

SUBCHAPTER L. ELECTRONIC SUBMISSIONS AND COMMUNICATIONS
28 TAC §1.1301 and §1.1302

INTRODUCTION. The Commissioner of Insurance adopts new 28 TAC §1.1301, relating to electronic submissions made to the Texas Department of Insurance (TDI), and new §1.1302, relating to electronic communications from TDI. New §1.1301 is adopted without changes to the proposed text published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7977). TDI revised the text of new §1.1302 as proposed in response to public comments.

REASONED JUSTIFICATION. New §1.1301 is added to generally authorize persons to make any submissions to TDI electronically. New §1.1302 is added to recognize that TDI may officially communicate by email with regulated persons. Section 1.1302 requires regulated persons to designate an email address for such communications from TDI. By allowing electronic submissions and communications instead of paper submissions and communications by mail, the new sections will reduce the regulatory burden and costs imposed on regulated persons and promote administrative efficiency and reduce costs for TDI.

Section 1.1301. Section 1.1301(a) generally authorizes persons to make submissions to TDI electronically, unless statute requires a method of submission that is not electronic. Examples of statutory provisions that require a non-electronic method of submission to TDI include Insurance Code §§84.046(2)(B), 541.255, 2651.151, and 2651.252. Subsection (a) supersedes any other provision in 28 TAC Part 1. Examples of rules that are superseded include 28 TAC §§5.9941, 12.101, 13.403, and 26.400.

Section 1.1301(b) states that an electronic submission must be made in accordance with any procedure established by statute or rule for that electronic submission. Examples of procedures for electronic submission established by statute include Insurance Code §1467.051 and §1467.084, which require a request for mediation or arbitration to be electronically

submitted through a portal on TDI's website. Examples of procedures for electronic submission established by rule include 28 TAC §3.1760(a), which requires life settlement data reports to be submitted to a particular email address, and 28 TAC §5.9310(f), which requires electronic filings through the NAIC System for Electronic Rate and Form Filing (SERFF). If a procedure for the electronic submission is not established by statute or rule, the electronic submission must be made as specified on TDI's website.

Section 1.1302. Section 1.1302(a) defines for this section the term "regulated person" to encompass all persons regulated by the Commissioner and the State Fire Marshal. In response to comment, the text of subsection (a) as proposed has been changed by replacing the word "including" with "meaning" and adding "or other authorization" to capture the appropriate persons regulated by TDI.

Section 1.1302(b) specifies that TDI may send official communications to the email address designated by a regulated person, unless statute requires a different method of communication. Examples of statutory provisions that require a different method of communication include Insurance Code §§81.002, 804.203, and 1201.007.

Section 1.1302(c) requires all regulated persons to provide to TDI an email address designated for the receipt of official communications from TDI, except as provided by §1.1302(d). Regulated persons should provide the email address as specified on TDI's website. If emails may no longer be received at a designated email address, the regulated person must notify TDI and provide a new email address within 10 business days. In response to comment, the text of subsection (c) as proposed has been changed by replacing the acronym "TDI" with "the department" for consistency with the rest of the rule text.

Section 1.1302(d) states that notice or service requirements are satisfied if TDI communicated by email under the section, unless statute or 28 TAC §1.90 requires a different

method of notice or service. Examples of statutory provisions that require a different method of notice include Insurance Code §81.002 and §1201.007.

Section 1.1302(e) provides an avenue for a regulated person to be relieved of the requirements of §1.1302, if the regulated person notifies TDI that the regulated person does not have the technological capability to maintain an email address designated for official department communications or for other good reason does not wish to receive communications by email. In response to comment, the text of subsection (e) as proposed has been changed by replacing the acronym "TDI" with "the department" for consistency with the rest of the rule text.

