June 8, 2026

Texas Department of Insurance
Office of the Chief Clerk
MC: GC-CCO
P.O. Box 12030
Austin, Texas 78711-2030

Via email: ChiefClerk@tdi.texas.gov

Re: Comments on Proposed 28 TAC §§5.9800-5.9806, Concerning requirements for appraisals

Dear Chief Clerk,

On behalf of our member insurers, the Insurance Council of Texas (ICT) appreciates the opportunity to submit comments on this proposal. Our members include over 400 insurance companies doing business in Texas providing insurance policies and coverage, including the personal automobile and residential property policies to which these rules would apply. Many of our members have personal automobile and residential policies with appraisal provisions that have been previously reviewed and approved by the Texas Department of Insurance (TDI), and those appraisal provisions are in use today to resolve loss disputes.

General comments and key issues

As noted in our comments on the informal proposal last fall, the legislation authorizing this rulemaking, Senate Bill 458 (89th Regular Session, 2025), was relatively narrow in scope. The key provision in SB 458 is the mandate that an appraisal provision be included in residential property and personal auto policies. The rulemaking provision in the bill directs the adoption of rules "necessary to implement this chapter," specifically identifying time to completion of appraisal and qualifications and selection of appraisers and umpires within the scope of the permitted rulemaking. Consistent with the statute, ICT believes the rules should remain focused on these issues, addressing other aspects of appraisal only to the extent they are necessary to implement the statute, and excluding other issues that were discussed during SB 458's consideration, but not ultimately included in the legislation.

In addition to our concern that certain provisions in the proposed rule go beyond the scope of SB 458, we note that the specificity in the proposed rule will force significant revision and refiling of existing appraisal provisions in policies. SB 458 expresses the need for appraisal provisions to be included in certain policies and directs TDI to adopt rules necessary to carry out this mandate, but it does not call for standardization of appraisal provisions. TDI has approved many variations of appraisal provisions as part of its review of forms. ICT believes it is essential that insurers continue to be allowed to offer appraisal provisions that do not conflict with explicit provisions of new Chapter 1813 or rules that are clearly supported by those statutes, subject to whatever approval by TDI that may apply. As noted on specific points below, we encourage more flexibility in the proposed rule and urge TDI not to revise the rule to be more prescriptive.

Some additional context should be noted. As the statute properly recognizes, appraisal is a process "solely to determine the amount of loss when that amount is in dispute between the policyholder and insurer." TDI's data call prior to passage of SB 458 revealed that appraisal is rarely invoked in all claims,

and exceedingly rarely in auto claims. We believe this data reflects that most of the time, the appraisal process is not needed. It is abundantly clear that some third parties see the adoption of this rule as an opportunity to encourage appraisal in many more claims, driving up the cost of these claims, and putting upward pressure on future rates. In considering adoption of these rules, we urge TDI to remain focused on rules that serve the broad interests of insurance consumers rather than the narrow interest of vendors.

Before turning to comments on specific sections of the proposed rule, we raise two broad issues of concern.

The first are the provisions related to the timeframe for requesting appraisal under §§ 5.9805(a) (residential) and 5.9806(a) (personal auto). As was made clear at the June 2 public hearing, there are many conflicting recommendations and opinions regarding this timeframe. We believe the best course for TDI in this rulemaking would be to avoid entirely the issue of when an appraisal demand must be made.

ICT believes the statutory basis for including any commencement timeframe in the rule is at best questionable. While the rulemaking authorization in the statute clearly includes consideration of the time in which an appraisal "must be *completed*", both the statutory wording and the context of this provision suggest it does not authorize a rule timeframe for *commencement* of appraisal. The term "completed" refers to when an appraisal that occurs must end, not when it must start, and if SB 458 intended to include a "start by" date for the appraisal process, the law would include such language. Also bolstering this interpretation is the fact that some groups supported a timeline for appraisal commencement proposed adding such language during the legislative discussions on SB 458 to broaden the rulemaking authority to cover commencement of appraisal. In addition, Subsection (b)'s reference to consideration of the "qualification and selection" of appraisers in setting the completion timeframe further suggests that the timeframe refers to *completing* appraisal (when the selection and qualification of appraisers will be relevant) rather than to the *commencement* of appraisal, which has no relationship to these issues. Based upon the plain language of SB 458 we respectfully urge TDI to remove any commencement timeframe from the proposed rule.

Conversely, if TDI retains commencement deadlines as part of its rule adoption, we believe the existing language requires some clarification, and we have provided specific suggestions in our section-by-section comments below.

