ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.10

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission Rule in Chapter 18. Specifically, the Commission adopts amendments to §18.10, regarding Guidelines for Substantial Compliance for a Corrected/Amended 8-day Pre-election Report. The amended rule is adopted without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6507). The rule will not be republished.

This adoption amends the rules used to determine whether an otherwise timely filed 8-day pre-election report will be considered late by virtue of correction. If a filer makes a correction to an 8-day pre-election report, the law requires the Commission to review the correction to see if the report substantially complied with the law as originally filed. Tex. Gov't Code § 571.0771(c). If a substantial correction is made to the report, the report is considered filed as of the day of the correction. Since 8-day reports are subject to an accruing penalty of $500 for the first day late and $100 for each additional day after that up to $10,000, a voluntary correction to an 8-day pre-election report can trigger substantial fines. The filer must also affirm that the report was filed in good faith and within 14 business days of learning of the error or omission for the correction not to trigger a late penalty.

The 8-day reports are considered "critical" reports which provide voters important information immediately before an election. The law is designed to prevent a filer from filing an incomplete or inaccurate report only to correct it later while evading any late filing penalty. However, the Commission has an interest in encouraging voluntary corrections to good-faith errors or omissions in reports. Knowing that a correction may trigger a hefty fine could dissuade some filers from correcting their reports. The adopted rule amendment attempts to strike a balance of encouraging corrections for good-faith mistakes while preventing a person from filing an inaccurate or incomplete report before an election.

The Commission currently decides whether a report substantially complied as originally filed by using TEC §18.10. If a corrected 8-day report is determined to be late by virtue of correction, a filer may request that the fine be waived or reduced. TEC §18.10 provides a special set of criteria for reductions or waivers of fines of 8-day reports that are late due to correction. The general rules for late reports, TEC §18.23 through §18.26, are also applied to 8-day reports that are considered late due to correction. The filer is given the more generous outcome.

The adopted amendment raises the monetary threshold of what would constitute a substantial correction. It also moves criteria that would qualify a corrected report or a waiver into the determination of whether the report will be considered late because of the correction. This provides a filer the waiver it would be entitled to under the current rules without having to file an affidavit of defense.

This adoption is submitted concurrently with the adopted repeal of §18.11, regarding Guidelines for Waiver or Reduction of a Late Fine for a Corrected/Amended 8-day Pre-election Report, so that waivers or reductions will be determined by the general rules for late reports. This will clear up the ambiguity as to which set of rules apply and create a simpler, more uniform set of rules for late reports.

No public comments were received on this amended rule.

The amended rule is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Chapter 571 of the Government Code.

The adoption affects Title 15 of the Election Code, and Chapter 571 of the Government Code.

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

Filed with the Office of the Secretary of State on December 18, 2023.

TRD-202304879
James Tinley
General Counsel
Texas Ethics Commission
Effective date: January 7, 2024
Proposal publication date: November 10, 2023
For further information, please call: (512) 463-5800

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1 TAC §18.11

The Texas Ethics Commission (the Commission) adopts a repeal in Texas Ethics Commission Rule in Chapter 18. Specifically, the Commission adopts the repeal of rule §18.11, regarding Guidelines for Waiver or Reduction of a Late Fine for a Corrected/Amended 8-day Pre-election Report. The repealed rule is adopted without changes to the proposed text as published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6508). The repeal will not be republished.

No public comments were received on this repealed rule.

The repealed rule is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repeal affects Title 15 of the Election Code and Chapter 571 of the Government Code.

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

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James Tinley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 85. VEHICLE STORAGE FACILITIES

16 TAC §85.722

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 85, §85.722, regarding the Vehicle Storage Facilities Program, without changes to the proposed text as published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5806). The adopted rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC Chapter 85, implement Texas Occupations Code, Chapter 2303, Vehicle Storage Facilities.

The adopted rule amendments address the maximum amounts for vehicle storage and impoundment fees that may be charged by a vehicle storage facility company. The adopted rule increases the allowable vehicle storage facility impoundment fee and daily storage fees in accordance with changes in the Consumer Price Index for all Urban Consumers (CPI-U) during the preceding state fiscal biennium, as authorized by statute. Pursuant to Texas Occupations Code §2303.1552, the Texas Commission of Licensing and Regulation (Commission) is authorized to adjust the vehicle impound and storage fees based upon changes in the CPI not later than November 1st on every odd-numbered year. The Commission is then authorized by that statute to adjust the impoundment fee described under §2303.155(b)(2) and the storage fees described under §2303.155(b)(3) by an amount equal to the amount of the applicable fee in effect on December 31 of the preceding year multiplied by the percentage increase or decrease in the consumer price index during the preceding state fiscal biennium. The adopted rule, based upon analysis of the CPI during the preceding state fiscal biennium by Department staff, is necessary to comply with the statutory requirements to implement changes in the vehicle impound and storage fees for 2023.

2023 Rate Adjustment Pursuant to Stakeholder Comment

On or about August 3, 2023, the Department received a stakeholder comment regarding a concern about the calculations used for the 2023 Rate Adjustment pursuant to §2303.1552. The comment noted a difference in the calculations used between the 2019 and 2021 Rate Adjustments which resulted in reduced fees that VSF operators were authorized to charge under the 2021 maximum VSF Storage and Impoundment fee rates following that 2021 adjustment. Upon review of the two rate adjustments, the Department amended the 2023 Rate Adjustment, consistent with existing state law, which includes a "catch-up adjustment," using initial base fees that reflect what the maximum authorized fees would currently be if the same 2019 and 2021 rate adjustment calculations had been employed. The result will be higher allowed maximum fees to be charged by VSF operators under the adopted rule.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §85.722(d) by reflecting the new maximum amounts for daily storage fees that may be charged by a vehicle storage facility in connection with receipt and storage of a vehicle, as authorized by statute.

The adopted rule amends §85.722(e) by reflecting the new maximum amount for the vehicle impoundment fee that may be charged by a vehicle storage facility in connection with impoundment and custody of a vehicle, as authorized by statute.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5806). The public comment period closed on November 6, 2023. The Department did not receive any comments from interested parties on the proposed rule.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The proposed rule was presented to the Towing and Storage Advisory Board (Advisory Board) at its meeting on September 13, 2023. The Advisory Board did not make any changes to the proposed rule. The Advisory Board voted and recommended that the proposed rule be published in the *Texas Register* for public comment. The Advisory Board agreed that a second meeting was not needed as the rule amendments employed the statutory calculations as authorized by Texas Occupations Code §2303.1552. At its meeting on December 1, 2023, the Commission adopted the proposed rule.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 2303, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 2303. No other statutes, articles, or codes are affected by the adopted rule.

The legislation that enacted the statutory authority under which the adopted rule is adopted is House Bill 1140, 86th Legislature, Regular Session (2019).

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

Filed with the Office of the Secretary of State on December 21, 2023.

TRD-202304937
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: January 15, 2024
Proposal publication date: October 6, 2023
For further information, please call: (512) 463-7750

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §§229.1, 229.3, 229.4, 229.6, 229.7

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §§229.1, 229.3, 229.4, 229.6, and 229.7, concerning the performance standards and procedures for educator preparation program (EPP) accountability. The amendments are adopted without changes since published as proposed in the August 18, 2023 issue of the *Texas Register* (48 TexReg 4467) and will not be republished. The adopted amendments provide for adjustments to the *2022-2023 Accountability System for Educator Preparation (ASEP) Manual,* clarify the system for accreditation assignments, clarify provisions for continuing approval reviews, and include technical updates.

REASONED JUSTIFICATION: EPPs are entrusted to prepare educators for success in the classroom. Texas Education Code (TEC), §21.0443, requires EPPs to adequately prepare candidates for certification. Similarly, TEC, §21.031, requires the SBEC to ensure candidates for certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. TEC, §21.045, also requires SBEC to establish standards to govern the continuing accountability of all EPPs. The SBEC rules in 19 TAC Chapter 229 establish the process used for issuing annual accreditation ratings for all EPPs to comply with these provisions of the TEC and to ensure the highest level of educator preparation, which is codified in the SBEC Mission Statement.

Following is a description of the adopted amendments to 19 TAC Chapter 229.

§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.

Update of ASEP Manual:

The adopted amendment to Figure: 19 TAC §229.1(c) updates the ASEP manual as follows:

Updates to the title update the appropriate date to the 2022-2023 academic year.

Technical edits to the table of contents update the title of Chapter 7 to match the corresponding change in the manual and capitalize the title of Chapter 5 to apply style standards for capitalization.

Updates to Chapter 1 update the appropriate date to the 2022-2023 academic year.

Updates to Chapter 2 update the small group aggregation to align with 19 TAC §229.4(c)(4) that provides that an EPP with a three-year cumulated group that is fewer than ten individuals, the group will be measured against the performance standard of the current year or an alternative performance standard of up to one candidate failing to meet the requirement, whichever is more favorable to the EPP. This allows an EPP to miss the standard by one candidate without failing the performance standard for accountability purposes. The update also includes a diagram to provide a demonstration of the small group aggregation to provide transparency to the field.

Updates to Chapter 3 update the appropriate dates to the 2022-2023 academic year. Additionally, an unnecessary year designation would be removed to simplify the annual update process.

Updates to Chapter 4 provide a technical edit to correct the cross-reference to 19 TAC §229.2(19), regarding the definition of first-year teacher. Updates also clarify that only teachers on standard, intern, and probationary certificates are included in the population of individuals that principals will complete surveys regarding preparation. This provides additional transparency to the field.

Updates to Chapter 5 provide a technical edit to correct the worked example.

Updates to Chapter 6 replace the term "license" with the term "certificate" to clarify that individuals apply for a teaching certificate, not license. This provides consistency of language. Updates also clarify that surveys related to Indicator 4b are only associated with individuals in the academic year in which they have been issued a certificate. This provides clarity to the field that although candidates submit a survey when they apply for their certificate, the survey is not used for accountability purposes until the academic year in which they are issued that certificate.

Updates to Chapter 7 add "Evaluation of Educator Preparation Programs by Teachers" to "New Teacher Satisfaction" in the title and the summary paragraph. This update was recommended by stakeholders to communicate the importance of the instrument for the purpose of increasing response rates. It also aligns with how the instrument is described to teachers. Updates also clarify that beginning in the 2023-2024 academic year, the population included in new teachers submitting a survey will align with the same population as the principal survey. This was recommended by stakeholders and ensures consistency in which individuals are included in surveys related to EPP accountability.

Updates to Chapter 8 provide a technical edit to replace the term "petition" with the term "application" to align with the term regarding EPP commendation, Innovative Educator Preparation.

Updates to Chapter 9 shift language about the applicability of the Index system from an option for status determination to the way that the status determination is made. This aligns with the contents of updated 19 TAC §229.4(b).

§229.3. Required Submissions of Information, Surveys, and Other Data.

The adopted amendment to §229.3(f) strikes §229.3(f)(3) as it was never utilized to measure Indicator 3 in ASEP. This provides clarity as to which data submissions are used for accountability. The subsequent provisions are renumbered accordingly.

§229.4. Determination of Accreditation Status.

The adopted amendment to §229.4(a)(4)(A) prescribes that EPPs that do not meet the performance standard for the frequency, duration, and documentation of field supervision due to only one candidate failing to receive the minimum number of observations will still meet that standard for accountability purposes. This prevents a program from failing this standard due to not having documentation for field supervision for only one candidate. This is responsive to stakeholder input about flexibility in the standards for small programs.

The adopted amendment to §229.4(b) clarifies that ASEP accreditation statuses are assigned to EPPs based on the Index system prescribed in the manual. The adopted amendment also removes outdated language which allowed EPPs to receive the better of the two systems for the 2021-2022 academic year. This provides clarity to the field as to the assignment of ASEP statuses and remove outdated language.

The adopted amendment to §229.4(b)(1) removes language regarding the ASEP system used for accountability that began in the 2021-2022 academic year as one of the two systems as options, as all programs will now be assigned statuses based on the Index system. The subsequent provisions are renumbered or relettered accordingly.

The adopted amendment to §229.4(b)(2) removes outdated language regarding the ASEP system that was in place through the 2021-2022 academic year. This provides transparency to the field as to how EPPs are assigned ASEP accreditation statuses. The subsequent provisions are renumbered accordingly.