In response to comment, the text of §1.1302 as proposed has been changed by adding subsection (f). Subsection (f) makes the requirement under subsection (c) that all regulated persons provide to TDI an email address designated for receipt of official communications applicable beginning January 1, 2022. This is intended to give regulated persons time to prepare for the shift to receiving electronic communications from TDI.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from eight commenters. The Insured Retirement Institute and Office of Injured Employee Counsel commented in support of the proposal. The American Property Casualty Insurance Association, Insurance Council of Texas, McDermott Will & Emery, Texas Association of Health Plans, Texas Association of Life & Health Insurers, and Texas Mutual Insurance Company commented in general support of the proposal but recommended certain changes.

After the end of the comment period stated in the proposal, TDI also received a written comment from a ninth commenter. Because the comment was not submitted within the stated comment period, it is not addressed in this order.

General Comments

Comment: While not requesting a public hearing, the Insurance Council of Texas and American Property Casualty Insurance Association also suggested that TDI have a stakeholder meeting prior to the adoption of the rules due to certain concerns.

Agency Response: While TDI understands some of the concerns raised and encourages stakeholders to participate in discussions as TDI implements this rule, TDI does not believe it is necessary to delay the adoption of the rules to address these concerns. To address some of the concerns regarding implementation, TDI is making the requirement under §1.1302(c) that all regulated persons provide to TDI an email address designated for receipt of official communications applicable beginning January 1, 2022.

Comments on §1.1301.

Comment: One commenter recommends that TDI allow for electronic submissions using a technology that provides for secure transmission to TDI.

Agency Response: TDI agrees that electronic submissions of confidential or proprietary information should be made using a secure method of transmission but declines to modify the language of §1.1301. Any necessary security measures will be established during implementation.

Comment: One commenter asks TDI to identify or give examples of what statutes, if any, require non-electronic filing in the rule.

Agency Response: TDI disagrees that specific statutes should be identified in the rule text but has given some examples in the reasoned justification section of this adoption order. Identifying specific statutes in the rule text would require this rule to be regularly updated to remain accurate.

Comment: One commenter asks that TDI's website provide a clear link on filing submissions and asks that filing parties receive a verification when submissions are made by email. The commenter also notes that filings made by email may not get information to a reviewer quickly.

Agency Response: TDI appreciates the comment and will take these recommendations into consideration in the development and improvement of our internal processes.

Comment: One commenter asks why §1.1301(b) states that a filing "must" be made in accordance with a statute *or rule*, but §1.1301(a) only mentions statute. The commenter requests that the rule identify those rules or exceptions that require some type of electronic filing.

Agency Response: TDI disagrees that specific statutes or rules should be identified in the rule text. To continue to be accurate, it would need to be frequently updated as TDI's rules are changed. Section 1.1301(a) provides that any submission to TDI may be made electronically and is intended to supersede any other rule in 28 TAC Part 1. But it cannot, and is not intended to, supersede any statute that requires a non-electronic method of submission.

Section 1.1301(b) addresses a related, but different issue--the particular procedure for making an electronic submission. Section 1.1301(b) requires that a submission made electronically be made in accordance with the procedure set out in statute or rule for that electronic submission. Examples of statutes that prescribe a specific procedure for electronic submissions are Insurance Code §1467.051 and §1467.084, which require a request for mediation or arbitration to be electronically submitted through a portal on TDI's website. As the commenter pointed out, an example of a rule prescribing a specific procedure for electronic submissions is 28 TAC §5.9310(f), which requires electronic filings through the NAIC System for Electronic Rate and Form Filing (SERFF). For those examples, §1.1301(b) requires that electronic submissions continue to be made in accordance those specific procedures established by those provisions.

But if no specific procedure for an electronic submission is set out in statute or rule, then the procedure set out on TDI's website should be followed.

Comments on §1.1302.

Comment: One commenter expresses concern that the following portion of the definition of "regulated person" in §1.1302(a) is overly broad: "holding an authorization, *including* a permit, license, certificate of authority, or certificate of registration, issued or existing under the Commissioner's or the State Fire Marshal's authority or the Insurance Code" (emphasis added).