ICT's second broad area of concern relates to the rule's requirements for a new notice of the appraisal process in § 5.9803. This new notice is neither statutorily required nor mentioned in SB 458. Compliance with the notice provision will require insurers to develop new notices, or, for any similar notices that may already exist, to conform these to the new requirements. The notice requirements are also prescriptive, requiring that many of the provisions already included in the appraisal clause of the policy be summarized. ICT requests that the notice provision be removed from the rule. If it is retained, we offer suggestions in our section-by-section comments that we believe would streamline the process for implementing this new requirement.

To summarize our general points: ICT believes that once adopted, these rules will be the most prescriptive in the country regard appraisal.[1] We believe that would be the case even if all of our concerns were addressed by conforming changes to the proposed rule. During the June 2 public hearing, and likely through other written comments, TDI will be encouraged to maintain its proposed commencement deadlines in its final adoption, often referred to during the public hearing as "use it or lose it", and to modify this deadline in ways that would be "less favorable" to insurers. We urge TDI to adopt rules that meet the core goal of ensuring the availability of appraisal and not to expand the rule into the myriad other legal and

[1] We recognize that some of our requests in the section-by-section comments would make the rule more rather than less prescriptive. To be clear, our preference is for a simpler rule closely tied to the basic statutory requirements. Our suggestions that would add greater specificity are offered in the alternative if the department retains the more specific requirements.

procedural issues which, if they are appropriate to address at all, are better addressed outside of this rulemaking.

Specific comments by rule section

Section 5.9800

The only issue of concern in this section is the proposed effective date of Sept. 1, 2026. We believe this date is unrealistic. The rule was proposed in May 2026, and after likely substantial comments and careful review and consideration of these comments by TDI, will likely not be adopted until late July at the earliest—and legally could be pending until November 2026, before having to be withdrawn or adopted. We also note that as these changes would apply to renewal policies, renewal notices for personal automobile and residential property policies are sent to policyholders prior to the renewal date. The proposed effective date would mean that insurers would need to know what language to include in renewal notices being sent in early July and would need to make internal programming changes before then in order to meet the proposed September 1 deadline.

Further, if the rule is adopted in similar form to the proposal, it will require revision of many existing appraisal provisions that may not include all the new requirements, or that may include provisions that differ in some respects. Insurers would also have to develop the new appraisal notices under § 5.9803. While it is accurate (as stated at the June 2 hearing) that insurers have been aware that *some* rulemaking regarding SB 458 would occur, they have not been (and are still not) aware of the actual specific requirements of this rule. If the rule provisions remain similar to those in the proposal, we request a January 1, 2027 effective date. This would allow companies notice of the changes once the rule is adopted, and the ability to assess, program, and implement the specific changes and seek and receive approval from TDI. If the notice provision is replaced with a simpler, more general requirement, as we suggest below, a slightly earlier effective date than January 1, 2027 might be feasible.

Section 5.9802

Among other things, the general requirements in this section mandate that appraisal be unilaterally available to either party and prohibit requiring an "impasse" before appraisal may be demanded. While ICT appreciates TDI's desire that appraisal be available to the insurer and policyholder, we also believe that it would benefit both the insurer and policyholder to attempt to work out disagreements prior to incurring the time and expense of appraisal.

We offer two suggestions. First, the rule could authorize appraisal clauses to include a short period of time prior to the initiation of appraisal to allow the parties to work out differences and determine whether appraisal is even necessary. Language could be added to this section providing that appraisal provisions could state that "either party has the right to unilaterally demand an appraisal beginning 15 days after exchanging statements and estimates in an effort to resolve a dispute between the parties over the amount of loss." Second, the rule could include language clarifying that, notwithstanding the right to unilaterally demand appraisal and the prohibition on requiring an "impasse" to trigger appraisal, that the parties are still encouraged to exchange information, allow inspection, and attempt to work out an amicable resolution prior to or after invoking appraisal.

We also urge the removal of 5.9802(2). If the rule is revised to urge the parties to exchange information and estimates, the extraneous impasse language would not be necessary as it would be clearer that there was a dispute as to the amount of loss.

Section 5.9803

If the appraisal process notice provision remains in the rule, ICT urges several changes.

The timing of the notice provision is tied to the notice of the acceptance or rejection of the claim under Insurance Code § 542.056; the rule requires that the appraisal notice be given "at the same time" as the § 542.056 notice. ICT requests that the rule allow more flexibility in the timing of the appraisal notice. Specifically, we request that a notice be given in connection with any first-party claim communication where a valuation or settlement determination is made, rather than specifically with the § 542.056 notice. This both would likely require fewer changes to existing insurer processes and avoid confusion in situations where appraisal is likely not an appropriate process to resolve a coverage determination.[2]

As to the content of the notice, ICT offers two alternatives. First, instead of summarizing the appraisal provision, the required notice could simply restate the actual provision. This would both be simpler and faster to implement and avoid potential confusion about and disputes regarding alleged differences between the actual language in the policy form and the summary in the appraisal process notice. Second, the notice could be replaced with a simple, general statement of the right to appraisal (based on the definition of "appraisal" in the rule), along with a statement that the insurance policy contains an appraisal provision and that the policyholder should consult the policy for additional details.[3] Either of these suggestions would accomplish the goal of specifically alerting the policyholder to the appraisal process while also allowing for quicker implementation and avoiding the need for companies to develop new summary explanations.