The adopted amendment to §229.4(b)(4) removes outdated language regarding the ASEP status of Not Rated: Declared State of Disaster. This provides clarity to the field by removing language that is no longer operable.

The adopted amendment to §229.4(c)(4) prescribes that when there is a small group with fewer than 10 individuals in a cumulative three-year period for that group, the candidate group will either be measured against the performance standard of the current year, or a performance standard where up to one candidate can fail to meet the requirement, whichever one is more favorable to the EPP. This allows for standards that are not 100% to not function as though they are 100% for small groups.

The adopted amendment to §229.4(c)(5) clarifies that if an EPP is assigned Accredited-Probation due to carry over status, the status will not be counted against the program as a consecutively measured year for purposes of revocation. This ensures that a program is not revoked due to a carryover status.

§229.6. Continuing Approval.

The adopted amendment to §229.6(b) prescribes that an EPP has up to four months to comply with SBEC rules and or TEC, Chapter 21, following a continuing approval review, or the Texas Education Agency (TEA) staff will recommend the EPP be sanctioned. This ensures transparency and consistency in the field regarding how long an EPP has to get into compliance after a continuing approval review.

§229.7. Informal Review of Texas Education Agency Recommendations.

An adopted technical edit in §229.7(a) and (b) updates a cross reference to §229.5.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began August 18, 2023, and ended September 18, 2023. The SBEC also provided an opportunity for registered oral and written comments on the proposal during the September 29, 2023 meeting's public comment period in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education (SBOE) took no action on the review of the amendments to 19 TAC §§229.1, 229.3, 229.4, 229.6, and 229.7 at the November 17, 2023 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an EPP, for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; §21.043(b) and (c), which requires SBEC to provide EPPS with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; §21.0441(c) and (d), which requires the SBEC to adopt rules setting certain admission requirements for EPPs; §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding EPPs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

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

Filed with the Office of the Secretary of State on December 19, 2023.

TRD-202304881
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Effective date: January 8, 2024
Proposal publication date: August 18, 2023
For further information, please call: (512) 475-1497

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER M. FILING REQUIREMENTS

The commissioner of insurance adopts amendments to 28 TAC §§5.9310, 5.9312, 5.9321, 5.9323, 5.9327, 5.9332, 5.9334, 5.9342, 5.9355, 5.9357, 5.9361, 5.9372, 5.9373 and new §5.9313, concerning filing requirements for property and casualty insurance. Among other changes, these adopted amendments reflect the enactment of Senate Bills 965 and 1367, 87th Legislature, 2021. Section 5.9321, concerning General Filing Requirements, is adopted with a nonsubstantive change to the proposed text published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3622). The change inserts an omitted word in §5.9321(c)(6)(C). Section 5.9327, concerning Additional Requirements for Personal Automobile and Residential Property Forms, was revised in response to public comments. These sections will be republished. The remaining sections are adopted without changes to the proposed text, and will not be republished. A notice of hearing was published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5580), and the hearing was held on October 4, 2023.

REASONED JUSTIFICATION. SB 965 repealed the law authorizing the commissioner to establish different filing requirements for certain personal automobile insurers with low market shares. SB 1367 eliminated rate, rule, and form filing requirements for numerous commercial lines of insurance. The amendments conform Subchapter M with the statutory changes.

The amendments make additional changes throughout Subchapter M. The amendments prohibit inapplicable provisions in personal automobile and residential property endorsements (for endorsements filed on or after January 1, 2025); require that insurers file application forms along with personal automobile policy forms; prohibit scanned documents and scanned text in filed property and casualty policy forms, endorsements, and form usage tables; prohibit password-protected or otherwise encrypted documents in filings; clarify the information used to establish an insurer exemption under Insurance Code §2251.252(a); distinguish the filing requirements applicable to advisory organizations; require submission of information on third-party data and models in rate, rule, and underwriting guideline filings; change underwriting guideline filing requirements to require a complete set of underwriting guidelines with each filing; delete the requirement to file a complete set of underwriting guidelines every three years; and replace TDI mailing addresses with TDI's website, where appropriate.

A change to the text as proposed inserts a word mistakenly omitted from the proposed text in §5.9321(c)(6)(C).

Amendments make minor grammatical, punctuation, and format changes to reflect current TDI drafting style and plain-language preferences.

The following summary describes the amendments to specific sections of the Filings Made Easy rules (FME Rules) found in 28 TAC Chapter 5, Subchapter M, Divisions 4, 5, 6, 7, 9, 10, and 11. The detailed section-by-section summary is organized by division.

Division 4. Filings Made Easy - Transmittal Information and General Filing Requirements for Property and Casualty Form, Rate, Underwriting Guideline, and Credit Scoring Model Filings.

Section 5.9310. Property and Casualty Transmittal Information and General Filing Requirements. The amendments to §5.9310 add text specifying that a filing submitted for one line of insurance (a monoline filing) may also be used in multi-peril insurance. Accordingly, amendments to this section delete references to dual filings, including transmittal information requirements for dual filings. Neither the new multi-peril text nor the deletion of dual filings text will require a separate multi-peril filing. When a filer makes a monoline filing under Insurance Code Chapters 2251 or 2301, the filing may be used for multi-peril insurance without making an additional, separate multi-peril filing.

Amendments implement SB 1367 by changing the definition of multi-peril insurance to exclude a combination of coverages as described in Insurance Code §2251.0031 and §2301.0031, which were added by the bill. These sections list insurance lines that are exempted from certain filing and approval requirements in Insurance Code Chapters 2251 and 2301.

Amendments also add the option to use the National Association of Insurance Commissioners System for Electronic Rate and Form Filing (SERFF) tracking number as an alternative to the TDI file number for certain required transmittal information.

Amendments also renumber subsections, paragraphs, and subparagraphs as appropriate to reflect the other amendments in the section, and they insert the titles of cited Insurance Code and Administrative Code provisions for consistency with current TDI rule drafting style.

Section 5.9312. Personally Identifiable Information. Amendments make two nonsubstantive clarifying changes to descriptions of personally identifiable information, changing "phone" to "phone number" and "email" to "email address."

Section 5.9313. Filing Format Requirements. New §5.9313 specifies filing format requirements that prohibit encrypted or password-protected documents in filings. Section 5.9313 does not make any changes to a filer's ability to mark documents as confidential or protect documents from public view in SERFF.

Section 5.9313 also specifies that property and casualty policy forms, endorsements, and form usage tables must not be scanned documents; may not include any scanned text or images with text that will be part of the insurance contract; must be in a format that is selectable and searchable; and must be in portrait, rather than landscape, orientation.

These requirements streamline the filing process by ensuring that policy forms, endorsements, and form usage tables are

more readily accessible to TDI staff and compatible with text search tools in SERFF and TDI's form review technology that relies on word recognition software.

Division 5. Filings Made Easy - Requirements for Property and Casualty Policy Form and Endorsement Filings.

Section 5.9321. General Filing Requirements. Amendments specify that unless requested by TDI, filings made by advisory organizations do not need to include proposed effective dates or form usage tables. Amendments allow filers to use a SERFF tracking number instead of a TDI file number to identify previously approved filings. Amendments also make several nonsubstantive wording changes to text and reorganize existing requirements on conditional mandatory addendums within the section for clarity.

Amendments also delete plain-language requirements for personal automobile and residential property insurance as addressed within this section. These requirements are deleted here and added to §5.9327 to clarify that the plain-language requirements only apply to personal automobile and residential property forms.

A change to the proposed text of §5.9321(c)(6)(C) inserts the word "that" in the phrase "form usage table that describes the conditions." The word was mistakenly omitted from the proposed text.

Section 5.9323. Requirements for Reference Filings. The amendment allows the SERFF tracking number to be used as an alternative identifier to the TDI file number for reference filings.

Section 5.9327. Additional Requirements for Personal Automobile and Residential Property Forms. The section heading is amended to address the provisions included in the section.

Amendments add new subsection (a), which specifies requirements for personal automobile and residential property insurance forms. New subsection (a)(2) requires that when filing an endorsement with provisions that do not apply to every policy to which the endorsement will be attached, the provisions must be enclosed with brackets to reflect that the provisions are variable text. New subsection (a)(2) also requires filings to indicate that when the endorsement is attached to a policyholder's specific policy, the endorsement will not include any provisions that are inapplicable to that specific policy. The text in subsection (a)(2) provides an example of how this requirement will operate. The requirements in subsection (a)(2) are effective for endorsements filed on or after January 1, 2025.

These changes are intended to increase consumers' understanding of their insurance policies by reducing or eliminating inapplicable provisions. The delayed implementation date is intended to allow insurers lead time to incorporate the requirements into their business practices.

Plain-language requirements for personal automobile and residential property insurance have been deleted in §5.9321 and similar text has been adopted in §5.9327(a)(1) to clarify that the plain-language requirements apply only to personal automobile and residential property forms. In addition, amendments in §5.9327 redesignate and renumber subsequent provisions as appropriate to reflect the new text.

New subsection §5.9327(c) requires that when making a new automobile insurance policy form filing, insurers must file for informational purposes any automobile insurance application forms that are not part of the policy. The new subsection also clarifies that insurers must file for approval any personal automobile insurance application forms that are part of the insurance policy.

Changes to the proposed text remove a proposed requirement to incorporate mandatory endorsements for policy forms filed on or after January 1, 2025. This change is discussed in detail in the Summary of Comments and Agency Response.

Division 6. Filings Made Easy - Requirements for Rate and Rule Filings.

Section 5.9332. Categories of Supporting Information. Amendments add new categories of supporting information for third-party data and model information. These amendments are intended to modernize the FME Rules to address insurers' increasing use of third-party data and models. The amendments require that the following information be filed for third-party data: the name of the data vendor or source; a description of the data; a description of how the data is used; and a list of the rating variables that reflect the use of the data. Similarly, amendments require that the following information be filed for third-party models: the name of the model vendor or source; the model name and version number; a description of the model; a description of the model input; a description of how the model output is used; and a list of the rating variables that depend on the model's output.

Amendments also allow filers the option of using the SERFF tracking number instead of the TDI file number when providing loss cost information for reference filings.

In addition, amendments renumber a paragraph to reflect addition of the new categories of supporting information, and they insert the titles of cited Insurance Code provisions and make nonsubstantive language changes for consistency with current TDI rule drafting style.

Section 5.9334. Requirements for Rate and Rule Filing Submissions. Amendments distinguish which filing requirements apply to advisory organization rate and rule filings. The amendments specify that advisory organization filings do not need to include proposed effective dates; written premium and policyholder information; policyholder impact information; historical premium and loss information; expense information; or profit provision information.

Amendments also add third-party data and model information to the list of required elements of rate and rule filing submissions.

In addition, amendments redesignate existing subsections as appropriate to reflect addition of the new provisions, and they insert the titles of cited Insurance Code provisions and make nonsubstantive language changes for consistency with current TDI rule drafting style.

Division 7. Filings Made Easy - Requirements for Underwriting Guideline Filings.

Section 5.9342. Filing Requirements. Amendments remove the requirement to file a comprehensive set of underwriting guidelines every three years. Instead, the amendments require, not later than 10 days after use, a comprehensive set of underwriting guidelines with each underwriting guideline filing. The amendments also require that each underwriting guideline filing include a mark-up or redline version of the guideline, clearly indicating any changes. These amendments reduce the number of underwriting guideline filings and streamline TDI's review of these filings.

The amendments also require that for each third-party data set used in underwriting, the following information be filed: the name of the data vendor or source; a description of the data; a description of how the data is used; and a list of the underwriting guidelines that reflect the use of the data. Similarly, amendments specify that the following information be filed for third-party models: the name of the model vendor or source; the model name and version number; a description of the model; a description of the model input; a description of how the model output is used; and a list of the underwriting guidelines that depend on the model's output.

The amendments specify that filings must clearly indicate any changes in the underwriting guidelines resulting from a change in third-party data and modeling information, and that no filing is necessary for a change in third-party data and modeling information that does not result in a change to underwriting guidelines. Adding the filing requirement for third-party data and model information modernizes the FME Rules to include information that insurers are increasingly using in their underwriting guideline filings.

In addition, amendments redesignate existing subsections and update references to subsections within the section as appropriate to reflect the new provisions, and they insert the titles of cited Insurance Code provisions for consistency with current TDI rule drafting style.

