October 1, 2019

Attention: Chief Clerk - Texas Department of Insurance
Hobby 1, Room 1210A
MC 112-2A
Austin, TX 78714-9104

REQUEST FOR RULE CHANGE CONSIDERATION

TAC Title 28 Part 1
§ 981.101. Requirements for Surplus Lines Documents

Current rule:
(b) A surplus lines document must state, in 11-point type, the following:

"This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as surplus line coverage under the Texas insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462, Insurance Code.
Chapter 225, Insurance Code, requires payment of a _____ (insert appropriate tax rate) percent tax on gross premium."

Currently, the required language does not accommodate DSLI insurers, so the stamping office utilizes separate disclosure language for DSLI insurers. This creates undue burdens for compliance, as brokers must now be cognizant of insurer when applying compliance rules to stamping language. It requires policy issuance systems and processing teams significant time and resources to keep an eye on this state-specific variance in stamping language.

The disclosures are similar in wording, showing

- The insurance is provided as a surplus lines coverage, by an insurer whom is not a member of the property and casualty insurance guaranty association.
- No surplus lines insurers enjoy guaranty fund protection
- TDI does not audit the finances & confirm solvency of <u>all</u> insurers, but does for DSLI insurers.

To avoid requiring separate disclosure notices for DSLI issued policies, the proposed new rule addresses the need for proper disclosure to the consumer, while simplifying the language to accommodate DSLI insurers, which only grow in number:

Proposed new rule:

(b) A surplus lines document must state, in 11-point type, the following:

"This insurance contract is issued and delivered as surplus lines coverage under the Texas Insurance Code. The insurer is not a member of the property and casualty insurance guaranty association created under Insurance Code Chapter 462, and the Texas Department of Insurance may not audit the finances or review the solvency of the surplus lines insurer providing this coverage.
Insurance Code Chapter 225 requires payment of a_____ (insert appropriate tax rate) percent tax on gross premium."

Submitted by:
All Risks Ltd.
10415 Morado Circle Building 2, Suite 150
Austin, TX 78759

October 1, 2019

Attention: Chief Clerk - Texas Department of Insurance
Hobby 1, Room 1210A
MC 112-2A
Austin, TX 78714-9104

REQUEST FOR RULE CHANGE CONSIDERATION

TAC Title 28 Part 1
§ 15.106 Stamping Office Filing and Fees

Current rule:

"(a) The surplus lines agent must file a true and correct copy of each executed surplus lines policy, contract, or other detailed evidence of coverage, including additions, deletions, or cancellations with the stamping office within 60 days of issuance or the effective date, whichever is later. If evidence of coverage other than the policy is initially filed, a copy of the policy must be filed with the stamping office within 60 days after it becomes available.
(b) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus lines insurance policy" as used in this section, includes:
(1) a declarations page;
(2) a listing of all participating insurers on the policy;
(3) all coverage parts and schedules, including limits;
(4) extended coverage exclusions;…"

The requirement to provide policy limits is of particular concern and consternation, because it compels surplus lines brokers to comply with subjective and vague reporting requirements. Policy limits for property & casualty products can be elaborate and exacting, making it impossible to standardize expectations for surplus lines filers. The variances in limits, both aggregate and sub-limits, including first and third-party P&C coverages provides no benefit in data to the TDI. Additionally, the stamping office's systems/software and agency management systems have no way to accommodate this policy limit requirement, so brokers and filers assumed additional costly manual procedures to remain in compliance.

Proposed new rule:

"(a) The surplus lines agent must file a true and correct copy of each executed surplus lines policy, contract, or other detailed evidence of coverage, including additions, deletions, or cancellations with the stamping office within 60 days of issuance or the effective date, whichever is later. If evidence of coverage other than the policy is initially filed, a copy of the policy must be filed with the stamping office within 60 days after it becomes available.
(b) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus lines insurance policy" as used in this section, includes:
(1) a declarations page;
(2) a listing of all participating insurers on the policy;
~~*(3) all coverage parts and schedules, including limits;*~~
(4) extended coverage exclusions;….."

Submitted by:
All Risks Ltd.
10415 Morado Circle Building 2, Suite 150
Austin, TX 78759

October 1, 2019

Attention: Chief Clerk - Texas Department of Insurance
Hobby 1, Room 1210A
MC 112-2A
Austin, TX 78714-9104

REQUEST FOR RULE CHANGE CONSIDERATION

TAC Title 28 Part 1
Rule §15.9 Becoming an Eligible Insurer

Current rule:
(a) The stamping office must evaluate surplus lines insurance policies, contracts, or other evidences of coverage for eligibility and compliance with filing requirements. The stamping office may request additional information from the surplus lines agent responsible for the filing if the information filed is not sufficient to make an evaluation in accordance with this section.
(b) Following its evaluation of filings under this section, the stamping office must provide the following written reports to TDI:

(1) Within 60 days of discovery, a report documenting any surplus lines insurance policy issued by an insurer that is not an eligible surplus lines insurer, any surplus lines insurance policy and contract that is of a type that is not compliant with the Insurance Code, and any act that requires a license that is performed by an unlicensed person.

(2) Promptly upon discovery, a report documenting any surplus lines insurance policy or contract that has uncorrected administrative or technical errors that the stamping office has asked the surplus lines agent to correct.

The purpose of this rule is to police surplus lines insurers. However, surplus lines insurer evaluation and eligibility requirements are defined within rule §15.301, where the TDI and the stamping office are granted complete authority to obtain needed information from these insurers. This rule is duplicative and unnecessary.

Furthermore, the wording within Rule §15.9 is ambiguous, as it compels the stamping office evaluate insurance policies, but fails to clarify or define that evaluation process. This evaluation or review process is also not defined in Subchapter A (General Provisions Rule §15.2). Texas has a robust and growing surplus lines market, making it unrealistic to expect the stamping office to inspect every insurance policy. As such, the stamping office utilizes focused audits and enforcement action to ensure compliance with state laws.

For these reasons, this rule is both unnecessary and ambiguous. It is in the best interest of consumers, the TDI, stamping office and surplus lines brokers for the above rule be considered for repeal by the TDI

Submitted by:
All Risks Ltd.
10415 Morado Circle Building 2, Suite 150
Austin, TX 78759

October 1, 2019

Attention: Chief Clerk - Texas Department of Insurance
Hobby 1, Room 1210A
MC 112-2A
Austin, TX 78714-9104

REQUEST FOR RULE CHANGE CONSIDERATION

TAC Title 28 Part 1
§ 19.902. One Agent, One License

Current rule:
The current rule requires resident business entities (agencies) to register each additional branch location of the agency.

Thirty-eight (38) states DO NOT have any requirements pertaining to branches. Twelve (12) states, including Texas, have some type of requirement for a branch location:

Since the enactment of Gramm Leach Bliley Act (GLBA) and the NAIC's Uniform Licensing Standards, states have been eliminating requirements that are considered burdensome and unnecessary. This requirement is unnecessary as the TDI maintains regulatory oversight and authority over the activities of the agency, regardless of the multiple locations that operate under the same federal identification number (FEIN) the agency may have.

Removing this rule helps move the TDI forward with streamlining its license processes, and it helps level the playing field with resident agencies, as this requirement does not apply to nonresident agencies.

The administrative costs associated with this requirement are labor intensive, cumbersome, and challenging due to the inability to immediately access online records, state systems and the NAIC Producer Database. As a result, confirming branch office locations increases the number of telephone/email inquiries to the TDI from individual agents, carriers, agencies and consumers.

This rule puts additional burdens on resident agencies, while contributing to unnecessary inquiries between wholesalers, brokers, agents and the TDI. It is in the best interest of consumers, the TDI, stamping office and surplus lines brokers for the above rule to be considered for repeal by the TDI.

Submitted by:
All Risks Ltd.
10415 Morado Circle Building 2, Suite 150
Austin, TX 78759

Regan Ellmer

From: Comments
Sent: Sunday, September 29, 2019 10:01 AM
To: Libby Elliott; Regan Ellmer
Subject: FW: AmWINS Comments on suggested changes
Attachments: TDI comments on policy limit requirement.docx

From: Kathy McVaney <[redacted]>
Sent: Friday, September 27, 2019 2:18 PM
To: Comments <Comments@tdi.texas.gov>
Subject: AmWINS Comments on suggested changes

Thank you for your consideration.

Kathryn McVaney, CIC, ARM
Senior Vice President – Regulatory Compliance
AmWINS Group, Inc.
(O) 704.749.2791 (M)704-651.2484 (F)704-943-9000
4725 Piedmont Row Drive, Suite 600, Charlotte, NC, 28210

To: comments@tdi.texas.gov

From: Kathy McVaney
Senior Vice President – Regulatory Compliance
AmWINS Group – Direct dial 704-749-2791

Date: September 27, 2019

AmWINS would like to express our thoughts on the requirement to report policy limits as part of the policy tax filing process within Rule 15.106(b)3. We are unclear as to the relevance of policy limit data and its use by the TDI. Policy limits vary by the type of coverage and many policies are structured with various aggregate and sublimits on a surplus lines policy. For multi-state risk the limit will be misleading for any use that would be directed solely at Texas only locations.

These limits are not part of the data collected electronically by our operating system, therefore it requires our staff to manually locate the limit, make a determination on which limit best responds to the requirement and provide that in our filing data with the SLTX. This requires resources to be pulled away from other responsibilities in order to comply with this requirement. In an effort to make certain our filings are timely this must be considered a priority by Industry estimates are that compliance with this requirement will cost $2 to $5 per policy which equates to between $2,000,000 and $5,000,000 annually.

Recommendation

Amend Rule 15.106(b)(3) as follows:

Proposed change:

b) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus lines insurance policy" as used in this section, includes:

(1) a declarations page;

(2) a listing of all participating insurers on the policy;

(3) all coverage parts and schedules~~, including limits~~;

(4) extended coverage exclusions

(5) all premium bearing documents

(6) risk zip code location and

(7) any other parts as may be required by the stamping office to review and record the policy

Thank you for your consideration.

From: Woods, Joe <[redacted]>
Sent: Tuesday, October 01, 2019 1:17 PM
To: ChiefClerk <ChiefClerk@tdi.texas.gov>
Subject: Rule change recommendations

Attached please find rule change recommendations provided by APCIA members. APCIA applauds the Department for this initiative and look forward to the results of your efforts.

Thank you for your consideration of these suggestions.

Best regards

Joe Woods
Vice President-State Government Relations
American Property Casualty Insurance Association
T: 512-358-1345
C: 512-413-6638
[redacted]

APCIA Recommendations for Rule Changes

Submitted to the Texas Department of Insurance: October 1, 2019

The citation for the specific rule on which you are commenting:

- 28 TAC 21.101-21.122: Insurance Advertising, et al.
- https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=28&pt=1&ch=21&sch=B&div=1&rl=Y

The issue the rule causes and why changing it should be a priority for TDI:

- Current regulations are cumbersome and restrict speed to market efforts of insurers.

Why the rule should be reviewed, revised, or repealed:

- Current regulations are cumbersome and restrict speed to market efforts of insurers.

The issue the rule causes and why changing it should be a priority for TDI:

- Protecting consumers from misleading advertising is an important function of TDI that APCIA supports. However, the current regulations are an impediment to speed to market for advertising. The advertising regulations underwent major changes in 1981 and have been amended several times since then, for example to address on-line advertisements and offers, but have not been rewritten to provide clear and concise direction that will reflect changes in marketing.

A brief description of your idea for improving the rule:

- Establish a stakeholder group to completely update/rewrite the advertising rules.

APCIA Recommendations for Rule Changes

Submitted to the Texas Department of Insurance: October 1, 2019

The citation for the specific rule on which you are commenting:

- 28 TAC 156.1 -- Carrier's Austin Representative
- https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=28&pt=2&ch=156&rl=1
- Statutory Authority: TX Labor Code § 406.011

Why the rule should be reviewed, revised, or repealed:

- It requires carriers to designate a representative in Austin, Travis County, TX to receive notices from the WC Commission. Carriers should be able to receive notices directly without going through an intermediary.
- This rule ignores the current reality of electronic communications and is based on 1960's need for timely contacts with companies.

The issue the rule causes and why changing it should be a priority for TDI:

- The requirement to have an intermediary to receive notices is inefficient and outdated. Carriers should be able to receive notices directly.
- To require someone be physically located in Austin seems unnecessary when all carriers have the ability to receive email transmissions instantly.
- Carriers should be responsible for keeping this information up to date, as they are with the Austin Representative designation.

A brief description of your idea for improving the rule:

- Repeal DWC 027 Designation of Insurance Carrier's Austin Representative and DWC 030 Austin Representative's Authorized Designees. Create a form with carrier contacts that the TX DWC needs. The carrier can receive notices directly to these designated contacts within the carrier's organization.

APCIA Recommendations for Rule Changes

Submitted to the Texas Department of Insurance: October 1, 2019

The citation for the specific rule on which you are commenting:

- 28 TAC 5.401-- Temporary and Permanent Requirements Regarding Underwriting Treatment of and Disclosure to Applicants for Private Passenger Automobile Liability Insurance.
- https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=T&app=9&p_dir=N&p_rloc=15590&p_tloc=&p_ploc=1&pg=2&p_tac=&ti=28&pt=1&ch=5&rl=311

Why the rule should be reviewed, revised, or repealed:

- Insurance policies should be priced according to risk. The applicant's history of maintaining insurance (or not) is predictive of both future loss and the likelihood of cancelling the policy prior to the end of the policy term.

The issue the rule causes and why changing it should be a priority for TDI:

- Private passenger auto prohibition on use of no prior insurance for pricing

A brief description of your idea for improving the rule:

- Delete 28 TAC 5.401

APCIA Recommendations for Rule Changes

Submitted to the Texas Department of Insurance: October 1, 2019

The citation for the specific rule on which you are commenting:

- Texas State Board of Insurance Letter dated June 1, 1978. Use of "Tie-in" Sales by Companies and Agents
- https://www.tdi.texas.gov/commercial/pcck6178bl.html

Why the rule should be reviewed, revised, or repealed:

- In 1978, the Chairman of the Texas State Board of Insurance and the Attorney General's Office were of the opinion that the practice of tying one product to the sale of another was illegal under state law and a Board Letter was issued.
- It is unclear whether the opinions expressed in the 1978 letter are applicable or enforced in 2019.
- The 1978 letter is not included in the 1995 and Earlier TDI Bulletins Links on the TDI website: https://www.tdi.texas.gov/bulletins/1995earlier/index.html
- The only reference to the 1978 letter on the TDI website is in the Review Requirements Checklist Mortgage Guarantee https://www.tdi.texas.gov/commercial/pcckmtgg.html

Tie-In Sales	Chapter 1806, Texas Insurance Code & 6/1/78 Board Letter	Tie-in sales may violate state law.

- Chapter 1806 Prohibited Practices and Rebates Related to Policies of the Texas Insurance Code does not specifically address tie-in sales

The issue the rule causes and why changing it should be a priority for TDI:

- Some carriers are following the 1978 letter and others are not. Tie-in sales (commonly called packaging or bundling today) are common in the marketplace. Many carriers require both the homeowners and personal auto policy to be written by that carrier.
- Carriers that abide by the 1978 letter could be at a competitive disadvantage to carriers that permit tie-in sales of policies.
- Adherence to the 1978 letter may result in a less profitable book of business for a carrier because a policy written for a customer in a less profitable line of business cannot be offset by requiring the customer to package/ bundle their policy in a more profitable line of business with the same carrier.

A brief description of your idea for improving the rule:

- Repeal the 1978 letter and issue a new bulletin expressly permitting packaging/bundling of insurance policies, such as a homeowners policy and a personal auto policy.

Regan Ellmer

From: Comments
Sent: Wednesday, October 2, 2019 10:36 AM
To: Libby Elliott; Regan Ellmer
Subject: FW: Proposed Amendment to Rule 15.106(b)(3)

From: Susan Gropp <[redacted]>
Sent: Tuesday, October 01, 2019 6:41 PM
To: Comments <Comments@tdi.texas.gov>
Subject: Proposed Amendment to Rule 15.106(b)(3)

To Whom it May Concern:

Re: Proposed Amendment to Rule 15.106(b)(3)

Pursuant to your request to identify rules which are unreasonably difficult for compliance, we would like to suggest that the Texas Department of Insurance (TDI) revise Rule 15.106(b)(3) to remove the requirement to identify policy limits in filing policies with the Texas Stamping Office.

Justification for Modification:

When the new requirement to include policy limits in filings at the Stamping Office was considered in 2017, the industry failed to recognize the possible burden the new rule would place on compliance as, it was assumed that limits, like other required data could be easily collected through digital software. This burden is placed on wholesalers, many of whom are small businesses with 2-15 employees like our company, who often cannot afford the added cost of compliance. Large wholesalers who operate in multiple states will have the option to write many of the same policies in other states and avoid the increased difficulties with compliance created by the new rule. Furthermore, we believe the data will be of limited use as the complexity of surplus lines policies make it difficult to precisely allocated the risk to lines of insurance, and many policies cover both in-state and out of state risk devaluing any utility of aggregate coverage numbers.

Recommendation Amend Rule 15.106(b)(3) as follows:

Proposed change: b) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus lines insurance policy" as used in this section, includes: (1) a declarations page; (2) a listing of all participating insurers on the policy; (3) all coverage parts and schedules, excluding limits;

Thank you for your consideration.

Regards,

Susan

Susan Gropp
Executive Vice President
5310 Harvest Hill Rd – Suite 200, Dallas, TX 75230
P 972.855.3566 **F** 877.841.4977
[redacted]
arcanainsurance.com
Dallas | London | Chicago

From: Linda Reed <[redacted]>
Sent: Monday, September 23, 2019 4:32 PM
To: Comments <Comments@tdi.texas.gov>
Subject: Proposed Amendment to Rule 15.106(b)(3)

Pursuant to your request to identify rules which are unreasonably difficult for compliance, AUI, Inc. strongly suggests that the Texas Department of Insurance (TDI) revise Rule 15.106(b)(3) to remove the requirement to identify policy limits in filing policies with the Texas Stamping Office.

