

SUBCHAPTER H. CEASE AND DESIST ORDERS
28 TAC §1.909

1. INTRODUCTION. The commissioner of insurance adopts amendments to 28 TAC §1.909, concerning burden of proof in a hearing on an emergency cease and desist order. The amendments are adopted without changes to the proposed text published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2986).

2. REASONED JUSTIFICATION. The amendments are necessary to clarify the rights and responsibilities of parties in a hearing to determine whether to affirm, modify, or set aside, in whole or in part, a cease and desist order issued under Insurance Code Chapter 83, relating to emergency cease and desist orders.

The amendments to §1.909 clarify that a person requesting a hearing concerning an emergency cease and desist order is entitled, consistent with Insurance Code §83.054(c), to show cause at the hearing why the order should not be affirmed. The amendments also clarify that the department has the burden of proof to show why the order should be affirmed.

The amendments implement Insurance Code Chapter 83, relating to emergency cease and desist orders. Insurance Code §83.003 authorizes the commissioner to adopt reasonable rules to implement Insurance Code Chapter 83, including rules that provide, to the extent possible, uniformity between this state and other states, the United States, or the National Association of Insurance Commissioners. The amendments also implement Government Code §2001.004(1), which specifies that, in

addition to other requirements under law, a state agency must adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

3. HOW THE SECTION WILL FUNCTION. Amended §1.909 clarifies the rights and responsibilities of parties in a hearing to determine whether to affirm, modify, or set aside, in whole or in part, a cease and desist order issued under Insurance Code Chapter 83.

4. SUMMARY OF COMMENTS. The department did not receive any comments on the published proposal.

5. STATUTORY AUTHORITY. The amendments are adopted pursuant to Insurance Code §83.003 and §36.001 and Government Code §2001.004(1). Insurance Code §83.003 authorizes the commissioner of insurance to adopt reasonable rules to implement Insurance Code Chapter 83, including rules that provide, to the extent possible, uniformity of procedures between this state and other states, the United States, or the National Association of Insurance Commissioners. Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

Government Code §2001.004(1) specifies that, in addition to other requirements under law, a state agency shall adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

6. TEXT.


§1.909. Burden of Proof. At the hearing, the person requesting the hearing is entitled to show cause why the order should not be affirmed, and the Department of Insurance has the burden of proof to show why the order should be affirmed. Based upon the evidence presented, the cease and desist order may be affirmed, modified, or set aside in whole or in part.

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

Issued at Austin, Texas, on June 8, 2012.


Sara Waitt, General Counsel
Texas Department of Insurance

The commissioner orders that the amendments to §1.909 are adopted.


ELEANOR KITZMAN
COMMISSIONER OF INSURANCE

Attest:

Sara Waitt, General Counsel
Texas Department of Insurance

COMMISSIONER'S ORDER NO. 12-0527