Division 9. Filings Made Easy - Reduced Filing Requirements for Certain Residential Property Insurers.

An amendment to the title of Division 9 clarifies that the division now applies only to residential property insurers for consistency with SB 965, which repealed Insurance Code §2251.1025, concerning Filing Requirements for Certain Personal Automobile Insurers with Less Than 3.5 Percent of Market.

Section 5.9355. Purpose. An amendment implements SB 965 by eliminating a reference to Chapter 2251, Subchapter C, which previously contained §2251.1025. In addition, an amendment inserts the title of Insurance Code Chapter 2251, Subchapter F for consistency with current TDI rule drafting style.

Section 5.9357. Filing Requirements. Amendments implement SB 965 by eliminating references to personal automobile insurers and making conforming changes throughout the section. To increase clarity, amendments revise the rule text related to certain insurers exempted from filing and approval requirements. The amendments also include third-party data and model information in the list of supporting information that insurers subject to §5.9357 are not required to file.

Division 10. Filings Made Easy - Additional Filing Requirements for Certain County Mutual Insurance Companies.

Section 5.9361. Additional Requirements. Amendments add the option to use a SERFF tracking number as an alternative to the TDI file number for certain required filing information and insert the title of Insurance Code Chapter 2301 for consistency with current TDI rule drafting style.

Division 11. Filings Made Easy - Certificates of Property and Casualty Insurance.

Section 5.9372. Preparation and Submission of Certificate of Insurance Form Filings. Amendments restructure rule text addressing how TDI will accept filings. The amendments also improve clarity, eliminate obsolete physical and mailing addresses, remove an email address, and specify that mailing addresses and other contact information are available on the Property and Casualty Certificates of Insurance web page on TDI's website. An amendment also inserts the title of Insurance Code Chapter 1811 for consistency with current TDI rule drafting style.

Section 5.9373. Certificate of Insurance Form Filing Transmittal Information. Amendments remove "request by mail" as an option for filers to obtain the Certificate of Insurance Form Filing Transmittal Form. The request-by-mail option is removed because TDI no longer receives requests by mail; the form is available on TDI's website.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from 10 commenters. Two speakers representing three of these commenters also spoke at a public hearing on the proposal held on October 4, 2023. Commenters in support of the proposal were Texas Appleseed, Texas Watch, and Consumer Federation of America, who submitted a joint comment letter, and the Office of Public Insurance Counsel (OPIC).

Commenters against the proposal were the American Property Casualty Insurance Association (APCIA); the Insurance Council of Texas (ICT) and the Association of Fire and Casualty Companies of Texas (AFACT), who submitted a joint comment letter; the National Association of Mutual Insurance Companies (NAMIC); the Texas Farm Bureau Insurance Companies; and Insurance Services Office, Inc. (ISO).

Comments and agency responses are grouped by topic.

Requirement to Incorporate Mandatory Endorsements for Policy Forms Filed on or After January 1, 2025

The proposal included a requirement that when an insurer files new or revised personal automobile or residential property policy forms on or after January 1, 2025, the insurer must incorporate the provisions of all associated mandatory endorsements at the time of the filing. Although four commenters expressed support for the proposed measure, many of the concerns expressed from other commenters were on this requirement. Several commenters misunderstood or misstated the proposed requirement.

Although TDI disagrees with the comments opposing the requirement, TDI has declined to adopt the proposed requirement. However, TDI remains concerned about improving consumer understanding of insurance policies and maintains the position that insurers have a responsibility to minimize consumer confusion, so TDI will continue discussions with stakeholder groups to identify and explore ways for insurers to efficiently and effectively make it easier for consumers to understand their policies.

Comments Misunderstanding or Misstating the Mandatory Endorsement Incorporation Requirement

Comment: Several commenters opposing the requirement make the following factually incorrect statements about the proposed requirement:

- mandatory endorsements would be prohibited on or after January 1, 2025;

- insurers would be required to incorporate all mandatory endorsements before January 1, 2025;

- insurers would be required to maintain a complete policy with all potential mandatory endorsement combinations;

- insurers would be prohibited from customizing insurance policies; and

- insurers would have to amend, print, and mail their base policy form to incorporate future legislative or regulatory requirements instead of using a mandatory endorsement.

Agency Response: Although TDI has declined to adopt the proposed requirement, TDI disagrees with the comments. The requirement would not have prohibited mandatory endorsements, but rather required incorporation only if and when an insurer filed a new policy form or revised an existing policy form using mandatory endorsements. The requirement would not have required any insurer action by January 1, 2025, but rather would have established a new standard for forms filed on or after that date. The requirement would not have required an insurer to maintain a policy with all potential mandatory endorsement combinations. Mandatory endorsements are not a "potential combination"--they are always added to the policy. The requirement would not have prohibited customization of policies, nor would it have required that insurers amend, print, or mail their base policy to incorporate future legislative or regulatory requirements instead of using a mandatory endorsement.

Comments on TDI's Statutory Authority for the Requirement

Comment: Two commenters question TDI's statutory authority to adopt a requirement that insurers incorporate mandatory endorsements when new policy forms are filed or when existing forms are filed for amendment on or after January 1, 2025.

Agency Response: Although TDI has declined to adopt the proposed requirement, TDI maintains that the agency has statutory authority to adopt such a requirement. TDI's authority is in Insurance Code §§36.002(1)(C), 36.002(2)(E), 541.401, 2301.053, 2301.055, Article 5.35(f), and 36.001.

Comment That the Mandatory Endorsement Incorporation Requirement Is Not Authorized by SB 965 or SB 1367

Comment: One commenter states that the mandatory endorsement requirement and some of the adopted amendments go beyond and are not authorized by either SB 965 or SB 1367.

Agency Response: TDI agrees with the comment. The mandatory endorsement incorporation requirement (though not adopted) and several adopted amendments are unrelated to either SB 965 or SB 1367 and are not adopted under the rulemaking authority provided by those bills. Rather, they are adopted under separate authority listed in the Statutory Authority statements in this adoption order. They are included in the same rulemaking proposal as the amendments implementing SB 965 and SB 1367 because they all amend sections in the Filings Made Easy rules.

Comments on Policy Forms Promulgated, Approved, or Adopted by the Commissioner Before June 11, 2003

Comment: Two commenters contend that the mandatory endorsement incorporation requirement conflicts with Insurance Code §1952.052 and §2002.052 that allow insurers to use policy forms that were promulgated, approved, or adopted by the commissioner before June 11, 2003.

Agency Response: Although TDI has declined to adopt the proposed requirement, TDI disagrees with the comments. Insurance Code §1952.052, relating to automobile insurance forms and endorsements, and §2002.052, relating to residential property insurance, allow the use of such forms without filing.

Comments on Different Contract Requirements for Texas

Comment: Several commenters suggest the rule as proposed requires insurers to have a different contract for Texas, and that Texas would be an outlier. These commenters express concern that the rule would prohibit the use of national policy forms, such as Insurance Services Office (ISO) or a company's own standard policy forms.

Agency Response: Although TDI has declined to adopt the proposed requirement, TDI disagrees with the comments. Because policies must comply with Texas laws, insurers already have a different contract for Texas. Many insurers currently create a Texas-specific contract by pairing a policy form with a mandatory endorsement that revises the policy to conform with Texas laws. The requirement would not have changed the contract; instead, it would have required the mandatory endorsement provisions to be incorporated into the policy form itself, changing only the format of the contract.

TDI disagrees that the requirement would have prohibited the use of national policy forms or a company's own standard policy forms. Under the requirement, a company could have continued using its forms until deciding to revise the form itself. Even then, companies would have only been required to incorporate mandatory endorsements the company used at that time. The requirement would not have prohibited the use of future mandatory endorsements with standard policy forms.

Comments on Lack of Substantive Coverage Impact

Comment: One commenter states that the mandatory endorsement incorporation requirement would have no substantive impact on coverage. Another commenter states that although the requirement might reduce policy page counts, the same policy language and contract terms would still need to be included.

Agency Response: TDI agrees with the comments. The requirement was intended to assist consumers in understanding their policies, rather than changing coverage.

Comments on the Impact of the Requirement on Consumer Understanding

Comment: Several commenters state broadly that the mandatory endorsement incorporation requirement would not help consumers understand their policies. Two commenters contend that the requirement would have very little impact in terms of reducing or eliminating the need for consumers to cross-reference endorsements, and that for policies that are national base forms, there will always be some need to cross-reference specific language that is amended or changed. These two commenters state that this is also true of other endorsements that may be requested by policyholders.

Several commenters suggest the opposite, explaining that the mandatory endorsement incorporation requirement would make policies and coverage more understandable, as well as making review less complicated and time-consuming. Another commenter states that insurance policies are long documents full of technical and legal terminology, and that consumers often find multiple endorsements amending various sections of a policy confusing. The commenter states that many insurers make changes to their policy forms using a Texas-specific amendatory endorsement that is often 8 to 10 pages long, and that incorporating mandatory endorsements into the policy would provide transparency and an important protection for Texas consumers.

Agency Response: TDI agrees that insurance policies are long, highly technical contracts that are challenging to read and un-

derstand, and the requirement would have added transparency and an important consumer protection.

Although TDI has declined to adopt the proposed requirement, TDI disagrees that the mandatory endorsement incorporation requirement would not have improved consumer understanding of insurance policies.

Comments on the Cost and Efficiency of the Mandatory Endorsement Incorporation Requirement

Comment: Several commenters state that the requirement would decrease efficiency and increase costs for insurers, though the commenters do not provide written estimates for costs or time. The commenters express concern that the requirement would result in significant costs from updating, printing, and mailing entire policies.

One commenter states that the cost relating to the requirement would be for printing and one-time information technology (IT) costs, and that companies doing business in multiple states may need to have multiple programs. The commenter estimates a one-time potential cost of $25,000 to more than $100,000.

Agency Response: Although TDI has declined to adopt the proposed requirement, TDI disagrees that the mandatory endorsement incorporation requirement would have necessarily resulted in significant insurer costs. If insurers decided to not modify their policies that use mandatory endorsements, they would have had no costs resulting from the requirement. More specifically, it would have applied only when a company was already in the process of making a change to the underlying policy form, so any costs of incorporating existing mandatory language would be minimal or almost nonexistent.

Comments That the Mandatory Endorsement Incorporation Requirement Would Confuse Claims Adjusters

Comment: Two commenters state that requiring different base contracts every time a mandatory provision is required would be potentially confusing in training and retention of qualified adjusters who handle claims across multiple states. Another commenter states that because claims adjusters often work across multiple states, a forced variation in policy construction creates significant inefficiencies and increased likelihood for error for adjusters accustomed to working with uniform polices that are amended to meet consumer needs.

Agency Response: Although TDI has declined to adopt the proposed requirement, TDI disagrees with the comments. The requirement would not have changed the policy language the adjusters are reading. Also, the requirement would not have prevented a company from providing an annotated version of its policy form to make it easier for claims adjusters to use. The mandatory endorsement incorporation requirement would not have caused confusion for claims adjusters or other insurance industry professionals, but would have improved consumers' understanding of their insurance policies.

Comment on Alternative to Mandatory Endorsement Incorporation Requirement

Comment: Although one commenter states support for the mandatory endorsement incorporation requirement, the commenter also offers an alternative for TDI's consideration. The commenter suggests requiring incorporation of all mandatory endorsements into a single Texas amendatory endorsement every three years as an alternative approach that TDI may consider.

Agency Response: TDI appreciates the comment but declines to make the suggested change. Requiring a filing on a specific time schedule would impose costs on insurers. However, allowing insurers to choose whether and when to schedule the event triggering the incorporation of mandatory endorsements would allow insurers to avoid or minimize any costs relating to the requirement.

Requirement to Bracket Variable Text in Filing and to Exclude Inapplicable Text in Consumer's Policy

The adopted amendments require that when filing a new or amended endorsement form on or after January 1, 2025, with provisions that do not apply to every personal automobile or residential property policy to which the endorsement will be attached, an insurer must bracket the provisions to indicate that they are variable text. The amendments also require the insurer's filing to indicate that when the endorsement is attached to a policyholder's specific policy, the endorsement will not include any provisions that are inapplicable to that specific policy. The following paragraphs address comments received on these requirements.

