code §414.005 states that the Division shall maintain an investigation unit to conduct investigations relating to alleged violations of the Act, Commissioner rules, or a Commissioner order or decision, with particular emphasis on violations of Chapters 415 and 416. As often as the Commissioner considers necessary, the Commissioner or the investigation unit may review the operations of a person regulated by the Division, including an agent of the person performing functions regulated by the Division, to determine compliance with the Act. The review described by subsection (b) of this statute may include on-site visits to the person's premises. The Commissioner is not required to announce an on-site visit in advance. During an on-site visit, a person regulated by the Division shall make available to the Division all records relating to the person's participation in the workers' compensation system. The Commissioner is required to adopt rules that prescribe the procedures to be used for both announced and unannounced on-site visits authorized under this section, including specifying the records subject to inspection. Labor Code §415.0211 provides the procedures for the issuance of an ex parte emergency cease and desist order and criteria by which the order may be issued. Labor Code §415.034 states that on request of the charged party or the Commissioner, the SOAH shall set a hearing and

the hearing shall be conducted in the manner provided for a contested case under Chapter 2001, Government Code.

SUBCHAPTER B. MEDICAL BENEFIT REGULATION

The amendments are adopted under Labor Code §§402.00111, 402.00116(a) and (b), 402.00128(b), and 402.061. Labor Code §402.00111 provides that except as otherwise provided by Labor Code, Title 5, the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code, Title 5. Labor Code §402.00116(a) provides that the Commissioner is the Division's chief executive and administrative officer and shall administer and enforce Labor Code, Title 5, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the Division or the Commissioner. Labor Code §402.00116(b) provides that the Commissioner has the powers and duties vested in the Division by Labor Code, Title 5 and other workers' compensation laws of this state. Labor Code §402.00128(b) provides that the Commissioner or the Commissioner's designee may investigate misconduct; hold hearings; issue subpoenas to compel the attendance of witnesses and the production of documents; administer oaths; take testimony directly or by deposition or interrogatory; assess and enforce penalties established under this title; enter appropriate orders as authorized by this title; institute an action in the Division's name to enjoin the violation of Labor Code, Title 5; initiate an action under Labor Code §410.254 to intervene in a judicial proceeding; prescribe the form, manner, and procedure for the transmission of information to the Division; correct clerical errors in the entry of orders; and 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 the Act.

7. TEXT.

SUBCHAPTER A. General Rules For Enforcement

§180.1. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings.

(1) Act--The Texas Workers' Compensation Act, Labor Code, Title 5, Subtitle A.

(2) Administrative violation--A violation, failure to comply with, or refusal to comply with the Act, or a rule, order, or decision of the commissioner. This term is synonymous with the terms "violation" or "violate."

(3) Agent--A person with whom a system participant utilizes or contracts for the purpose of providing claims service or fulfilling duties under Labor Code, Title 5 and rules. The system participant who utilizes or contracts with the agent may also be responsible for the administrative violations of that agent.

(4) Appropriate credentials--The certification(s), education, training, and experience to provide the health care that an injured employee is receiving or is requesting to receive.

(5) Commissioner--The commissioner of workers' compensation.

(6) Complaint--A written submission to the division alleging a violation of the Act or rules by a system participant.

(7) Compliance Audit (also Performance Review)--An official examination of compliance with one or more duties under the Act and rules. A compliance audit does not include monitoring or review activities involving the Medical Advisor or the Medical Quality Review Panel.

(8) Conviction or convicted--

(A) A system participant is considered to have been convicted when:

(i) a judgment of conviction has been entered against the system participant in a federal, state, or local court;

(ii) the system participant has been found guilty in a federal, state, or local court;

(iii) the system participant has entered a plea of guilty or nolo contendere (no contest) that has been accepted by a federal, state, or local court;

(iv) the system participant has entered a first offender or other program and judgment of conviction has been withheld; or

(v) the system participant has received probation or community supervision, including deferred adjudication.

(B) A conviction is still a conviction until and unless overturned on appeal even if:

(i) it is stayed, deferred, or probated;

(ii) an appeal is pending; or

(iii) the system participant has been discharged from probation or community supervision, including deferred adjudication.

