

Subchapter A. Rules of Practice and Procedure
Division 1. General Procedural Provisions
~~**[28 TAC §§1.47 - 1.49, 1.51, 1.52, 1.88, and 1.89]**~~
28 TAC §1.32 and §1.47

INTRODUCTION. The Texas Department of Insurance (TDI) proposes the repeal of 28 TAC §§1.47 - 1.49, 1.51, 1.52, 1.88, and 1.89; amendments to §1.32; and new §1.47. These sections concern the procedures for responding to notices of hearing, dispositions of contested cases, and appeals of dispositions. The proposed changes modernize and clarify parts of TDI's contested case process.

EXPLANATION. The proposed repeal of §§1.47 - 1.49, 1.51, and 1.52 removes regulations that no longer provide relevant guidance because of repealed or recodified statutes. The proposed repeal of §1.88 and §1.89 removes regulations containing outdated procedures that have been superseded by regulations in 1 TAC Chapter 155. The proposed amendments to §1.32 and proposed new §1.47 update the procedure for (1) informing applicants and license or authorization holders about alleged violations, and (2) informally disposing of contested cases when the applicant or license or authorization holder does not participate in the process. The proposed amendments also make nonsubstantive changes for plain language and to reflect current agency drafting style.

Details of the proposed amended, new, and repealed sections follow.

Section 1.32. The proposed amendments to §1.32 remove unnecessary references, update the process for applicants to request a hearing following a proposed denial of a new or renewal license or authorization, and make plain language changes.

The first sentence in §1.32 is solely a reference to a repealed statute, stating that the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license is governed by §18 of Texas Civil Statutes, Article 6252-13a. Article 6252-13a was repealed

effective September 1, 1993; those regulations on licenses are now governed by the Administrative Procedures Act (APA), under Government Code §2001.054. The sentence is stricken, as it provides no relevant information or direction, and the APA sufficiently addresses the matter; it is not necessary for §1.32 to interpret or apply it.

In the second sentence, the proposed amendments change "he or she shall have" to "the person will have" and remove the end of the sentence, which states that a hearing will be granted if requested and again refers to Article 6252-13a. The latter amendment does not affect the applicant's right to a hearing; instead, it limits the rule's scope to better accommodate the possibility of a contested case being informally disposed of under any method listed in Government Code §2001.056 before it is docketed at the State Office of Administrative Hearings (SOAH). The amendments aim to limit confusion or conflict between the procedural steps §1.32 regulates and those steps regulated by proposed new §1.47 or other laws. If an applicant requests a hearing, that application will be referred to TDI's Enforcement Section and continue through the contested case process.

Repeal of existing §1.47. Existing §1.47, which consists of a single sentence, is proposed for repeal because it is solely a reference to a repealed statute. Section 1.47 states that informal disposition of a contested case is governed by §13(e) of Texas Civil Statutes, Article 6252-13a. Article 6252-13a was repealed effective September 1, 1993; informal disposition of contested cases is now governed by the APA, under Government Code §2001.056. Section 1.47 provides no relevant information or direction. The APA sufficiently addresses the matter; it is not necessary to update §1.47 to interpret or apply it.

Proposed new §1.47. Proposed new §1.47 provides a more efficient process for informal dispositions of contested cases when the person identified in the allegations does not participate. For contested cases involving applications for new or renewal

licenses or authorizations, the process in proposed new §1.47 follows the steps in the proposed amendments to §1.32.

The new process in proposed §1.47 is similar to the process in existing §1.88 and §1.89, which are proposed to be repealed. The primary difference is that the informal disposition will occur *before* the contested case is docketed with SOAH instead of after docketing, as required under the existing rules. The proposed title for new §1.47 identifies the notice that will be sent under this section and reflects the change to the timing of the informal disposition. New §1.47 allows for a more modern and efficient process and retains the same level of notice regarding the allegations against the person.

Proposed new §1.47(a) establishes that TDI may send a person a notice of allegations that sets out the factual matters asserted against them, the legal authority under which TDI can act on those matters, any relief sought, and the repercussions of failing to respond to the notice of allegations. The information in the notice of allegations is similar to what is currently included in a petition and a notice of hearing, under §1.88 and Government Code §2001.052, except for the time, place, and nature of the hearing. This information will not be available because the notice of allegations will be sent before the hearing is docketed at SOAH. The notice of allegations will provide a person with an invitation to show compliance with the law and information to make an informed decision about whether they would like to proceed to a public hearing at SOAH.