Comment Misunderstanding the Bracketing Requirement

Comment: One commenter erroneously states that the amendments require the consumer's insurance policy to have brackets around inapplicable provisions.

Agency Response: TDI disagrees with the comment and clarifies that the amendments require that inapplicable provisions be bracketed in endorsement forms only in the versions of those forms filed with TDI. The rule does not require or authorize insurers to use brackets around inapplicable provisions in the documents provided to consumers. To the contrary, the rule prohibits the inclusion of inapplicable provisions in the documents provided to consumers.

Comment on Cost and Workload for Bracketing Requirement

Comment: One commenter says that the bracketing of variable text has a significant impact on residential property programs that have multiple base coverage forms, which may lead to increased programming and procedural costs for insurers. The commenter also suggests there might not be sufficient time to implement the changes and that insurers might not have a choice regarding the timing of filings needed to respond to legislation. Another commenter states that the requirement may result in significant forms work for personal lines policies and that insurers would likely have 16 or 17 months to implement.

Agency Response: TDI disagrees that the requirement will impose a significant cost or implementation difficulty. Under the requirements of the rule, insurers have complete discretion to decide whether and when they will file with TDI new or amended endorsements with variable text. To the extent that insurers choose not to include variable text in new or revised endorsement forms filed with TDI, insurers will have no costs resulting from the requirement. Allowing insurers to choose whether and when to schedule the event triggering the requirement to bracket variable text allows insurers to avoid or minimize any costs relating to the requirement.

Requirement to File Automobile Insurance Application Forms

Adopted amendments require that insurers file automobile insurance application forms with TDI. Specifically, TDI's adopted amendments include two requirements relating to filing automobile insurance applications: (1) applications that are part of the

policy must be filed for approval, and (2) applications that are not part of the policy must be filed for informational purposes. The first is required by statute, and the second codifies existing agency practice.

Insurance Code §2301.006 requires that TDI review and approve forms used in writing certain insurance lines before an insurer may use those forms. Forms include the policy form and endorsements. Insurance Code §2301.003(b)(14) specifies that this filing and prior approval requirement applies to personal automobile insurance. Therefore, statute requires that insurers file and receive approval for automobile insurance application forms that are made part of the insurance policy.

TDI's current practice is to also request automobile insurance applications that are not part of the policy for informational purposes. Codifying this practice into rule will streamline filing requirements so that filers and agency staff have a clear understanding of filing requirements at the outset of the process.

The following paragraphs address comments relating to the requirement to file for information automobile insurance applications that are not part of the policy.

Comments on Lack of Statutory Authority on Automobile Insurance Application Filing Requirement

Comment: Three commenters state that TDI does not have statutory authority to require insurers to file personal automobile application forms that are not part of the insurance policy.

Agency Response: TDI disagrees with the comments. TDI has authority for the requirement under Insurance Code Chapter 2301 and §36.001. Under Chapter 2301, TDI must evaluate whether each provision in a policy form or endorsement is unjust or deceptive, encourages misrepresentation, or violates law or public policy. For personal automobile policies, TDI must also look for specific mandatory coverages, such as uninsured motorist coverage and personal injury protection coverage, which must be offered and can only be rejected by named insureds in a specified manner as referenced in Insurance Code §2301.053. Given the breadth of those requirements, TDI needs additional information to understand the context of provisions in a new personal automobile insurance policy form and how it is likely to be understood and operate in the marketplace. Also, Insurance Code §2301.054 specifies that a contract or agreement not written into a personal automobile insurance application and policy is void and violates the Insurance Code.

Accordingly, TDI's current practice is to request that insurers file for informational purposes automobile insurance application forms that are not part of the policy. TDI has found that such application forms could contain contractual terms, some of which might conflict with the remainder of the contract, despite insurer representations otherwise. The informational filing of automobile insurance application forms that are not part of the insurance contract provides an important consumer protection; the filing requirement is necessary for TDI to perform its review-and-approval duties under Chapter 2301.

Comment on Lack of Policyholder Benefit of Automobile Insurance Application Form Filing Requirement

Comment: One commenter states this requirement is unnecessary and has no clear benefit to policyholders.

Agency Response: TDI disagrees with the comment. TDI's current practice is to request automobile insurance application forms as part of the form review process. This requirement increases transparency for filers and streamlines the filing process by requiring application forms be provided at the outset of the filing process.

Language in automobile insurance application forms that is inconsistent with the policy language may cause consumer harm in that consumers may be confused or unable to understand their coverage; it benefits policyholders for TDI to verify that automobile insurance application forms do not have language that conflicts with policy language or statutory requirements.

Comment on Increased Costs from Automobile Insurance Application Form Filing Requirement

Comment: One commenter states that the requirement will increase costs because the commenter's automobile insurance application is not static, but rather dynamic, and changes depending on the inputs.

Agency Response: TDI disagrees with the comment. TDI's current practice is to request automobile insurance application forms as part of the form review process, and including this requirement in the rule streamlines the filing process. TDI has not experienced any companies that have been unable to fulfill this request.

Comment Misunderstanding the Automobile Insurance Application Form Filing Requirement

Comment: One commenter mistakenly states that a company would have to include the application form with a filing anytime the company made a change to its personal automobile policy form.

Agency Response: TDI disagrees with the comment. A change to a personal automobile policy form does not trigger an automobile insurance application form filing under the requirement. The adopted rule text specifies that it applies "when an insurer files a new personal automobile policy form."

Requirement for Third-Party Data in Rate and Rule Filings

The adopted amendments add new categories of supporting information for third-party data and third-party models and require this information in rate and rule filings. The required information consists of basic information about the source of the data and models and how they are used in the ratemaking process. The following paragraphs address comments relating to the requirement to file third-party data and model information in rate and rule filings.

Comments on Breadth and Ambiguity of the Third-Party Information Requirement in Rate and Rule Filings

Comment: Two commenters state that "third-party data" is not defined and is overly broad and vague. These commenters state that this change adds a new level of uncertainty and vagueness on how it will be applied and what insurers will need to file. The commenters also state that the requirement adds another layer of bureaucratic uncertainty because TDI staff may construe this requirement inconsistently.

Agency Response: TDI disagrees with the comments. The requirement adds transparency and specificity by listing the required information, which helps both companies and TDI staff. Companies will know what to include in their filings, and TDI staff will know what is expected to be in the filing.

Comment on Costs of the Third-Party Information Requirement in Rate and Rule Filings

Comment: One commenter states that requiring this information will create greater compliance burdens, which will add to the administrative costs in creating and maintaining policies.

Agency Response: TDI disagrees with the comment. The required third-party data and model information is basic identifying and descriptive information. This requirement is not expected to impose significant costs.

Comments on TDI's Need for Third-Party Information in Rate and Rule Filings

Comment: Two commenters state that the information insurers currently provide is sufficient for TDI to evaluate rate and rule filings. A third commenter states that TDI and OPIC both need this information to fulfill their statutory duty to determine whether rates and rules meet applicable laws and regulations.

Agency Response: TDI disagrees with the comments that the information TDI currently receives is sufficient, and TDI agrees with the comment that the new requirement is necessary for TDI to fulfill its statutory duty. TDI has observed increasingly frequent insurer use of third-party data and models in rate and rule filings. TDI has seen third-party data and models used to develop classification systems, territorial relativities, roof condition scores, and wildfire risk scores. TDI has a statutory responsibility to review rates to verify compliance with statutory and regulatory standards, and third-party information required by the rule is necessary for TDI to fulfill this statutory responsibility.

Comments on Alternative to Third-Party Information Requirement in Rate and Rule Filings

Comment: Two commenters recommend that the requirement not be adopted, or that TDI instead limit the requirement to specific types of third-party data such as hurricane models used to develop catastrophe loads in rate filings.

Agency Response: TDI disagrees with not adopting the requirement and declines to implement the alternative suggestion. While information on third-party data and models that is used to develop catastrophe loads in rate filings falls within the adopted requirement, limiting the requirement to data used to develop catastrophe loads in rate filings is insufficient for TDI to fulfill its statutory requirement. Insurers are also using third-party data and models to develop classification systems, territorial relativities, roof condition scores, wildfire risk scores, and other supplementary rating information. The use of third-party data and models in these other aspects of ratemaking is as relevant as catastrophe load information is when reviewing filings for compliance.

Requirement for Third-Party Data in Underwriting Guideline Filings

The adopted amendments also require insurers to include information about the use of third-party data and third-party models in underwriting guideline filings. The required information consists of basic information about the source of the data and models and how they are used in the underwriting process. Insurers are required by law to file their underwriting guidelines for personal automobile, residential property, and workers' compensation insurance.

Insurance Code §38.002 requires each insurer writing personal automobile insurance or residential property insurance to file its underwriting guidelines with TDI and requires that the underwriting guidelines are sound, actuarially justified, substantially commensurate with the contemplated risk, and not unfairly discriminatory. Insurance Code §2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines. Insurance Code §2053.032 requires that underwriting guidelines for workers' compensation insurance be sound, actuarially justified, or otherwise substantially commensurate with the contemplated risk, as well as not be unfairly discriminatory.

The following paragraphs address comments relating to the requirement to file third-party data and model information in underwriting guideline filings.

Comments on Breadth and Ambiguity of the Third-Party Information Requirement in Underwriting Guideline Filings

Comment: Two commenters state that third-party data required in underwriting guideline filings is not defined and is overly broad and vague. They suggest that TDI add some parameters to the third-party data requirement.

Agency Response: TDI disagrees with the comments. "Third-party data" is a common term, and the adopted amendments provide parameters to the requirement by listing the specific information required with underwriting guideline filings. The new requirement adds transparency and specificity, which helps both filers and TDI staff.

Comments on Costs of the Third-Party Information Requirement in Underwriting Guideline Filings

Comment: One commenter states that requiring third-party information in underwriting guideline filings will create greater compliance burdens, which will add to administrative costs in creating and maintaining policies. Two other commenters question why external data should be required in underwriting guideline filings, like data used to determine replacement cost values, building codes that may be used in underwriting, or consumer price indexes. The commenters state that the requirement will increase costs.

Agency Response: TDI disagrees with the comments. The required third-party data and model information is basic identifying and descriptive information. This requirement is not expected to impose significant costs.

Comments on Statutory Authority to Require Third-Party Information Requirement in Underwriting Guideline Filings

Comment: Two commenters state that TDI has no statutory authority to require this information in underwriting guidelines.

Agency Response: TDI disagrees with the comments. Both Insurance Code §38.002 and §2053.032 require that underwriting guidelines be "sound, actuarially justified, or otherwise substantially commensurate with the contemplated risk." Further, both statutes provides that "underwriting guidelines may not be unfairly discriminatory." The third-party information required by the rule is necessary for TDI to fulfill its statutory responsibility to verify that underwriting guidelines comply with these statutory requirements.

Comments on TDI's Need for Third-Party Information in Underwriting Guideline Filings

Comment: Two commenters state that underwriting guidelines pertain to accepting or rejecting a risk and that models are not typically used to accept or reject a risk. A third commenter states that TDI needs this information to fulfill its statutory duty to assess whether underwriting guidelines comply with applicable statutes and regulations.

Agency Response: TDI disagrees with the comments that third-party data and models are not used in underwriting guidelines. TDI has observed increasing use of third-party data and models in underwriting guideline filings. For example, TDI has seen third-party data and models used to develop wildfire risk scores, which have been used in companies' underwriting guideline filings.

TDI agrees with the comment that the information is necessary for TDI to achieve its statutory responsibility to review underwriting guidelines to verify compliance with statutory and regulatory standards.

Prohibition on Password-Protected, Encrypted, or Scanned Documents in Filings

The adopted amendments prohibit password-protected or otherwise encrypted documents in filings. The amendments prohibit scanned documents and scanned text in filed property and casualty policy forms, endorsements, and form usage tables. The following paragraphs address comments relating to these prohibitions.

Comments That TDI Accepts Password-Protected or Encrypted Filings in Other Settings

Comment: Two commenters state that TDI allows filings in other settings that are routinely encrypted, or password protected, and that this prevents the inadvertent release of documents with personal information or sensitive trade secret information.