Agency Response: TDI agrees and has changed the word "including" to "meaning" and added "other authorization" to capture the appropriate regulated persons. This is consistent with the definition of "authorization" in Insurance Code §82.001.

Comment: Two commenters ask that TDI clarify how confidential and proprietary information will be secured when using the provided email address. The commenters recommend that TDI take measures to secure communications, including adopting encryption in transit for the transmission of confidential and proprietary information.

Agency Response: TDI agrees that electronic communications of confidential or proprietary information should be made using a secure method of transmission but declines to modify the language of §1.1302. Any necessary security measures will be established during implementation.

Comment: One commenter recommends replacing "TDI" in three places with "the department."

Agency Response: TDI partially agrees with the comment and has replaced "TDI" with "the department" in §1.1302(c) and (e), but not in §1.1302(b) because that instance is a quote from the title of 28 TAC §1.90.

Comment: One commenter requests confirmation that §1.1302(b) would not supersede State Office of Administrative Hearing (SOAH) rules in 1 TAC Chapter 155, particularly the requirements of §155.105 to serve parties and their representatives electronically through the electronic filing manager if the email address of the party or attorney to be served is on file.

Agency Response: TDI confirms that §1.1302(b) is not intended to supersede any provision outside of 28 TAC Part 1, including 1 TAC Chapter 155. Section 1.1302(b) is also not intended to supersede 28 TAC §1.90, which contains the joint memorandum of understanding between TDI and SOAH concerning procedures for contested cases before SOAH.

Comment: One commenter states that the term "official communications" in §1.1302(b) is vague and not defined. The commenter asks TDI to specify the type of communications it intends to send electronically.

Agency Response: TDI disagrees with specifying the various types of communications that it intends to send electronically. The term "official communications" is not intended to be a limiting term. It is intended to encompass all communications that TDI may send or is required to send in order to carry out its official duties under statute or rule.

Comment: One commenter asserts that the phrase "unless a statute requires a different form of communication" in §1.1302(b) is vague and should identify any statutes that require a different form of communication.

Agency Response: TDI disagrees that specific statutes should be identified in the rule, but has given some examples in the reasoned justification section of this adoption order. Identifying specific statutes would require this rule to be regularly updated to remain accurate.

Comment: One commenter recommends allowing regulated entities to provide three to five email addresses instead of only one in §1.1302(c).

Agency Response: TDI declines to modify §1.1302(c). Communicating with regulated persons using multiple email addresses could complicate those communications and potentially lead to inadvertent errors when sending communications. TDI notes that there are technological methods that regulated persons may use to accomplish the same result, such as designating an email address that automatically forwards emails to others or designating a general email address that multiple people have access to.

Comment: One commenter requests guidance as to how it can assure that the appropriate people within a company see the notification in a timely manner in case the person with the designated email is either absent or has left the company. The commenter notes that one possibility may be for a company to set up an email address that would automatically forward to a list of people within the company. In related comments, two other commenters point out that large companies may need to provide a single portal email address for communications rather than naming one or more individuals, but other companies may prefer to use the names of individuals or agents for service of process. One of the commenters suggests allowing for these differing methods in the rule or providing a forum on how this should be implemented.

Agency Response: TDI understands the concern and intends §1.1302(c) to be a flexible provision under which regulated persons can determine for themselves what email address makes the most sense to designate. A regulated person could designate an organizational or individual email address or the email address of an agent for the service of process. As noted in the previous comment response, there are technological methods that regulated persons may use to ensure the appropriate people within an organization see any email sent from TDI in a timely manner, including designating an email address that automatically forwards emails to others or

designating a general email address that the appropriate people have access to. TDI also encourages stakeholders to provide input as the rule is implemented.

Comment: One commenter requests clarification on whether individual insurance company employees who may hold a separate license as an adjuster, agent, risk manager, or other license type will need to provide a separate email address or whether the company can have a single portal for all official questions for the insurer and all its employees.