Under proposed new §1.47(b), a person has 20 days to respond to the notice of allegations--the same response time that is in existing §1.88. The proposed repeal of §1.88 will result in TDI's rules no longer requiring a response to a notice of hearing. There is also no requirement for a response to a notice of hearing in SOAH's rules; *see* 1 TAC Chapter 155. This proposal shifts the existing requirement that the person respond to TDI's allegations and show a willingness to participate in a hearing from after docketing to before docketing at SOAH. Proposed new §1.47 does not include any requirements or

limitations regarding the person's response to the notice of allegations, other than it needs to be in writing.

Under proposed new §1.47(c), if a person does not timely respond to a notice of allegations, then the contested case may be informally disposed of under a default order, as authorized by Government Code §2001.056 and Insurance Code §82.055 or §4005.102. This is the same type of disposition allowed under existing §1.89 for failing to file a response to a notice of hearing. Subsection (c) identifies what will be included in or addressed by a default order issued under the section. A default order under this subsection will describe how the person who is the subject of the order waived their opportunity for a hearing by failing to respond to a properly sent notice of allegations. The allegations from §1.47(a) will be used as the findings of fact and conclusions of law, and the relief sought in §1.47(a)(4) will be the action ordered by the default order.

New §1.47(d) sets out the process to appeal a default order issued under §1.47. This process is substantially similar to the process in existing §1.89, with some language updates to reflect current agency drafting style and plain language preferences. A party to a contested case may file a motion to set aside the default order and reopen the record. Subsection (d) plainly describes how the motion must be submitted to TDI. Subsections (d)(2) and (d)(3) provide the same standard of review for granting a motion under the subsection and the same explanation that a motion under the subsection is not a motion for rehearing, as stated in existing §1.89. If the party establishes that the failure to respond was not intentional and was a mistake, then the commissioner will grant the motion to set aside the default order. Once a default order under this section is set aside, the party will again have the ability to show compliance or present their case at SOAH.

New §1.47(e) clarifies that the updated process of sending a notice of allegations will constitute the beginning of an action under Insurance Code §81.001.

Repeal of §1.48. Section 1.48, which consists of a single sentence, is proposed for repeal because it is solely a reference to a repealed statute. Section 1.48 states that the form and time limits for a final decision of the commissioner, the fire marshal, or the Board of Insurance in a contested case are governed by §15 and §16 of Texas Civil Statutes, Article 6252-13a. Article 6252-13a was repealed effective September 1, 1993; form and time limits for final decisions are now governed by the APA, under Government Code §2001.141 and §2001.143. Section 1.48 provides no relevant information or direction and could confuse a party attempting to appeal a final decision in a contested case. The APA sufficiently addresses the matter; it is not necessary to update §1.48 to interpret or apply it.

Repeal of §1.49. Section 1.49, which consists of a single sentence, is proposed for repeal because it is solely a reference to a repealed statute. Section 1.49 states that the requirements and time limits for a motion for rehearing in a contested case before the commissioner, fire marshal, or the Board of Insurance are governed by §16 of Article 6252-13a. Article 6252-13a was repealed and these regulations are now addressed by the APA, under Government Code §2001.145 and §2001.146. Section 1.49 provides no relevant information or direction and could confuse a party attempting to request a motion for rehearing. The APA sufficiently addresses the matter, so it is not necessary to update §1.49 to interpret or apply it.

Repeal of §1.51. Section 1.51 is proposed for repeal because the section sets out procedures that are inconsistent with current statutes in the Insurance Code and the APA. Section 1.51, which was last amended in 1991, addresses appeals of final agency decisions in contested cases. In 1993, the APA began addressing the judicial review of final agency decisions, under Government Code Chapter 2001, Subchapter G. Subchapter G sufficiently addresses the matter, so it is not necessary to update §1.51 to interpret or apply it.

Subsection (b) provides procedures for appeals of acts, rulings, or decisions of the Texas Workers' Compensation Assigned Risk Pool, the Texas Catastrophe Property Insurance Association, or the Texas Medical Liability Underwriting Association. These procedures have been superseded by law. Section 1.51 provides outdated information and directions, and it could confuse a party attempting to appeal a final agency decision.