Agency Response: TDI disagrees with the comments. Property and casualty form, rate, rule, underwriting guidelines, and credit scoring model filings must be submitted through SERFF. There is an existing mechanism within SERFF to keep confidential or trade secret information from public view. Also, because a password may expire or a filer may change the password, it is impractical and inefficient for TDI staff to work with password-protected documents. Although TDI does accept certain password-protected documents or encrypted documents in other settings, they are allowed to protect personally identifiable information (PII) in those documents. Existing FME rules prohibit the filing of PII.

Comments on Password-Protected or Encrypted Documents' Impact on Open Records Requests

Comment: Two commenters state that insurance companies often make open records requests for competitors' rate filings so that they may use those rates in their own filings, and that if the prohibition is adopted, companies may miss the 10-day deadline from the Office of the Attorney General to object to the release of their rate filing information.

Agency Response: TDI disagrees with the comments. TDI does agree that competitors often request other companies' rate filings. However, the Office of Attorney General's process under the Open Records Act is not at issue in this rule. The rule does not prevent companies from making timely objections to the Office of the Attorney General.

Comments on TDI's Statutory Authority to Prohibit Password-Protected, Encrypted, or Scanned Documents in Filings

Comment: Two commenters state that TDI has no statutory authority to prohibit encrypted, password-protected, or scanned documents in filings.

Agency Response: TDI disagrees with the comments. The requirement is adopted under Insurance Code §§36.002(1)(C), 36.002(1)(F), 36.002(2)(E), 2251.101, 2301.055, 559.004, and 36.001.

Comments on TDI's Rationale for Prohibiting Scanned or Unsearchable Documents

Comment: Two commenters question why TDI is prohibiting scanned and unsearchable documents.

Agency Response: The adopted amendments prohibit scanned documents and scanned text in filed policy forms, endorsements, and form usage tables to ensure that filings are compatible with text search tools in SERFF and TDI's current form review technology, which rely on word recognition software. This technology helps TDI review form filings more consistently and efficiently. If a PDF or other document is scanned or includes scanned text, the technology might not work.

Changes to Underwriting Guideline Filing Requirements

The adopted amendments remove the requirement to file a complete set of underwriting guidelines every three years. Instead, the amendments require insurers to file a complete set with each revision of their underwriting guidelines.

The following paragraphs address general comments received on the adopted underwriting guideline filing requirements. Comments about the third-party-information requirement in underwriting guideline filings are already addressed above.

Comment Misunderstanding the Adopted Amendments for Underwriting Guideline Filings

Comment: One commenter states that replacing the requirement to file underwriting guidelines every three years with the requirement to file not later than 10 days after use could reduce the volume of filings.

Agency Response: TDI agrees that adopted amendments remove the requirement to file a full set of underwriting guidelines every three years, which will reduce the volume of filings. TDI also clarifies that the text requiring filing underwriting guidelines not later than 10 days after use is not new. It has been in the FME rule for years.

Comment Requesting Rule Text Limiting TDI's Review to New or Amended Underwriting Guidelines

Comment: One commenter suggests that TDI include rule text limiting the agency's review of underwriting guideline filings. The commenter requests that the rule text specify that only new or amended underwriting guidelines will be subject to approval or disapproval.

Agency Response: TDI disagrees with the comment and declines to implement the suggestion. TDI has a statutory responsibility to verify that filed underwriting guidelines--in their entirety--satisfy statutory and regulatory requirements, which may have changed since the prior filing. TDI also clarifies that TDI reviews underwriting guidelines for compliance but does not approve or disapprove underwriting guideline filings.

Comment Supporting Requirement to File a Comprehensive Set of Underwriting Guidelines with Each Filing

Comment: One commenter expresses support for TDI's requirement that filers include a comprehensive set of underwriting guidelines with each personal automobile, residential property, or workers' compensation underwriting guideline filing. The commenter states that underwriting guidelines often contain interdependent elements that cannot be reviewed individually for

legal compliance. The commenter states that the requirement will allow TDI reviewers to efficiently consider filed changes within the full context of the underwriting structure, and better identify and understand potential legal violations.

Agency Response: TDI agrees with the comment. Agency reviewers may have difficulty evaluating a change in underwriting guidelines without the context of the complete set of guidelines.

Comment on Allowing Monoline Filings to Be Used in Multi-Peril Insurance

Comment: One commenter expresses support for the amendment that allows a monoline filing to be used for multi-peril insurance without making an additional, separate multi-peril filing. The commenter suggests it will likely have a positive impact on insurers by reducing the number of multi-peril filings.

Agency Response: TDI appreciates the comment.

Comment on Requiring SERFF Filing for Change in Policy Form Use

TDI also received a comment that suggests adding an additional requirement to the FME rules, which is discussed in the following paragraphs.

Comment: One commenter suggests adding an express requirement that any changes in policy form usage be filed in SERFF for informational purposes.

Agency Response: TDI appreciates the suggestion but declines to make the change. To the extent the suggested change may create a new requirement, it would need another rule proposal to allow an opportunity for stakeholders and the public to comment. TDI would also need to weigh the potential merits and costs of the suggested change.

DIVISION 4. FILINGS MADE EASY - TRANSMITTAL INFORMATION AND GENERAL FILING REQUIREMENTS FOR PROPERTY AND CASUALTY FORM, RATE, UNDERWRITING GUIDELINE, AND CREDIT SCORING MODEL FILINGS

28 TAC §§5.9310, 5.9312, 5.9313

STATUTORY AUTHORITY. The commissioner adopts the amendments to §5.9310 and §5.9312 and new §5.9313 under Insurance Code §§36.002(1)(C), 36.002(1)(F), 36.002(2)(E), 2251.101, 2301.001, 2301.007, 2301.055, 559.004, and 36.001.

Insurance Code §36.002(1)(C) authorizes the commissioner to adopt reasonable rules that are necessary to effect the purposes of a provision of Insurance Code Chapter 2301, Subchapter A. Insurance Code §2301.001 states that the purpose of Insurance Code Chapter 2301, Subchapter A, includes regulating insurance forms to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive, and to provide regulatory procedures for the maintenance of appropriate information reporting systems. Also, Insurance Code §2301.007 states that the commissioner may disapprove a form or withdraw approval of a form if it violates any law or contains a provision, title, or heading that is unjust or deceptive, encourages misrepresentation, or violates public policy.

Insurance Code §36.002(1)(F) authorizes the commissioner to adopt reasonable rules necessary to effect the purposes of a provision of Insurance Code Chapter 2251.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §2251.101 provides that each insurer must file its rates, rating manuals, supplementary rating information, and additional information with TDI as required by the commissioner. It also provides that the commissioner adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information.

Insurance Code §2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Insurance Code Chapter 2301, Subchapter B.

Insurance Code §559.004 authorizes the commissioner to adopt rules necessary to implement Insurance Code Chapter 559.

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.

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

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Jessica Barta
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DIVISION 5. FILINGS MADE EASY - REQUIREMENTS FOR PROPERTY AND CASUALTY POLICY FORM AND ENDORSEMENT FILINGS

28 TAC §§5.9321, 5.9323, 5.9327

STATUTORY AUTHORITY. The commissioner adopts the amendments to §§5.9321, 5.9323, and 5.9327 under Insurance Code §§36.002(1)(C), 36.002(2)(E), 541.401, 2301.001, 2301.007, 2301.053, 2301.054, 2301.055, Article 5.35(f), 2051.201, and 36.001.

Insurance Code §36.002(1)(C) authorizes the commissioner to adopt reasonable rules that are necessary to effect the purposes of a provision of Insurance Code Chapter 2301, Subchapter A. Insurance Code §2301.001 states that the purpose of Insurance Code Chapter 2301, Subchapter A, includes regulating insurance forms to ensure that they are not unjust, unfair, inequitable, misleading, or deceptive, and to provide regulatory procedures for the maintenance of appropriate information reporting sys-

tems. Also, Insurance Code §2301.007 states that the commissioner may disapprove a form or withdraw approval of a form if it violates any law or contains a provision, title, or heading that is unjust or deceptive, encourages misrepresentation, or violates public policy.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §541.401 specifies that the commissioner may adopt and enforce reasonable rules the commissioner determines necessary to accomplish the purposes of Insurance Code Chapter 541. Insurance Code §541.001 states that the purpose of Insurance Code Chapter 541 is to regulate insurance trade practices by defining or providing for the determination of trade practices that are unfair methods of competition or unfair or deceptive acts or practices and prohibiting those trade practices.

Insurance Code §2301.053 provides that a form may not be used unless it is written in plain language.

Insurance Code §2301.054 specifies that a contract or agreement not written into a personal automobile insurance application and policy is void and violates the Insurance Code.

Insurance Code §2301.055 provides that the commissioner may adopt reasonable and necessary rules to implement Insurance Code Chapter 2301, Subchapter B.

Insurance Code Article 5.35(f) specifies timelines for commissioner form and endorsement approval, and states that for good cause shown the commissioner may withdraw approval of a form or endorsement at any time.

Insurance Code §2051.201 authorizes the commissioner to adopt and enforce all reasonable rules necessary to carry out the provisions of a law referenced in Insurance Code §2051.002(1), (2), or (3).

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.

§5.9321. General Filing Requirements.

(a) Filings must be submitted for one line of insurance only, except for multi-peril and interline filings.

(b) Filings submitted under this division may not be combined with any other filing types submitted under this subchapter.

(c) Filings must contain the following:

(1) the transmittal information required in §5.9310 of this title (relating to Property and Casualty Transmittal Information and General Filing Requirements);

(2) a copy of the proposed policy forms or endorsements;

(3) a form number for each proposed form;

(4) an edition date for each proposed form, if applicable;

(5) the TDI file number or SERFF tracking number for the previously approved policy to which the proposed form will be attached, if applicable;

(6) a form usage table that includes:

(A) the form name and form number for each proposed form;

(B) information indicating whether each proposed form is optional, mandatory, or conditional mandatory; and

(C) for conditional mandatory forms, an addendum to the form usage table that describes the conditions that make each form mandatory. For filings other than personal automobile, residential property, or personal multi-peril, the filer may describe the conditions elsewhere in the filing;

(7) a memorandum that:

(A) explains in detail the reasons for the filing;

(B) describes each proposed policy form or endorsement; and

(C) details each policy form or endorsement's use, including the type of risk or risks for which the forms or endorsements will be used.

(d) Filings must also meet the following requirements.

(1) Filings must include all provisions required by statute, administrative rule, or Commissioner's order. Filers may add the required provisions to a policy form by including a Texas amendatory endorsement. The filing must include the amendatory endorsement, or the filing may reference an approved amendatory endorsement that applies to the policy forms in the filing.

(2) For amended policy forms or endorsements, copies of the previously approved or adopted policy forms or endorsements indicating the differences between the approved or adopted policy forms or endorsements and the filed policy forms or endorsements must be included. New text must be underlined, and deleted text must be in brackets with a strikethrough. Alternatively, the changes can be indicated by other clearly identified or highlighted editorial notations referencing new and replaced text. The marked changes must be in a separate single document for each filed form.

(e) Unless requested by TDI, filings made by advisory organizations do not need to include:

(1) the proposed effective date specified in §5.9310(c)(9) of this title; or

(2) the form usage table specified in subsection (c)(6) of this section.

§5.9327. Additional Requirements for Personal Automobile and Residential Property Forms.

(a) Personal automobile and residential property insurance forms are subject to this subsection.

(1) Filed forms must meet the plain-language requirements described in Insurance Code §2301.053, concerning Requirements for Forms; Plain-Language Requirement, and Commissioner's Order No. 92-0573. Filings must also include the Flesch Reading Ease Test readability score for the forms.

(2) When filing an endorsement form with provisions that do not apply to every policy to which the endorsement will be attached, the provisions must be enclosed with brackets to reflect that the provisions are variable text. The filing must also indicate that when the endorsement is attached to a policyholder's specific policy, the endorsement will not include any provisions that are inapplicable to that specific policy. For example, an insurer may file an endorsement with provisions that amend an HO-3 policy and an HO-5 policy. If certain provisions apply only to the HO-5, those must be bracketed in the filed form, and must not be visible to the policyholder when the form is used to endorse the HO-3. This paragraph applies to new or amended endorsements filed on or after January 1, 2025.

(b) Insurers must file residential property policy declarations page forms for approval.

