

1  
2 Title 28. Insurance.  
3 Part 2. Texas Department of Insurance, Division of Workers' Compensation.  
4 Chapter 180. Monitoring and Enforcement  
5 Subchapter A. General Rules for Enforcement  
6 §180.8. Notices of Violation; Notices of Hearing; Default Judgments, and  
7 Subchapter B. Medical Benefit Regulation  
8 §180.26 Criteria for Imposing, Recommending and Determining Sanctions; Other Remedies  
9

10 The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes amendments to  
11 Texas Administrative Code, Title 28, §180.8 and §180.26. The proposed amendments are necessary to  
12 implement Senate Bill (SB) 2551, 86th Legislature (2019). The proposed amendments to §180.8(b)(4)  
13 provide that the factors used for determining the appropriateness of a sanction include those under Texas  
14 Labor Code §415.021(c-2), if applicable. The proposed amendments to §180.26 add a new subsection (f)  
15 to provide that DWC will consider the factors listed in Labor Code §415.021(c-2) when a Notice of  
16 Continuing Investigation has been provided by the insurance carrier and amend subsections (i) and (j) to  
17 provide that DWC will consider the factors listed under §415.021(c-2) when assessing a sanction. The  
18 amendments to Chapter 180 are proposed concurrently with amendments to Chapter 124.

19  
20 BACKGROUND AND PURPOSE

21  
22 Senate Bill 2551 amended both the Workers' Compensation Act, Labor Code Title 5, and Government  
23 Code Chapter 607, Subchapter B, relating to diseases and illnesses suffered by firefighters, peace officers,  
24 and emergency medical technicians (EMTs) (collectively "first responders"). A separate bill, SB 1582,  
25 added peace officers to the list of first responders covered by Subchapter B. As these proposed rules will  
26 apply uniformly to all first responders covered by Subchapter B, no additional rulemaking is required to  
27 implement SB 1582. The proposed amendments to Chapters 124 and 180 address both an insurance



1 Senate Bill 2551 amended Subchapter B to direct that four specified types of cancer and cancers  
2 originating in seven specified organs might trigger the presumption under Government Code §607.055.  
3 SB 2551 also amended the requirements for rebutting a presumption. A presumption can be rebutted  
4 through showing, by a preponderance of the evidence, that a risk factor, accident, hazard, or other  
5 cause not associated with an individual's service as a first responder was a substantial factor in bringing  
6 about the individual's disease or illness, without which the disease or illness would not have occurred.  
7 §607.058(a). A rebuttal must include a statement that describes, in detail, the evidence that the person  
8 reviewed before making the determination that a cause not associated with the individual's service as a  
9 first responder was a substantial factor in bringing about the individual's disease or illness, without  
10 which the disease or illness would not have occurred. §607.058(b).

11

12 Senate Bill 2551 also amended the Workers' Compensation Act (Act) to provide that an insurance carrier  
13 is not required to initiate compensation or deny a claim within 15 days after receiving written notice of  
14 an injury if the claim results from an employee's disability or death for which a presumption is claimed  
15 under Subchapter B. In that circumstance, an insurance carrier must provide the claimant and DWC  
16 with a notice, herein referred to as a "Notice of Continuing Investigation," that describes all steps taken  
17 by the insurance carrier to investigate the injury before notice was given and the evidence the insurance  
18 carrier reasonably believes is necessary to complete its investigation of the compensability of the injury.  
19 The insurance carrier must issue a Notice of Continuing Investigation no later than 15 days after first  
20 receiving written notice of the injury. Labor Code §409.021.

21

22 The bill also amended Labor Code §415.021, to require that the commissioner consider whether the  
23 employee cooperated with the insurance carrier's investigation of the claim and whether the employee

1 timely authorized access to the relevant medical records when determining whether to assess an  
2 administrative penalty involving a claim in which the insurance carrier provided a Notice of Continuing  
3 Investigation, pursuant to Labor Code §409.021(a-3). The commissioner shall also consider whether the  
4 insurance carrier conducted an investigation of the claim, applied the statutory presumptions under  
5 Subchapter B, and expedited medical benefits under Labor Code §504.055 (relating to Expedited  
6 Provision of Medical Benefits for Certain Injuries Sustained by First Responder in Course and Scope of  
7 Employment by a political subdivision).