Repeal of §1.52. The proposed repeal of §1.52 is because the section, which consists of a single sentence, is solely a reference to a repealed statute. Section 1.52 states that the time periods for §1.48 and §1.49, which are both proposed for repeal, may be modified as provided by §16 of Article 6252-13a. Article 6252-13a was repealed and the regulations are now addressed in the APA, as stated above. Section 1.52 provides no relevant information or direction and could confuse a party attempting to modify time periods. The APA sufficiently addresses the matter, so it is not necessary to update §1.52 to interpret or apply it.

Repeal of §1.88. Section 1.88 is proposed for repeal because it will be unnecessary if the other proposed repeals and amendments are adopted. The provisions in §1.88 relate to §1.89, which is proposed for repeal. Section 1.88 includes outdated references and provisions that are sufficiently addressed under the APA and 1 TAC Chapter 155. The requirement in proposed new §1.47 to respond to a notice of allegations supplants the requirement in §1.88 to respond to a notice of hearing.

Repeal of §1.89. Section 1.89 is proposed for repeal because it will be unnecessary if the other proposed repeals and amendments are adopted. Some provisions in §1.89 concerning contested case hearings have been superseded by SOAH procedures included in 1 TAC §155.501 and §155.509, while other provisions provide an informal disposition process that will be supplanted by proposed new §1.47.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner Leah Gillum, Fraud and Enforcement Division, has determined that during each year of the first five years this proposal is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections as proposed, other than that imposed by statute. Ms. Gillum made this determination because the sections as proposed do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments, new section, and repeals.

Ms. Gillum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years this proposal is in effect, Ms. Gillum expects that administering the sections as proposed will have the public benefit of ensuring sufficient due process protections through a more efficient and clearly written process. The amendments and repeals will remove outdated sections that might confuse or provide incorrect information to a person attempting to follow the contested case process.

Ms. Gillum expects that this proposal will not increase the cost of compliance for stakeholders because they do not require substantive changes from the current process.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that this proposal will not have an adverse economic effect on small or micro businesses, or on rural communities. While the new and repealed sections will apply to small or micro businesses, the updated process is substantially similar to the existing process and does not require additional or significantly different actions by small or micro

businesses. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Any cost associated with responding to TDI under new §1.47 will be the same as is present under current §1.89. Neither the proposed amendments to §1.32 nor the proposed repeals of §§1.47 - 1.49, 1.51, 1.52, 1.88, or 1.89 result in additional costs on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the sections as proposed are in effect, the rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

This proposal repeals existing regulations and replaces them with new regulations addressing the need to file a written response to TDI's allegations in a contested case.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on August 5, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on August 5, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

Subchapter A. Rules of Practice and Procedure
Division 1. General Procedural Provisions
Repeal of 28 TAC §§1.47 - 1.49, 1.51, 1.52, 1.88, and 1.89

STATUTORY AUTHORITY. TDI proposes the repeal of §§1.47 - 1.49, 1.51, 1.52, 1.88, and 1.89 under Government Code §2001.004 and §2001.056, and Insurance Code §§82.055, 4005.102, and 36.001.

Government Code §2001.004 provides for a state agency's adoption of rules stating the nature and requirements for formal and informal procedures.

Government Code §2001.056 provides that informal disposition of a contested case may be made by default.

Insurance Code §82.055 provides that the commissioner may informally dispose of a matter under Insurance Code Chapter 82, Subchapter B, by consent order, agreed settlement, stipulation, or default.

Insurance Code §4005.102 lists remedies for violations of the Insurance Code, other insurance laws of Texas, and commissioner rules. This list includes a denial or disciplinary action against an applicant or a regulated person. The section also states that the remedies under the section are in addition to any remedy available under Insurance Code Chapter 82, which includes informal disposition by default.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed repeal of §§1.47 - 1.49, 1.51, 1.52, 1.88, and 1.89 implements Government Code §2001.004 and §2001.056 and Insurance Code §82.055 and §4005.102.

TEXT.

§1.47. Informal Disposition of a Contested Case.

§1.48. Final Decisions.

§1.49. Motion for Rehearing.