(1) Declarations pages include renewal declarations pages, renewal certificates, amended declarations pages, and separate disclosure pages allowed under §5.9700 of this title (relating to Residential Property Declarations Pages and Deductible Disclosures).

(2) Filed declarations page forms must be completed with sample--not actual--policyholder information sufficient to demonstrate how the insurer will comply with this rule and Insurance Code §2301.056, concerning Requirement for Forms; Declarations Page Requirement.

(c) Insurers must file personal automobile insurance application forms as follows:

(1) new or amended application forms that are part of the insurance policy must be filed for approval; and

(2) application forms that are not part of the insurance policy must be filed for informational purposes when an insurer files a new personal automobile policy form.

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

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DIVISION 6. FILINGS MADE EASY - REQUIREMENTS FOR RATE AND RULE FILINGS

28 TAC §5.9332, §5.9334

STATUTORY AUTHORITY. The commissioner adopts the amendments to §5.9332 and §5.9334 under Insurance Code §§36.002(1)(F), 36.002(2)(E), 912.056, 2251.101, and 36.001.

Insurance Code §36.002(1)(F) authorizes the commissioner to adopt reasonable rules necessary to effect the purposes of a provision of Insurance Code Chapter 2251.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §912.056 provides that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner requires by rule.

Insurance Code §2251.101 provides that each insurer must file its rates, rating manuals, supplementary rating information, and additional information with TDI as required by the commissioner. It also provides that the commissioner adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information.

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.

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DIVISION 7. FILINGS MADE EASY - REQUIREMENTS FOR UNDERWRITING GUIDELINE FILINGS

28 TAC §5.9342

STATUTORY AUTHORITY. The commissioner adopts the amendments to §5.9342 under Insurance Code §§36.002(2)(E), 38.002, 38.003, 2053.034, and 36.001.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §38.002 requires each insurer writing personal automobile insurance or residential property insurance to file its underwriting guidelines with TDI and to ensure that the underwriting guidelines are sound, actuarially justified, substantially commensurate with the contemplated risk, and not unfairly discriminatory.

Insurance Code §38.003 provides that TDI may obtain a copy of the underwriting guidelines of an insurer for lines other than personal automobile insurance or residential property insurance.

Insurance Code §2053.034 provides that each insurer writing workers' compensation insurance must file with TDI a copy of its underwriting guidelines.

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.

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

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DIVISION 9. FILINGS MADE EASY - REDUCED FILING REQUIREMENTS FOR CERTAIN RESIDENTIAL PROPERTY INSURERS

28 TAC §5.9355, §5.9357

STATUTORY AUTHORITY. The commissioner adopts the amendments to §5.9355 and §5.9357 under Insurance Code §§36.002(1)(F), 36.002(2)(E), and 36.001.

Insurance Code §36.002(1)(F) authorizes the commissioner to adopt reasonable rules necessary to effect the purposes of a provision of Insurance Code Chapters 2251.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

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.

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

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DIVISION 10. FILINGS MADE EASY - ADDITIONAL FILING REQUIREMENTS FOR CERTAIN COUNTY MUTUAL INSURANCE COMPANIES

28 TAC §5.9361

STATUTORY AUTHORITY. The commissioner adopts the amendments to §5.9361 under Insurance Code §§36.002(1)(F), 36.002(2)(E), 912.056, 2251.101, and 36.001.

Insurance Code §36.002(1)(F) authorizes the commissioner to adopt reasonable rules necessary to effect the purposes of a provision of Insurance Code Chapters 2251.

Insurance Code §36.002(2)(E) authorizes the commissioner to adopt reasonable rules appropriate to accomplish the purposes of a provision of Subtitles B, C, D, E, F, H, or I of Title 10 of the Insurance Code.

Insurance Code §912.056 requires that certain county mutual insurance companies that have appointed managing general agents, created districts, or organized local chapters to manage a portion of their business must, for each managing general agent, district, or local chapter program, file the rating information that the commissioner requires by rule.

Insurance Code §2251.101 requires that each insurer must file its rates, rating manuals, supplementary rating information, and additional information with TDI as required by the commissioner. It also requires that the commissioner adopt rules on the information to be included in rate filings and prescribe the process by which TDI may request supplementary rating information and supporting information.

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.

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

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DIVISION 11. FILINGS MADE EASY - CERTIFICATES OF PROPERTY AND CASUALTY INSURANCE

28 TAC §5.9372, §5.9373

STATUTORY AUTHORITY. The commissioner adopts the amendments to §5.9372 and §5.9373 under Insurance Code §1811.003 and §36.001.

Insurance Code §1811.003 allows the commissioner to adopt rules necessary or proper to accomplish the purposes of Insurance Code Chapter 1811.

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.

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.334

The Comptroller of Public Accounts adopts an amendment to §3.334, concerning local sales and use taxes, without changes to the proposed text as published in the October 27, 2023, issue of the *Texas Register* (48 TexReg 6340). The rule will not be republished.

The comptroller adds subsection (c)(7) regarding the location where an order is received:

"The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller."

The text is taken from Section 3.10.1C5 of the Streamlined Sales and Use Tax Agreement (SSUTA). *See* https://www.streamlinedsalestax.org/docs/default-source/agreement/ssuta/ssuta-as-amended-through-05-24-23-with-hyperlinks-and-compiler-notes-at-end.pdf.

In its 2014 rulemaking, the comptroller proposed a definition of "receive," but deleted the proposed definition in response to concerns stated in oral and written comments. *See* (39 TexReg 4179) (May 30, 2014) (proposed rule amendment) and (39 TexReg 9598) (December 5, 2014) (adopted rule amendment).

In its January 2023 rulemaking, the comptroller again declined to adopt a definition of "receive" and instead, addressed the two circumstances that were most prominently debated - automated website orders and fulfillment warehouses. Subsection (b) of the adopted rule articulated the comptroller's interpretation that an automated website "receives" the order and that a fulfillment warehouse does not "receive" the order when it is forwarded from the website to the warehouse. *See* (48 TexReg 400) (January 27, 2023).

Since then, it has become apparent that other circumstances also require a clear articulation of the comptroller's interpretation of the term "received." Thus, the comptroller is adopting a general standard that is applicable to all situations, as well as to automated website orders and fulfillment warehouses.

The adopted standard comports with the ordinary usage of the terms, as evidenced by the fact that the standard has been approved by twenty-four states under the Streamlined Sales Tax Agreement. The adopted standard will also promote uniformity with those states that have elected or will elect origin-based sourcing.

The comptroller is currently in litigation with cities claiming that the location where an order is received should be the location where the vendor forwards the order for fulfillment, rather than the location where the order is received from the customer. *See City of Coppell, Texas; the City of Humble, Texas; the City of DeSoto, Texas; the City of Carrollton, Texas; the City of Farmers Branch, Texas; and the City of Round Rock, Texas v. Glenn Hegar,* Cause No. D-1-GN-21-003198 in Travis County, Texas District Court. However, as explained more fully in the January 2023 rulemaking, the legislative history indicates that the legislature did not intend a fulfillment warehouse to be the location where the order was received unless the fulfillment warehouse received the order directly from the customer. *See* (48 TexReg 398) (January 27, 2023).

In addition, as explained more fully in the January 2023 rulemaking (48 TexReg 396), the comptroller's current interpretation goes as far back as Comptroller's Decision No. 15,654 (1985), which stated:

"But it seems to the administrative law judge that the legislature was amending the law if not entirely in reaction to the then-pending case of *Bullock v. Dunigan Tool & Supply Co.,* 588 S.W.2d 633 (Tex. Civ. App.-Texarkana, writ ref'd n.r.e.), at least partly in reaction to that case. And if that be so, then the legislature did not want warehousing and storage facilities (many of which are outside city limits) to be the places where sales were consummated for local sales tax purposes unless orders were actually received there by personnel working there, but wanted the office location out of which the salesman operated to be the place where the sales were consummated."

The comptroller expects this issue to be fully litigated. But in the interim, the comptroller must still apply the local tax consummation statutes to pending controversies, and taxpayers are entitled to understand the basis for the comptroller's rulings. Adoption of a definitive standard may also facilitate a more definitive decision from the courts.

The comptroller held a public hearing on November 8, 2023. The comptroller received oral and written comments regarding adoption of the amendment. The commenters were the following persons:

Barbara Boulware, City Attorney for City of Goliad in support.

Mayor Clyde C. Hairston, Mayor Pro Tem Mitchell Cheatham, Deputy Mayor Pro Tem Betty Gooden-Davis, Councilmembers Carol Strain-Burk, Stanley Jaglowski, Marco Mejia, and Derrick Robinson, City of Lancaster against the proposed amendment.

Representative Ben Bumgarner against the proposed amendment.

Kyle Kasner, Texas City Services, against the proposed amendment.

John Kroll, HMWK, against the proposed amendment.

Jim Harris, on behalf of the Coalition for Appropriate Sales Tax Law Enactment and its members the cities of Coppell, Carrollton, Desoto, Farmers Branch, Humble, Lancaster, and Lewisville (the CASTLE group), against the proposed amendment.

Jack Newman against the proposed amendment.

Dan Butcher, Clark Hill, commented without taking a position for or against the proposed amendment.

City Manager Michael W. Kovacs of City of Fate in support of amendment.

Interim Director of Budget and Strategy-Budget Justyn Mejorado, City of Sugar Land without taking a position for or against the amendment.

Attorney for the City of Round Rock Stephan L. Sheets against the amendment.

Mayor TJ Gilmore, City of Lewisville against the amendment.

Mayor Josh Schroeder, City of Georgetown against the amendment.

City Manager Sam A. Listi, City of Belton against the amendment.

City Manager Rolin McPhee, City of Longview against the amendment.

Mayor David Bristol, City of Prosper against the amendment.

City Manager Mike Land, City of Coppell against the amendment.

In summary, most opponents of the rule amendment commented that the amendment is inconsistent with the statute and will impair the sourcing of local sales tax to fulfillment warehouses. Supporters of the rule amendment commented that the amendment will provide clarity and stability to local government institutions.

Summary of the Factual Bases for the Rule.

In some circumstances, the consummation of a sale for local sales tax purposes is determined by when and where an order is received. Controversies have arisen regarding this determination, but the consummation statutes provide no further guidance. Therefore, the comptroller is exercising its rule-making authority to articulate a uniform standard.

Reasons Why the Comptroller Disagrees With, and in Some Cases Agrees With, Party Submissions and Proposals.

The effect on fulfillment warehouses and similar facilities.

Most of the opponents of new subsection (c)(7) are concerned with the effect of the subsection on fulfillment warehouses and similar facilities. New subsection (c)(7) does not change the comptroller's existing rule regarding these facilities. Subsection (b)(1)(A) already provides: "Forwarding previously received orders to a facility for fulfillment does not make the facility a place of business." The text of new subsection (c)(7) is consistent with the existing text: "The location where an order is received ... means the physical location ... where an order is initially received ... and not where the order may be subsequently accepted, completed or fulfilled."

New subsection (c)(7) also supplements the preexisting rule by explicitly stating the criteria for determining when an order is received: "An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller."

The criticisms of new subsection (c)(7) are similar to the criticisms that the comptroller previously received regarding subsection (b)(1)(A), and much of the comptroller's commentary in the January 2023 rulemaking is applicable here. See 48 TexReg 391 (January 27, 2023).

New subsection (c)(7) explicitly limits receipt to the location where the order is *initially* received, ruling out intermediate and final locations where an order might be accepted, completed, or fulfilled. The CASTLE group commented that the modifier "initially" is not present in the portion of definition of "place of business" that refers to the location at which orders "are received." The CASTLE group, as well as Mr. Kasner, also commented that the consummation statute in Tax Code, §321.203 sometimes refers to where the retailer "first receives" the order, implying that an order can be "received" at more than one place.

The CASTLE group also argued that the dictionary defines "receive" as "to take into one's possession, to take delivery of a thing, to get, or to come by," and a fulfillment warehouse cannot fulfill an order unless it gets or comes by the order. This argument may seem reasonable in the abstract, but not in context. When the statute and its legislative history are considered as a whole, the proper construction is the opposite - a fulfillment warehouse does not receive an order for purposes of the local sales tax statutes merely because fulfillment information has been sent to the warehouse.

