

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
TDHCA Governing Board Approved Draft of  
10 TAC §1.13. Contested Case Hearing Procedures

Disclaimer

Attached is a draft of proposed new 10 TAC §1.13, Contested Case Hearing Procedures, that was approved by the TDHCA Governing Board on June 28, 2018. This action will entail the repeal of the current rules at §1.13, Contested Case Hearing Procedures, and a contemporaneous new rule being proposed to replace it. This document, including its preamble, is expected to be published in the July 13, 2018, edition of the Texas Register and that published version will constitute the official version for purposes of public comment and can be found at the following link: <https://www.sos.texas.gov/texreg/index.shtml>.

Public Comment

Public Comment Period: Start: 8:00 a.m. Austin local time on July 16, 2018  
End: 5:00 p.m. Austin local time on August 16, 2018

Comments received after 5:00 p.m. Austin local time on August 16, 2018, will not be accepted.

Written comments may be submitted, in hard copy/fax or electronic formats to:

Texas Department of Housing and Community Affairs  
Attn: Brooke Boston  
Rules Comments  
P.O. Box 13941  
Austin, Texas 78711-3941  
Email: [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us)

Written comments may be submitted in hard copy or email formats within the designated public comment period. Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
Street Address: 221 East 11th Street, Austin, TX 78701  
Mailing Address: PO Box 13941, Austin, TX 78711-3941  
Main Number: 512-475-3800 Toll Free: 1-800-525-0657  
Email: [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us) Web: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

## Preamble for proposed new 10 TAC §1.13. Contested Case Hearing Procedures

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC §1.13, Contested Case Hearing Procedures. The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2161.003, clarify the steps that initiate a hearing, provide for a timeframe within which the Department will refer a case to the State Office of Administrative Hearings, and make other revisions for readability and clarity.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Irvine also has determined that, for the first five years a rule would be in effect:

1. The proposed rule does not create or eliminate a government program;
2. The proposed rule will not require a change in the number of employees of the Department;
3. The proposed rule will not require additional future legislative appropriations;
4. The proposed rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed rule will not create a new regulation, except that it is replacing a rule being repealed simultaneously to provide for the updating and improved clarity of that rule;
6. The proposed rule will not expand an existing regulation;
7. The proposed rule will not increase the number of individuals subject to the rule's applicability; and
8. The proposed rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be ensuring a rule that provides for clear guidelines for the handling of contested case hearings with the Department and improves the clarity of the rules. There will not be any economic cost to any individuals required to comply with the new section, because the processes described by the rule have been in place through the rule found at this section being repealed.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 16, 2018, to August 16, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email [brooke.boston@tdhca.state.tx.us](mailto:brooke.boston@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time AUGUST 16, 2018.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

### §1.13. Contested Case Hearing Procedures.

(a) Purpose. The purpose of this section is to provide procedures for contested case hearings. This section does not apply to matters such as appeals to the Board of staff decisions or waivers, and this section does not in itself create any right to a contested case hearing but merely provides a process for contested case hearings that are otherwise expressly provided for by law or rule.

(b) SOAH Designation. The Governing Board (the "Board") of the Texas Department of Housing and Community Affairs (the "Department") designates the State Office of Administrative Hearings ("SOAH") to hold all contested case hearings on the Board's behalf.

#### (c) Initiation of Hearing.

(1) Upon receipt of a pleading or other document that is intended to initiate a contested case proceeding before the Department, the Department shall determine if a contested case hearing is indicated under the relevant statutory provisions and rules and, if so, will mark the file as a pending proceeding and refer the matter to SOAH for hearing generally within 45 calendar days, or such other lesser time as an applicable state or federal statute, rule, or regulation may require. The Department will notify the opposing party of any delay.

(2) SOAH shall acquire jurisdiction over a case when the Department completes and files a Request to Docket Case form or other form acceptable to SOAH, together with the notice of report to the Board required under Tex. Gov't Code §2306.043 or other pertinent documents giving rise to the case. Once SOAH acquires jurisdiction, all subsequent documents created, sent, or received in connection with the proceeding that SOAH requires to be filed with it are to be filed with SOAH, with appropriate service upon the opposing party in accordance with this chapter and the rules of SOAH.

(3) Except upon a showing of good cause or as an applicable statute or federal regulation may require, all contested case hearings in which the Department is a party shall be held at the offices of SOAH located in Austin, Texas.

(4) Nothing in this subchapter shall in any way limit, alter, or abridge the ability of the Department to enter into mediation or alternative dispute resolution at any time prior to or after the holding of the administrative hearing but prior to the adoption by the Board of a final order.

#### (d) Service of Notice of Hearing, Pleadings and Other Documents on Parties.

(1) Service of a notice of hearing shall be made by hand delivery, regular first class mail or certified mail to the party's last known address as shown on the Department's records, in accordance with §1.22 of this Chapter (relating to providing contact information to the Department).

(2) Service of pleadings and other documents shall be made in any manner provided for in SOAH rules.

#### (e) Proposal for Decision.

(1) After the conclusion of a hearing, the Administrative Law Judge ("ALJ") shall prepare and serve on the parties a proposal for decision that includes the ALJ's findings of fact and conclusions of law, as modified by the ALJ's addressing of any exceptions and replies to exceptions timely filed with the ALJ in accordance with Tex. Gov't Code §2001.062 and SOAH rules. The Executive Director shall place the proposal for decision and a proposed final order on the Board's agenda for discussion and possible action at a subsequent meeting of the Board.

(2) At a meeting of the Board where the proposed final order may be adopted, parties may provide testimony based on the record only, for changes to the proposal for decision or the proposed final order. No new evidence shall be submitted at the Board meeting. The Board may, on its own motion, remand to SOAH for any additional fact finding it determines is necessary, or, the Board

may change a finding of fact or conclusion of law made by the ALJ, but only for reasons stated in Tex. Gov't Code §2001.058(e) . The Board may adopt a final order if it finds that the findings of fact and conclusions of law are supported by the evidence. Motions for rehearing may be filed and served in accordance with the Tex. Gov't Code Chapter 2001 and the rules of SOAH.

(f) Disposition of Contested Cases on a Default Basis.

(1) In contested cases where the party not bearing the burden of proof at the hearing fails to appear, the ALJ may issue an order finding that adequate notice has been given, deeming factual allegations in the notice of hearing admitted, if appropriate, conditionally dismissing the case from the SOAH docket, and conditionally remanding the case to TDHCA for disposition on a default basis. Pursuant to SOAH rules, a party has 15 calendar days after the issuance of a conditional order of dismissal and remand to file with SOAH a motion to set aside the order of dismissal and remand. On the sixteenth day after issuance, if no motion to set aside has been timely filed or if such a motion to set aside is not granted within the time limits provided for in SOAH's rules, the conditional order of dismissal and remand becomes final.

(2) When the order of dismissal and remand is final, the Executive Director shall prepare a proposed order for the Board's action containing findings of fact, as set forth in the notice of hearing, conclusions of law, and granting the relief requested by staff. The matter shall be placed on the Board's agenda for discussion and possible action at a subsequent meeting. Although public testimony is allowed, argument and evidence on the merits will not be considered at the meeting. Motions for rehearing shall be filed and served in accordance with Tex. Gov't Code Chapter 2001 and the rules of SOAH.