8

9 The changes in law made by SB 2551 apply to a claim for benefits filed on or after June 10, 2019, the  
10 effective date of SB 2551. Section 8 of SB 2551 provides that the amendments to Government Code  
11 §607.055 and §607.058 apply only to a claim for benefits filed on or after June 10, 2019. Section 10 of SB  
12 2551 provides that Labor Code §504.053(e)(1) applies only to administrative violations that occur on or  
13 after June 10, 2019. These proposed amendments will not apply to a claim for benefits filed before June  
14 10, 2019.

15

16 DWC posted an informal draft of these rules on its website for comment and hosted a stakeholder  
17 workshop on Wednesday, August 21, 2019. No comments were received regarding the draft amendments  
18 to §180.8 and §180.26. These proposed amendments have not been changed since the informal draft.

19

20 Rule 180.8(b) describes the requirements for a notice of violation (NOV). The proposed amendments to  
21 subsection (b)(4)(A) and (B) incorporate by reference a new factor under Labor Code §415.021(c-2).  
22 Under the proposed amendments, if applicable, an NOV will demonstrate that DWC considered whether  
23 an employee timely authorized access to applicable medical records before determining whether to

1 assess an administrative penalty involving a claim in which the insurance carrier provided notice under  
2 Labor Code §409.021(a-3) (Notice of Continuing Investigation).

3  
4 Rule 180.26 concerns the criteria for imposing, recommending, and determining sanctions. The  
5 amendments include a new subsection (f) which provides that DWC shall consider the factors in Labor  
6 Code §415.021(c-2) when determining which sanction to impose in claims where the insurance carrier  
7 provided a Notice of Continuing Investigation.

8  
9 FISCAL NOTE

10  
11 Debra Knight, Deputy Commissioner for Compliance and investigations, has determined that for each year  
12 of the first five years these proposed rules will be in effect, there will be no additional estimated cost to  
13 the state and local governments, other than that imposed by the statute. As these proposed amendments  
14 align Chapter 180 with the amendments made by SB 2551, there will not be any estimated reduction in  
15 costs to the state and local governments, nor will there be any estimated loss or increase in revenue to  
16 the state or local governments as a result of enforcing or administering these rules.

17  
18 PUBLIC BENEFITS AND COSTS

19  
20 Ms. Knight has determined that for each year of the first five years that these proposed new rules will be  
21 in effect there will be a more efficient provision of benefits to injured employees under the Workers'  
22 Compensation Act, Labor Code, Title 5, and that the probable economic costs to insurance carriers  
23 required to comply with the rule will be minimal. The primary benefit of the adoption of these rules will  
24 be to give insurance carriers the opportunity to notify and conduct their investigation of a claim covered

1 by Government Code Chapter 607, Subchapter B. Insurance carriers may now process cancer presumption  
2 claims in accordance with the rule changes to §124.2 and §124.3 since SB 2551 became effective on June  
3 10, 2019.

4

5 GOVERNMENT GROWTH IMPACT STATEMENT

6

7 Ms. Knight has determined that during the first five years that these rules are in effect, the proposed rules  
8 neither create nor eliminate a government program. The implementation of the proposed rules does not  
9 require the creation of new employee positions or the elimination of existing employee positions. The  
10 implementation of the proposed rules does not require an increase or decrease in future legislative  
11 appropriations. The proposed rules do not require an increase or decrease in fees paid to the agency.  
12 Other than those imposed by statute, the proposed rules do not create a new regulation. Other than that  
13 imposed by statute, the proposed rules do not expand, limit, or repeal an existing regulation. The  
14 proposed rules do not increase or decrease the number of individuals subject to the rule’s applicability.  
15 The proposed rules do not positively or adversely affect the state economy.

16

17 STATEMENT ON COSTS TO REGULATED PERSONS

18

19 As these rules are necessary to implement SB 2551, as provided under Government Code §607.058, a  
20 statement on costs to regulated persons under Government Code §2001.0045 is not required. As  
21 discussed above under the Fiscal Note, these proposed rules do not impose costs on the Texas workers’  
22 compensation system. These proposed amendments align the rule with the statutes as amended by SB  
23 2551.

24

1 LOCAL EMPLOYMENT IMPACT

2

3 For each of the first five years that these rules will be in effect, the rules will not have an impact on local  
4 employment. These proposed amendments will merely align the rules with the statutes as amended by  
5 SB 2551.