§1.51. Appeals to the Board of Acts, Rulings, or Decisions of Certain Persons, Associations, Organizations, or Other Entities.

§1.52. Modification to Time Periods.

§1.88. Written Response to Notice of Hearing.

§1.89. Default: What Constitutes Default; Remedies.

Subchapter A. Rules of Practice and Procedure
Division 1. General Procedural Provisions
28 TAC §1.32 and §1.47

STATUTORY AUTHORITY. TDI proposes amendments to §1.32 and new §1.47 under Government Code §2001.004 and §2001.056, and Insurance Code §§82.055, 4005.102, and 36.001.

Government Code §2001.004 provides for a state agency's adoption of rules stating the nature and requirements for formal and informal procedures.

Government Code §2001.056 provides that informal disposition of a contested case may be made by default.

Insurance Code §82.055 provides that the commissioner may informally dispose of a matter under Insurance Code Chapter 82, Subchapter B, by consent order, agreed settlement, stipulation, or default.

Insurance Code §4005.102 lists remedies for violations of the Insurance Code, other insurance laws of Texas, and commissioner rules. This list includes a denial or disciplinary action against an applicant or a regulated person. The section also states that the remedies under the section are in addition to any remedy available under Insurance Code Chapter 82, which includes informal disposition by default.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed amendments to §1.32 and new §1.47 implement Government Code §2001.004 and §2001.056, and Insurance Code §82.055 and §4005.102.

TEXT.

§1.32. Licenses.

~~[Except as otherwise provided by law, the procedure for the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license is governed by the Act, §18.]~~
Except as otherwise provided by law, if an applicant's original application or request for renewal of a license or certificate of authority is denied, the person will ~~[he or she shall]~~ have 30 days from the date of denial to make a written request for a hearing. ~~[and, if so requested, the hearing will be granted and the provisions of the Act and these sections with regard to a contested case shall apply.]~~

§1.47. Informal Disposition After Notice of Allegations.

(a) Before docketing a contested case with the State Office of Administrative Hearings, the Texas Department of Insurance (TDI) may send a person a notice of allegations via certified mail to the person's last known mailing address that includes:

(1) a short, plain statement of the factual matters asserted;

(2) the legal authority and jurisdiction under which TDI or the commissioner is authorized to act;

(3) the statutes and rules involved;

(4) any relief sought, including denial, revocation, or other disciplinary action;

(5) an invitation to show compliance with the law;

(6) statements that notify the person that:

(i) the person has a right to a hearing;

(ii) the person must respond to the notice in writing not later than the 20th day after the date it was mailed; and

(iii) if the person does not respond, then the commissioner may issue a default order that admits all allegations asserted as true and orders the relief recommended in the notice.

(b) Not later than the 20th day after the date a notice of allegations is mailed, the person must send a written response to TDI as directed in the notice.

(c) If the person does not send a written response by the deadline described in subsection (b) of this section, the commissioner may informally dispose of the contested case by issuing a default order. A default order under this section will:

(1) find that a notice of allegations was properly sent to the person;

(2) find that the person received and waived an opportunity for hearing;

(3) deem all allegations in the notice of allegations as true;

(4) find that the person failed to show compliance with the law; and

(5) order the relief listed in the notice of allegations.

(d) A party in the contested case may file a motion with TDI to set aside a default order entered under this section and reopen the record.

(1) A party must file the motion with TDI's Chief Clerk's Office and send a copy of it to the TDI attorney named in the notice of allegations before the order becomes final under Government Code Chapter 2001, Subchapter F, concerning Contested Cases: Final Decisions and Orders; Motions for Rehearing.

(2) The commissioner will grant a motion under this subsection if the requesting party establishes that the failure to file a written response to the notice of allegations was neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident.

(3) A motion under this subsection is not a motion for rehearing and is not a substitute for a motion for rehearing. The filing of a motion under this subsection has no effect on either the statutory deadline for the requesting party to file a motion for rehearing or for the commissioner to rule on it, as provided under Government Code Chapter 2001, Subchapter F.

(e) Sending a notice of allegations under this section begins an action under Insurance Code §81.001, concerning Limitations Period for Certain Disciplinary Actions.

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

Issued in Austin, Texas, on June 20, 2024.

DocuSigned by:
Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance