

SUBCHAPTER H. CEASE AND DESIST ORDERS
28 TAC §1.909

1. INTRODUCTION. The Texas Department of Insurance (Department) proposes amendments to §1.909, concerning burden of proof in a hearing on an emergency cease and desist order. These 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 proposed 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 proposed amendments also clarify that the Department has the burden of proof to show why the order should be affirmed.

The proposed amendments implement Insurance Code Chapter 83, relating to emergency cease and desist orders. Insurance Code §83.003 authorizes the Commissioner of Insurance (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 proposed amendments also implement Government Code §2001.004(1), which 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.

2. FISCAL NOTE. Stanton Strickland, Associate Commissioner, Legal Section, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Mr. Strickland also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the proposal is greater clarity concerning the rights and responsibilities of parties in a hearing concerning an emergency cease and desist order.

Mr. Strickland has determined that there are no costs to persons required to comply with the proposal, including micro, small, and large businesses. This is because the proposed amendments to §1.909 do not impose any new requirements upon a person requesting a hearing on a cease and desist order. Instead, the proposed amendments clarify, consistent with Insurance Code §83.054(c), that a person requesting a hearing is entitled to show cause why the order should not be affirmed; the Department has the burden of proof to show why the order should be affirmed.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with Government Code §2006.002(c), the Department has determined that the proposed amendments to

§1.909 will not have an adverse economic effect on small or micro businesses because the proposed amendments do not impose a new requirement upon a person requesting a hearing. Instead the proposed amendments clarify that a person requesting a hearing is entitled to show cause why a cease and desist order should not be affirmed, as required under Insurance Code §83.054(c). Therefore, in accordance with Government Code §2006.002(c), the Department is not required to prepare a regulatory flexibility analysis.

5. TAKINGS IMPACT ASSESSMENT. The Department 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 and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 28, 2012 to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Stanton Strickland, Associate Commissioner, Legal Section, Mail Code 110-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O.

Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The amendments are proposed 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 Texas Department of Insurance 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.

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

<u>Rule</u>	<u>Statute</u>
§1.909	Insurance Code §83.003 and §83.054; and Government Code §2001.004(1)

9. 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. ~~[The burden of proof in this hearing shall be on the party requesting the hearing to show cause why the cease and desist order issued by the commissioner should be set aside.]~~ Based upon the evidence presented, the cease and desist order may be affirmed, modified, or set aside in whole or in part.