6

7 ECONOMIC EFFECT ON SMALL BUSINESS AND RURAL COMMUNITIES

8

9 DWC does not anticipate that these rules will have an adverse economic effect on micro-businesses.  
10 These rules primarily impact insurance carriers, and as of 2016, DWC had identified 10 insurance carriers  
11 writing workers' compensation and excess workers' compensation business in Texas that met the  
12 definition of a small business under Government Code §2006.001(2). These entities had total national  
13 premiums of less than \$6 million, from all lines of business. Political subdivisions that self-insure their  
14 workers' compensation responsibilities, including rural political subdivisions, will be impacted by these  
15 rules; however, these rules would not impose any new costs on self-insured political subdivisions.

16

17 REGULATORY FLEXIBILITY ANALYSIS

18

19 DWC does not find that it would be practicable to establish separate compliance or reporting  
20 requirements or to exempt either insurance carriers that qualify as small businesses or self-insured rural  
21 political subdivisions from these rules. The proposed amendments merely conform the rules to the  
22 requirements of the authorizing statutes. As a result, this proposal does not require a regulatory flexibility  
23 analysis under Government Code §2006.002(c).

24

1 TAKINGS IMPACT ASSESSMENT

2

3 DWC has determined that no private real property interests are affected by this proposal and that this  
4 proposal does not restrict or limit an owner’s right to property that would otherwise exist in the absence  
5 of government action. As a result, this proposal does not require a takings impact assessment under  
6 Government Code §2007.043.

7

8 REQUEST FOR COMMENTS

9

10 Comments may be submitted by email to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov) or by mailing  
11 or delivering your comments to Cynthia Guillen, Office of General Counsel, MS-4D, Texas  
12 Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin,  
13 Texas 78744-1645. To be considered, comments must be received by 5 p.m., Central Time, on November  
14 25, 2019.

15

16 DWC will hold a public hearing to discuss these proposed rules on November 20, 2019, at 10 a.m. at the  
17 DWC central office located at 7551 Metro Center Drive, Suite 100, in Austin. DWC provides reasonable  
18 accommodations for persons attending meetings, hearings, or educational events as required by the  
19 Americans with Disability Act. If you need accommodations, please contact Cynthia Guillen at 512-804-  
20 4275 or at [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov) before noon, Central time, on November 18, 2019.

21

22 STATUTORY AUTHORITY FOR §180.8

23

1 The proposed amendments are authorized by Texas Labor Code §§402.00111, 402.00116, 402.00128,  
2 402.021, 402.061, 409.021, 409.022, 414.002, and 415.021, Government Code §607.052 and §607.058,  
3 and SB 2551 §9.

4

5 Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all  
6 executive authority under Title 5 of the Labor Code.

7

8 Section 402.00116 provides that the commissioner is the chief executive and administrative officer of  
9 the agency with all the powers and duties vested under the Act.

10

11 Section 402.00128 describes the general powers and duties of the commissioner, including assessing  
12 and enforcing penalties and prescribing the form, manner, and procedure for the transmission of  
13 information to DWC.

14

15 Section 402.021 provides that a basic goal of the Texas workers' compensation system is that each  
16 employee shall be treated with dignity and respect when injured on the job and that it is the intent of  
17 the Legislature that the workers' compensation system must minimize the likelihood of disputes and  
18 resolve them promptly and fairly when identified and effectively educate and clearly inform each system  
19 participant of their rights and responsibilities under the system and how to appropriately interact within  
20 the system.

21

22 Section 402.061 provides that the commissioner shall adopt rules as necessary for the implementation  
23 and enforcement of the Act.

24

1 Section 409.021(a) sets forth the general rule that, not later than the 15th day after receipt of written  
2 notice of injury, an insurance carrier must either begin payment of benefits or notify DWC and the  
3 injured employee in writing of its refusal to pay and their procedural rights. Section 409.021(a-3)  
4 provides that an insurance carrier is not required to comply with subsection (a) if the claim results from  
5 an employee's disability or death for which the presumption is claimed to be applicable under  
6 Subchapter B, Chapter 607, Government Code and not later than the 15th day after the date on which  
7 the insurance carrier received written notice of the injury, the insurance carrier has provided the  
8 employee and DWC with a notice describing all steps taken by the insurance carrier to investigate the  
9 injury. Section 409.021(a-3) also requires the commissioner to adopt rules as necessary to implement  
10 that subsection. Section 409.021(d) provides that an insurance carrier may reopen the issue of the  
11 compensability of an injury if there is a finding of evidence that could not reasonably have been  
12 discovered earlier.