Finally, as to this section, we request that the rule explicitly authorize electronic notice.

Section 5.9804

Comments at the June 2 public hearing requested that TDI expand the rule to include specific ethical standards for appraisers and umpires. While ICT does not oppose such standards in principle, we encourage TDI to propose any such standards for comment prior to adopting them. Alternatively, this may be a matter for consideration by the legislature to adopt appropriate ethical standards.

Subsection (a)(2) and (3) requires that appraisers and umpires be "independent from the parties" to the appraisal and "disinterested in the outcome of the appraisal." ICT appreciates TDI's definition in § 5.9801 to clarify that the "parties" are the policyholder and insurer. In part because of this appropriately circumscribed definition of a "party", we believe this wording of (a)(3) should also be modified to capture any entity that has a stake in the outcome of the claim. ICT suggests the insertion of the words "claim or" between the words "the" and "appraisal". This would prevent entities who have an interest in the claim outcome from serving as appraisers or umpires.

Section 5.9805 and 5.9806

If the rule retains the timeframes for commencement of appraisal, ICT urges several changes. First, the timeframe in §§ 5.9805(a)(2) and 5.9806(a)(2) should not be tied to the date a lawsuit is filed, since the respondent may not be aware of the suit until served notice. We suggest 30 days after the date the respondent's answer to the lawsuit is due.

[2] For example, if a flood damage claim is rejected because it is an uncovered loss, alerting the policyholder to appraisal with the § 542.056 notice is not helpful.

[3] An example of specific language: "Your insurance policy contains an appraisal provision to resolve disputes between you and us over the amount of loss. Please consult your policy for more information."

We also encourage two other changes to the commencement timeframe. In §§ 5.9805(a)(1) and 5.9806(a)(1), we request that the words "and delivered to the other party" be added to the requirement that a request for appraisal be made "in writing". This may already be the rule's intent, but clarification on this issue would avoid any uncertainty. We also request the inclusion of language clearly stating that regardless of the expiration of any rule timeframes for requesting appraisal, that the parties (policyholder and insurer) always may agree to utilize appraisal. This change would help reinforce that the appraisal process is there to serve the needs the parties and not the many other individuals and entities who play a role in the process. This may already be the intent of §§ 5.9805(c) and 5.9806(c), but it could be made more explicit by adding language clarifying that the deadlines in subsection (a) of both sections may also be extended by agreement of the parties.

Regarding the deadlines for appraisal completion identified in Sections 5.9805(b) and 5.9806(b), ICT notes that generally, the proposed rule deadlines for the various steps in the appraisal process are longer than those included in many policies. ICT suggests setting the deadlines in the rule as maximums, allowing for policies that include more expeditious deadlines. This approach reflects the legislative concern that the appraisal process potentially takes too much time, rather than too little. Making this change would also reduce the number of policy forms that must be refiled solely to comply with new deadlines.

The proposed rule's provisions regarding umpire selection will likely require revisions of many longstanding TDI approved policy forms that utilize alternative umpire selection procedures. We believe the better course would be to exclude specific requirements for umpire selection from the rule.[4] If these new requirements remain in the rule, we encourage that they not be made more prescriptive, as some advocated at the rule hearing.

The proposal is unclear in most instances about the consequences of failing to meet the deadlines. For the provisions where there is clarity on the consequences (selection of an alternative umpire after 240/180 days), additional clarity on the timeframe for the new umpire should also be considered. In addition, ICT would appreciate clarification on TDI's general intended enforcement position regarding these provisions. If TDI intends to impose compliance penalties for timelines not being met, we request clarification that these penalties would not be imposed on insurers when the timing of processes is not within the insurer's control.

Finally, the judicial option for umpire selection under § 5.9806(b)(3)(A) should be tied to a court "where the vehicle is principally garaged *as stated in the policy*." Adding the italicized words would ensure that the proper county would not change after the dispute, preventing potential venue-shopping.

Thank you for your time and consideration of these comments. Please feel free to contact us if you have any questions.

Respectfully,



Albert Betts
ICT Executive Director

[4] We acknowledge that SB 458 requires that the commissioner "must consider the qualifications and selection of appraisers and umpires," but note that this requirement is tied to the establishment of the period in which an appraisal must be completed, suggesting a much narrower focus than in the proposed rule.