

No. **2022-7176**

**Official Order  
of the  
Texas Commissioner of Insurance**

**Date: 01/12/2022**

**Subject Considered:**

Progressive County Mutual Insurance Company  
6300 Wilson Mills Road  
Mayfield Village, OH 44143-2182

Consent Order  
SOAH Docket No. 454-21-3342  
TDI Enforcement File No. 28212

**General remarks and official action taken:**

This is a consent order with Progressive County Mutual Insurance Company (Progressive). The department alleges that Progressive's April and July 2021 rate filings did not comply with the filing requirements of Chapter 2251 and the Filings Made Easy Rules set out in Texas law. Progressive has agreed to pay an administrative penalty of \$160,000.

**Waiver**

Progressive acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Progressive waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order. Under TEX. INS. CODE § 82.055(b), Progressive agrees to this consent order with the express reservation that it does not admit to a violation of the Texas Insurance Code or of a rule and that the existence of a violation is in dispute.

**Findings of Fact**

1. Progressive is a domestic Texas insurer that holds a certificate of authority to transact the business of insurance in Texas.

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2. Texas Insurance Code Chapter 2251 requires insurers, including Progressive, to file their rates for personal automobile insurance with the commissioner on or before the dates they use those rates.
3. Progressive's filed rates must comply with the requirements of Chapter 2251 and the rules adopted under that chapter — 28 TEX. ADMIN. CODE §§ 5.9310-5.9312 and 5.9330-5.9337 (Filings Made Easy Rules).
4. The Filings Made Easy Rules describe and define specific information that must be included in the rate filings. Required information includes actuarial support, which consists of sufficient documentation and analysis to allow a qualified actuary to understand and evaluate the rates, each component used in developing the rates, and the appropriateness of each material assumption. Sufficient supporting information is necessary for the department to establish that a filing produces rates that are not excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which they apply.

### Progressive's April and July Rate Filings

5. In April 2021, and again in July 2021, Progressive filed personal automobile insurance rates and rules with the department via the System for Electronic Rates & Forms Filing (SERFF) as shown below.

<b>Filing Date</b>	<b>Agency Business</b>	<b>Direct Business</b>	<b>Effective Date</b>
April 22, 2021 (April Filings)	PRGS-132790714	PRGS-132790716	New business: April 23, 2021 Renewals: May 27, 2021
July 1, 2021 (July Filings)	PRGS-132858852	PRGS-132858874	New business: July 2, 2021 Renewals: August 5, 2021

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6. The Agency Business filings were for personal automobile policies sold through Progressive's appointed, independent agents, and the Direct Business filings were for policies sold through Progressive's website or without the use of independent agents. Progressive implemented the rates in both filings.
7. As originally filed, Progressive's April and July Filings did not comply with the requirements of Chapter 2251 and the Filings Made Easy Rules. Both sets of filings lacked legally required elements as well as actuarially sufficient information to allow department actuarial staff to review the basis for Progressive's rate changes.

### *April Filings*

8. The April Filings failed to meet the standards set in Chapter 2251 and the Filings Made Easy Rules because:
  - a. The April Filings' filing memoranda did not describe the changes to the rates, rating manuals, rules, or supplementary rating information and fees used by Progressive, nor did the memoranda describe the supporting information provided for each as required by 28 TEX. ADMIN. CODE § 5.9334(g).
  - b. The April Filings did not contain an actuarial memorandum as described in and required by 28 TEX. ADMIN. CODE §§ 5.9332(2) and 5.9334(h)(5), respectively. Because Progressive did not provide an actuarial memorandum, the April Filings lacked certain information, such as a description of the methodologies for determining the loss trends.
  - c. The April Filings did not contain actuarial support appropriate to the rating information filed with regard to the selected loss trends as required by 28 TEX. ADMIN. CODE § 5.9334(h)(6).
  - d. The April Filings did not contain actuarial support appropriate to the rating information filed with regard to the selected premium trends as required by 28 TEX. ADMIN. CODE § 5.9334(h)(6).
9. Department actuarial staff sent written correspondence, known as objections, to Progressive between the April filing date and the end of June to address the issues

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in the April Filings. These objections and Progressive's responses were made through SERFF.