Agency Response: As explained in the previous comment response, TDI intends §1.1302(c) to be a flexible provision. It will be up to each regulated person to determine which email address to designate.

Comment: One commenter states that the requirement to provide an email address for official communications in §1.1302(c) should be directed at licensees.

Agency Response: TDI agrees if the commenter means "licensees" to encompass those holding an authorization from TDI, meaning a permit, license, certificate of authority, or certificate of registration, issued or existing under the Commissioner's or the State Fire Marshal's authority or the Insurance Code. TDI has modified the definition of "regulated person" in §1.1302(a) to change the word "including" to "meaning" and added "other authorization" to capture the appropriate regulated persons.

Comment: One commenter indicates the phrase "unless a different method of notice or service is required by statute or §1.90 of this title" in §1.1302(c) is vague and should identify any statutes that fit within that exception.

Agency Response: TDI disagrees that specific statutes should be identified in the rule text, but has given some examples in the reasoned justification section of this adoption order. Identifying specific statutes would require this rule to be regularly updated to remain accurate.

STATUTORY AUTHORITY. TDI proposes §1.1301 and §1.1302 under Insurance Code §36.001 and Government Code §417.005.

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.

Government Code §417.005 provides that the Commissioner may adopt necessary rules to guide the State Fire Marshal and fire and arson investigators commissioned by the State Fire Marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the Commissioner.

SUBCHAPTER L. ELECTRONIC SUBMISSIONS AND COMMUNICATIONS

TEXT.

§1.1301. Electronic Submissions.

(a) Notwithstanding any other provision in Part 1 of this title (relating to Texas Department of Insurance), any submissions made to the Texas Department of Insurance (department) may be made electronically, unless statute requires an alternative method of submission.

(b) A submission made electronically to the department must be made in accordance with any specific procedure for electronic submissions established by statute or rule. If a specific procedure for electronic submissions is not established by statute or rule, an electronic submission must be made as specified on the department's website.

§1.1302. Electronic Communications from the Texas Department of Insurance.

(a) In this section, "regulated person" means an individual, corporation, association, partnership, or other artificial person holding an authorization, meaning a permit, license, certificate of authority, certificate of registration, or other authorization, issued or existing under the Commissioner's or the Texas State Fire Marshal's authority or the Insurance Code.

(b) Notwithstanding any other provision in Part 1 of this title (relating to Texas Department of Insurance) other than §1.90 of this title (relating to Joint Memorandum of Understanding (MOU) between Texas Department of Insurance (TDI) and State Office of Administrative Hearings (SOAH) Concerning Procedures for Contested Cases before SOAH and Responsibilities of Each Agency), the department may send official communications to the email address designated for such communications by a regulated person, unless statute requires a different method of communication.

(c) Except as provided by Subsection (e) of this section, all regulated persons must provide an email address that is designated for receipt of official department communications. Regulated persons should provide the email address as specified on the department's website. If communications may no longer be received at the designated email address, the regulated person must notify the department and designate a new email address within 10 business days.

(d) Notice or service sent by email under this section satisfies any notice or service requirements, unless a different method of notice or service is required by statute or §1.90 of this title.

(e) If a regulated person does not have the technological capability to maintain an email address designated for official department communications, or for good reason does not wish to receive communications by email from the department, the regulated person should notify the department as specified on the department's website regarding address changes.

(f) Subsection (c) of this section is applicable beginning January 1, 2022.


2021-6812

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 1. General Administration

Adopted Sections
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CERTIFICATION. This 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 May 3, 2021.

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James Person, General Counsel
Texas Department of Insurance

The Commissioner adopts new 28 TAC §1.1301 and §1.1302.

Commissioner of Insurance

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By: 
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Doug Slape
Chief Deputy Commissioner
Tex. Gov't Code §601.002
Commissioner's Order No. 2018-5528