(9) Department--Texas Department of Insurance.

(10) Division--Texas Department of Insurance, Division of Workers' Compensation.

(11) Emergency--As defined in §133.2 of this title (relating to Definitions). This definition does not apply to "emergency" as used in the term "ex parte emergency cease and desist orders."

(12) Frivolous--That which does not have a basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(13) Frivolous complaint--A complaint that does not have a basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(14) Immediate post-injury medical care--That health care provided on the date that the injured employee first seeks medical attention for the workers' compensation injury.

(15) Notice of Violation (NOV)--A notice issued to a system participant by the division when the division has found that the system participant has committed an administrative violation and the division seeks to impose a sanction in accordance with Labor Code, Title 5 or division rules.

(16) Peer Review--An administrative review by a health care provider performed at the insurance carrier's request without a physical examination of the injured employee.

(17) Remuneration--Any payment or other benefit made directly or indirectly, overtly or covertly, in cash or in kind, including, but not limited to, forgiveness of debt.

(18) Rules--The division's rules adopted under Labor Code, Title 5.

(19) Sanction--A penalty or other punitive action or remedy imposed by the commissioner on an insurance carrier, representative, injured employee, employer, or health care provider, or any other person regulated by the division under the Act, for an administrative violation.

(20) SOAH--The State Office of Administrative Hearings.

(21) System Participant--A person or their agent subject to the Act or a rule, order, or decision of the commissioner.

§180.3. *Compliance Audits.*

(a) The division shall conduct Compliance Audits of the workers' compensation records of system participants and their agents for compliance with the Act and division rules.

(b) The division may conduct a compliance audit at the offices of a system participant or at any location the division deems appropriate. During a compliance audit, the division may, at its discretion, utilize persons in addition to division staff to provide additional expertise.

(c) The division shall provide reasonable notice in advance of a compliance audit. That notice shall:

(1) be in writing;

(2) be sent at least 10 days before the compliance audit is to be performed;

(3) specify the information that must be made available;

(4) list the name and telephone number of the audit coordinator; and

(5) specify the date, time, location, and conditions of the compliance audit.

(d) The system participant being audited (auditee) shall designate a general contact person and a contact person at each relevant location to coordinate the compliance audit. That contact person shall:

(1) provide reasonable access to requested personnel and information;

(2) respond to reasonable needs of auditors on-site or to inquiries by auditors; and

(3) be familiar with the system participant's procedures and recordkeeping systems related to the scope of the compliance audit.

(e) System participants (which may include those who are not being audited but whose records are necessary to conduct an audit of another system participant), upon request, shall

make available for review claim files and other workers' compensation records in the format and manner specified by the division.

(f) Initial findings of the compliance audit will be provided in writing to the auditee.

(g) The auditee may prepare and file with the division a management response to the initial findings. The response may include proposed corrective actions. If such a response is provided, the division shall review the response and shall adjust its findings if deemed appropriate.

(h) Final compliance audit reports may be published on the division's Internet website and shall be redacted to not include any confidential claim file information.

(i) The division, should it deem it appropriate or upon request of a licensing or certification authority, shall provide the appropriate licensing or certification authority with a copy of all final compliance audit reports (redacted in accordance with subsection (h) of this section) and the auditee's response to the final compliance audit report, if any.

(j) To the extent permitted by the Act and division rules, the division shall submit a bill to the auditee for the actual expenses associated with the compliance audit, including audit staff time, additional expertise, travel and per diem expenses, and copying costs.

(k) The auditee shall submit payment by check, made payable to the order of the Texas Department of Insurance, for the expenses within 25 days after receipt of the bill.

§180.4. *On-Site Visits.*

(a) As often as it considers necessary, the division may review the operations of a system participant to determine compliance with the Act or division rules.

(b) When reviewing the operations of a system participant to determine compliance with the Act or division rules, the division may conduct on-site visits to the system participant's premises. On-site visits may be announced or unannounced.

(c) The on-site visit will occur during the system participant's normal business hours.