With regard to statutory construction, the Texas Supreme Court has stated: "We must analyze statutory language in its context, considering the specific sections at issue as well as the statute as a whole. {Citation omitted}. While 'it is not for courts to undertake to make laws "better" by reading language into them,' we must make logical inferences when necessary 'to effect clear legislative intent or avoid an absurd or nonsensical result that the Legislature could not have intended.'" *Castleman v. Internet Money Ltd.,* 546 S.W.3d 684, 688 (Tex. 2018), quoting *Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm'n,* 518 S.W.3d 318, 338 (Tex. 2017).

Considering the local sales tax statute sections as a whole, the term "received" must be limited to the location where an order is initially received. This construction effects the clear legislative intent and avoids an absurd or nonsensical result that the legislature could not have intended.

The legislature did not define "receiving," "received," or "order." So, the terms must be construed in the context in which they are used. One context is the definition of "place of business of the retailer" in Tax Code, §321.002(3)(A). A "place of business of a retailer" is a location operated "for the purpose of receiving orders." One might say, as does the CASTLE group, that a purpose of a fulfillment warehouse is to receive the order because receipt is a necessary step in fulfillment. However, one might also reasonably say that while a sales office is operated for the "purpose of receiving orders," a fulfillment warehouse without sales personnel is not operated for such a purpose - the purpose is only fulfillment, which does not require the receipt of the entire order containing price and payment terms. The only necessary information is delivery information - the product description, quantity, and delivery location. Because there are at least two reasonable interpretations, the terms in this context are ambiguous.

In another context the meaning becomes clearer. That context is the consummation statute in Tax Code, §321.203. Consider Tax Code, §321.203(d):

"(d) If the retailer has more than one place of business in this state and Subsections (c) and (c-1) do not apply, the sale is consummated at:

(1) the place of business of the retailer in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent or employee who took the order operates."

Assume a situation in which the retailer has multiple retail stores in Texas (more than one place of business in the state), but a customer calls in an order to a Texas sales office and the order is fulfilled from a location outside of Texas, so that Tax Code, §321.203(c) and (c-1) indisputably do not apply. Also assume that information from the order is forwarded to the retailer's executive office in Texas for approval, to the retailer's Texas credit office for a credit check, to the retailer's Texas manufacturing facility for assembly, to the retailer's Texas storage lot for bundled shipping to a fulfillment center, to the retailer's fulfillment center for fulfillment to the customer, to the retailer's Texas accounting office for billing, and to the retailer's Texas controller for collection on the account.

In the sense proposed by the CASTLE group, all these locations "received" the "order" to complete their assigned tasks. But this interpretation leads to absurd results. If the "order" was "received" at multiple locations, so that each location became a "place of business," it would be impossible to identify the particular location where the local tax should be sourced.

Furthermore, Tax Code, §321.203(d) refers to "*the* place of business ... where the order is received," indicating that there is a singular location where the order is received. The most reasonable singular location, and perhaps the only reasonable singular location, is where the information necessary to accept the order is initially received as provided in subsection (c)(7). In the example above, the location where the order is received would be the Texas sales office.

This example regarding Tax Code, §321.203(d) also illustrates the need for additional clarity. Subsection (b)(1)(A) explicitly provides that a fulfillment center is not a "place of business" simply because orders may be forwarded to the facility for fulfillment. But subsection (b)(1)(A) does not explicitly eliminate the possibility that other locations are "places of business," such as locations where orders are accepted or otherwise completed. New subsection (c)(7) explicitly eliminates those possibilities. There is a single location where an order is received - the initial location where all the information necessary for acceptance has been received. With this clarification, the consummation statute can be applied with greater certainty.

The CASTLE group commented: "For all practical purposes an order placed on a website is typically received at the same time at various locations, including fulfillment centers." However, for the practical purpose of sourcing local tax, there is a single location where a website order is initially received - the Web server. According to a report from the group's own expert, Amit Basu: "...the Buyer places the online order by communicating with a Web server that manages the Seller's Web site. ... The Web server transmits the order electronically to the Seller's e-Commerce software program."

Mr. Kroll commented that it may be impossible to determine the location of initial receipt: "Some companies will have multiple redundant server/data center operations spread across multiple geographic locations." The comptroller agrees. As pointed out in the 2020 rulemaking, a computer server may be situated on the seller's premises, it may be situated at a co-location facility operated by a third party, or it may be situated at a web hosting facility operated by a third party. The computer server may be one of multiple servers that serve the same website from different physical addresses as part of a cloud distribution network. The computer server may route the order to multiple other servers for load balancing purposes. Conversely, a single computer server may serve multiple websites. The seller may or may not know the physical address of the server receiving the order. But, if the seller does not know the physical location of the server, an ordinary person would not consider the physical location of the computer server to be a place of business of the seller. So, the best way to treat these orders consistently and coherently is to treat them uniformly as being received at locations that are not places of business of the seller. If a server is not a "place of business" of the seller, then the exact location of the server does not have to be determined because the location will not determine the sourcing of local sales tax.

The comptroller's construction of the statute is supported by statutory history. Prior to 1979, the consummation statute had no provision for sourcing to where an "order" was "received," and the statute provided:

"If the retailer has more than one place of business in the State, the place or places at which retail sales, leases, and rentals are consummated shall be the retailer's place or places where the purchaser or lessee takes possession and removes from the retailer's premises the articles of tangible personal property, or if the retailer delivers the tangible personal property to a point designated by the purchaser or lessee, then the sales, leases, or rentals are consummated at the retailer's place or places of business from which tangible personal property is delivered to the purchaser or lessee." Acts 1969, 61st Leg., 2nd C.S., Ch. 1. Art. 1 § 42.

In 1979, the Texas Legislature added a definition of "place of business of the retailer," which was previously undefined. The definition required that the location be operated "for the purpose of receiving orders." Acts 1979, 66th Legislature, Ch. 624, Art. 1, §3 (amended Article 1066c(B)(1)). The legislature also added a sourcing provision based on where the order is received, comparable to current Tax Code, §321.203(d):

"If neither possession of tangible personal property is taken at nor shipment or delivery of the tangible personal property is made from the retailer's place of business within this State, the sale, lease, or rental is consummated at the retailer's place of business within the State where the order is received or if the order is not received at a place of business of the retailer, at the place of business from which the retailer's salesman who took the order operates."

Acts 1979, 66th Legislature, Ch. 624, Art. 1, §3 (amended Article 1066c(B)(1)(c)). Like current Tax Code, §321.203(d), the legislature referred to "*the* place of business ... where the order is received," contemplating a single location, and not multiple locations. And like the current statute, the 1979 sourcing statute would be unworkable if an "order" could be "received" at multiple locations where order information might be sent for processing.

The 1979 amendments were originally set to expire on August 31, 1981. But, following an October 2, 1980, Interim Report of the House Ways and Means Committee, the legislature made the 1979 amendments permanent. Acts 1981, 67th Legislature, Ch. 838, §1.

Mr. Kroll commented that the comptroller "misremembers the legislative history." The comptroller disagrees. During the 1979 session of the legislature, a House Study Group analysis stated that the "bill is necessary to protect the state from possible consequences of the pending court suits." The analysis specifically referenced "Dunigan Tool and Supply v. Bullock" as one of those suits. The analysis is available at the Legislative Reference Library website at https://lrl.texas.gov/scanned/hroBillAnalyses/66-0/SB582.pdf.

In the *Dunigan* litigation, sales personnel took orders that were forwarded to pipe storage facilities where the orders were fulfilled. At the time of the 1979 legislation, the district court had ruled that the transactions should be sourced to the pipe storage facilities. *Bullock v. Dunigan Tool & Supply Co.,* 588 S.W.2d 633, 635 (Tex. Civ. App. - Austin, Sept. 6, 1979, writ ref'd n.r.e.). Therefore, when the 1979 House Study Group bill analysis stated that the bill was intended to protect the state from the consequences of the *Dunnigan* litigation, the analysis meant that the legislation was intended to reduce the circumstances in which transactions would be sourced to fulfillment warehouses, which at the time were often located in rural areas not subject to local sales tax. The legislature accomplished this objective by adding a definition of "place of business" that was limited to a location operated "for the purpose of receiving orders," and by adding a provision for sourcing transactions to where the order was received. Acts 1979, 66th Legislature, Ch. 624, Art. 1, §3.

Mr. Kasner commented that the proposed rule reverses the effect of the *Dunigan* decision. He is correct, because the rule attempts to follow the subsequent legislation, which was intended to reverse the effect of the *Dunigan* decision.

In the subsequent October 2, 1980, Interim Report of the House Ways and Means Committee, the committee considered whether to allow the recently adopted statutory definition of "place of business" to expire. The committee described the consequence: "The location of sale would no longer be tied to permitted outlets, salesmen's locations, or sales offices." Interim Report at 20. The committee understood that the phrase "operated for the purpose of receiving orders" meant sales activities and not ancillary activities necessary to subsequently effectuate the sale.

To be clear, under the 1979 legislation and today, a fulfillment warehouse could be and can be a "place of business." The legislature set a low threshold: "A warehouse, storage yard, or manufacturing plant may not be considered a 'place of business of the retailer' unless three or more orders are received by the retailer in a calendar year at such warehouse, storage yard, or manufacturing plant." Acts 1979, 66th Legislature, Ch. 624, Art. 1, §3. A typical warehouse, storage yard, or manufacturing plant would almost certainly process more than three orders in a calendar year. So, this explicit threshold requirement is an additional indication that the legislature did not intend for these facilities to automatically be "places of business" simply because they processed order information that was previously received at other locations. Instead, the legislature set a low threshold yet still expected these facilities to engage in at least some sales activities.

Mr. Gilmore commented: "This is a major revision to a state practice that has been in place for more than 50 years." The CASTLE group commented that the amendment is "inconsistent with his {the comptroller's} pre-2019 application of the statutory definition of 'place of business.'" The comptroller disagrees with these comments.

The comptroller's treatment of fulfillment warehouses goes as far back as Comptroller's Decision No. 15,654 (1985), which stated (emphasis added):

"But it seems to the administrative law judge that the legislature was amending the law if not entirely in reaction to the then-pending case of *Bullock v. Dunigan Tool & Supply Co.,* 588 S.W.2d 633 (Tex. Civ. App.-Texarkana, writ ref'd n.r.e.), at least partly in reaction to that case. And if that be so, then the legislature did not want warehousing and storage facilities (many of which are outside city limits) to be the places where sales were consummated for local sales tax purposes unless orders were actually received there by personnel working there, but wanted the office location out of which the *salesman* operated to be the place where the sales were consummated."

The CASTLE group commented: "The Comptroller misreads the decision." But the text speaks for itself and is an accurate quotation from the decision.

The 2014 version of §3.334 (39 TexReg 9597 at 9605) (STAR Accession No. 201501004R) also discussed fulfillment warehouses:

"(2) Distribution centers, manufacturing plants, storage yards, warehouses, and similar facilities.

(A) A distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller at which the seller receives three or more orders for taxable items during the calendar year is a place of business.

(B) If a salesperson who receives three or more orders for taxable items within a calendar year is assigned to work from, or to work at, a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the facility is a place of business.

(C) If a location that is a place of business of the seller, such as a sales office, is in the same building as a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the entire facility is a place of business of the seller."

If a distribution center was automatically a "place of business," as suggested by the CASTLE group, there would be no reason for subparagraph (C).

In 2016, STAR Accession No. 201606995L (June 1, 2016) also discussed fulfillment warehouses:

"The warehouse from which the person ships those items is not a place of business, unless the warehouse separately qualifies as a place of business."

And, in 2019, STAR Accession No. 201906015L (June 13, 2019) discussed fulfillment warehouses:

"Scenario One: Taxpayer Retailer operates fulfillment centers in Texas that are not open to the public. ... When an order is received at a location that is not a place or business and is fulfilled in Texas at a location that is not a place of business, the sale is consummated at the location in Texas to which the order is shipped. See Rule 3.334(h)(3)(D). For Scenario One, local sales and use tax is due based on the location where the order is delivered."

Again, a fulfillment warehouse is not automatically a place of business.

Each of these documents, which the comptroller indexed and made available for public inspection on the State Tax Automated Research (STAR) System, is consistent with the statement in the rule that the location from which a product is shipped shall not be used in determining the location where the order is received by the seller.