10. Progressive's responses to the department's objections were still deficient and did not meet the requirements of Texas law. Specifically:
  - a. Progressive's April Filings' filing memoranda did not fully comply with the requirements of 28 TEX. ADMIN. CODE § 5.9334(g).
  - b. Progressive's April Filings did not include an actuarial memorandum. Because there was no actuarial memorandum, the April Filings lacked certain information, such as a description of the methodologies for determining the loss trends.
  - c. The April Filings did not contain actuarial support appropriate to the rating information filed with regard to the selected loss trends.
  - d. The April Filings did not contain actuarial support appropriate to the rating information filed with regard to the selected premium trends.

### *July Filings*

11. On July 1, 2021, Progressive made its July Filings. There were still ongoing department questions and objections on the April Filings. Progressive had provided a response to questions and objections on the April Filings the week before the July Filings were made.
12. The July Filings also did not meet the standards required by Chapter 2251 and the Filings Made Easy Rules. Many of the deficiencies were the same or were similar to those identified and described by the department in the April Filings. Specifically:
  - a. The July Filings' filing memoranda did not describe the supporting information provided as required by 28 TEX. ADMIN. CODE § 5.9334(g).
  - b. Progressive again provided no actuarial memorandum as described in and required by 28 TEX. ADMIN. CODE §§ 5.9332(2) and 5.9334(h)(5). Because Progressive did not provide an actuarial memorandum, the July Filings lacked

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- certain information, such as a description of the methodologies for determining the loss trends.
- c. The July Filings did not contain actuarial support appropriate to the rating information filed with regard to the selected loss trends as required by 28 TEX. ADMIN. CODE § 5.9334(h)(6).
  - d. The July Filings did not contain actuarial support appropriate to the rating information filed with regard to the selected premium trends as required by 28 TEX. ADMIN. CODE § 5.9334(h)(6).
13. The department sent objections to the July Filings through SERFF on July 23, 2021. The objections identified numerous ways the July Filings failed to comply with the filing requirements and requested that Progressive provide additional information to support the filings.
  14. Progressive provided some responses to the department's objections on July 28, 2021.
  15. Progressive's July Filings continued to be incomplete and/or deficient:
    - a. The July Filings' filing memoranda did not describe the supporting information provided as required by 28 TEX. ADMIN. CODE § 5.9334(g).
    - b. Progressive filed a document it called an "actuarial memorandum," but the descriptions of the actuarial methodologies in the document were either inconsistent with the July Filings or failed to provide sufficient detail to allow the department to review the rates proposed in the filing. For instance, Progressive's description of the premium trend selection in the "actuarial memorandum" is inconsistent with its actual premium trend selections in the July Filings. Additionally, the document states that the department "approved" prior Progressive rate filings, which is inconsistent with Texas law.
    - c. The July Filings did not contain actuarial support appropriate to the rating information filed with regard to the selected loss trends as required by 28 TEX. ADMIN. CODE § 5.9334(h)(6). In fact, Progressive's response to the objections states that its selected trends used to set rates do "not rely on the historic exponential trends." Instead, Progressive "made selects predicting where losses

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- would go post covid shutdowns." Progressive expected losses to "continue given the rising frequencies from return to driving, as well as covid related impacts on inflation (severity) caused by demand shocks, which are outsized in the automotive sector." Progressive failed to provide support or describe how its selections were made given these statements.
- d. The July Filings do not contain actuarial support appropriate to the rating information filed with regard to the selected premium trends as required by 28 TEX. ADMIN. CODE § 5.9334(h)(6).
16. The department filed a petition at the State Office of Administrative Hearings (SOAH) in August outlining the alleged violations, including the deficiencies outlined in the above Findings of Facts.
17. Progressive filed a response at SOAH and denied all of the allegations in the petition filed by the department.
18. Following the SOAH filing, Progressive filed in SERFF additional information related to the filings throughout September, October, and November to address the issues with the filings.