13

14 Section 409.022(c) provides that an insurance carrier commits an administrative violation if the  
15 insurance carrier does not have reasonable grounds for a refusal to pay benefits, as determined by the  
16 commissioner. Section 409.022(d) provides that if an insurance carrier's notice of refusal to pay benefits  
17 under Section 409.021 is sent in response to a claim for compensation resulting from an emergency  
18 medical technician's, peace officer's, or a firefighter's disability or death for which a presumption is  
19 claimed to be applicable under Subchapter B, Chapter 607, Government Code, the notice must include a  
20 statement by the carrier that explains why the carrier determined a presumption under Subchapter B  
21 does not apply to the claim for compensation; and describes the evidence that the carrier reviewed in  
22 making the determination.

23

1 Section 414.002 provides that DWC shall monitor the system for compliance with the Act and rules as  
2 well as other laws relating to workers' compensation.

3

4 Section 415.021(c-2) provides that in determining whether to assess an administrative penalty involving  
5 a claim in which the insurance carrier provides notice under Section 409.021(a-3), the commissioner  
6 shall consider whether the employee cooperated with the insurance carrier's investigation and whether  
7 the employee authorized access to the applicable medical records.

8

9 Government Code §607.052(a) provides that notwithstanding any other law, this subchapter applies  
10 only to a firefighter, peace officer, or emergency medical technician who on becoming employed or  
11 during employment as a firefighter, peace officer, or emergency medical technician, received a physical  
12 examination that failed to reveal evidence of the illness or disease for which benefits or compensation  
13 are sought using a presumption established by Subchapter B; is employed for five or more years as a  
14 firefighter, peace officer, or emergency medical technician; and seeks benefits or compensation for a  
15 disease or illness covered by Subchapter B that is discovered during employment as a firefighter, peace  
16 officer, or emergency medical technician.

17

18 Section 607.052(b) provides that a presumption under Subchapter B does not apply to a determination  
19 of a survivor's eligibility for benefits under Chapter 615; in a cause of action brought in a state or federal  
20 court except for judicial review of a proceeding in which there has been a grant or denial of  
21 employment-related benefits or compensation; to a determination regarding benefits or compensation  
22 under a life or disability insurance policy purchased by or on behalf of the firefighter, peace officer, or  
23 emergency medical technician that provides coverage in addition to any benefits or compensation  
24 required by law; or if the disease or illness for which benefits or compensation is sought is known to be

1 caused by the use of tobacco and the firefighter, peace officer, or emergency medical technician is or  
2 has been a user of tobacco or if their spouse has, during the marriage, been a user of tobacco that is  
3 consumed through smoking.

4  
5 Section 607.058 provides that a presumption under §§607.053, 607.054, 607.055, or 607.056 may be  
6 rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or  
7 other cause not associated with the individual's service as a firefighter, peace officer, or emergency  
8 medical technician was a substantial factor in bringing about the individual's illness, without which the  
9 illness would not have occurred. A rebuttal offered under Section 607.058 must include a statement by  
10 the person offering the rebuttal that describes, in detail, the evidence that the person reviewed before  
11 making the determination that a cause not associated with the individual's service as a firefighter, peace  
12 officer, or emergency medical technician was a substantial factor in bringing about the individual's  
13 illness without which the illness would not have occurred.

14  
15 Finally, §9 of SB 2551 requires that the commissioner adopt rules no later than January 1, 2020. The  
16 proposed amendment supports the implementation of the Workers' Compensation Act, Texas Labor  
17 Code Title 5, Subtitle A.

18

19 Chapter 180. Monitoring and Enforcement  
20 Subchapter A. General Rules for Enforcement  
21 §180.8. Notices of Violation; Notices of Hearing; Default Judgments  
22

23 (a) (no change).