(d) An on-site visit must not disturb a health care provider's actual provision of health care to a patient.

(e) The division shall provide written notice of each announced and unannounced on-site visit. This notice shall:

(1) be sent at least 10 days before the on-site visit unless the on-site visit is unannounced in which case the notice will be provided at the time of the on-site visit;

(2) specify the alleged violation(s) that is the subject of the on-site visit;

(3) specify the types of records that must be made available during the on-site visit;

(4) list the name and telephone number of the division staff representative; and

(5) specify the date, time, location, and conditions of the on-site visit.

(f) The person who is the subject of the on-site visit shall designate a general contact person at the premises. During the on-site visit the contact person shall:

(1) provide access to requested personnel and information;

(2) respond to the needs of division staff and to inquiries by division staff; and

(3) be familiar with the system participant's procedures and recordkeeping systems that are related to the records and information requested during the on-site visit.

(g) The person subject to an on-site visit shall make available to the division in the format and manner specified by the division all records specified in the written notice

provided under subsection (e) of this section. A written notice may specify for inspection any records related to the person's participation in the workers' compensation system, including:

(1) claim files;

(2) medical records and reports;

(3) payment records;

(4) billing records;

(5) electronic records;

(6) communications;

(7) adjustor notes;

(8) accident reports;

(9) notifications of lost time;

(10) notifications of injuries;

(11) payroll data and wage statements;

(12) investigative reports;

(13) filed division forms; and

(14) contracts.

§180.5. *Access to Workers' Compensation Related Records and Information*.

(a) Upon written request from the division any system participant shall provide copies of or access to all records and information held by that system participant related to issues being reviewed or investigated in the format and manner specified by the division.

(b) The request will identify the records and information to be produced and will provide a specific, reasonable date to produce the information.

§180.8. ***Notices of Violation; Notices of Hearing; Default Judgments.***

(a) A notice of violation (NOV) is a notice issued to a system participant when the division finds that the system participant has committed an administrative violation and the division seeks to impose a sanction under the Act or division rules. A NOV is not required to be issued before or after the issuance of an ex parte emergency cease and desist order.

(b) A NOV shall be in writing and include:

(1) the provision(s) of the Act, rule, order, or decision of the commissioner that the system participant violated;

(2) a summary of the facts that establish that the violation(s) occurred;

(3) a description of the proposed sanction that the division intends to impose;

(4) the right to consent to the charge and the proposed sanction(s);

(5) the right to request a hearing; and

(6) other information about the rights, obligations, and procedures for requesting a hearing.

(c) The charged party shall file a written answer to the NOV not later than the twentieth day after the day the notice is received. The answer shall either consent to the proposed sanction, and remit the amount of the penalty, if any, or request a hearing by being filed with the division's chief clerk of proceedings. If the charged party fails to respond to the NOV within 20 days of receipt of the notice, the division shall schedule a hearing at the State Office of Administrative Hearings (SOAH) and provide notice of hearing to the charged party that meets the requirements of §148.5 of this title (relating to Notice of Hearing).

(d) A charged party that receives a notice of hearing under subsection (c) of this section shall, within 20 days of the date on which the notice of hearing is provided to the party, file a written answer or other responsive pleading. Such response shall be filed in

accordance with 1 TAC §155.101 (relating to Filing Documents) and §155.103 (relating to Service of Documents on Parties).

(e) For purposes of this section, events described in paragraphs (1) or (2) of this subsection constitute a default on the part of a charged party who receives a notice of hearing under subsection (c) of this section:

(1) failure of the charged party to file a written response as provided by subsection (d) of this section; or

(2) failure of the charged party to appear in person or by legal representative on the day and at the time set for hearing in a contested case at SOAH, regardless of whether a written response has been filed.

(f) In the event that a charged party defaults as described by subsection (e) of this section, the division may seek informal disposition by default by the commissioner as permitted by Government Code §2001.056.

(g) For purposes of this subchapter, "disposition by default" shall mean the issuance of an order against the charged party in which the allegations against the party in the notice of hearing are deemed admitted as true, upon the offer of proof to the commissioner that proper notice was provided to the defaulting party. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Government Code §2001.051 and §2001.052 and §148.5 of this title.

(h) After informal disposition of a contested case by default, a charged party may file a written motion to set aside the default order and reopen the record. A motion by the charged party to set aside the default order and reopen the record shall be granted by the commissioner if the charged party establishes that the failure to file a written response or to attend the hearing was neither intentional nor the result of conscious indifference, and that

such failure was due to a mistake or accident. A motion to set aside the default order and reopen the record shall be filed by the charged party with the division's chief clerk of proceedings prior to the time that the order of the commissioner becomes final pursuant to the applicable provisions of Government Code, Chapter 2001, Subchapter F.

(i) A motion to set aside the default order and reopen the record is not a motion for rehearing and is not to be considered a substitute for a motion for rehearing. A motion for rehearing is required in order to exhaust administrative remedies. The filing of a motion to set aside the default order and reopen the record has no effect on either the statutory time periods for the filing of a motion for rehearing or on the time period for ruling on a motion for rehearing, as provided in applicable provisions of the Government Code, Chapter 2001, Subchapter F.

§180.9. *Proposals for Decision*.

(a) If a hearing was conducted in conjunction with Labor Code §§407.046, 408.023, 415.0215, or 415.034, or in another case under the Act that is not subject to Labor Code §402.073(b), the commissioner shall review the proposed decision of the administrative law judge. If the commissioner modifies, amends, or changes a recommended finding of fact or conclusion of law, or order of the administrative law judge, the commissioner's final order shall state the legal basis and the specific reasons for the change.

(b) The division shall notify the person by issuing an order that describes the effects of the sanction. This order shall be delivered by verifiable means with a copy to the appropriate licensing or certification authority.

(c) Failure to comply with the sanction may result in additional administrative violations.

§180.10. *Ex Parte Emergency Cease and Desist Orders.*

(a) The commissioner ex parte may issue an emergency cease and desist order upon application by division staff if:

(1) the commissioner believes a person regulated by the division under Labor Code, Title 5 is engaging in conduct violating a law, rule or order; and

(2) the commissioner believes that the alleged conduct under paragraph (1) of this subsection will result in harm to the health, safety, or welfare of another person.

(b) The order must contain the following information:

(1) the name and last known address of the person against whom the order is entered;

(2) the alleged conduct that the commissioner believes the person regulated by the division under Labor Code, Title 5 is engaging in that is a violation of a law, rule, or order and that the commissioner believes will result in harm to the health, safety, or welfare of another person;

(3) a statement that the person is to immediately cease and desist from the acts, methods, or practices stated in the order;

(4) the rights of the person against whom the order is entered with regard to requesting a hearing to contest the order. (This statement must include a reference to the specific statute, rule, or order found to have been violated, a statement of the legal authority and jurisdiction under which the order is issued, specific reference to the time limit for requesting a hearing to contest the order, and reference to the statute or statutes in which the time limit is contained. This statement must include the fact that the burden of requesting the hearing is on the person against whom the order was entered);

(5) a statement that the order is final on the 31st day after the date the affected person receives the order unless the affected person requests a hearing; and

(6) a statement regarding the actions that may be taken or sanctions that may be imposed against the person against whom the order was entered in the event of violation of the order.

(c) A request for a hearing to contest the order must be requested not later than the 30th day after the date the affected person receives the order and must:

(1) be in writing;

(2) be directed to the commissioner and filed with the division's chief clerk of proceedings; and

(3) state the grounds for the request to set aside or modify the order.

(d) On receiving a request for a hearing the division shall serve notice of the time and place of the hearing at the State Office of Administrative Hearings (SOAH). The hearing shall be held not later than the 10th day after the date the commissioner receives the request for a hearing unless the parties mutually agree to a later hearing date. At the hearing, the person requesting the hearing is entitled to show cause why the order should not be affirmed and the burden of proof is on the division to show why the order should be affirmed.

(e) Agreements to hold the hearing at a later date must be in writing. The person who is adversely affected by the issuance of the ex parte emergency cease and desist order and who desires a hearing regarding such order must file any such agreement with the division's chief clerk of proceedings before the expiration of the 10th day after the date the request for hearing is received.