Commenters, including Representative Bumgarner (District 63), Mayor Gilmore (Lewisville), City Manager McPhee (Longview), Mayor Schroeder (Georgetown), Mayor Bristol (Prosper), City Manager Land (Coppell), Justyn Mejorado (Interim Director of Budget and Strategy - Budget for the City of Sugar Land), and Jack Newman (unknown city) expressed concern about revenue loss, particularly with regard to local sales taxes generated by fulfillment warehouses within their jurisdictions. Some requested more study. The comptroller received similar comments in the previous rulemaking. The comptroller's previous responses remain applicable.

Since 1985, the comptroller's interpretation has been that a fulfillment warehouse is not automatically a "place of business." To be a "place of business," the warehouse must receive at least three orders during the calendar year. A company that sources local sales tax to a warehouse location is representing to the comptroller that the warehouse is a "place of business" that has received three or more orders. The representation may or may not be correct. The comptroller does not know unless a misrepresentation is discovered during an audit. Without that knowledge, the comptroller cannot say whether the company would or would not change its reporting as a result of the rule's explicit statement of the comptroller's existing policy. An individual jurisdiction may be able to conduct a detailed study for companies in its jurisdiction to determine the effect. But the comptroller does not have the resources to conduct such a study for every reporting location in the state.

The clarifications in the adopted rule will likely cause some vendors to recognize their noncompliance and change their reporting methods, with some cities gaining and some losing. But the validity of the rule does not turn on whether there will or will not be revenue losses or gains to particular cities, the extent of such losses or gains, or whether the outcome is fair or unfair. The validity of the rule turns on whether it follows the statute.

Response to comments regarding use of language from the SSUTA.

Mr. Kroll commented: "The Texas Legislature, (the entity with constitutional responsibility for the state's Tax Policy), has had nine regular sessions to adopt the SSUTA's preferred origin sourcing model found in SSUTA 3.10.1. The Legislature has not acted, even in 2013 when then Senator Hegar was chairing the Senate Finance, Subcommittee on Fiscal Matters with Tax policy responsibility."

The CASTLE group similarly commented: "the Legislature, in general, rejected the Comptroller's efforts to become a member and be subject to the Agreement, and, more specifically, declined to adopt the language of 3.10.1 and change the definition of what is a 'place of business.'"

Mr. Land (Coppell) commented: "By not adopting the agreement, the legislature was rejecting the very language the Comptroller proposes to adopt..."

Mayor Hairston (Lancaster) commented: "Rule changes refer to the Streamline Sales and Use Tax Agreement. States participating in this agreement do not seem to have similar economic issues as the State of Texas. If the intent of the rule change is to position the state to participate in the Sales and Use Tax Agreement, further research is needed to better support the rationale for this action."

And, Mr. McPhee (Longview) commented: "This sentiment runs counter to the story of Texas. Yes, we should look to and learn from other states, but Texas should lead and not follow. We should not implement statewide policies because 'everyone else is doing it.'"

Mayor Bristol (Prosper) had similar comments.

Although the legislature declined to adopt the SSUTA, it would be an overstatement to suggest that the legislature specifically rejected the language of a single subsection of the SSUTA. As the CASTLE group points out in its comments: "Therefore, prior to December 31, 2007, the Legislature had to agree to the quoted 3.10.1 language, as a step in allowing Texas to be subject to the Agreement. But doing so would have required not only that the Legislature radically revise the statutory definition of "place of business" but make many other changes to the sections of the Tax Code addressing sales and use tax."

Texas has a unique, composite consummation statute, in which sales are sometimes sourced to where the order is received, sometimes sourced to where the order is fulfilled, and sometimes sourced to where the order is delivered. Adoption of the SSUTA would require fundamental changes to this composite consummation statute, which the comptroller is not advocating or promoting. However, there is one area of overlap. Both systems use the receipt of an order as a factor in sourcing. In this area of overlap, it is entirely appropriate to consider how the SSUTA does it.

The comptroller has considered the language in the SSUTA and concluded that it is a reasonable and practical method of determining where and when an order is received. And, the SSUTA language has the added benefit of being a concept that other states have acknowledged, and a concept with which many taxpayers will already be familiar.

Responses to other comments.

Mr. Butcher commented that the comptroller should provide that businesses with economic development agreements will be able to receive the benefits for their remaining terms. Mr. Bristol commented that the comptroller should provide rules to curb abusive economic development agreements while providing cities the abilities to provide for true economic development. The comptroller responds that the agency will not adopt any special provisions for economic development agreements in this rulemaking. The economic development statutes determine what is and is not allowable under such agreements, and the comptroller cannot by rule prevent revenue shifting that is permissible under the consumption statutes.

Mayor Hairston (Lancaster) commented that "the contemplated shift from origin-based to destination-based sales tax sourcing represents a significant alteration of existing law." The comptroller disagrees with this comment. There cannot be a wholesale shift because the consummation statutes have never been solely origin-based. From 1979 to the present, there have been four sourcing possibilities. Local taxes may be sourced to the point where the order was received, the point from which the order was

shipped or delivered, the point to which the order was shipped or delivered, or the first point in the state where the item is stored, used, or consumed. *See* Acts 1979, 66th Legislature, Ch. 624; Tax Code, §321.203 and §321.205. Even the expression "origin" sourcing is something of a misnomer, since local taxes have never been based on the point where a product was designed, developed, or manufactured.

With regard to the reference in subsection (c)(7) to "on behalf of the seller," Mr. Kasner commented that "a clear comparison/distinction needs to be provided on this term in light of TTC {Texas Tax Code} using the term 'agent.'" The comptroller responds that no additional rule text is needed. The local sales and use tax statute uses the term "agent" to determine whether a location is a "place of business" - a "place of business" must be a location "operated by the retailer or the retailer's *agent* or employee." However, under the statute, an order may be "received" at a location that is not a place of business. There is no requirement in subsection (c)(7), explicit or implied, that an order can only be received by the retailer, the retailer's agent, or the retailer's employee. The adopted paragraph simply references the location where the order is received "by or on behalf of the seller," and further states that it may be the location of a "seller or a third party." No agency is required and no comparison or distinction between the terms is needed.

Mr. Kasner commented that the definition of "'order received' needs to broaden to address orders received directly by the retailer, its employees, and/or its agents." The comptroller responds that the reference in subsection (c)(7) to an order received "*by* or on behalf of the seller" is sufficient to cover orders received directly by the retailer, its employees, and/or its agents.

Mr. Kasner commented that a definition of "automated order receipt system" needs to be provided, and asks whether the term is the same as a "computer server, Internet protocol address, domain name, website or software application." The comptroller responds that the term is not the same, and it is sufficiently specific without further definition. For example, a website may or may not be automated to receive orders, and an automated order system might be a telephonic system that does not use any of the listed items.

Mr. Kasner commented that the proposed definition needs to emphasize the "hierarchy of sales consummation." The comptroller responds that this hierarchy is already explained in the other paragraphs of subsection (c).

Mr. Kroll commented that "Destination sourcing ... is the Comptroller's preferred method of local sales tax sourcing." The comptroller disagrees with this comment. The comptroller's objective is to apply the statutes, and as previously stated, the statutes have four sourcing possibilities, only one of which is destination sourcing.

Mr. Listi (Belton) commented that new subsection (c)(7) adds another layer to the hierarchy of sale consummation. Mr. Listi further stated that subsection (c)(7) sources a sale to the location where the "order is initially received" and not "where the order may be subsequently accepted, completed, or fulfilled." The comptroller responds that subsection (c)(7) only determines where an order is received and does not determine where a sale is consummated. A sale may still be consummated at a location where the order is fulfilled.

Mr. McPhee (Longview) commented that a "similar issue" was considered by the 2021 legislature in House Bill 4072 and the 2023 legislature with House Bill 5089. The comptroller responds that these bills are dissimilar because they would have radically changed the consummation hierarchy. Subsection (c)(7) does not change the consummation hierarchy.

Mayor Schroeder (Georgetown) commented that the proposed rule change imposes an unnecessary burden on small businesses. The comptroller responds that subsection (c)(7) may reduce the burden on small businesses and other taxpayers by providing more definitive guidelines on when and where an order is received.

Mr. Sheets commented by resubmitting his prior comments made on Oct. 24, 2022. The comptroller responds that its previous responses remain responsive.

Implications for the pending litigation.

Representative Bumgarner commented that the proposed rule change should be paused indefinitely to allow the pending litigation to be fully litigated before attempting to make any additional changes to local sales tax sourcing. The comptroller responds that the rule amendment should facilitate the litigation by explicitly stating the comptroller's interpretation of the statute, enabling a more definitive ruling from the courts.

During the pendency of the lawsuit, the comptroller is temporarily enjoined from enforcing §3.334(b)(5). Subsection (b)(5) provides guidance on whether certain facilities are or are not "places of business." A fulfillment warehouse without sales personnel may be affected by subsection (b)(5). While the temporary injunction is in place, the agency will not attempt to reallocate local taxes allocated to such facilities based on subsection (b)(5).

New subsection (c)(7) provides guidance on a different issue - when and where an order is received. This issue affects the consummation of sales to locations other than fulfillment warehouses, as the preceding discussion regarding Tax Code, §321.203(d) illustrates. For example, is a sale consummated at the sales office that receives the order, or is the sale consummated at the home office that approves the order forwarded by the sales office? The comptroller is currently resolving issues like this example, and the rulemaking should not be delayed until the litigation is concluded.

Statements in support.

Ms. Boulware (Goliad) commented that the amendment would provide some clarity and stability to the local governmental institutions that received sales taxes, and Mr. Kovacs (Fate) commented that the amendment is consistent with earlier efforts to promote good governance and sound economic principles in the administration of sales tax.

The comptroller adopts the amendment under Tax Code, §§111.002 (Comptroller's Rule; Compliance; Forfeiture); 321.306 (Comptroller's Rules); 322.203 (Comptroller's Rules); 323.306 (Comptroller's Rules), which authorize the comptroller to adopt rules to implement the tax statutes.

The amendment to this section implements Tax Code, Chapter 321, Subchapters A, B, C, D, and F; Tax Code, Chapter 322; Tax Code, Chapter 323.

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

Filed with the Office of the Secretary of State on December 20, 2023.

TRD-202304936
Jenny Burleson
Director, Tax Policy Division
Comptroller of Public Accounts
Effective date: January 9, 2024
Proposal publication date: October 27, 2023
For further information, please call: (512) 475-2220

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER N. REPORTING WORKPLACE VIOLENCE

40 TAC §800.600

The Texas Workforce Commission (TWC) adopts the following new subchapter to Chapter 800, relating to General Administration:

Subchapter N. Reporting Workplace Violence, §800.600

New Subchapter N Reporting Workplace Violence, §800.600, is adopted without changes to the proposal, as published in the October 20, 2023, issue of the *Texas Register* (48 TexReg 6201), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 800 rule change is to establish rules as required by House Bill (HB) 915, 88th Texas Legislature, Regular Session (2023), which added Chapter 104A to the Texas Labor Code. HB 915 requires employers to post a notice to employees providing contact information so that employees can anonymously report their concerns regarding workplace violence or suspicious activities to the Texas Department of Public Safety.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER N. REPORTING WORKPLACE VIOLENCE

The Commission adopts new Subchapter N as follows:

New Subchapter N, regarding reporting workplace violence, provides rules regarding the form and content of a reporting workplace violence poster as required by HB 915 and Texas Labor Code Chapter 104A.

§800.600. Reporting Workplace Violence

New §800.600 prescribes the form and content of a reporting workplace violence poster as required by HB 915 and Texas Labor Code Chapter 104A.

TWC hereby certifies that the final rule has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period closed on November 20, 2023. No comments were received.

PART IV. STATUTORY AUTHORITY

The rule is adopted under Texas Labor Code §104A.003, as enacted by House Bill 915, 88th Texas Legislature, Regular Session (2023), which provides TWC authority to prescribe the form and content of the notice required under Texas Labor Code Chapter 104A.

The adopted rule affects Title 3, Texas Labor Code, particularly Chapter 104A.

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

Filed with the Office of the Secretary of State on December 19, 2023.

TRD-202304891
Les Trobman
General Counsel
Texas Workforce Commission
Effective date: January 8, 2024
Proposal publication date: October 20, 2023
For further information, please call: (512) 850-8356

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