24 (b) An NOV shall be in writing and include:

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

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

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

5 (4) a statement of the basis for the proposed sanction including:

6 (A) a description of the underlying facts considered by the division for each of the factors  
7 listed in Labor Code §415.021(c) and (c-2), if applicable, (relating to Assessment of Administrative  
8 Penalties) and §180.26 of this title (relating to Criteria for Proposing, Recommending and  
9 Determining Sanctions; Other Remedies) in determining the appropriateness of the division's  
10 proposed sanction;

11 (B) a description of which factors under Labor Code §415.021(c) and (c-2), if applicable, and  
12 §180.26 of this title had a mitigating or aggravating effect on the division's proposed sanctions; and

13 (C) a description of the division's proposed sanction for each violation or violation type in  
14 the case of repeated administrative violations. This requirement does not prohibit the division from  
15 considering the aggregate impact of all administrative violations described in the NOV when  
16 proposing a sanction if justice requires such consideration;

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

18 (6) the right to request a hearing; and

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

20 (c)– (i) (no change).

21  
22 STATUTORY AUTHORITY FOR §180.26

23

1 The proposed amendments are authorized by Texas Labor Code §§402.00111, 402.00116, 402.00128,  
2 402.021, 402.061, 409.021, 409.022, 414.002, and 415.021, Government Code §607.052 and §607.058,  
3 and SB 2551 §9.

4  
5 Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all  
6 executive authority under Title 5 of the Labor Code.

7  
8 Section 402.00116 provides that the commissioner is the chief executive and administrative officer of  
9 the agency with all the powers and duties vested under the Act.

10  
11 Section 402.00128 describes the general powers and duties of the commissioner, including assessing  
12 and enforcing penalties and prescribing the form, manner, and procedure for the transmission of  
13 information to DWC.

14  
15 Section 402.021 provides that a basic goal of the Texas workers' compensation system is that each  
16 employee shall be treated with dignity and respect when injured on the job, and that it is the intent of  
17 the Legislature that the workers' compensation system minimize the likelihood of disputes and resolve  
18 them promptly and fairly when identified, and effectively educate and clearly inform each system  
19 participant of their rights and responsibilities and how to appropriately interact within the system.

20  
21 Section 402.061 provides that the commissioner shall adopt rules as necessary for the implementation  
22 and enforcement of the Act.

23

1 Section 409.021(a) sets forth the general rule that, not later than the 15th day after receipt of written  
2 notice of injury, an insurance carrier must either begin payment of benefits or notify DWC and the  
3 injured employee in writing of its refusal to pay and their procedural rights. Section 409.021(a-3)  
4 provides that an insurance carrier is not required to comply with subsection (a) if the claim results from  
5 an employee's disability or death for which the presumption is claimed to be applicable under  
6 Subchapter B, Chapter 607, Government Code, and not later than the 15th day after the date on which  
7 the insurance carrier received written notice of the injury, the insurance carrier has provided the  
8 employee and DWC with a notice describing all steps taken by the insurance carrier to investigate the  
9 injury. Section 409.021(a-3) also requires the commissioner to adopt rules as necessary to implement  
10 that subsection. Section 409.021(d) provides that an insurance carrier may reopen the issue of the  
11 compensability of an injury if there is a finding of evidence that could not reasonably have been  
12 discovered earlier. Section 409.022(c) provides that an insurance carrier commits an administrative  
13 violation if the insurance carrier does not have reasonable grounds for a refusal to pay benefits, as  
14 determined by the commissioner. Section 409.022(d) provides that if an insurance carrier's notice of  
15 refusal to pay benefits under Section 409.021 is sent in response to a claim for compensation resulting  
16 from an emergency medical technician's, peace officer's, or a firefighter's disability or death for which a  
17 presumption is claimed to be applicable under Subchapter B, Chapter 607, Government Code, the notice  
18 must include a statement by the insurance carrier that explains why the insurance carrier determined a  
19 presumption under Subchapter B does not apply to the claim for compensation; and describes the  
20 evidence that the insurance carrier reviewed in making the determination.

21

22 Section 414.002 provides that DWC shall monitor the system for compliance with the Act and rules as  
23 well as other laws relating to workers' compensation.

24

1 Section 415.021(c-2) provides that in determining whether to assess an administrative penalty involving  
2 a claim in which the insurance carrier provides notice under Section 409.021(a-3), the commissioner  
3 shall consider whether the employee cooperated with the insurance carrier's investigation and whether  
4 the employee authorized access to the applicable medical records.

