

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

INTRODUCTION. The commissioner of insurance adopts 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 changes modernize and clarify parts of TDI's contested case process. The repealed, amended, and new sections are adopted without changes to the proposed text published in the July 5, 2024, issue of the *Texas Register* (49 TexReg 27).

REASONED JUSTIFICATION. The repeal of §§1.47 - 1.49, 1.51, and 1.52 removes regulations that no longer provide relevant guidance because of repealed or recodified statutes. The repeal of §1.88 and §1.89 removes regulations containing outdated procedures that have been superseded by regulations in 1 TAC Chapter 155. New §1.47 and the amendments to §1.32 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 amendments also make nonsubstantive changes for plain language and to reflect current agency drafting style.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on August 5, 2024.

Commenters: TDI received comments from one commenter, Texas Land Title Association, in support of the proposal with changes.

Comment on §1.32

Comment. The commenter suggests that TDI consider establishing a timeframe within which the requested hearing will take place to establish clear expectations and ensure efficiency in resolving any disagreement involving licensing decisions.

Agency Response. Because of the variable nature of litigation and TDI's inability to control when a hearing is ultimately held at the State Office of Administrative Hearings (SOAH), TDI declines to make the suggested change.

Comments on §1.47

Comment. The commenter recommends that TDI prescribe the text and formatting of the required disclosure about a person's procedural rights in subsection (a). The commenter states that this change would ensure awareness of the consequences of failing to respond to a notice of allegations.

Agency Response. TDI agrees that it is important for license holders to be made aware of the consequences of failing to respond to TDI's allegations but does not believe that prescribing text and formatting is the best way to achieve clear, plain language communications. TDI declines to make the change, as each of the elements in the commenter's suggested language are already addressed in the proposed requirements. The rule will continue to include substantive requirements for disclosures that inform parties of their procedural rights without restricting the wording or formatting of those disclosures.

Comment. The commenter suggests that TDI add a requirement regarding the method of a default order's delivery to clarify how the named party will receive the commissioner's order. The commenter recommends the rule state that the order will be delivered in the same manner as the notice of allegations.

Agency Response. TDI declines to make the suggested change. Insurance Code §81.002 states that when delivering a decision or order, it must be mailed "to each party and the party's attorney of record, by certified mail, return receipt requested. . ." This is consistent with Government Code §2001.142(a)(3), which provides that a state agency may notify each party in a contested case of a decision or order by "service by first class, certified, or registered mail sent to the last known address of the party's attorney of record or of the party if the party is not represented by counsel." TDI does not believe it is necessary to interpret or apply these statutes in rule.

Comment. The commenter suggests that TDI clarify the description of who can file a motion to set aside a default order. Instead of the language "party in the contested case," the commenter suggests "person against whom a default order has been entered." The commenter states the change is appropriate because it appears a "contested case" does not exist at this stage of the process.

Agency Response. TDI declines to make the suggested change. Under the Administrative Procedures Act in Government Code Chapter 2001, a contested case may begin before the formal initiation of a contested case proceeding at SOAH or before the commissioner. There is a contested case at this stage of the process, and the proposed language better encompasses all those persons that may desire to file a motion to set aside a default order.

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. The commissioner adopts 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 and §4005.102.

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 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.

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 of 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. The commissioner adopts 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 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.

TEXT.**§1.32. Licenses.**

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 have 30 days from the date of denial to make a written request for a hearing.

§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:
 - (A) the person has a right to a hearing;
 - (B) the person must respond to the notice in writing not later than

the 20th day after the date it was mailed; and

(C) 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.

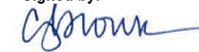
CERTIFICATION. The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on September 25, 2024.

Signed by:

5DAC5618BBC74D4... _____
Jessica Barta, General Counsel
Texas Department of Insurance

The repeal of 28 TAC §§1.47 - 1.49, 1.51, 1.52, 1.88, and 1.89; amended §1.32; and new §1.47 are adopted.

Signed by:

FC5D7EDDFB4F8... _____
Cassie Brown
Commissioner of Insurance

Commissioner's Order No. 2024-8852