Justification for Modification

When the new requirement to include policy limits in filings at the Stamping Office was considered in 2017, the industry failed to recognize the burden the new rule would place on compliance as, it was assumed that limits, like other required data could be easily collected through digital software. In practice the new requirement requires manual input by trained staff who must make a professional determination of the limit, the type of line, the limit applies to and then aggregate different limits for different covered risks to comply.

Industry estimates are that compliance will typically cost $2-5 per policy to comply which equates to $2-5 million for the industry. Further, just hiring a data entry clerk to capture the data or complete the excel reports is going to cost anywhere from $26,500-$50,000 a year depending on location and experience/knowledge of the data entry clerk. This burden is placed on wholesalers, many of whom are small businesses, similar to AUI, with 2-10 employees who cannot afford the added cost of compliance. Our company has had to add additional hours for our processors who enter the data into the Stamping Office system to complete the information now required, adding to the cost of our operations as indicated in the industries estimated cost of $2 – 5 per policy. Large wholesalers who operate in multiple states will have the option to write many of the same policies in other states and avoid the increased difficulties with compliance created by the new rule.

Furthermore, we believe the data will be of limited use as the complexity of surplus lines policies make it difficult to precisely allocated the risk to lines of insurance, and many policies cover both in-state and out of state risk devaluing any utility of aggregate coverage numbers.

Recommendation

Amend Rule 15.106(b)(3) as follows:
Proposed change:
b) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus lines insurance policy" as used in this section, includes:

(1) a declarations page;
(2) a listing of all participating insurers on the policy;
(3) all coverage parts and schedules;

Linda Reed / President
[redacted]

AUI MGA & Surplus Lines

Office: (800) 993-0024 / Fax: (512) 894-0306
14101 W. Hwy 290, Bldg 1400c Austin, TX 78737
http://aui-inc.com/

Regan Ellmer

From: Comments
Sent: Sunday, September 29, 2019 10:01 AM
To: Libby Elliott; Regan Ellmer
Subject: FW: Proposed Amendment to Rule 15.106(b)(3)
Attachments: Rule Change Request.docx

From: Matt Leicht <[redacted]>
Sent: Friday, September 27, 2019 11:14 AM
To: Comments <Comments@tdi.texas.gov>
Subject: Proposed Amendment to Rule 15.106(b)(3)

Please see the attached related to the request for comments about potential rules updates.
Thanks

Matt

CRAIG & LEICHT

Matt Leicht CIC, CPCU, ASLI
Owner/Underwriter
713-955-2130
[redacted]
16000 Barkers Point Ln Ste 265
Houston, TX 77079
** Check out our online rating at http://www.craigandleicht.com/-new-online-rating.html **
CALL 844-508-1068 FOR A PHONE QUOTE

Texas Department of Insurance

Attn: Chief Clerk

Hobby 1, Room 1210A

MC 112-2A, P.O. Box 149104

Austin, Tx 78714-9104

Re: Proposed Amendment to Rule 15.106(b)(3)

Pursuant to your request to identify rules which are unreasonably difficult for compliance, Craig & Leicht strongly suggest that the Texas Department of Insurance revise rule 15.106(b)(3) to remove the requirement to identify policy limits in filing policies with the Texas Stamping Office.

The revision of the rules to include the words “with limits” has created a substantial financial burden on the industry as a whole and that includes to our small business. The amount of time required for filing with the stamping office has gone from about 30 minutes every month for us to about 14 to 20 hours per month. The additional time is solely a result of the addition of the requirement to report limits with each transaction that is filed.

The other significant issue with this rule change is how inaccurate this information will be. This rule has a very predictable outcome which is to either eventually after years and millions of dollars prove to be of no value, or worse, begin the slippery slope of forcing even more manual date entry on Surplus Lines Agents in the hopes to getting enough information that might be seen as valuable. It is worth noting that a significant number of Surplus Lines Insurers don’t keep account specific policy limit details, especially on liability policies, because the information is not valuable.

Surplus Lines Agents in Texas are happy to work with TDI to get them information that will help them make informed decisions. Unfortunately, the current rule results in tremendous amounts of man hours and financial burdens to produce information that is inaccurate at best and completely misleading at worst. We strongly encourage the Department to reconsider this rule.

Thank you for your time. Please feel free to contact me with any questions or concerns.

Matt Leicht

Craig & Leicht LLC

Houston Tx

PERFORMANCE IS THE DIFFERENCE

September 30, 2019

Sent Via Email: comments@tdi.texas.gov

Chief Clerk
Hobby 1, Room 1210A
MC 112-2A, P.O. Box 149104
Austin, TX 78714-9104

Re: Proposed Amendment to Rule 15.106(b) (3)

Dear Commissioner Sullivan,

On behalf of the CRC Group, we appreciate the opportunity to provide comments supporting the revision to 15.106(b) (3). CRC Insurance Services, Inc. ("CRC") is a large wholesale insurance brokerage company and Texas is one of our largest producing states. We believe the most efficient way to revise the rule is to **remove** the phrase "including limits" in 15.106(b) (3) because reporting policy limits are not easily identifiable or reportable, which creates an administrative and compliance burden for our industry.

As noted above, policy limits are not easily identified and collected, and certainly, do not allow for an automated process. In practice, identifying policy limits requires trained insurance staff capable of analyzing a policy and sometimes, making a subjective determination regarding which limits apply to which part of the policy and then aggregate different limits to comply with reporting requirements.

Furthermore, many of CRC's policies are layered and it will be difficult to allocate the limits. Many of CRC's package policies provide limits in a listing, thus making it an extra step to go back to the production teams to question which limit belongs to each state.

In addition, requiring policy limits is not only difficult for the Surplus Lines Tax Department ("SLT") and production teams, but affects many of our other administrative departments. CRC does not electronically track policy limits because there is no one way to do so (e.g. shared and layered policies, per occurrence vs. aggregate limits, etc.). CRC therefore has to collect the information manually to report to the state. Moreover, the different ways to track and report limits mean that the data is unlikely to be useful to anyone, including the Surplus Lines Stamping Office of Texas ("SLSOT").

For the reasons noted above, including limits in 15.106(b) (3) doesn't seem to be commercially reasonable or feasible. It also is unclear to CRC why this information is valuable or useful to the SLSOT.

Sincerely,

Dave Obenauer
CEO, CRC Group

Regan Ellmer

From: Comments
Sent: Wednesday, September 25, 2019 5:10 PM
To: Libby Elliott; Regan Ellmer
Subject: FW: A fresh look at insurance rules - An initiative announced by Insurance Commissioner Kent Sullivan
Attachments: TX_DOI_Rules.pdf; Comments_Fresh_Look_TDI.zip

Importance: High

From: Joseph Petrelli [redacted]
Sent: Wednesday, September 25, 2019 2:04 PM
To: Comments <Comments@tdi.texas.gov>
Cc: Mike Stinziano [External] <[redacted]>; [redacted]
Subject: A fresh look at insurance rules - An initiative announced by Insurance Commissioner Kent Sullivan
Importance: High

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown or unexpected emails.

In a recent announcement, copy attached as TX_DOI_Rules.pdf, Insurance Commissioner Kent Sullivan initiated an effort to identify rules that need to be updated or changed. In the three stage process outlined in the fresh look at rules, stage 1 was the submission of a brief statement for each rule that should be changed or updated. Attached to this email as a zip file containing 42 requests are those rules that we have identified as being in need of change or update. Consistent with the request for Stage 1 submissions, we present a clear and concise statement one page in length with the following information:

- Citation for the specific rule
- Why the rule should be reviewed, or revised
- The issue and why changing the rule should be a priority for TDI
- Brief description for improving the rule.

A hard copy will be forwarded as a courtesy to the recipients of this email.

Thank you for the opportunity to present our thoughts to the Texas Department of Insurance.

Joseph Petrelli | President
Demotech, Inc. | 2715 Tuller Parkway | Dublin, Ohio 43017-2310
Main: (800) 354-7207 | Direct: (614) 526-2160 | FAX: (614) 526-2161
[redacted] | www.demotech.com

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

7 TAC § 25.25, TITLE 7. BANKING AND SECURITIES, PART 2. TEXAS DEPARTMENT OF BANKING, CHAPTER 25. PREPAID FUNERAL CONTRACTS, SUBCHAPTER B. REGULATION OF LICENSES, § 25.25. Conversion from Trust-Funded to Insurance-Funded Benefits, TEXAS ADMINISTRATIVE CODE

... financial strength ratings of the insurance company determined by **A.M. Best** Company, Standard & Poor's, Wiess Research, Duff & Phelps, and ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
2. Competition that would otherwise benefit the prices and coverages available to Texans is stifled rather than encouraged. This seems inconsistent with competition, monopolies and boycotts.
3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, [redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

7 TAC § 85.403, TITLE 7. BANKING AND SECURITIES, PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER, CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS, SUBCHAPTER A. RULES OF OPERATION FOR PAWNSHOPS, DIVISION 4. OPERATION OF PAWNSHOPS, § 85.403. Insurance, TEXAS ADMINISTRATIVE CODE

... coverage must be $ 100,000 per occurrence from an insurance company with an **A.M. Best rating** of B+ or better. (B) In addition, pawnshops operating ...
... Fire insurance coverage must be purchased from an insurance company with an **A.M. Best rating** of B+ or better as follows: (A) for pawnshops not ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983,** the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
2. Competition that would otherwise benefit the prices and coverages available to Texans is stifled rather than encouraged. This seems inconsistent with competition, monopolies and boycotts.
3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, [redacted], 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

16 TAC § 25.107, TITLE 16. ECONOMIC REGULATION, PART 2. PUBLIC UTILITY COMMISSION OF TEXAS, CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS, SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION, § 25.107. Certification of Retail Electric Providers (REPs), TEXAS ADMINISTRATIVE CODE

... Investors' Service, or "BBB-" from Standard & Poor's or Fitch, or "BBB" from **A.M. Best.** (9) Permanent employee--An individual that is fully integrated into a ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
2. Competition that would otherwise benefit the prices and coverages available to Texans is stifled rather than encouraged. This seems inconsistent with competition, monopolies and boycotts.
3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, j[redacted]1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

16 TAC § 25.304, TITLE 16. ECONOMIC REGULATION, PART 2. PUBLIC UTILITY COMMISSION OF TEXAS, CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS, SUBCHAPTER L. NUCLEAR DECOMMISSIONING, § 25.304. Nuclear Decommissioning Funding and Requirements for Power Generation Companies, TEXAS ADMINISTRATIVE CODE
... A3 by Moody's Investor's Service or the equivalent rating from **A.M. Best.** (iii) The surety or insurance must be payable to the PGC decommissioning ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

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The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
2. Competition that would otherwise benefit the prices and coverages available to Texans is stifled rather than encouraged. This seems inconsistent with competition, monopolies and boycotts.
3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, [redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

16 TAC § 73.40, TITLE 16. ECONOMIC REGULATION, PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION, CHAPTER 73. ELECTRICIANS, § 73.40. Insurance Requirements, TEXAS ADMINISTRATIVE CODE

... Chapter 981, or other insurance companies that are rated by **A.M. Best** Company as B+ or higher.

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

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The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
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3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, j[redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

28 TAC § 5.6405, TITLE 28. INSURANCE, PART 1. TEXAS DEPARTMENT OF INSURANCE, CHAPTER 5. PROPERTY AND CASUALTY INSURANCE, SUBCHAPTER G. WORKERS' COMPENSATION INSURANCE, DIVISION 2. GROUP SELF-INSURANCE COVERAGE, § 5.6405. Excess Insurance, TEXAS ADMINISTRATIVE CODE

... financial strength rating of "A-" or better, as determined by **A.M. Best** Company; (3) the surplus lines insurer provides a ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
2. Competition that would otherwise benefit the prices and coverages available to Texans is stifled rather than encouraged. This seems inconsistent with competition, monopolies and boycotts.
3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, j[redacted]1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

28 TAC § 56.55, TITLE 28. INSURANCE, PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION, CHAPTER 56. STRUCTURED COMPROMISE SETTLEMENT AGREEMENTS, § 56.55. Annuity Company, TEXAS ADMINISTRATIVE CODE

... must be licensed to do business in Texas and must have a **Best's rating** of A+, with a financial size category of VII or above, ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
2. Competition that would otherwise benefit the prices and coverages available to Texans is stifled rather than encouraged. This seems inconsistent with competition, monopolies and boycotts.
3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, [redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

28 TAC § 114.4, TITLE 28. INSURANCE, PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION, CHAPTER 114. SELF-INSURANCE, § 114.4. Security Deposit Requirements, TEXAS ADMINISTRATIVE CODE

... business in Texas and possess either a current **A.M. Best rating** of B+ or better or a Standard & Poor's rating of claims ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
2. Competition that would otherwise benefit the prices and coverages available to Texans is stifled rather than encouraged. This seems inconsistent with competition, monopolies and boycotts.
3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, [redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

28 TAC § 131.4, TITLE 28. INSURANCE, PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION, CHAPTER 131. BENEFITS--LIFETIME INCOME BENEFITS, § 131.4. Change in Payment Period; Purchase of Annuity for Lifetime Income Benefits, TEXAS ADMINISTRATIVE CODE

... in Texas and must have a current A. M. **Best rating** of B+ or better or have a Standard & Poor's rating of claims ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983,** the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
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The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
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Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, j[redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

28 TAC § 132.16, TITLE 28. INSURANCE, PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION, CHAPTER 132. DEATH BENEFITS--DEATH AND BURIAL BENEFITS, § 132.16. Change in Payment Periods; Purchase of Annuity for Death Benefits, TEXAS ADMINISTRATIVE CODE

... in Texas and must have a current A. M. **Best rating** of B+ or better or have a Standard & Poor's rating of claims ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
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5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

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2. Competition that would otherwise benefit the prices and coverages available to Texans is stifled rather than encouraged. This seems inconsistent with competition, monopolies and boycotts.
3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, [redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

28 TAC § 166.2, TITLE 28. INSURANCE, PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION, CHAPTER 166. ACCIDENT PREVENTION SERVICES, § 166.2. Adequacy of Accident Prevention Services, TEXAS ADMINISTRATIVE CODE

... industry standards and practices governing occupational safety and health, such as: **A.M. Best,** North American Industry Classification System (NAICS), Bureau of ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
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5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
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The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
2. Competition that would otherwise benefit the prices and coverages available to Texans is stifled rather than encouraged. This seems inconsistent with competition, monopolies and boycotts.
3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, j[redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

28 TAC § 166.3, TITLE 28. INSURANCE, PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION, CHAPTER 166. ACCIDENT PREVENTION SERVICES, § 166.3. Annual Information Submitted by Insurance Companies, TEXAS ADMINISTRATIVE CODE
... Association of Insurance Commissioners (NAIC) number; (E) company's **A.M. Best rating;** (F) changes in ownership, organizational structure, or management of the ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
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4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
2. Competition that would otherwise benefit the prices and coverages available to Texans is stifled rather than encouraged. This seems inconsistent with competition, monopolies and boycotts.
3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, j[redacted], 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

30 TAC § 37.9050, TITLE 30. ENVIRONMENTAL QUALITY, PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, CHAPTER 37. FINANCIAL ASSURANCE, SUBCHAPTER T. FINANCIAL ASSURANCE FOR RADIOACTIVE SUBSTANCES AND AQUIFER RESTORATION, § 37.9050. Financial Assurance Mechanisms, TEXAS ADMINISTRATIVE CODE

... a financial size category of "XV" as assigned by the **A.M. Best** Company. (2) The insurance policy must designate the commission as an ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
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A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, [redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

30 TAC § 37.9100, TITLE 30. ENVIRONMENTAL QUALITY, PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, CHAPTER 37. FINANCIAL ASSURANCE, SUBCHAPTER V. FINANCIAL ASSURANCE FOR CLASS B SEWAGE SLUDGE FOR LAND APPLICATION UNITS, § 37.9100. Commercial Liability Insurance, TEXAS ADMINISTRATIVE CODE

... in Texas that has a rating of A- or better by **A.M. Best** Company; (4) designate the Texas Commission on Environmental Quality as an ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
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3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, [redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

30 TAC § 37.9105, TITLE 30. ENVIRONMENTAL QUALITY, PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, CHAPTER 37. FINANCIAL ASSURANCE, SUBCHAPTER V. FINANCIAL ASSURANCE FOR CLASS B SEWAGE SLUDGE FOR LAND APPLICATION UNITS, § 37.9105. Environmental Impairment Insurance, TEXAS ADMINISTRATIVE CODE

... in Texas that has a rating of A- or better by **A.M. Best** Company; (4) designate the Texas Commission on Environmental Quality as an ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
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A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, [redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

30 TAC § 37.9120, TITLE 30. ENVIRONMENTAL QUALITY, PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, CHAPTER 37. FINANCIAL ASSURANCE, SUBCHAPTER V. FINANCIAL ASSURANCE FOR CLASS B SEWAGE SLUDGE FOR LAND APPLICATION UNITS, § 37.9120. Incapacity of Responsible Person or Insurance Company, TEXAS ADMINISTRATIVE CODE

... in a rating below A- as published by the **A.M. Best** Company. (c) The responsible person must provide evidence of

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
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5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
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Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, [redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

30 TAC § 37.9265, TITLE 30. ENVIRONMENTAL QUALITY, PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, CHAPTER 37. FINANCIAL ASSURANCE, SUBCHAPTER X. FINANCIAL ASSURANCE REQUIREMENTS FOR BRINE EVAPORATION PITS, § 37.9265. Third Party Pollution Liability Requirements for Brine Evaporation Pits, TEXAS ADMINISTRATIVE CODE

... business in the state of Texas that has a rating by the **A.M. Best** Company of "A-" or better; (2) is in an amount not...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
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I remain available to discuss this matter. Joseph Petrelli, j[redacted], 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

30 TAC § 293.63, TITLE 30. ENVIRONMENTAL QUALITY, PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, CHAPTER 293. WATER DISTRICTS, SUBCHAPTER F. DISTRICT ACTIONS RELATED TO CONSTRUCTION PROJECTS AND PURCHASE OF FACILITIES, § 293.63. Contract Documents for Water District Projects, TEXAS ADMINISTRATIVE CODE

... for the contract and: (i) a rating of at least B from **Best's Key Rating** Guide; or (ii) if the surety company does not have any such rating due to the ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
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5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
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I remain available to discuss this matter. Joseph Petrelli, j[redacted]1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

31 TAC § 364.54, TITLE 31. NATURAL RESOURCES AND CONSERVATION, PART 10. TEXAS WATER DEVELOPMENT BOARD, CHAPTER 364. MODEL SUBDIVISION RULES, SUBCHAPTER B. MODEL RULES, DIVISION 3. PLAT APPROVAL, § 364.54. Financial Guarantees for Improvements, TEXAS ADMINISTRATIVE
CODE

... by the commissioners court; and (C) rating of at least B from **Best's Key Rating** Guide; or if the surety company does not have any such rating due to the length of ...

Why the rule should be reviewed, revised or repealed:

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1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
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Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

33 TEXREG 36, ISSUE: Volume 33, Number 1, ISSUE DATE: January 4, 2008, SUBJECT: PROPOSED RULES, AGENCY: PUBLIC UTILITY COMMISSION OF TEXAS, TEXAS ADMINISTRATIVE CODE CITATION: 16 TAC § 25.304, TITLE 16. ECONOMIC REGULATION, PART 2. PUBLIC UTILITY COMMISSION OF TEXAS, CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS, SUBCHAPTER L. NUCLEAR DECOMMISSIONING, TEXAS REGISTER

... A3 by Moody's Investor's Service or the equivalent rating from **A.M. Best.** (iii) The surety or insurance must be payable to the PGC decommissioning ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
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Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, j[redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

33 TEXREG 2288, ISSUE: Volume 33, Number 11, ISSUE DATE: March 14, 2008, SUBJECT: ADOPTED RULES, AGENCY: PUBLIC UTILITY COMMISSION OF TEXAS, TEXAS ADMINISTRATIVE CODE CITATION: 16 TAC § 25.304, TITLE 16. ECONOMIC REGULATION, PART 2. PUBLIC UTILITY COMMISSION OF TEXAS, CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS, SUBCHAPTER L. NUCLEAR DECOMMISSIONING, TEXAS REGISTER

... A3 by Moody's Investor's Service or the equivalent rating from **A.M. Best.** (iii) The surety or insurance must be payable to the PGC decommissioning ...

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The rule as currently written should be revised for several reasons, including but not limited to:

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3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, [redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

33 TEXREG 4484, ISSUE: Volume 33, Number 23, ISSUE DATE: June 6, 2008, SUBJECT: PROPOSED RULES, AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, TEXAS ADMINISTRATIVE CODE CITATION: 30 TAC §§ 37.9245, 37.9250, 37.9255, 37.9260, 37.9265, TITLE 30. ENVIRONMENTAL QUALITY, PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, CHAPTER 37. FINANCIAL ASSURANCE, SUBCHAPTER X. FINANCIAL ASSURANCE REQUIREMENTS FOR BRINE EVAPORATION PITS, TEXAS REGISTER

... business in the state of Texas that has a rating by the **A.M. Best** Company of "A-" or better; (2) is in an amount not

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The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
2. Competition that would otherwise benefit the prices and coverages available to Texans is stifled rather than encouraged. This seems inconsistent with competition, monopolies and boycotts.
3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, j[redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

33 TEXREG 5172, ISSUE: Volume 33, Number 27, ISSUE DATE: July 4, 2008, SUBJECT: PROPOSED RULES, AGENCY: TEXAS DEPARTMENT OF BANKING, TEXAS ADMINISTRATIVE CODE CITATION: 7 TAC § 25.25, TITLE 7. BANKING AND SECURITIES, PART 2. TEXAS DEPARTMENT OF BANKING, CHAPTER 25. PREPAID FUNERAL CONTRACTS, SUBCHAPTER B. REGULATION OF LICENSES, TEXAS REGISTER

... financial strength ratings of the insurance company determined by **A.M. Best** Company, Standard & Poor's, Wiess
Research, Duff & Phelps, and ...
... financial strength ratings of the insurance company determined by **A.M. Best** Company, Standard & Poor's, Wiess
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Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

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I remain available to discuss this matter. Joseph Petrelli, j[redacted], 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

33 TEXREG 5942, ISSUE: Volume 33, Number 30, ISSUE DATE: July 25, 2008, SUBJECT: ADOPTED RULES, AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, TEXAS ADMINISTRATIVE CODE CITATION: 30 TAC § 293.63, TITLE 30. ENVIRONMENTAL QUALITY, PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, CHAPTER 293. WATER DISTRICTS, SUBCHAPTER F. DISTRICT ACTIONS RELATED TO CONSTRUCTION PROJECTS AND PURCHASE OF FACILITIES, TEXAS REGISTER

... for the contract and: (i) a rating of at least B from **Best's Key Rating** Guide; or (ii) if the surety company does not have any such rating due to the ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
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Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

33 TEXREG 7426, ISSUE: Volume 33, Number 36, ISSUE DATE: September 5, 2008, SUBJECT: PROPOSED RULES, AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, TEXAS ADMINISTRATIVE CODE CITATION: 30 TAC §§ 37.9030, 37.9035, 37.9040, 37.9045, 37.9050, TITLE 30. ENVIRONMENTAL QUALITY, PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, CHAPTER 37. FINANCIAL ASSURANCE, SUBCHAPTER T. FINANCIAL ASSURANCE FOR RADIOACTIVE SUBSTANCES AND AQUIFER RESTORATION, TEXAS REGISTER

... a financial size category of "XV" as assigned by the **A.M. Best** Company. (2) The insurance policy must designate the commission as an ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

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Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

34 TEXREG 177, ISSUE: Volume 34, Number 2, ISSUE DATE: January 9, 2009, SUBJECT: ADOPTED RULES, AGENCY: TEXAS DEPARTMENT OF BANKING, TEXAS ADMINISTRATIVE CODE CITATION: 7 TAC § 25.25, TITLE 7. BANKING AND SECURITIES, PART 2. TEXAS DEPARTMENT OF BANKING, CHAPTER 25. PREPAID FUNERAL CONTRACTS, SUBCHAPTER B. REGULATION OF LICENSES, TEXAS REGISTER

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Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

34 TEXREG 1615, ISSUE: Volume 34, Number 10, ISSUE DATE: March 6, 2009, SUBJECT: ADOPTED RULES, AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, TEXAS ADMINISTRATIVE CODE CITATION: 30 TAC §§ 37.9030, 37.9035, 37.9040, 37.9045, 37.9050, TITLE 30. ENVIRONMENTAL QUALITY, PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, CHAPTER 37. FINANCIAL ASSURANCE, SUBCHAPTER T. FINANCIAL ASSURANCE FOR RADIOACTIVE SUBSTANCES AND AQUIFER RESTORATION, TEXAS REGISTER

... a financial size category of "XV" as assigned by the **A.M. Best** Company. (2) The insurance policy must designate the commission as an ...

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Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

34 TEXREG 2949, ISSUE: Volume 34, Number 20, ISSUE DATE: May 15, 2009, SUBJECT: ADOPTED RULES, AGENCY: PUBLIC UTILITY COMMISSION OF TEXAS, TEXAS ADMINISTRATIVE CODE CITATION: 16 TAC § 25.107, TITLE 16. ECONOMIC REGULATION, PART 2. PUBLIC UTILITY COMMISSION OF TEXAS, CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS, SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION, TEXAS REGISTER

... definition of "investment-grade credit rating" to allow ratings from **A.M. Best** and to remove the ambiguous reference to nationally recognized credit rating ...
... grade credit rating-to include a "BBB" rating from **A.M. Best,** and removes the reference to nationally recognized agencies. Subsection (b)(...
... increases the standard beyond what Moody's, S&P, Fitch, and **A.M. Best** define as investment grade. Subsection (f)(1)(A)(...

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Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

34 TEXREG 2969, ISSUE: Volume 34, Number 20, ISSUE DATE: May 15, 2009, SUBJECT: ADOPTED RULES, AGENCY: PUBLIC UTILITY COMMISSION OF TEXAS, TEXAS ADMINISTRATIVE CODE CITATION: 16 TAC § 25.107, TITLE 16. ECONOMIC REGULATION, PART 2. PUBLIC UTILITY COMMISSION OF TEXAS, CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS, SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION, TEXAS REGISTER

... Investors' Service, or "BBB-" from Standard & Poor's or Fitch, or "BBB" from **A.M. Best.** (9) Permanent employee--An individual that is fully integrated into a ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
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Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

34 TEXREG 6398, ISSUE: Volume 34, Number 38, ISSUE DATE: September 18, 2009, SUBJECT: PROPOSED RULES, AGENCY: TEXAS DEPARTMENT OF LICENSING AND REGULATION, TEXAS ADMINISTRATIVE CODE CITATION: 16 TAC §§ 73.10, 73.20 - 73.24, 73.26, 73.28, 73.40, 73.51 - 73.54, 73.60, 73.65, 73.70, 73.80, 73.90, 73.91, TITLE 16. ECONOMIC REGULATION, PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION, CHAPTER 73. ELECTRICIANS, TEXAS REGISTER

... Chapter 981, or other insurance companies that are rated by **A.M. Best** Company as B+ or higher. § [A> 73.51. Electrical ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
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Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

35 TEXREG 1827, ISSUE: Volume 35, Number 9, ISSUE DATE: February 26, 2010, SUBJECT: IN ADDITION, AGENCY: Texas Department of Insurance, TEXAS REGISTER

... i.e. (relating to LAD servicing carriers) raise the required **A.M. Best** financial rating for a LAD servicing carrier from ...

Why the rule should be reviewed, revised or repealed:

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Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

35 TEXREG 1881, ISSUE: Volume 35, Number 10, ISSUE DATE: March 5, 2010, SUBJECT: PROPOSED RULES, AGENCY: OFFICE OF CONSUMER CREDIT COMMISSIONER, TEXAS ADMINISTRATIVE CODE CITATION: 7 TAC §§ 85.401 - 85.408, 85.410, 85.412, 85.413, 85.415 - 85.423, TITLE 7. BANKING AND SECURITIES, PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER, CHAPTER 85. RULES OF OPERATION FOR PAWNSHOPS, SUBCHAPTER D. OPERATION OF PAWNSHOPS, TEXAS REGISTER

... coverage must be $100,000 per occurrence from an insurance company with an **A.M. Best rating** of B+ or better. (B) In addition, pawnshops operating ...
... Fire insurance coverage must be purchased from an insurance company with an **A.M. Best rating** of B+ or better [A> as follows <A] [[D> for < ...

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5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
2. Competition that would otherwise benefit the prices and coverages available to Texans is stifled rather than encouraged. This seems inconsistent with competition, monopolies and boycotts.
3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, j[redacted]1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

35 TEXREG 10197, ISSUE: Volume 35, Number 47, ISSUE DATE: November 19, 2010, SUBJECT: ADOPTED RULES, AGENCY: PUBLIC UTILITY COMMISSION OF TEXAS, TEXAS ADMINISTRATIVE CODE CITATION: 16 TAC § 25.107, TITLE 16. ECONOMIC REGULATION, PART 2. PUBLIC UTILITY COMMISSION OF TEXAS, CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS, SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION, TEXAS REGISTER

... Investors' Service, or "BBB-" from Standard & Poor's or Fitch, or "BBB" from **A.M. Best.** (9) Permanent employee--An individual that is fully integrated into a ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

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The issues the rule causes are many; the three major issues are:

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Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, j[redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

37 TEXREG 9744, ISSUE: Volume 37, Number 50, ISSUE DATE: December 14, 2012, SUBJECT: PROPOSED RULES, AGENCY: TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION, TEXAS ADMINISTRATIVE CODE CITATION: 28 TAC §§ 166.1 - 166.3, 166.5, TITLE 28. INSURANCE, PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION, CHAPTER 166. ACCIDENT PREVENTION SERVICES, TEXAS REGISTER

... industry standards and practices governing occupational safety and health, such as: **A.M. Best,** North American Industry Classification System (NAICS), Bureau of ...
... Association of Insurance Commissioners (NAIC) number; (E) company's **A.M. Best rating;** (F) changes in ownership, organizational structure, or management of the ...
... Texas; National Association of Insurance Commissioners (NAIC) number; **A.M. Best rating;** changes in ownership, organizational structure, or management since the ...
... principal Texas office address; primary NAICS code; **A.M. Best** Hazard index number; policyholder contact person's name, ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
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4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
2. Competition that would otherwise benefit the prices and coverages available to Texans is stifled rather than encouraged. This seems inconsistent with competition, monopolies and boycotts.
3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, j[redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

38 TEXREG 2000, ISSUE: Volume 38, Number 12, ISSUE DATE: March 22, 2013, SUBJECT: ADOPTED RULES, AGENCY: TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION, TEXAS ADMINISTRATIVE CODE CITATION: 28 TAC §§ 166.1 - 166.3, 166.5, TITLE 28. INSURANCE, PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION, CHAPTER 166. ACCIDENT PREVENTION SERVICES, TEXAS REGISTER

... industry standards and practices governing occupational safety and health, such as: **A.M. Best,** North American Industry Classification System (NAICS), Bureau of ...
... Association of Insurance Commissioners (NAIC) number; (E) company's **A.M. Best rating;** (F) changes in ownership, organizational structure, or management of the ...
... Texas; National Association of Insurance Commissioners (NAIC) number; **A.M. Best rating;** changes in ownership,
organizational structure, or management since the ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
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5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
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Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, [redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

39 TEXREG 1578, ISSUE: Volume 39, Number 10, ISSUE DATE: March 7, 2014, SUBJECT: PROPOSED RULES, AGENCY: OFFICE OF CONSUMER CREDIT COMMISSIONER, TEXAS ADMINISTRATIVE CODE CITATION: 7 TAC §§ 85.401 - 85.403, 85.405 - 85.408, 85.410, 85.412, 85.418 - 85.421, 85.423, TITLE 7. BANKING AND SECURITIES, PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER, CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS, SUBCHAPTER A. RULES OF OPERATION FOR PAWNSHOPS, DIVISION 4. OPERATION OF PAWNSHOPS, TEXAS REGISTER

... coverage must be $100,000 per occurrence from an insurance company with an **A.M. Best rating** of B+ or better. (B) In addition, pawnshops operating ...
... Fire insurance coverage must be purchased from an insurance company with an **A.M. Best rating** of B+ or better as follows: (A) for pawnshops not ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
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The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
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Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, j[redacted]1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

39 TEXREG 3401, ISSUE: Volume 39, Number 17, ISSUE DATE: April 25, 2014, SUBJECT: ADOPTED RULES, AGENCY: PUBLIC UTILITY COMMISSION OF TEXAS, TEXAS ADMINISTRATIVE CODE CITATION: 16 TAC § 25.107, TITLE 16. ECONOMIC REGULATION, PART 2. PUBLIC UTILITY COMMISSION OF TEXAS, CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS, SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION, TEXAS REGISTER

... Investors' Service, or "BBB-" from Standard & Poor's or Fitch, or "BBB" from **A.M. Best.** (9) Permanent employee--An individual that is fully integrated into a ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
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I remain available to discuss this matter. Joseph Petrelli, [redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

39 TEXREG 4156, ISSUE: Volume 39, Number 22, ISSUE DATE: May 30, 2014, SUBJECT: PROPOSED RULES, AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, TEXAS ADMINISTRATIVE CODE CITATION: 30 TAC § 293.63, TITLE 30. ENVIRONMENTAL QUALITY, PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, CHAPTER 293. WATER DISTRICTS, SUBCHAPTER F. DISTRICT ACTIONS RELATED TO CONSTRUCTION PROJECTS AND PURCHASE OF FACILITIES, TEXAS REGISTER

... for the contract and: (i) a rating of at least B from **Best's Key Rating** Guide; or (ii) if the surety company does not have any such rating due to the ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
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Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

39 TEXREG 9463, ISSUE: Volume 39, Number 49, ISSUE DATE: December 5, 2014, SUBJECT: PROPOSED RULES, AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, TEXAS ADMINISTRATIVE CODE CITATION: 30 TAC § 37.9045, § 37.9050, TITLE 30. ENVIRONMENTAL QUALITY, PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, CHAPTER 37. FINANCIAL ASSURANCE, SUBCHAPTER T. FINANCIAL ASSURANCE FOR RADIOACTIVE SUBSTANCES AND AQUIFER RESTORATION, TEXAS REGISTER

... a financial size category of "XV" as assigned by the **A.M. Best** Company. (2) The insurance policy must designate the commission as an ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
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I remain available to discuss this matter. Joseph Petrelli, [redacted] 1 614 526 2160

Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

43 TAC § 27.7, TITLE 43. TRANSPORTATION, PART 1. TEXAS DEPARTMENT OF TRANSPORTATION, CHAPTER 27. TOLL PROJECTS, SUBCHAPTER A. COMPREHENSIVE DEVELOPMENT AGREEMENTS, § 27.7. Design-Build Contracts, TEXAS ADMINISTRATIVE CODE

... minus (A-) or better and Class VIII or better by **A.M. Best** and Company, or an alternative form of security in the amount of $ 250 ...
... minus (A-) or better and Class VIII or better by **A.M. Best** and Company, in an amount that is sufficient to ensure the proper performance of any ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
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Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

554. 35 TEXREG 3711, ISSUE: Volume 35, Number 20, ISSUE DATE: May 14, 2010, SUBJECT: PROPOSED RULES, AGENCY: PUBLIC UTILITY COMMISSION OF TEXAS, TEXAS ADMINISTRATIVE CODE CITATION: 16 TAC § 25.107, TITLE 16. ECONOMIC REGULATION, PART 2. PUBLIC UTILITY COMMISSION OF TEXAS, CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS, SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION, TEXAS REGISTER

... Investors' Service, or "BBB-" from Standard & Poor's or Fitch, or "BBB" from **A.M. Best.** [A> (10) <A] [A> Misdemeanor--An offense defined as ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
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Response to Insurance Commissioner Kent Sullivan Initiative to Identify Rules that Need to be Updated or Changed. Deadline of October 1, 2019

The citation for the specific rule on which Demotech is commenting:

TEXREG 5172, ISSUE: Volume 35, Number 25, ISSUE DATE: June 18, 2010, SUBJECT: PROPOSED RULES, AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, TEXAS ADMINISTRATIVE CODE CITATION: 30 TAC § 37.9105, TITLE 30. ENVIRONMENTAL QUALITY, PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, CHAPTER 37. FINANCIAL ASSURANCE, SUBCHAPTER V. FINANCIAL ASSURANCE FOR CLASS B SEWAGE SLUDGE FOR LAND APPLICATION UNITS, TEXAS REGISTER

... in Texas that has a rating of A- or better by **A.M. Best** Company; (4) designate the Texas Commission on Environmental Quality as an ...

Why the rule should be reviewed, revised or repealed:

The rule as currently written should be revised for several reasons, including but not limited to:

1. The rule reinforces a structural insurance ratings monopoly in Texas because it fails to recognize Demotech and several other competent insurance rating services.
2. The rule fails to reference Demotech, the first company to review and rate independent, regional and specialty insurers (1989) and Demotech's record of performance identifying financially stable insurers is as good as any entity's including A. M. Best.
3. Demotech's capability has been independently analyzed by The Florida State University
4. Drs. Richard Klein and Michael Barth have independently analyzed the survival rates of carriers reviewed by Demotech and issued a report to the NAIC and every department of insurance including the Texas Department of Insurance (2018). They concluded that Demotech could be a resource to departments of insurance as well as consumers.
5. Under the **Texas Fair Enterprise & Antitrust Act of 1983**, the Attorney General of Texas enforces the act by investigating and prosecuting violations, such as: price-fixing, bid-rigging, monopolies, cartels, group boycotts, and anti-competitive mergers and acquisitions. Rules, regulations and statutes should NOT create monopolies.
6. The National Council of Insurance Legislators has promulgated a Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies. The current rule is inconsistent with the spirit of the Model Act and inconsistent with provisions of the Model Act in that the current rule does not reference the competent rating agencies referenced in the Model Act.

The issue the rule causes and why changing it should be a priority for TDI:

The issues the rule causes are many; the three major issues are:

1. Duly licensed insurers operating in Texas that have elected to be reviewed and rated by one of the many competent insurer rating service are disadvantaged. As such, the rule is unreasonably difficult for duly licensed carriers in good standing with the Texas DOI to comply with the rule.
2. Competition that would otherwise benefit the prices and coverages available to Texans is stifled rather than encouraged. This seems inconsistent with competition, monopolies and boycotts.
3. Given the increase in the number of competent insurer rating agencies as enumerated in the NCOIL Model Act, the current rule is out of date.

A brief description of Demotech's idea for improving the rule:

Our idea for improving the rule is a revision to reference each of the competent rating agencies enumerated in the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies.

I remain available to discuss this matter. Joseph Petrelli, [redacted] 1 614 526 2160

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08736
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

NATIONAL COUNCIL OF INSURANCE LEGISLATORS (NCOIL)

Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies

Adopted by the NCOIL Financial Services Committee on November 16, 2017
Adopted with amendments by the NCOIL Executive Committee on November 19, 2017
Sponsored by Rep. Steve Riggs (KY) and Sen. Bob Hackett (OH)

Section 1. Short Title

Model Act to Support State Regulation of Insurance by Requiring Competition among Insurance Rating Agencies

Section 2. Findings and Purpose

The Legislature finds that:

1) Protecting consumers and ensuring the safety and soundness of insurance companies in the United States have been the prime objectives of state insurance regulation for over 150 years.
2) The states have sole authority for the regulation of the business of insurance as provided under the McCarren-Ferguson Act.
3) State insurance regulation has been successful and effective.
4) State insurance regulation has in place on-going substantive procedures, processes, and protocols to license, regulate and supervise insurers.
5) There is no requirement that duly licensed insurance companies be rated and that among those that are, companies make choices about rating organizations based on management's evaluation of the perceived strengths of each rating organization as it relates to their markets and business models.
6) The test of insurer ratings is whether in the long run the company performs as expected, and in that regard each of these rating organizations on the whole have a consistent record of accurately gauging the ability of the companies to pay claims and service their customers.
7) An unintended yet direct consequence of designating a single, exclusive insurer rating requirement in laws, statutes, bulletins or other public material is the diminution of "public regulation by public authority" and an implication of private regulation of insurance.
8) A response to this threat to public regulation is necessary.

9) Multiple, competent insurer rating organizations exist.

It is the purpose of this Act to:

To require competition in insurer ratings to benefit consumers, duly licensed insurance companies, producers, and other third-party stakeholders by promulgating and embracing insurer rating requirements in laws and regulations that incorporate the enumeration of multiple, competent insurer rating organizations.

Section 3. Definitions

As used in this Act:

1) "Competent Rating Agency" means A.M. Best Rating Services, Inc. Company; Demotech, Inc.; Fitch Group; Moody's Investor Service; Kroll Bond Rating Agency; Standard and Poor's Financial Services LLC or another rating agency certified or approved by a national entity that engages in such a process. The process shall include, but not necessarily be limited to, the following requirements:

    a. A requirement for the rating agency to register and provide an annual updated filing;
    b. Record retention requirements;
    c. Financial reporting requirements;
    d. Policies for the prevention of misuse of material nonpublic information;
    e. Management of conflicts of interest, including prohibited conflicts;
    f. Prohibited acts practices;
    g. Disclosure requirements;
    h. Required policies, practices, and internal controls;
    i. Standards of training, experience and competence for credit analysts.

2) "Public Entity" means any department, agency, special purpose district, or other instrumentality of this State and county or local government in this State.

Section 4. Requirements

No public entity shall bar any competent rating agency in designating the use of insurer rating requirements in laws, statutes, regulations, rules, bulletins, or other public materials.

Section 5. Effective Date

This Act shall take effect immediately.

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SEP 30 2019
TEXAS DEPT. OF INSURANCE
MAIL SERVICES

Chief Clerk
Texas Department of Insurance
Hobby 1, Room 1210A
MC 112-2A, P.O. Box 149104
Austin, TX 78714-9104

From: Cindy Davidson <[redacted]
Sent: Monday, September 30, 2019 12:49 PM
To: Comments <Comments@tdi.texas.gov>
Subject: Comments: TDI Rules Modernization

Thank you for the opportunity to submit suggestions for Texas insurance rules that would benefit from modernization.

As an approved provider of both prelicensing and continuing education, ExamFX respectfully requests that the attached recommendations be considered.

Thank you,

Cynthia Davidson, CIC, ITP, SILA-F
Director, Insurance & Securities Content
D 913.661.6550 | M 310.741.0207
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Rule: ***28 Texas Administrative Code, Section Rules §19.1003(a), §19.1003(a)(B), and §19.1003(a)(C); Licensee Hour and Completion Requirements***

Rule §19.1003(a) and §19.1003(a)(B) states that each licensee (with a few exceptions) must complete 24 hours of continuing education which must include at least 2 hours in certified ethics or consumer protection courses.

Reason for review:

Texas is one of a handful of states that does not meet the Uniform Licensing Standard regarding required CE hours

***Improvement on the rule*:**

We recommend that Texas aligns the requirement to meet the Uniform Licensing Standard of 24 hours of CE which must include 3 hours of ethics. Changing the requirement would meet uniformity standards.

Rule §19.1003(a)(C) requires TX licensees to complete at least 50% of the CE requirement in certified classroom or classroom equivalent courses.

Reason for review:

Texas is one of 3 states that has this requirement. This presents challenges with course approvals of classroom equivalent courses under **Rule §19.1009(h)** and the 12-credit hour limit under **Rule §19.1010(a)(D**).

Issues Relating to the rule and priority for TDI:

By limiting the approved credit hours to 12 credits based on the 50% classroom requirement, Texas -based providers are not able to offer their courses nationally for more credits (which puts them at a disadvantage with their competitors) unless they designate another home state and submit the course in that state an request more hours than their home state allows.

Improvement on the rule:

It is our recommendation to remove this requirement from **Rule §19.1003(a)(C).**

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Rule: ***28 Texas Administrative Code, Section Rule §19.1006(a); Course Criteria***
Rule §19.1006(a) states the following:

To be certified as a continuing education course, the course content shall be designed to enhance the knowledge, understanding, and/or professional competence of the student as to one or more of the following topics: insurance principles and coverages; applicable laws, and rules; recent and prospective changes in coverages; technical policy provisions and underwriting guidelines and standards; law and the duties and responsibilities of the licensee; consumer protection; or insurance ethics. The course content may also include instruction on management of the licensee's insurance agency.

Reason for the review:

Currently, Texas takes a restrictive view on approved topics. This rule restricts the topic area to exclude areas which the modern insurance professional is expected to understand by their clients or the industry. They expect producers to understand how the products the producer is offering fit in the consumers overall financial goals. They do not want a producer that simply knows basic product features and provisions. Topics on estate planning, retirement planning, needs based planning, and other financial planning topics should be approved topics.

Issues related to the rule and priority for TDI

While the narrow topic list may be appropriate for a newly licensed producer, it does not reflect the "real life" of an experienced or seasoned producer whose business often overlaps with other financial products and topics, including estate planning, wealth accumulation and transfer, tax planning and qualified plans.

Rules and regulations must reflect the increased complexity of the insurance industry and melding of insurance and financial services' activities of an insurance producer. As previously mentioned, consumers demand and expect producers to have a broader base of knowledge than ever before. By having an overly restrictive list of approved topics, the rule is putting consumers at risk and defeating the purpose of insurance continuing education which is to "*... to enhance the knowledge, understanding, and/or professional competence of the student...*" Producers must know more than just policy provisions, laws, and ethics if they are going to provide competent professional guidance to Texas consumers.

For Example: A provider submitted an IRA course for CE approval. The course was denied as it was not related to insurance. The provider responded that IRAs can be funded with annuities (an insurance product) and therefore a producer MUST know the features of an IRA in order to ethically fund an IRA with an annuity. The course was rejected even after the response. Ironically, candidates for licensing in Texas are tested on retirement plans on the state exam. If they are required to know the information to become licensed, why is it not allowed as a topic for continuing education?

Improvement on the rule:

We recommend that Texas expand their approved topic/content list to include the recommended NAIC best practices on approved CE approved topics.

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Rule: ***28 Texas Administrative Code, Section Rule §19.1010(a)(2)(A); Hours of Credit***

Rule §19.1010(a)(2)(A) mandates that the calculation of hours in Texas is calculated in one of two ways: the average of at least 5 time-testers, or the average of approved credit in at least three other states.

Reason for review:

Texas is the only state that requires an education provider to pilot test a course to get a course approved in their state.

Issues related to the rule and priority for TDI:

The five time-tester requirement is an issue because it is difficult to find five qualified individuals that are Texas producer licensed to do the time test. There is a significant delay in getting a course submitted due to waiting on the time tests to be completed.

If a Texas home state provider does not pilot test the course, they must first get it approved in at least 3 other states before they can submit to Texas. This causes a delay to go nationwide because now 3 other states must perform a substantive review of the course in order to get the home state approval in Texas and use reciprocity with remaining states.

Improvement on the rule:

It is our recommendation to remove these 2 methods of calculation and instead, calculate the number of CE credit hours using the NAIC Recommended Guidelines for Online Courses. Most states use a formula of 9,000 words per CE credit hour for a basic course. A factor of 1.25 (7,200 words per hour) is applied to intermediate level CE courses and a factor of 1.5 (6,000 words per hour) is applied for advanced level CE courses. This would simplify the process and allow for a quicker approval and release date which makes the courses available to TX producers much sooner.

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Rule: ***28 Texas Administrative Code, Section Rule §19.1010(a)(2)(D); Hours of Credit***

RULE §19.1010 (a)(2)(D) states that the TDI will not certify more than 24 credit hours for any one classroom equivalent course or 12 credit hours for any one self-study course.

Reason for review:

Texas is of only a few states with this requirement. Self-study Continuing Education (CE) Providers domiciled in Texas have a need to offer more than 12 hours of CE credit for licensees outside of Texas.

Issues related to the rule and priority for TDI:

Continuing Education providers who are domiciled in Texas have difficulties submitting courses for more than 12 hours in other states. They have to submit the course in another state as a resident home state submission. This usually leads to providers having to send more documentation and takes additional time for CE providers in Texas to get courses approved.

Improvement on the rule:

The SILA Education and Training Subgroup would like to request that RULE §19.1010(a)(2)(D) be struck from the Texas Administrative Code. Instead, we recommend that Texas use the NAIC Recommended Guidelines for Online Courses Acceptable Procedures to determine Appropriate Number of Credit Hours as follows:

Method A

- 600-700 words (standard font size) = one text page
- Textbooks/workbooks/other printed material – one credit for every 15 pages
- 3 screens with an aggregate total of approximately 600-700 words – one text page
- 45 screens – one hour of credit
- Divide total screens by 45 – total number of credit hours
- Multiply number of hours by 1.00 for a basic level course; 1.25 for an intermediate level; 1.50 for an advanced course for additional study time = total number of credit hours (fractional hours rounded up if .50 or above and rounded down if .49 or less)

Method B

- Divide total number of words by 180 (documented average reading time) = number of minutes to read material
- Divide number of minutes by 50 = credit hours
- Multiply number of hours by 1.00 for a basic level course; 1.25 for an intermediate level; 1.50 for an advanced course for additional study time = total number of credit hours (fractional hours rounded up if .50 or above and rounded down if .49 or less)

Method C

- Course that is part of a nationally recognized professional designation
- Credit hours equivalent to hours assigned to the same classroom course material

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Rule: ***28 Texas Administrative Code, Section Rule §19.1011(d)(1); Requirements for Successful Completion of Continuing Education Courses***

Rule §19.1011(d)(1) states that the final examination or interactive inquiries must reasonably evaluate the student's understanding of the course content. At least 70% of the examination questions or interactive inquiries must be based at the application level. The remainder of the questions may be based at the knowledge level.

Reason for review:

Texas is the only state that has this requirement for the exams. This requires providers to create and maintain special exams just for Texas. Some education providers will choose not to offer the course in Texas because they don't want to create application-based questions and maintain two separate exam banks. Insurance CE providers who also work in other industries say this is not a common practice in other industries.

Issues related to the rule and priority for TDI:

Placing a higher emphasis on application-based questions is not educationally supported. Application-based questions are not intrinsically superior to recognition or recall questions in measure mastery of a subject.

The 70% rule does not take into consideration that some topics, when appropriately developed, do not lend themselves to application-based questions. A student's understanding and acclimation of these kinds of topics and learning points are quite often better assessed through "knowledge-based" questions (typical "recognition and recall" question). Due to the higher complexity of this type of question, they are often seen by agents as "trick questions".

Aside from the additional course development expense of this requirement, another issue is the determination of what qualifies as an application question. This is very subjective decision and there is no consistency among course reviewers. On several occasions, the course approval vendor rejected courses because they did not consider certain questions to be application -based. In these situations, the provider received a denial and appealed the decision that the questions did not qualify as application-based questions. In many cases, the appeal was not successful, and providers had to rewrite questions and send the course back through the editing process. This difference of opinion (of what is considered an application-based question) results in increased course development costs and delays in releasing a new or updated course.

The 70% application question requirement is even more onerous on classroom equivalent (CLEQ) courses where the "interactive inquiries" must also be 70% application questions, which significantly increases the number of questions that must be written for a classroom equivalent course. Each inquiry period must have 5 questions. Each inquiry period has a 50% new question requirement, so 10 questions must be written to display 5 questions per inquiry period. Each hour of classroom equivalency must have a minimum of 4 inquiry periods, therefore, every classroom equivalent (CLEQ) course hour requires 40 questions, 70% of which must be application based. For example, a 5-hour CLEQ course requires us to write 200 questions, of which 140 must be application questions.

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Improvement on the rule:

It is our recommendation that **rule §19.1011(d)(1)** be stricken from the code. This would allow education providers the latitude to develop questions they feel are meaningful without the concern that the state approval vendor will not consider a question to be application-based. It also eliminates the additional expense to the state and education providers caused by subjective disagreements as to whether a question is an application question or not.

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Rule: ***28 Texas Administrative Code, Section Rule §19.1011(e); Requirements for Successful Completion of Continuing Education Courses***

RULE §19.1011(e) states the following:

(e) Providers shall issue certificates of completion to students who successfully complete a certified course. The provider must issue the certificate in a manner which shall ensure that the student receiving the certificate is the student who took the course, issue the certificate within 30 days of completing the course, and complete the certificate to reflect the date the student took the course/examination. Providers shall not allow a student, or any person or organization other than the provider giving the course, to prepare, print, or complete a certificate of completion.

Reasons for the review:

Texas is the only state who does not allow electronic certificates to be provided to the licensee.

Issues related to the rule and priority for TDI:

Continuing Education (CE) Providers would like to provide electronic certificates of completion for Texas Insurance Continuing Education courses. This allows the student immediate access to the certificate. Currently, CE Providers may not allow a student, or any person or organization other than the provider giving the course, to prepare, *print*, or complete a certificate of completion.

Improvement on the rule:

We recommend that the word "print" be removed from **RULE §19.1011(e)**.

Regan Ellmer

From: Comments
Sent: Sunday, September 29, 2019 10:01 AM
To: Libby Elliott; Regan Ellmer
Subject: FW: Insurance Code Suggestions for Texas Department of Insurance - Multi-year Installment Policies
Attachments: RE: Multi-year policies with installments; Texas Administrative Code - Multi year policy installments.html

Importance: High

From: Patricia Motyleski <[redacted]>
Sent: Friday, September 27, 2019 4:10 PM
To: Comments <Comments@tdi.texas.gov>
Cc: Michael Harris <[redacted]>; Laura Muka <[redacted]>
Subject: Insurance Code Suggestions for Texas Department of Insurance - Multi-year Installment Policies
Importance: High

Dear Kent Sullivan - Texas Insurance Commissioner,

Exceptional Risk Advisors is a Surplus Lines Broker that have been placing Lloyd's of London coverage in the state of TX.

Our book of business is based on multi-year policies that are usually paid in installments – either monthly, quarterly, semi-annual or annual. In other states, we generally report such policies as a multi-year: ex. April 21, 2015 – April 20, 2020 and then report each paid installment as an endorsement. Reporting the policies in this fashion allows for each installment or subsequent endorsement to pick up the tax and stamping fee that was in place on the original policy effective date, which in this example would be April 21, 2015. This allows all invoices to be consistent and straightforward.

We are aware of the current reporting procedures outlined in the attached email and Texas Administrative Code, also attached. We would respectfully like to suggest the Texas Insurance Commissioner please review the insurance code in respect of reporting multi-year policies paid in installments, that they may be treated as a single multi-year policies instead of multiple one-year policies. We feel this would help to bring consistency and allow Surplus Lines Brokers the ability to report policies to the state of TX in a more effective manner.

Thank you for your consideration, and please don't hesitate to reach out with any questions.

Regards,

Expect the Exceptionalmmich

Patti Motyleski
Surplus Lines Administrator

EXCEPTIONAL
RISK ADVISORS

T: 866-512-0444 | D: 201-335-0944

[redacted]
www.ExceptionalRiskAdvisors.com

Read The Evolution of High-Limit Disability Plans

From: Keri Kish <[redacted]>
Sent: Wednesday, September 25, 2019 1:06 PM
To: Ted Tafaro <[redacted]com>
Subject: Submit suggestions to Texas Department of Insurance

WSIA WHOLESALE & SPECIALTY INSURANCE ASSOCIATION

Contact WSIA: Email us at [redacted] or call 816.741.3910

Texas Insurance Commissioner requests suggestions for insurance code revisions by October 1

September 25, 2019

The Texas Department of Insurance (TDI) has put in motion its plan to review its insurance code and is soliciting suggestions for rules that need to be updated or changed. Earlier this month the

TDI issued the first call for comments in their fresh look at insurance rules initiative. **Comments are due by October 1**.

This is a great opportunity for the industry to provide suggestions that will further modernize the regulatory process and the Texas insurance market. Suggestions should focus on rules that are outdated, unnecessarily burdensome or could benefit from some clarification.

One example that WSIA will submit relates to member concerns regarding Rule 15.106(b)(3) requiring surplus lines agents to report policy limits when filing with the Surplus Lines Stamping Office of Texas. Members are particularly concerned about the relevance of policy limit data in relation to the difficulty of determining the appropriate limit to provide given the often-complex structure of various aggregates and sublimits on a surplus lines policy.

Email suggestions to **comments@tdi.texas.gov** **by October 1**. Comments should be limited to one page, must reference the specific rule and should provide a suggestion as to how to address your concern.

WSIA.ORG

WSIA News - Published by
Wholesale & Specialty Insurance Association
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816.741.3910 | [redacted]

Joel Cavaness, President
Brady Kelley, Executive Director
Susan Henderson, Marketing & Communications Director

Regan Ellmer

From: Tech Support [redacted]org>
Sent: Friday, September 27, 2019 9:28 AM
To: Patricia Motyleski
Subject: RE: Multi-year policies with installments

Hi Patricia,
Our current system supports multi-year policies. Here is the explanation of how to determine how to enter them. Our new system will essentially work the same since the method is based on the Texas Insurance Code requirements.

> For any multi-year policy, paid in installments (or monthly reporting) there is a different process that should be applied so that we can appropriately calculate the correct tax and stamping fee rates. Multi-year policies have slightly different rules than *regular annual policies* based on Chapter 3, Section 3.822(b)(1) of the Texas Administrative Code. This can be found here: https://www.sltx.org/compliance/laws/state.

1. For a **multi-year policy term where the entire premium is paid up front**, the policy and any subsequent endorsements within that term take the tax and stamping fee rates in effective as of the inception/effective date of the policy.
    a. For example: Original policy term is 12/1/13-12/1/18 and all the premium is paid up front, this will take a stamping fee rate of .06% and tax rate of 4.85%. Any endorsements within this period will take the same rates.
        i. Any extension past the expiration date for these policies will take the tax and stamping fee rate in effect as of the extension. (as above)
            1. Example: endorsement extends the expiration date through 12/1/19; this extension period will take the stamping fee and tax rates in effect as of the extension – stamping fee rate .15% and tax rate 4.85 %.
2. For a **multi-year policy term where the premium is paid in installments**, the tax and stamping fee rate will be the rate in effect as of the anniversary date of the policy.
    a. For example: Original policy term is 1/1/15-1/1/18: The policy will be entered with the first anniversary period 1/1/15-1/1/16 and will take the rate in effect as of the inception date of the policy which is stamping fee rate of .06% and tax rate of 4.85%. The installment payments and any endorsements within this anniversary period will take the same rates.
    b. For the 2nd anniversary period (for the above original policy term 1/1/15-1/1/18) will be entered as 1/1/16-1/1/17 and will take the rates in effect as of the anniversary date of 1/1/16 which is stamping fee rate of .15% and tax rate of 4.85%. The installments payments and any endorsements within this period will take the same rates.
    c. For the 3rd anniversary period (for the above original policy term 1/1/15-1/1/18) will be entered as 1/1/17-1/1/18 and will take the rates in effect as of the anniversary date of 1/1/17 which is stamping fee rate of .15% (or the current stamping fee rate) and tax rate of 4.85%. The installments payments and any endorsements within this period will take the same rates.

Cathy Hull | Senior Analyst
Surplus Lines Stamping Office of Texas | (800) 681-5848 opt 2
805 Las Cimas Parkway, Suite 300, Austin, Texas 78746
[redacted] | sltx.org

SLTX has moved! Please note our new address.

From: Patricia Motyleski <[redacted]com>
Sent: Friday, September 27, 2019 8:15 AM
To: Tech Support <[redacted]>
Subject: Multi-year policies with installments

Hi – we are aware that the current SLTX portal cannot support multi-year policies with installments and we are aware that the SLTX is in the process of implementing a new system sometime in the future. We are wondering if the new system will support these multi-year policies with installments?

Please let us know as soon as you can.

Regards,

Expect the Exceptional,

Patti Motyleski
Surplus Lines Administrator

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RISK ADVISORS

T: 866-512-0444 | D: 201-335-0944

[redacted]
www.ExceptionalRiskAdvisors.com

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<<Prev Rule Next Rule>>

Texas Administrative Code

TITLE 34	PUBLIC FINANCE
PART 1	COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 3	TAX ADMINISTRATION
SUBCHAPTER GG	INSURANCE TAX
RULE §3.822	Basis and Reporting of Surplus Lines Premium Tax, the Allocation of Premium for Surplus Lines and Independently Procured Premium Tax, and Multiple Agent Transactions for Surplus Lines Insurance

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(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Exempt premiums--If a surplus lines policy covers risks or exposures that are properly allocated to federal waters, international waters, or risks or exposures that are under the jurisdiction of a foreign government, then the premiums on such policies or portions of such policies are not taxable in Texas.

(2) Federal preemptions to state taxation for surplus lines insurance--Federal preemptions from state taxation exist for premiums on policies that are issued for the following entities:

(A) The Federal Deposit Insurance Corporation (FDIC), when it acts as the receiver of a failed financial institution that holds the property being insured;

(B) The National Credit Union Administration; and

(C) A federally chartered credit union.

(3) Multiple agent transaction--A transaction in which two or more agents, each acting as a surplus lines agent of record, place portions of the total insurance coverage, under a cover note or under a subscription policy, for a single insured.

(4) Premium received--The total gross amount of premium that is collected for the coverage that the contract or policy provides, which includes, but is not limited to, premiums, membership fees, assessments, dues, policy fees, or any other consideration for insurance. This amount includes agent fees that are charged in addition to, or in lieu of, a commission. Premium received does not include any separately billed finance charge that is associated with the financing of the premium.

(5) Premium written--The total gross amount of premium for the coverage that the insurance contract or policy provides, which includes, but is not limited to, premiums, membership fees, assessments, dues, policy fees, or any other consideration for insurance that is billed to the insured. This amount includes agent fees that are charged in addition to, or in lieu of, a commission. Premium written does not include any separately billed finance charge that is associated with the financing of the premium.

(6) Properly allocated and apportioned--The division or distribution of premium among or between the various locations afforded coverage under the insurance contract. This distribution of premium must comply with the methods that this section describes.

(7) Surplus lines agent or agency--An agent or agency that holds a surplus lines license that this state has issued pursuant to Insurance Code, Article 1.14-2.

(8) Surplus lines agent of record--The Texas licensed surplus lines agent who places a policy with an eligible surplus lines insurer, or the Texas licensed surplus lines agent who transacts business directly with an out-of-

state agent not licensed by Texas as a surplus lines agent to obtain coverage with an eligible surplus lines insurer. The agent in these situations is the agent of record for such agent's portion of the premium for the policy placement.

(9) Taxable surplus lines premium--For surplus lines taxation purposes, except for exempt or federally pre-empted premiums, surplus lines premium is taxable under Insurance Code, Article 1.14-2, §12(a).

(10) Texas waters--Waters within 10.359 statute miles or nine nautical miles from the Texas coastline.

(b) Determination of Texas premium and tax due. Unless otherwise properly allocated and reported pursuant to subsection (c) of this section, all premiums that are associated with a surplus lines policy are Texas premiums for taxation and reporting purposes. Premiums on policies for risks in Texas waters are subject to Texas taxation. All surplus lines insurance premium taxes must be computed on the total gross premium written or premium received for the policy as of the date that coverage becomes effective, except as follows:

(1) A policy that is issued for a term in excess of one year, with a fixed premium that is payable annually, shall be taxed on the first year's premium at the statutory rate as of the date that the policy is effective. The tax on premiums payable for subsequent years shall be computed and collected as of the date that such subsequent premiums become due and payable. For taxation purposes, that date is the policy anniversary date.

(2) Premium deposits made on a policy that provides for retrospective premium adjustments are premiums for such policy as of the effective date of the policy, and are taxed accordingly.

(3) Retrospective premium adjustments that are made under the terms of a surplus lines policy and that require the insured's payment of additional premiums are taxed at the rate originally charged. Retrospective premium adjustments that require the return of a portion of premium or premium deposit are effectuated by the surplus lines agents through a tax refund at the rate originally charged.

(c) Allocation of premium. A surplus lines agent of record may allocate the premium by use of the method that most reasonably and equitably allocates the premium that applies to Texas, other states, and nontaxable jurisdictions on those policies that cover multiple locations. The amount of premium on each policy must be allocated as Texas premium, other states premium, and exempt/preempted premium and must be reported to the Surplus Lines Stamping Office of Texas in a format that the Texas Department of Insurance and the Surplus Lines Stamping Office of Texas provide. Policies for risks that are 100 percent exempt, are preempted by federal statute and are on risks located entirely outside Texas, or risks that are allocated entirely to another state, are not required to be reported to the Surplus Lines Stamping Office of Texas. The premiums for these policies must be reported to the comptroller on a form prescribed for this purpose. The premium allocated to other states must be reported in the aggregate for all other states, beginning with policies that are effective the month that follows adoption of this section. The allocation standard chosen must be maintained in the policy file at the office of the surplus lines agent of record, and must be available upon request for inspection for taxation and regulation purposes for a minimum of four years, beginning the day after the date on which the annual tax report is due.

(1) Acceptable apportionment or premium allocation standards are as follows:

(A) (PA)--percentage of physical assets in Texas;

(B) (EP)--percentage of payroll that applies to employees who are located or conduct business in Texas;

(C) (S)--percentage of sales in Texas;

(D) (TC)--percentage of taxable capital for franchise tax purposes in Texas;

(E) (T)--percentage of time that an insured's conduct or property is exposed to coverage in Texas;

(F) (X)--any other method of equitable apportionment that is adequately described.

(2) Premiums that are properly allocated to any other state or states, and that are specifically exempt from taxation under the regulations of the other state or states, are not taxable in Texas.

(3) The apportionment or allocation standards under subsection (c)(1) of this section also apply to independently procured insurance premiums under Insurance Code, Title 2, §101.252.

(d) Tax base election. Surplus lines agents may elect to report and pay the premium tax on a premium-written or premium-received basis. All premiums will be taxed on the same basis. Each surplus lines agent must file an election on forms that the comptroller prescribes, and must state the method of taxation that the agent has chosen. If an agent fails to file an election, the agent must report on a premium-written basis. The tax base election chosen must be identified on the first tax report filing made that follows adoption of this section. Subject to approval from the comptroller, agents are allowed to change their election every four years prospectively. After the expiration of the initial four year election period, a change in the tax base election will be effective beginning the year received by the comptroller. An agent who changes from a premium-received to a premium-written basis will owe taxes on all outstanding receivables as of January 1 of the year of the change.

(1) Agents who elect to pay premium taxes on a premium-written basis will owe tax on all premium written during the reporting period, regardless of whether the tax has been collected, unless the premium is properly allocated or apportioned and reported under subsection (c) of this section.

(2) Agents who elect to pay premium taxes on a premium-received basis will owe tax on all premium received, regardless of whether the tax has been collected during the reporting period, unless the premium is properly allocated or apportioned and reported under subsection (c) of this section.

(3) Failure to bill and collect the tax at the time of delivery of the cover note, certificate of insurance, policy, or other initial confirmation of coverage is a violation of Insurance Code, Article 1.14-2, §12.

(e) Prepayment of taxes. Beginning January 1, 2000, licensed surplus lines agents are required to remit tax prepayments.

(1) A surplus lines agent must remit a premium tax prepayment by the 15th day of the month that follows any month in which accrued taxes equal or exceed $70,000, based on the tax base elected by the agent under subsection (d) of this section. The prepayment amount must equal the accrued liability at the end of the month.

(2) Failure to make the required prepayments will result in the application of penalty and interest.

(f) Bad debts. Any portion of the policy premium that is not collectible is considered to be a bad debt.

(1) An agent is not required to report tax on any amount that has been entered in the agent's books as a bad debt during the reporting period in which the contract was made, provided that the agent has deducted such amount on the agent's federal income tax return for that period.

(2) An agent is entitled to a credit for tax reported and paid on an account that is later determined to be a bad debt. The agent may take a deduction on the surplus lines tax report form, or obtain a refund from the comptroller, in the reporting period in which the agent's books reflect the bad debt. Deductions and refunds due to bad debts are limited to four years from the date on which the account is entered in the agent's books as a bad debt.

(3) A deduction may only be claimed on that portion of the bad debt that represents the amount reported subject to tax. In determination of that amount, all payments and credits to the policy may be applied ratably against the various charges that comprise the bad debt, except as paragraph (4) of this subsection provides.

(4) An agent may not deduct the expense of collection of bad debt, or the amount that the agent pays to a third party or that the third party retains for the service of collection of bad debt, from the amount subject to tax.

(5) To claim bad debt deductions, an agent's records must show:

(A) the date of the original or renewal insurance policy;

(B) the name and address of the insured;

(C) the amount that the insured contracted to pay;

(D) taxable and nontaxable charges;

(E) the amount on which the agent paid tax;

(F) all payments or other credits that are applied to the account of the insured; and

(G) evidence that the uncollected amount has been designated as a bad debt in the agent's books and records and was claimed as a bad debt deduction for income tax purposes.

(6) If an agent later collects all or part of an account for which a bad debt deduction was claimed, the amount collected must be reported as taxable premium in the reporting period in which such collection was made and taxed at the rate originally assessed.

(7) Installment policies may not be labeled as bad debts merely for the purpose of delay of payment of the premium tax.

(g) Financed or periodic payment transactions. Financed or periodic payment transactions include all policies in which the terms of the contract provide for deferred payments of the premium. These transactions include installment policies, conditional contracts, and premium-financed policies.

(1) Tax is due on the premium, interest charges, finance charges, and all other service charges incurred as a part of the policy issuance, unless these charges are stated separately to the insured by such means as an invoice, billing, ticket, or contract.

(2) An agent must report and pay tax on financed or periodic payment transactions based on one of the reporting methods that subsection (d) of this section describes.

(A) If the agent has elected to pay tax based on a premium-written basis, the entire amount of tax is due on the premium for the policy period and must be reported during the initial year in which the policy is effective.

(B) If the agent has elected to pay tax on a premium-receipts basis, tax must be reported based on the actual premium collected during the reporting period, excluding separately stated finance charges.

(h) Multiple agent transaction. Each agent of record in a multiple agent transaction is responsible for filing the policy that covers such agent's portion of the premium with the Surplus Lines Stamping Office of Texas, for filing an annual tax report with the comptroller on such business, and for payment of premium taxes on such premium or portion of such premium.

(i) Absorption of tax. As stated in Insurance Code, Article 1.14-2, §12, surplus lines agents are prohibited from absorption of the surplus lines premium tax. The assessment of tax due but not collected from insureds does not constitute absorption of taxes. Agents who are found to be absorbing tax through practices such as rebating or failing to bill for tax, or through violation of any subsection of this section, will be reported to the Texas Department of Insurance for regulatory action.

Source Note: The provisions of this §3.822 adopted to be effective March 20, 2001, 26 TexReg 2199

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September 24, 2019

Via Email: comments@tdi.texas.gov and
Via Hand Delivery

Chief Clerk
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Texas Department of Insurance
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MC 112-2A
P.O. Box 149104
Austin TX 78714-9104

RE: Petition for Rulemaking; Update to TDI Rules in Accordance with April 2, 2019 TDI call to identify rules that need updating (https://www.tdi.texas.gov/commissioner/fresh-look-at-insurance-rules.html)

Dear Chief Clerk:

In accordance with the request published April 2, 2019 by the Texas Department of Insurance, and the announcement published at: (https://www.tdi.texas.gov/commissioner/fresh-look-at-insurance-rules.html), we respectfully request an update to an HMO rule in order to conform the rule to the statute that allows an HMO or its contracted pharmacy benefit manager[1] to immediately terminate a pharmacy provider on the exceptional grounds allowed by statute in Tex. Ins. Code §843.306 (b)(1)-(3) without delay and without review.

The proposed rule change we have included with this letter would amend the text of 28 TAC §11.901(d)(1) to clarify that the pharmacy provider termination can be immediately effective in the case of imminent harm, adverse licensing action, or fraud or malfeasance, as expressly intended by the statute. The change would clarify the rule to avoid an interpretation that imposes an extra-statutory 90-day waiting period. This is important as the change would prevent the terminated provider from retaliating against the terminating HMO (or its PBM) during a 90 day post-notice period. Harmful post-termination behavior has been observed in the case of some terminated pharmacies, essentially a type of doubling

[1] See also Tex. Atty. Gen. Opinion KP-0036 (August 14, 2015) (page 2) ("Thus, to the extent that a PBM serves as a delegated entity of an HMO...and administers contracts with pharmacy providers, the PBM must comply with notice and review requirements of section 843.306.") General Paxton only invokes the statutory requirements in his opinion, and does not rely on the TDI HMO rule that imposes a 90 day notice period before the termination is effective in the exceptional situations set out by statute.

down on fraudulent or other bad activity to take advantage of the 90 day delay in termination imposed by the HMO rule in its current iteration.

Thank you for consideration of the attached proposed rule change.

Respectfully submitted,

Nanette K. Beaird
Foley & Lardner LLP

Enclosures: Text of Proposed Rule Change and "A Fresh Look at Insurance Rules"

Proposal for rulemaking

We respectfully petition the Texas Department of Insurance to amend its rules to protect HMOs, and their contracted PBMs, from the extensive damage caused by pharmacies that are terminated for fraud or malfeasance after their receipt of termination notice (the notice period is currently a full 90 days with regard to pharmacy contracts with an HMO or its contracted PBM) before the termination can take effect. The proposed amendments to prevent such damage are set out below (proposed added language is underlined):

28 TAC §11.901(d) should be amended to read as follows:

***

(d) Physician and provider contracts, subcontracts, and arrangements must include provisions regarding written notification of termination to a physician or provider in compliance with Insurance Code §843.306 (concerning Termination of Participation; Advisory Review Panel) and §843.307 (concerning Expedited Review Process on Termination or Deselection), including provisions providing that:

(1) the HMO must provide notice of termination by the HMO to the physician or provider at least 90 days before the effective date of the termination, unless the termination is made pursuant to exceptions under Insurance Code §843.306 (b);

(2) not later than 30 days following receipt of the written notification of termination, a physician or provider may request a review by the HMO's advisory review panel except in a case involving:

(A) imminent harm to patient health;

(B) an action by a state medical or dental board, another medical or dental licensing board, or another licensing board or government agency that effectively impairs the physician's or provider's ability to practice medicine, dentistry, or another profession; or

(C) fraud or malfeasance; and

(3) within 60 days after receipt of the physician or provider's request for review, the advisory review panel must make its formal recommendation and the HMO must communicate its decision to the physician or provider. Nothing in the review requirements shall be interpreted to require a termination review in the case of a provider's termination pursuant the exceptions in Insurance Code §843.306 (b).

TDI Texas Department of Insurance

A fresh look at insurance rules

Insurance Commissioner Kent Sullivan announced a new initiative earlier this year to identify rules that need to be updated or changed. We're now ready to hear from you about rules that need work. Are there rules that make compliance unreasonably difficult? Is the text ambiguous or out of date? Does it seem inconsistent with statute?

The review will be a three-stage process:

1. Stakeholders are asked to submit a brief statement for each rule they're requesting to change or update.
2. TDI will review all submissions and will announce the selection of a limited number of rule proposals for more detailed review and comment. TDI will request additional information, including suggested text revisions, for these submissions.
3. After reviewing the additional information, TDI will determine the submissions that move forward to formal rule projects. These will go through TDI's normal rule process, which allows for opportunities for public comment.

Stage 1 submissions

To submit a rule for consideration, please send a clear and concise statement of about **one page** per rule with the following information:

- The citation for the specific rule on which you are commenting.
- Why the rule should be reviewed, revised, or repealed.
- The issue the rule causes and why changing it should be a priority for TDI.
- A brief description of your idea for improving the rule.

Send submissions to comments@tdi.texas.gov or by mail to:

Chief Clerk
Hobby 1, Room 1210A
MC 112-2A, P.O. Box 149104
Austin, TX 78714-9104

Deadline: October 1, 2019

This request for suggestions is not part of our formal rule review process under Government Code 2001.039 or negotiated rulemaking under Government Code Chapter 2008. It's an

additional effort on our part to find rules that need to be modernized or changed. There is no requirement for TDI to act on any suggestion.

Do not use this initiative to submit rulemaking petitions under Government Code 2001.021.

Questions? Email comments@tdi.texas.gov.

Last updated: 8/30/2019

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GRIFFIN
UNDERWRITING SERVICES
In CA, DBA: Griffin Insurance Services, CA License #0G66558

September 30, 2019

Dear Texas Insurance Commissioner,

Thank you for allowing agencies to provide suggestions to further modernize the regulatory policy filing process for surplus lines. Our agency, like many others, are trying to modernize and simplify our work processes to gain more efficiencies in the workplace. We operate in all 50 states and it is very trying to have such filing differences between states.

It is our desire to easily and most efficiently file transactions with the State of Texas as well as the rest of the country. Please consider the following suggestions:

1. Reporting of Limits- Rule 15.106)(b)(3): Texas is one of a handful of states that require this. Requiring reporting of this limit is difficult because the language is not clear on which limit is reported. (ie. The GL limit, aggregate limit, property, etc...)

   This requirement also makes batch or automatic filing difficult as most policy management systems do not capture limits in a format that can be easily exported. This results in manual filing of hundreds of policies per month. Manual filing is not ideal as people are inherently flawed and will make errors. It is also not cost effective as the overhead costs will increase cost to the consumer.

2. Listing all Lloyds syndicates for each Lloyds policy sold- Rule 15.106(b)(2)
   Requiring surplus lines agents to report each syndicate number on a policy is incredible time consuming. This information is not retrievable from an agency management system and must be manually reported. The additional requirement of looking up each Texas assigned number per syndicate and providing that assigned number is an incredibly cumbersome task. Again, this results in manual entries, increased overhead, and additional costs to the insured. There is only one other state that collects this information. Why do the other 48 states find no value in collecting syndicate breakdowns per policy?

3. Tax Calculations
   Another opportunity would be for the taxes to automatically calculate in the EFS system. Differences in rounding taxes or manual entry errors, result in tagged transactions that consume time and resources, not only from us but from your agency as well. If the system would automatically calculate then tags for 2 cents would not be necessary.

Thank you for your time and consideration.
Regards,
Hannah Strok
HR & Compliance Manager

From: Jim Chaney < >
Sent: Monday, September 30, 2019 10:01 AM
To: Comments <Comments@tdi.texas.gov>
Subject: rule change suggestion - RULE §19.1011

Attached is my recommendation for a rule change for your consideration.

Jim Chaney, MS, CPCU, ITP, HCI, AIC, ARM, AU, AIDA, PCLA/FCLA

Director of Curriculum / Senior Instructor

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Rule to be changed:

Title 28: Part 1: Chapter 19: Subchapter K:

RULE §19.1011 Requirements for Successful Completion of Continuing Education Courses

(d) Self study examinations and classroom equivalent interactive inquiries shall meet the criteria set forth in paragraphs (1) - (12) of this subsection:

(1) The final examination or interactive inquiries must reasonably evaluate the student's understanding of the course content. *At least 70% of the examination questions **or** interactive inquiries must be based at the application level. The remainder of the questions may be based at the knowledge level;*

Reason for change:

The only reason for requiring continuing education hours for the renewal of insurance licenses is to ensure that at least a minimum amount of CE courses are taken during each licensing period, knowing that many licensees would not pursue continuing education without the requirement. The current process eliminates basic knowledge level training from eligibility for online continuing education credit and effectively reduces the amount of training available at this critical level. This causes a problem because in order to effectively develop application level skills, there must be a basic level of knowledge. The current system forces students into application level courses where they may be able to pass the exam, but lack the required basic understanding to effectively apply the concepts outside of class. There are consequently severe gaps in their knowledge that translate into errors in performance.

By eliminating the availability of knowledge level online training, student s must either obtain this type training in a traditional classroom or skip to application level training without the necessary basic skills.

Each presentation method has varying degrees of both effectiveness and efficiency with regard to the level of instruction. Self-paced courses, which include online classes with static content, are a very efficient way to deliver awareness and knowledge level content, but can be ineffective in development of higher-level skills. At the same time, classroom presentation can be very effective in presenting knowledge level materials, but may be inefficient, costing more than self-paced modes of learning.[1] The classroom is not the most efficient way to train at the knowledge level, but without an online option, this level of training must be delivered in this manner. This is a waste of resources.

Why change:

The current rule does not allow self-paced online learning to be used for the maximum impact and effectiveness, which is knowledge level training. By eliminating the 70% rule insurance professionals can obtain the level of training most appropriate for them using the delivery method that is both efficient and effective.

Recommended change – delete the 70% requirement.

(d) Self study examinations and classroom equivalent interactive inquiries shall meet the criteria set forth in paragraphs (1) - (12) of this subsection:

(1) The final examination or interactive inquiries must reasonably evaluate the student's understanding of the course content. ~~At least 70% of the examination questions **or** interactive inquiries must be based at the application level. The remainder of the questions may be based at the knowledge level;~~

Submitted by:
Jim Chaney, MS, CPCU, AIC, ARM, AU, AIDA, AINS, PCLA/FCLA, ITP
Director of Curriculum / Senior Instructor, Haag Education

[1] Brinkerhoff, Robert O. and Apking, Anne M. *High Impact Learning* (2001 Basic Books) pp 108-109

PROTECTING ASSETS.
MAKING A DIFFERENCE.

September 30, 2019

Chief Clerk
Hobby 1, Room 1210A
MC 112-2A, PO Box 149104
Austin, TX 78714-9104

VIA E-mail: comments@tdi.texas.gov

RE: Proposed Amendment to Rule 15.106(b) (3)

Dear Sir or Madam:

Pursuant to your request to identify rules which are unreasonably difficult for compliance, IMA, Inc. strongly recommends that the Texas Department of Insurance (TDI) revise Rule 15.106(b)(3) to remove the requirement to identify policy limits in filing policies with the Surplus Lines Stamping Office of Texas (SLTX).

Justification for Modification:

When the new requirement to include policy limits in filings at the Stamping Office was considered in 2017, the industry failed to recognize the burden the new rules would place on compliance because it was assumed that limits, like other required data, could be easily collected through digital software. Unfortunately, practice has shown that the new requirement requires manual input by trained staff who must make a professional determination of the limit, the type of line the limit applies to, and the aggregate different limits for different covered risks. IMA has had to hire additional staff to comply with this new requirement instead of investing additional resources to service accounts or seek new business.

Industry estimates are that compliance will typically cost $2 to $5 per policy to comply which equates to $2 to $5 million for the industry. Further, just hiring a data entry clerk to capture the data or complete the excel reports is going to cost anywhere from $26,500 to $50,000 a year depending on location and experience/knowledge of the data entry clerk. This burden is placed on wholesalers, many of whom are small businesses with 2 to 10 employees that cannot afford the added cost of compliance. Large wholesalers who operate in multiple states will have the option to write many of the same policies in other states and avoid the increased difficulties with compliance created by the new rule.

Furthermore, we believe the data will be of limited use as the complexity of surplus lines policies make it difficult to precisely allocate the risk to lines of insurance, and many policies cover both in-state and out-of-state risks devaluing any utility of aggregate coverage numbers.

Agency Management Systems (AMS) are not able to support or implement any change ‘on demand’, especially agencies that utilize a Data Export System to submit large amounts of data at the same time. Many agencies use Vertafore for their AMS systems, and Vertafore has a Data Export system designed

for Texas. Any changes to the Data Export system would need to be completed by Vertafore, which would take a minimum of 30 days to implement, at best. To complicate matters, Vertafore no longer supports their Data Export systems, thus, no changes will be made. This leaves the agencies only one other option, which is to report the Policy Limit data manually on an Excel spreadsheet. For agencies who report thousands of new and renewal policies each year, this manual process is extremely time consuming and burdensome. Our Agency Management System is not able to offer a work-around for this new rule, making our process go from automated to antiquated. The only option is to hire additional staff to comply with Rule 15.106, or pay out large sums of money for a new AMS system or create an in-house AMS system, both of which are not viable options.

Recommendation:

Repeal Rule 15.106(b) (3)

Sincerely,

Eric Pauly, General Counsel
IMA, Inc.

THOMPSON COE

Thompson, Coe, Cousins & Irons, L.L.P.
Attorneys and Counselors

Jay A. Thompson
Direct Dial: (512) 703-5060
[redacted]

Austin
Dallas
Houston
Los Angeles
New Orleans
Saint Paul

October 1, 2019

The Honorable Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
c/o Chief Clerk
MC 112-2A
333 Guadalupe St.
Austin, Texas 78701

via email: comments@tdi.texas.gov

Re: TDI Rule Review Input

Dear Commissioner Sullivan:

This letter is sent on behalf of my client the Insurance Council of Texas (ICT), a trade association comprised of over 500 property casualty insurers doing business in Texas. My client and I appreciate the opportunity to provide suggestions to you concerning specific agency rules that will assist in best practices, consumer protection, modernization, and user-friendly processes.

I reviewed several chapters in Title 28, Part 1 relating to Texas Department of Insurance rules and prepared a worksheet reviewing all subchapters, divisions and sections in Chapters 1, 5, 7, 19, 21, and 22. This worksheet was provided to ICT committees to assist them in formulating specific recommendations to you. This review showed that a large number of sections need to be updated to reflect statutory changes as a result of recodification. Some, but not all, of these sections are included in the specific recommendations attached to this letter. This long worksheet is available to you or your staff if needed.

In completing this process, we have also received comments from some members expressing hope that you will also review the use of informal rules being used by the agency. These are often encountered in form and rate filings and other filings made with the Department. Some of the on-line checklists also contain requirements not adopted through the formal rulemaking process. The use of informal rules makes compliance difficult for companies attempting to use best practices and know what rules will be applied in various filings made with the Department.

Attached to this letter is a document reflecting specific recommendations to key sections on the formal rules in 28 TAC. A large number of members writing auto insurance have requested that 28 TAC §5.401 be repealed. This rule prohibits use of the lack of prior insurance in underwriting. A detailed explanation is provided in the attached document. We hope changes suggested in these areas will be a priority for the Department to consider.

Please contact me if you have questions or need additional information in support of these recommendations.

Sincerely,

/s/ Jay Thompson
Jay A. Thompson

Cc: Albert Betts, Exec. Dir. ICT

INSURANCE COUNCIL OF TEXAS (ICT)
RULE REVIEW COMMENTS AND SUGGESTIONS

TITLE 28-INSURANCE
PART ONE-TEXAS DEPARTMENT OF INSURANCE
TEXAS ADMINISTRATIVE CODE

CHAPTER 1
Subchapter A
Division 1. General Procedural Rules

SECTION	Description	Adopted/Amended	Suggested Action/Priority
1.1-1.13	General Procedures Rules	1976/1984	Consider updating or repealing.
1.14	Motions During Hearings	1976	Consider updating or repealing
1.16-1.38	General Procedures Rules	1976/1984	Consider updating or repealing
1.39	Form of Briefs	1976	Consider updating or repealing
1.40-1.81	Gen'l Procedural Rules	1976/1984	Consider updating or repealing
1.82-1.87	Discovery rules	1993	Consider updating or repealing
1.88	Response to Notice	1996/1997	Consider updating or repealing
1.89	Default	1996	Consider updating or repealing
1.90	SOAH MOU	1993/1995/1996	Update to more accurately reflect current procedures with SOAH rules.

General Comments: These procedural rules are outdated. The rules were adopted at a time when the State Board of Insurance and TDI regularly conducted hearings. The board has been abolished and the TDI itself seldom conducts its own hearings except for hearings on rules and financial examination appeals. When these rules were adopted, they were designed to be similar and in compliance with similar requirements for contested case proceedings under the Administrative Procedure Act. To the extent some of the specific provisions are covered by the APA, the need for a separate rule is diminished. Discovery rules may not be needed because of similar provisions in the APA and Texas Rules of Civil Procedure and Evidence. SOAH hearings are generally conducted under rules of procedure adopted by SOAH not the TDI.

To the extent procedural rules are necessary for due process in contested cases, the priority to update or repeal these rules should be MEDIUM.

These procedural rules do not necessarily reflect hearings conducted by TDI, such as appeals of financial examinations under Chapter 401 or appeals of market conduct examinations under Chapter 751. There are numerous statutory references that have been recodified or amended and should be amended.

INSURANCE COUNCIL OF TEXAS (ICT)
RULE REVIEW COMMENTS AND SUGGESTIONS

TITLE 28-INSURANCE
PART ONE-TEXAS DEPARTMENT OF INSURANCE
TEXAS ADMINISTRATIVE CODE

CHAPTER 1
Subchapter C
Assessment of Maintenance Taxes and Fees, 2017

SECTION	Description	Adopted/Amended	Suggested Action/Priority
1.414	Fees	1994/2017	Either repeal or update

General Comments: Maintenance tax rates are set every year. Is it still necessary to maintain this rule?

Subchapter F
Summary Procedures for Routine Matters/PRIORITY HIGH

SECTION	Description	Adopted/Amended	Suggested Action/Priority
1.701	Purpose	1985/1985	Amend to correct statute
1.702	Designated Activities	1985/1993/2003	Update and Amend/High. There is no designation for property/casualty form filings. The only delegation to p/c appears to be for rate deviation filings which are no longer used.
1.703	Delegation	1985/1993/2003	Update and Amend/High
1.705	Review	1985/1992/2003	Update and Amend/HIGH

General Comments: The statute was enacted to allow the Commissioner to delegate certain routine functions by rule. However, the practice of using rules to delegate functions has largely been ignored and the Commissioners have regularly issued "delegation orders" instead. This is particularly true in financial transactions, holding company transactions, and others. After the death of Commissioner Mattax, delegation orders were used for several months even though there could have been serious legal questions on the use of orders. How far can delegation orders be used when the Legislature has specifically required the Commissioner to delegate through formal rules?

There have been a few problems in form filings in property and casualty. These problems have been encountered where disputes on objections to a particular form filing. In practice, forms may be disapproved by lower level staff instead of the delegated person in the rule. The review procedure is seldom if ever used and the procedures for a hearing are not clear. In some cases filings are closed in SERFF requiring a complete new filing. This is inefficient and cumbersome. Procedures for review, if needed, should be spelled out.

The use of summary procedures is helpful in expediting reviews and approval of policy forms. TDI should amend this rule to make it clear that property/casualty form and rate reviews are designated activities subject to the review provisions in this rule.

INSURANCE COUNCIL OF TEXAS (ICT)
RULE REVIEW COMMENTS AND SUGGESTIONS

TITLE 28-INSURANCE
PART ONE-TEXAS DEPARTMENT OF INSURANCE
TEXAS ADMINISTRATIVE CODE

CHAPTER 1
Subchapter G
Notice and Processing Periods for Permit Applications

SECTION	Description	Adopted/Amended	Suggested Action/Priority
1.801-1.813	Permit Applications	1989	Update with correct statutory references and current procedures.
1.807	Company License	1989	TDI allows itself 180 days to issue or deny an application for license. This should be able to be done more efficiently.
1.808	Foreign License	1989	TDI allows itself 180 days to issue or deny an application for license. This should be able to be done more efficiently.

General comments: The statutory references in this subchapter need to be updated as well as definitions, which still include the Board. The TDI has recently made significant improvements in processing of agent license applications. Applications for company licenses in Sections 1.807-1.808 needs review and if there are rules being applied but not included these should be included in any formal rule. Some companies report that the standards for obtaining a license are frequently subject to informal internal rules such as minimum reinsurance or other requirements before a license can be obtained. UCAA applications are generally used now for company license applications. Rules should be amended to reflect that current procedures and checklists. This will assist both new and foreign companies seeking to do business in Texas.

INSURANCE COUNCIL OF TEXAS (ICT)
RULE REVIEW COMMENTS AND SUGGESTIONS

TITLE 28-INSURANCE
PART ONE-TEXAS DEPARTMENT OF INSURANCE
TEXAS ADMINISTRATIVE CODE

CHAPTER 5
PROPERTY AND CASUALTY INSURANCE

Subchapter A
Automobile Insurance
Division 2. Dividends Procedure

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.101-5.103	Dividends	1983	Consider repealing. These were adopted when auto rates and procedures were promulgated. The statutes all reference old rate and form statutes that have been effectively repealed and replaced.

Division 3. Miscellaneous Interpretations

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.201	Auto Plan	1983	Consider repealing. References are to old board rules adopted before the implementation of the APA in 1976.
5.202	Physical Exam	1983	Consider repealing. Physical exam costs was added when rates were promulgated.
5.203	Certificates to 3rd parties	1983	Update to be consistent with disclosures in current law on certificates of insurance.
5.204	MVSRA	1992/2014	Update to comply with changes in law by elimination of named driver policies.
5.205	Auto Theft Fee Pass Through	1992/1999/2013	Update to comply with changes in law in 2019.
5.206	Underserved Zip Codes	1995/2002	Update to include specific references. Determine if this is necessary?
5.208	Disclosures-Named Driver	2015	Repeal. The requirement for this disclosure was repealed in 2019.

INSURANCE COUNCIL OF TEXAS (ICT)
RULE REVIEW COMMENTS AND SUGGESTIONS

TITLE 28-INSURANCE
PART ONE-TEXAS DEPARTMENT OF INSURANCE
TEXAS ADMINISTRATIVE CODE

Subchapter A
Automobile Insurance
Division 4. Loss Control Information for Commercial Auto

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.303	Evaluation/Inspection	1990	Repeal the requirement for a loss control audit every two years. This is not required in any other state and not required by statute. Inspections if needed could be done as part of market conduct exams. PRIORITY: HIGH

General Comments: *The repeal of the loss control audit for commercial auto should be given a high priority especially for commercial auto. The requirement to conduct loss control audits every two years is not mandated by statute. Instead, this was imposed by rule. Texas is the only state that requires this audit. TDI resources could be better allocated to other functions instead of an audit every two years of every insurer. This would be more efficient. Audits, if needed, could be done in routine financial or market conduct examinations.*

Division 5
Underwriting and Disclosure Private Passenger Auto

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.401	Temporary Rules	1992	Repeal. This applies to all but county mutual companies prohibiting the lack of prior insurance in underwriting. This rule was adopted when rates and forms were promulgated. This rule is no longer necessary and should be repealed. PRIORITY: HIGH

General Comments: *Numerous members of ICT have requested that this rule be repealed. This rule was adopted in 1992, a few years after auto insurance was made mandatory. The need for this rule no longer exists. The evidence is overwhelming that insureds that lack prior insurance should be classified differently than insureds that have maintained coverage. Texas is one of the only states where the lack of prior insurance is prohibited. This would allow better risk classification and avoid subsidization by consumers who maintain required liability insurance.*

INSURANCE COUNCIL OF TEXAS (ICT)
RULE REVIEW COMMENTS AND SUGGESTIONS

TITLE 28-INSURANCE
PART ONE-TEXAS DEPARTMENT OF INSURANCE
TEXAS ADMINISTRATIVE CODE

CHAPTER 5
Subchapter B
Insurance Code, Ch. 5, Subch. B
Division 1 Dividend Procedures

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.1101	Classes	1983	Repeal. This is out of date. The statutory provisions relate to promulgated rates and classes.
5.1102-5.1103	Dividend Classes	1983	Repeal. These statutory references are out of date and have been replaced.

Division 2
Regulation of Excess Liability Insurance

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.1201	Umbrella	1997	Repeal. This seems unnecessary in light of filings made easy.

Division 7
Standards for Loss Control for Professional Liability Insurance

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.1701-5.1712	for Hospitals	1990	Review to determine if updates are necessary
5.1703	Audits	1990	Repeal the requirement for an audit once every two years. This is not necessary and unique to only Texas insurers. PRIORITY: HIGH

General Comments: *The requirement to conduct loss control audits every two years is not mandated by statute. Instead, this was imposed by rule. Texas is the only state that requires this audit. TDI resources could be better allocated to other functions instead of an audit every two years of every insurer. This would be more efficient. Audits, if needed, could be done in routine financial or market conduct examinations.*

Division 8
Loss Control for Professional Liability Other than Medical

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.1723	Audits	1990	Repeal the requirement for an audit once every two years. This is not necessary and unique to only Texas insurers. Update to eliminate State Board. PRIORITY: HIGH

INSURANCE COUNCIL OF TEXAS (ICT)
RULE REVIEW COMMENTS AND SUGGESTIONS

TITLE 28-INSURANCE
PART ONE-TEXAS DEPARTMENT OF INSURANCE
TEXAS ADMINISTRATIVE CODE

General Comment: *The requirement to conduct loss control audits every two years is not mandated by statute. Instead, this was imposed by rule. Texas is the only state that requires this audit. TDI resources could be better allocated to other functions instead of an audit every two years of every insurer. This would be more efficient. Audits, if needed, could be done in routine financial or market conduct examinations.*

Chapter 5
Subchapter D
Fire and Allied Lines
Division 2. Rate Deviations & Dividends

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.3104	Rate and Dividends	1976/1984	Repeal. This is no longer necessary and relevant statutes have been repealed or replaced.

Division 8. Underserved Areas for Residential Property/PRIORITY HIGH

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.3700	Underserved Areas for MAP and Exempt	1996/2002	Repeal and update to correct cites. Some of these may no longer be applicable due to repeal of the MAP and implementation of FAIR Plan.
5.3701	FAIR	2003	In 2003, all 254 counties were designated as underserved. Using standards for underserved, the entire state should not be designated. Review and consider revising to reflect that the entire state is not underserved. Update statutory references.
5.3702	Underserved for Certain Rate Exemptions	2004	Update Statutory References and assure zip codes accurately reflect underserved areas.

General Comments: FAIR PLAN. In 1995, the legislature also created a stand-by FAIR plan under Art. 21.49A (now Ch. 2211). The FAIR plan was originally supposed to be a stand-by mechanism that would be enacted only after a voluntary Market Assistant program was made mandatory. In 2003, this statutory requirement for a mandatory MAP was not used as required and instead a statewide FAIR Plan because of the "mold crisis". Under 5.3701, the whole state is designated as underserved for purposes of the FAIR Plan. Designated zip codes for FAIR plan was adopted by rule in 2003 in 28 TAC sec. 5.3701. This needs to be revisited.

EXEMPT FROM PREMIUM TAX IN CERTAIN UNDERSERVED AREAS. In 1995, the Legislature also enacted a statute that allowed insurers writing residential property coverage on TDI adopted forms in designated zip codes to be exempt from paying premium tax. This chapter enacted in 1995 as Article 5.35-3 and recodified in 2005 as Chapter 2004. Class 1 zip codes for purposes of this statute are the zip codes designated in 5.3701(c). In 1995, policy forms were promulgated by TDI. The form TDI adopted for this program was very limited that very few companies or agents want to use it. It is not clear if many, if any, insurers have used this.

MARKET ASSISTANCE PROGRAM UNDERSERVED AREAS. As referenced above, the legislature also enacted a Market Assistance Program codified as Art. 21.49-12, which was repealed in 2003. The MAP was based on zip codes designated by TDI as underserved. Designated zip codes for these two statutes were adopted by rule in 1996 and amended in 2002. These are the Class 2 zip codes in 28 TAC 5.3700(d) . With the repeal of the MAP program, those zip code designations are effectively repealed. The MAP itself still exists in 28 TAC Ch. 5, Subch. N, Sections 5.9400-5.9416.

EXEMPTION FROM CERTAIN RATE FILINGS. In 2003, the Legislature repealed the benchmark rate program and required all insurers to file and use rates. This included insurers previously exempt from rate filings such as county mutuals for auto rates and Lloyds and reciprocals from residential property. An exemption is allowed from rate filing for insurers writing the majority of their writings on property valued at less than $100,000 and located in underserved areas designated under Art. 5.35-3. This was originally codified as Art. 5.13-2C and is now codified in Sec. 2251.252, Ins. Code. These zip codes were adopted in 2004 and codified in 28 TAC 5.3702.

GROUP INSURANCE IN UNDERSERVED AREAS. In 1995, the Legislature enacted Art. 21.79 that permitted group insurance for private passenger auto and residential property in designated underserved areas. This has been recodified in Chapter 2152, Ins. Code. This can be done if authorized by rule. I do not see where this has been specifically allowed by rule. The existing rules only address the statutes referenced above.

Subchapter F
Inland Marine & Multi-Peril

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.5001-5.5005	Definitions, Rates for comm'l multi-peril	1984/1988/1986/1989/ 1992/1999/2000	Update. Eliminate references to Board of Insurance. Numerous types are not filed or regulated. This should be made clear in filings made easy rules.

INSURANCE COUNCIL OF TEXAS (ICT)
RULE REVIEW COMMENTS AND SUGGESTIONS

TITLE 28-INSURANCE
PART ONE-TEXAS DEPARTMENT OF INSURANCE
TEXAS ADMINISTRATIVE CODE

CHAPTER 5
Subchapter G. Workers Compensation Insurance
Division 1. Sale of Substitutes to Workers Compensation Insurance

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.6302	Sale of Substitutes	1992. Rule has not been amended.	1. Repeal and replace current rule. 2. Recently published rule is too broad and the disclosure needs considerable work. It is recommended this be withdrawn. 3. ICT is willing to submit either a new proposed rule to a working group of stakeholders to submit a new proposal by Oct. 15 or work on legislation for 2021.

General Adopted/Amended: This rule is overly broad. It was adopted in 1992 and has not been amended since. ICT and its members offer workers compensation and some offer coverages for non-subscribers. The existing disclosures are more consistent with the requirements in the Labor Code than the 2019 proposed disclosures.

Division 3
Special Instructions for WC Policies and participating Policies

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.6501	Special instruction	1983	Consider repealing. This implements part of TDI WC Manual that has generally been replaced by statute or use of the NCCI manual.

Subchapter H
Cancellation and Non-renewal

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.7001-5.7016	applicability	1976/1983/1986/2012	Review to determine if the rules in this subchapter should be replaced to be consistent with all requirements in Ch. 551.

INSURANCE COUNCIL OF TEXAS (ICT)
RULE REVIEW COMMENTS AND SUGGESTIONS

TITLE 28-INSURANCE
PART ONE-TEXAS DEPARTMENT OF INSURANCE
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CHAPTER 5
Subchapter N
Residential Property Market Assistant Program

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.9400-	5.9416	1996/1998/1999	Consider repealing. The MAP **was** effectively eliminated when TDI implemented the FAIR Plan. Review to determine if FAIR should be reduced and some type of MAP implemented.

Subchapter T
FAIR Plan
Division1

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.9901-5.9941	FAIR Plan	2003	Update statutory references
5.9923	Assessments & Recoupments	2003	Update statutory references; update procedures on recoupment and surcharges to be consistent with statutory accounting.

INSURANCE COUNCIL OF TEXAS (ICT)
RULE REVIEW COMMENTS AND SUGGESTIONS

TITLE 28-INSURANCE
PART ONE-TEXAS DEPARTMENT OF INSURANCE
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CHAPTER 7
Corporate and Financial
Subchapter A. Examination and Financial Analysis

SECTION	Description	Adopted/Amended	Suggested Action/Priority
7.65-7.70	Annual Statement Blanks	various	Repeal. TDI is no longer adopting this by rule.
7.83	Appeal of Exams	1999	1. Update statutory references and titles. 2. Amend the rule to establish or adopt by reference appeal procedures for exam appeals. 3. Update provisions on confidentiality.

General comments: Sec. 7.83 has provisions that are outdated. The rule is used for financial exam appeals but has no specific procedures for how the appeal is conduct. The procedures used have been modified over the years through ad hoc means. Confidentiality language in the rule does not match Ch. 401. It should be updated.

Chapter 7
Subchapter D.
Risk Based Capital and Surplus

SECTION	Description	Adopted/Amended	Suggested Action/Priority
7.402-7.404	NAIC RBC	2008/2009/2010/2013/2014	Review to determine if most recent specific NAIC formula has been properly adopted by rule to avoid IBR problems.

Chapter 7
Subchapter J
Examination Expenses and Assessments

SECTION	Description	Adopted/Amended	Suggested Action/Priority
7.1001	Assessments	2012/2013/2014/2015/ 2016/2017	Clarify that this does not apply to market conduct exams under Ch. 751. This has been applied to some foreign insurers who have undergone only market conduct exams.

INSURANCE COUNCIL OF TEXAS (ICT)
RULE REVIEW COMMENTS AND SUGGESTIONS

TITLE 28-INSURANCE
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Chapter 7
Subchapter N
Service of Process

SECTION	Description	Adopted/Amended	Suggested Action/Priority
7.1401-7.1415	Service provisions	1989/1990	Update statutory references. Eliminate Board of Insurance. Update with proper forms and current procedures.

Chapter 7
Subchapter T
Permissible Payments to Sponsoring Organizations

SECTION	Description	Adopted/Amended	Suggested Action/Priority
7.2001	Sponsorships	1995	Update statutory references.

INSURANCE COUNCIL OF TEXAS (ICT)
RULE REVIEW COMMENTS AND SUGGESTIONS

TITLE 28-INSURANCE
PART ONE-TEXAS DEPARTMENT OF INSURANCE
TEXAS ADMINISTRATIVE CODE

Chapter 19
Agent Licensing
Subchapter A Disciplinary Hearings

SECTION	Description	Adopted/Amended	Suggested Action/Priority
19.1-19.2	General	1976/1983/1984	Repeal. These are not needed.

Chapter 19
Subchapter J
Standards of Conduct for Licensed Agents

SECTION	Description	Adopted/Amended	Suggested Action/Priority
19.901	conduct	1987/1990	Amend the definition of assumed name. This is inconsistent with definitions in the Business & Comm. Code and has caused considerable confusion in recent market conduct exams relating to duties of insurers and agents on filing requirements. Priority: HIGH

General Comments: Sec. 19.901(3) defines assumed name as any name other than a true name. The assumed name provisions in other laws have been amended and do not require filing of an assumed name for a sole proprietorship if it is the last name and describes the business. For example, John Doe has an agency called the Doe Insurance Agency. TDI requires a filing for this. There is no list of assumed names searchable for this and TDI market conduct examiners frequently cite the failure of an agent to file assumed name and place the violation on the insurer.

INSURANCE COUNCIL OF TEXAS (ICT)
RULE REVIEW COMMENTS AND SUGGESTIONS

TITLE 28-INSURANCE
PART ONE-TEXAS DEPARTMENT OF INSURANCE
TEXAS ADMINISTRATIVE CODE

Chapter 21
TRADE PRACTICES
Subchapter A
Unfair Competition and Practices

SECTION	Description	Adopted/Amended	Suggested Action/Priority
21,2-21,4	General	1976/1982	Update statutory references

Chapter 21
Subchapter B
Advertising
Divisions 1,2

SECTION	Description	Adopted/Amended	Suggested Action/Priority
21.101-21.122	General Advertising rules	1981/1987/2010	Update statutory references Review and update with NAIC models if needed.