(f) Following receipt of the proposal for decision from SOAH regarding the hearing the commissioner shall review the proposed decision of the administrative law judge and wholly

or partly affirm, modify, or set aside the order. If the commissioner modifies, amends, or changes a recommended finding of fact or conclusion of law, or order of the administrative law judge, the commissioner's final order shall state the legal basis and the specific reasons for the change.

(g) Pending a hearing, the order continues in effect unless the order is stayed by the commissioner.

(h) If the person against whom the order was entered submits a motion for stay of the ex parte emergency cease and desist order, the motion may be granted by the commissioner before the date of the show cause hearing. If the parties agree to a later show cause hearing date pursuant to subsection (d) of this section, the motion for stay may be granted by the commissioner before the date of the show cause hearing upon written motion by any party to the hearing. If the motion for stay is granted, notice shall be sent to the requesting party that the order has been stayed in whole or in part and what part of the order continues to be in effect. If the motion is not granted before the date of the show cause hearing the motion is denied and notice is not required of the denial.

SUBCHAPTER B. Medical Benefit Regulation

§180.27. *Restoration.*

(a) In accordance with Labor Code §408.0231(d)(2) a doctor, other than a doctor to which Labor Code §408.023(r) applies, may apply for the restoration of a doctor privilege removed under Labor Code §408.0231 by sending a letter of consideration to the Medical Advisor.

(b) The request shall be evaluated by the Medical Advisor and /or members of the Medical Quality Review Panel. The requestor shall be liable for the cost of the review, which may include an audit of the records of the requestor.

(1) If, in the Medical Advisor's opinion, the doctor:

(A) has all the appropriate unrestricted licenses/certifications;

(B) has overcome the conditions that resulted in the sanction;

(C) meets all the division's qualification standards and conditions for restoration of some or all of the practice privileges removed; and

(D) is not out of compliance with the Labor Code, Insurance Code, a department rule, or a rule, order, or decision of the commissioner the Medical Advisor may recommend that the commissioner lift the sanction(s) or restore some or all of the privileges removed or restricted by the sanction(s).

(2) If in the Medical Advisor's opinion, the doctor has not met all the requirements for restoration of privileges, the Medical Advisor shall notify the doctor by verifiable means of the intent to recommend to the commissioner that the sanctions not be lifted or that the privileges removed or restricted by the sanction(s) not be restored in whole or in part and the reasons for that recommendation. Within 15 days after receiving the notice, a doctor may file a response that addresses the reasons given in the recommendation to deny lifting the sanction(s) or restoration of some or all of the privileges removed or restricted by the sanction(s). The Medical Advisor shall review the response and make a final recommendation to the commissioner. A copy of the requestor's response to the division shall be provided to the commissioner for consideration.

(c) The commissioner shall consider the matter and shall notify the requestor of the final decision by verifiable means, and may send a copy to the appropriate licensing or

certification authority. If the commissioner does not lift the sanction, the commissioner may include in the final decision the conditions that the doctor must meet before the division will reconsider lifting the sanctions including, but not limited to, the amount of time that the doctor must wait prior to re-requesting lifting the sanction(s) or restoration of some or all of the privileges removed or restricted by the sanction(s).

8. CERTIFICATION.

This agency hereby certifies that the adopted amendments and new rules have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on January 24, 2012.

X _____

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 §§180.1, 180.3, 180.5, 180.8, and 180.27 of this title (relating to Definitions, Compliance Audits, Access to Workers' Compensation Related Records and Information, Notices of Violation; Notices of Hearing; Default Judgments, and Restoration, respectively), and new §§180.4, 180.9, and 180.10 (relating to On-Site Visits, Proposals for Decision, and Ex Parte Emergency Cease and Desist Orders, respectively) are adopted.

AND IT IS SO ORDERED.

X

ROD BORDELON
COMMISSIONER OF WORKERS'
COMPENSATION

ATTEST:

X

Dirk Johnson
General Counsel

COMMISSIONER ORDER NO.