## Mitigation

19. Progressive agrees to implement processes to confirm future filings will comply with the Filings Made Easy Rules.

## **Conclusions of Law**

1. The commissioner has jurisdiction over this matter under TEX. INS. CODE §§ 82.051–82.055, 84.021–84.044, 801.051–801.053, 912.002, 912.101, and 2251.001- 2251.156 and 28 TEX. ADMIN. CODE § 5.9334.
2. The commissioner has the authority to informally dispose of this matter as set forth in TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. Progressive has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited

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to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.

4. Progressive's April and July Filings violated TEX. INS. CODE § 2251.101(a) and 28 TEX. ADMIN. CODE § 5.9334(g) because the filing memoranda did not briefly describe the supporting information.
5. Progressive's April Filings violated TEX. INS. CODE § 2251.101(a) and 28 TEX. ADMIN. CODE § 5.9334(h)(5) because they did not include an actuarial memorandum.
6. Progressive's July Filings violated TEX. INS. CODE § 2251.101(a) and 28 TEX. ADMIN. CODE § 5.9334(h)(5) because they did not include a complete actuarial memorandum with all required information.
7. Progressive's April and July Filings violated TEX. INS. CODE § 2251.101(a) and 28 TEX. ADMIN. CODE § 5.9334(h)(6) because they did not contain actuarial support appropriate to the rating information filed with regard to the selected loss trends.
8. Progressive's April and July Filings violated TEX. INS. CODE § 2251.101(a) and 28 TEX. ADMIN. CODE § 5.9334(h)(6) because they did not contain actuarial support appropriate to the rating information filed with regard to the selected premium trends.

## Order

It is ordered that Progressive pay an administrative penalty of \$160,000 within 30 days from the date of this order. The administrative penalty must be paid as instructed in the invoice, which the department will send after entry of this order.

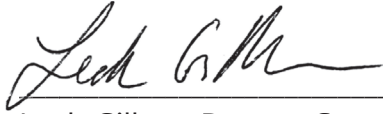
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Cassie Brown  
Commissioner of Insurance

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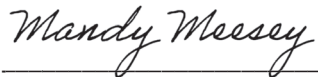
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Recommended and reviewed by:



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Leah Gillum, Deputy Commissioner  
Enforcement Division



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Mandy Meesey, Associate Commissioner  
Enforcement Division



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**Affidavit**

STATE OF California §

COUNTY OF Sacramento §

Before me, the undersigned authority, personally appeared James Kincaid, who being by me duly sworn, deposed as follows:

"My name is James Kincaid. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of Product Manager and am the authorized representative of Progressive County Mutual Insurance Company. I am duly authorized by said organization to execute this statement.

Progressive County Mutual Insurance Company has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the state of Texas."

[Signature] 01/11/2022  
Affiant

SWORN TO AND SUBSCRIBED before me on \_\_\_\_\_, 20\_\_.

(NOTARY SEAL)

SEE ATTACHED NOTORIAL CERTIFICATE

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

# CALIFORNIA JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }

COUNTY OF Sacramento }

Subscribed and sworn to (or affirmed) before me on this 11 day of January, 2022  
Date Month Year

by James Kincaid

*Name of Signers*

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature: Karen Catanio  
*Signature of Notary Public*



*Seal*  
*Place Notary Seal Above*

### OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent attachment of this form to an unintended document.

Description of Attached Document  
Title or Type of Document: Affidavit

Document Date: 01/11/2022

Number of Pages: 1

Signer(s) Other Than Named Above: /