5

6 Government Code §607.052(a) provides that notwithstanding any other law, this subchapter applies  
7 only to a firefighter, peace officer, or emergency medical technician who on becoming employed or  
8 during employment as a firefighter, peace officer, or emergency medical technician, received a physical  
9 examination that failed to reveal evidence of the illness or disease for which benefits or compensation  
10 are sought using a presumption established by Subchapter B; is employed for five or more years as a  
11 firefighter, peace officer, or emergency medical technician; and seeks benefits or compensation for a  
12 disease or illness covered by Subchapter B that is discovered during employment as a firefighter, peace  
13 officer, or emergency medical technician.

14

15 Section 607.052(b) provides that a presumption under Subchapter B does not apply to a determination  
16 of a survivor's eligibility for benefits under Chapter 615; in a cause of action brought in a state or federal  
17 court except for judicial review of a proceeding in which there has been a grant or denial of  
18 employment-related benefits or compensation; to a determination regarding benefits or compensation  
19 under a life or disability insurance policy purchased by or on behalf of the firefighter, peace officer, or  
20 emergency medical technician that provides coverage in addition to any benefits or compensation  
21 required by law; or if the disease or illness for which benefits or compensation is sought is known to be  
22 caused by the use of tobacco and the firefighter, peace officer, or emergency medical technician is or  
23 has been a user of tobacco or if their spouse has, during the marriage, been a user of tobacco that is  
24 consumed through smoking.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

Section 607.058 provides that a presumption under §§607.053, 607.054, 607.055, or 607.056 may be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a firefighter, peace officer, or emergency medical technician was a substantial factor in bringing about the individual's illness, without which the illness would not have occurred. A rebuttal offered under Section 607.058 must include a statement by the person offering the rebuttal that describes, in detail, the evidence that the person reviewed before making the determination that a cause not associated with the individual's service as a firefighter, peace officer, or emergency medical technician was a substantial factor in bringing about the individual's illness without which the illness would not have occurred.

Finally, §9 of SB 2551 requires that the commissioner adopt rules no later than January 1, 2020. The proposed amendments support the implementation of the Workers' Compensation Act, Texas Labor Code Title 5, Subtitle A.

Subchapter B. Medical Benefit Regulation  
§180.26 Criteria for Imposing, Recommending and Determining Sanctions; Other Remedies

- (a) – (e) (no change).
- (f) When determining which sanction to impose against a system participant and the severity of that sanction in claims where the insurance carrier provided notice under Section 409.021(a-3), (Notice of Continuing Investigation), the division shall consider the factors listed in Labor Code §415.021(c-2).

1 (g) [~~(f)~~] In an investigation where both an administrative violation and a criminal prosecution are  
2 possible, the division may, at its discretion, postpone action on the administrative violation until the  
3 related criminal prosecution is completed.

4 (h) [~~(g)~~] As an alternative to imposing a sanction such as an administrative penalty on a charged  
5 system participant, the division may, at its discretion, provide formal notice of the violation through  
6 a Warning Letter. A Warning Letter shall:

7 (1) – (3) (no change).

8 (i) [~~(h)~~] The division may enter into a consent order with the system participant if the division and  
9 the system participant have communicated regarding:

10 (1) – (2) (no change).

11 (3) the appropriateness of the proposed sanction, including how the division considered the  
12 factors under Labor Code §415.021(c) and (c-2) and subsection (e) of this section in determining the  
13 proposed sanction.

14 (j) [~~(i)~~] A consent order may be entered into before or after issuance of an NOV under §180.8 of this  
15 title (relating to Notices of Violation; Notices of Hearing; Default Judgments). Consent orders must  
16 include:

17 (1) a description of which factors under Labor Code §415.021(c) and (c-2) and subsection (e) of  
18 this section the division considered aggravating or mitigating when determining the proposed  
19 sanctions; and

20 (2) a statement that the system participant acknowledges:

21 (A) (no change).

22 (B) the division considered the factors under Labor Code §415.021(c) and (c-2) and  
23 subsection (e) of this section.

24

1

2

3 DWC certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal  
4 authority to adopt.

5

6 Nicholas Canaday III

7 General Counsel

8 Texas Department of Insurance, Division of Workers' Compensation