Subchapter E
Sex and Marital Status

SECTION	Description	Adopted/Amended	Suggested Action/Priority
21.401-21.409	Definitions & other provisions	1978/1985	Repeal or amend to be consistent with current statutory provisions. Delete references to board. Update statutory references if maintained.

Subchapter H
Unfair Discrimination

SECTION	Description	Adopted/Amended	Suggested Action/Priority
21.701-21.705	definitions	1983/1985/1990/1992 1997	Update statutory references

Regan Ellmer

From: Comments
Sent: Wednesday, September 25, 2019 5:10 PM
To: Libby Elliott; Regan Ellmer
Subject: FW: Texas Administrative Code
Attachments: TDI Rules.odt

From: Jim Bennett <[redacted]>
Sent: Wednesday, September 25, 2019 2:18 PM
To: Comments <Comments@tdi.texas.gov>
Subject: Texas Administrative Code

We are recommending a change to rule 25.10 of the Texas Administrative Code.

We are making a recommendation to revise rule 25.10 in order to clarify the responsibility of a broker in an insurance transaction that is currently causing confusion and difficulties for premium finance companies, retail agents and the consumers.

Currently, Article 651.162 and 651.165 of the Texas Insurance Code and the supporting rules in the Texas Administrative Code clearly require an insurer to return all unearned premium for a cancelled insurance policy to the premium finance company when the insurer is properly notified that the premiums are financed. However, when a Managing General Agent/General Agent brokers a policy that has been premium financed policy with an insurer, often the Managing General Agency/General Agent do not believe these statutes and rules apply to this transaction and the result is the unearned premium is returned to the retail agent rather than to the premium finance company. We believe the recommended changes to rule 25.10 will clarify the responsibility of the Managing General Agent/General Agent.

Jim Bennett

Executive Director

Insurance Premium Finance Association of Texas

512-413-2966

Texas Administrative Code
Title 28 Part 1
Chapter 25 – Subchapter A
Rule 25.10 – Premium Refunds

Rule 25:10 – Premium Refunds

(a) If the insurance premium finance company notified the insurer of the existence of the premium finance agreement pursuant to the Insurance Code, Article 24.22, then the entire unearned premium owed the insurance premium finance company (in trust for the insured) shall be paid within 60 days from the date notice of cancellation was received. If an audit of the insured's records is required to determine the amount of premiums, the time shall be extended to 90 days. If the audit is delayed because of acts of the insured, the 90-day period shall be extended to provide a reasonable time to conduct the audit and determine the amount of premiums earned.

(b) If the insurance premium finance company funds policy premiums or notifies a ManagingGeneral Agent/General Agent who has brokered a policy with an insurer that an insurance policy premium is financed, then the Managing General Agent/General Agent must return all gross unearned premiums to the insurance premium finance company within 60 days of the policy cancellation date.

(c) If the insurance premium finance company does not give notice of the premium finance agreement to the insurer (as provided by the Insurance Code, Article 24.22), then the total unearned premium refund shall be paid directly to the insurance premium finance company within 120 days from the effective date of the cancellation, unless the insurer has already refunded the unearned premium to the insured due to cancellation

Regan Ellmer

From: Comments
Sent: Wednesday, October 2, 2019 10:33 AM
To: Libby Elliott; Regan Ellmer
Subject: FW: Review and Proposed Amendment to Rule 15.106(b)(3)

From: Sarah Guzzetta <[redacted]>
Sent: Tuesday, October 01, 2019 3:15 PM
To: Comments <Comments@tdi.texas.gov>
Subject: Review and Proposed Amendment to Rule 15.106(b)(3)

In response to your request to identify specific agency rules that need to be updated or changed, please note the following which recommends amendments to the Texas Department of Insurance Rule 15.106 (b)(3) to remove the requirement to identify policy limits when filing with the Surplus Lines Stamping Office of Texas.

JUSTIFICATION

At the time this rule was presented for consideration and comments, the addition of the policy limits requirement was not made clear to stakeholders. Therefore, questions of how this requirement was to be met and of what value the information acquired would be were not properly addressed.

As many of us have attempted to comply over the past months, we have learned that even simple compliance is costly and time consuming. Required data must be entered by experienced and knowledgeable staff. Industry estimates are that the cost of compliance averages approximately $3 per policy entry. This is a substantial financial burden on the small regional and/or local surplus lines agents operating in the State of Texas.

My primary concerns are the value of the information collected and how this data will be used. Many surplus lines policies are complex instruments with multiple coverage parts and levels of "policy limits". To try and simplify the reporting process dilutes the value of the data. Once collected, this diluted information could be used in a manner that is harmful to our industry.

Proposed Amendment

As follows:

(b) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus lines insurance policy" as used in this section includes:

(1) A declarations page;
(2) A listing of all participating insurers on the policy;
(3) All coverage part and schedules.

Thank you for your consideration.

Regards,

Sarah Guzzetta
Executive VP
Direct: 713-358-5020 | Mobile 713-409-5998 .
[redacted]
www.lp-risk.com

From: jennifer cartwright <[redacted]>
Sent: Friday, September 06, 2019 1:57 PM
To: Comments <Comments@tdi.texas.gov>
Subject: RE: What rules need changing

County Mutual Agent Licensing- Laws about the county mutual license can be found in the Texas Insurance Code Sections 4051.201 and 4001.151

My understanding is this is a way to bridge a gap until you get your ISR or agents license. In our area we see representatives using a county mutual license on a daily basis for bind coverage. I have even seem companies offer classes for agents to send CSR's to.
I feel agents and companies abuse this license and representatives are binding coverage, issues quotes and discussing coverage when they should not be. I feel only IRS and agents with a full license should be doing that. We test and do continuing education for a reason. County mutual have none of those rule.

--
Thank You,
Jennifer
Mark Inman Ins.
940-322-2800

McClelland and Hine

A Division of Worldwide Facilities, LLC.

Service | Dedication | Technology

September 30th, 2019

Chief Clerk
Hobby 1, Room 1210A
MC 112-2A, P.O. Box 149104
Austin, TX 78714-9104

Email To: **comments@tdi.texas.gov**

Re: Proposed Amendment to Rule 15.106(b)(3)

Pursuant to your request to identify rules which are unreasonably difficult for compliance and where more cost efficient and more effective alternatives are currently available for achieving public policy objectives and regulatory supervision, I recommend that the Texas Department of Insurance (TDI) revise Rule 15.106(b)(3) to remove the requirement to identify policy limits in filing policies with the Texas Stamping Office and rely on the current existing wording.

The current rule will result in added costs for compliance and given the nature of excess and surplus lines policies with no uniformity of rate or form will result in collection of data that will not be able to be standardized and therefore of limited value in achieving public policy or regulatory objectives.

Under current regulations, if there are specific public policy or regulatory issues the Stamping Office can utilize more targeted policy sampling to address those issues and provide more uniform and reliable information.

Sincerely,

Gilbert Hine
Senior Vice President
Worldwide Facilities, LLC

The McGowan Companies
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Atlanta Austin Baltimore Chicago Cleveland Dallas Eatontown, NJ Huntsville Long Island Minneapolis New York City Phoenix San Diego Seattle

October 1, 2019

Chief Clerk
Hobby 1, Room 1210A
MC 112-2A, P.O. Box 149104
Austin, TX 78714-9104

Re: Proposed Amendment to Rule 15.106(b)(3)

To Whom It May Concern:

Pursuant to your request to identify rules which are unreasonably difficult for compliance, McGowan & Company, Inc. strongly suggests that the Texas Department of Insurance (TDI) revise Rule 15.106(b)(3) to remove the requirement to identify policy limits in filing policies with the Texas Stamping Office.

When the new requirement to include policy limits in filings at the Stamping Office was considered in 2017, the industry failed to recognize the burden the new rule would place on compliance as, it was assumed that limits, like other required data could be easily collected through digital software. In practice the new requirement requires manual input by trained staff who must make a professional determination of the limit, the type of line, the limit applies to and then aggregate different limits for different covered risks to comply.

Just hiring a data entry clerk to capture the data or complete the excel reports is going to cost anywhere from $26,500-$50,000 a year depending on location and experience/knowledge of the data entry clerk. This burden is placed on wholesalers, many of whom cannot afford the added cost of compliance.

Further, we believe the data will be of limited use as the complexity of surplus lines policies make it difficult to precisely allocate the risk to lines of insurance, and many policies cover both in-state and out of state risk devaluing any utility of aggregate coverage numbers.

Recommendation

Amend Rule 15.106(b)(3) as follows:
Proposed change:
b) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus lines insurance policy" as used in this section, includes:

(1) a declarations page;
(2) a listing of all participating insurers on the policy;
(3) all coverage parts and schedules, ~~including limits~~;

Thank you,

The McGowan Companies

Melody A. Piorkowski
Compliance Manager
[redacted]

Regan Ellmer

From: Comments
Sent: Wednesday, October 2, 2019 10:36 AM
To: Libby Elliott; Regan Ellmer
Subject: FW: Submission for Rule Changes
Attachments: 12 Credit Hour Limit v2.docx; 70% Application Questions v2.docx; TX CE Completion Requirements v2.docx; Print Certificates v2.docx; TX Approved CE Topic List v2.docx; TX Hours of Credit v2 (2).docx

From: Danielle Janecka <[redacted]>
Sent: Tuesday, October 01, 2019 5:02 PM
To: Comments <Comments@tdi.texas.gov>
Subject: Submission for Rule Changes

Good afternoon:

Please find attached The National Alliance responses to the request for rule changes announced by Insurance Commissioner Kent Sullivan. As a national provider of continuing education and professional designations in the risk and insurance industry for over 50 years, we appreciate the opportunity to share our recommendations for change. For five decades, The National Alliance has set the standard for quality, practical continuing education and for delivering what insurance and risk management practitioners want. Over 150,000 respected professionals, across the U.S. and worldwide, have used and continue to use our programs as the foundation upon which they build their successful careers and businesses. We have had two very simple goals:

- To provide excellent programs of practical value to the best insurance and risk management practitioners, and
- To continually work to bring greater recognition and value to their achievements

The educational programs and research conducted by The National Alliance were built on a foundation of integrity, innovation, and imagination. These qualities commit us to act responsibly, to be accountable for our actions, to fulfill our obligations, and to inspire others with our relentless determination to achieve a standard of excellence in every endeavor. With this is mind we have partnered with other organizations with shared goals and values. Over the years we have been involved with SILA and in particular working with the SILA Education and Training (SETS) subgroup, which also supports and recommends these changes. With Texas as our home state, we are very committed to providing timely feedback and recommendations that align with these goals and are in the best interest of our participants who serve in the est interest of their client, the consumer. Please feel free to contact me with any additional questions and thank you again for the opportunity to submit our feedback and recommendations.

Sincerely,
Danielle Janecka

Danielle Janecka
Head of Participant Experience

The National Alliance for Insurance Education & Research
512-349-6181 | 800-633-2165 ext 6181 | F: 512-349-6194

Offering world-class insurance and risk management education that is practical, comprehensive, and continuing.

Disclaimer

Rule: ***28 Texas Administrative Code, Section Rule §19.1010(a)(2)(D); Hours of Credit***

RULE §19.1010 (a)(2)(D) states that the TDI will not certify more than 24 credit hours for any one classroom equivalent course or 12 credit hours for any one self-study course.

Reason for review:

Texas is of only a few states with this requirement. Self-study Continuing Education (CE) Providers domiciled in Texas have a need to offer more than 12 hours of CE credit for licensees outside of Texas.

Issues related to the rule and priority for TDI:
Continuing Education providers who are domiciled in Texas have difficulties submitting courses for more than 12 hours in other states. They have to submit the course in another state as a resident home state submission. This usually leads to providers having to send more documentation and takes additional time for CE providers in Texas to get courses approved.

Improvement on the rule:
The SILA Education and Training Subgroup would like to request that RULE §19.1010(a)(2)(D) be struck from the Texas Administrative Code. Instead, we recommend that Texas use the NAIC Recommended Guidelines for Online Courses Acceptable Procedures to determine Appropriate Number of Credit Hours as follows:

Method A

- 600-700 words (standard font size) = one text page
- Textbooks/workbooks/other printed material – one credit for every 15 pages
- 3 screens with an aggregate total of approximately 600-700 words – one text page
- 45 screens – one hour of credit
- Divide total screens by 45 – total number of credit hours
- Multiply number of hours by 1.00 for a basic level course; 1.25 for an intermediate level; 1.50 for an advanced course for additional study time = total number of credit hours (fractional hours rounded up if .50 or above and rounded down if .49 or less)

Method B

- Divide total number of words by 180 (documented average reading time) = number of minutes to read material
- Divide number of minutes by 50 = credit hours
- Multiply number of hours by 1.00 for a basic level course; 1.25 for an intermediate level; 1.50 for an advanced course for additional study time = total number of credit hours (fractional hours rounded up if .50 or above and rounded down if .49 or less)

Method C

- Course that is part of a nationally recognized professional designation
- Credit hours equivalent to hours assigned to the same classroom course material

Rule: ***28 Texas Administrative Code, Section Rule §19.1011(d)(1); Requirements for Successful Completion of Continuing Education Courses***

Rule §19.1011(d)(1) states that the final examination or interactive inquiries must reasonably evaluate the student's understanding of the course content. At least 70% of the examination questions or interactive inquiries must be based at the application level. The remainder of the questions may be based at the knowledge level.

Reason for review:

Texas is the only state that has this requirement for the exams. This requires providers to create and maintain special exams just for Texas. Some education providers will choose not to offer the course in Texas because they don't want to create application-based questions and maintain two separate exam banks. Insurance CE providers who also work in other industries say this is not a common practice in other industries.

Issues related to the rule and priority for TDI:

Placing a higher emphasis on application-based questions is not educationally supported. Application-based questions are not intrinsically superior to recognition or recall questions in measure mastery of a subject.

The 70% rule does not take into consideration that some topics, when appropriately developed, do not lend themselves to application-based questions. A student's understanding and acclimation of these kinds of topics and learning points are quite often better assessed through "knowledge-based" questions (typical "recognition and recall" question). Due to the higher complexity of this type of question, they are often seen by agents as "trick questions".

Aside from the additional course development expense of this requirement, another issue is the determination of what qualifies as an application question. This is very subjective decision and there is no consistency among course reviewers. On several occasions, the course approval vendor rejected courses because they did not consider certain questions to be application - based. In these situations, the provider received a denial and appealed the decision that the questions did not qualify as application-based questions. In many cases, the appeal was not successful, and providers had to rewrite questions and send the course back through the editing process. This difference of opinion (of what is considered an application-based question) results in increased course development costs and delays in releasing a new or updated course.

The 70% application question requirement is even more onerous on classroom equivalent (CLEQ) courses where the "interactive inquiries" must also be 70% application questions, which significantly increases the number of questions that must be written for a classroom equivalent course. Each inquiry period must have 5 questions. Each inquiry period has a 50% new question requirement, so 10 questions must be written to display 5 questions per inquiry period. Each hour of classroom equivalency must have a minimum of 4 inquiry periods, therefore, every classroom equivalent (CLEQ) course hour requires 40 questions, 70% of which must be application based. For example, a 5-hour CLEQ course requires us to write 200 questions, of which 140 must be application questions.

Improvement on the rule:

It is our recommendation that **rule §19.1011(d)(1)** be stricken from the code. This would allow education providers the latitude to develop questions they feel are meaningful without the concern that the state approval vendor will not consider a question to be application-based. It also eliminates the additional expense to the state and education providers caused by subjective disagreements as to whether a question is an application question or not.

Rule: ***28 Texas Administrative Code, Section Rule §19.1011(e); Requirements for Successful Completion of Continuing Education Courses***

RULE §19.1011(e) states the following:
(e) Providers shall issue certificates of completion to students who successfully complete a certified course. The provider must issue the certificate in a manner which shall ensure that the student receiving the certificate is the student who took the course, issue the certificate within 30 days of completing the course, and complete the certificate to reflect the date the student took the course/examination. Providers shall not allow a student, or any person or organization other than the provider giving the course, to prepare, print, or complete a certificate of completion.

Reasons for the review:

Texas is the only state who does not allow electronic certificates to be provided to the licensee.

Issues related to the rule and priority for TDI:

Continuing Education (CE) Providers would like to provide electronic certificates of completion for Texas Insurance Continuing Education courses. This allows the student immediate access to the certificate. Currently, CE Providers may not allow a student, or any person or organization other than the provider giving the course, to prepare, *print,* or complete a certificate of completion.

Improvement on the rule:

We recommend that the word “print” be removed from **RULE §19.1011(e)**.

Rule: ***28 Texas Administrative Code, Section Rules §19.1003(a), §19.1003(a)(B), and §19.1003(a)(C); Licensee Hour and Completion Requirements***

Rule §19.1003(a) and §19.1003(a)(B) states that each licensee (with a few exceptions) must complete 24 hours of continuing education which must include at least 2 hours in certified ethics or consumer protection courses.

Reason for review:

Texas is one of a handful of states that does not meet the Uniform Licensing Standard regarding required CE hours

***Improvement on the rule*:**

We recommend that Texas aligns the requirement to meet the Uniform Licensing Standard of 24 hours of CE which must include 3 hours of ethics. Changing the requirement would meet uniformity standards.

Rule §19.1003(a)(C) requires TX licensees to complete at least 50% of the CE requirement in certified classroom or classroom equivalent courses.

Reason for review:

Texas is one of 3 states that has this requirement. This presents challenges with course approvals of classroom equivalent courses under **Rule §19.1009(h)** and the 12-credit hour limit under **Rule §19.1010(a)(D**).

Issues Relating to the rule and priority for TDI:

By limiting the approved credit hours to 12 credits based on the 50% classroom requirement, Texas - based providers are not able to offer their courses nationally for more credits (which puts them at a disadvantage with their competitors) unless they designate another home state and submit the course in that state an request more hours than their home state allows.

Improvement on the rule:

It is our recommendation to remove this requirement from **Rule §19.1003(a)(C).**

Rule: ***28 Texas Administrative Code, Section Rule §19.1010(a)(2)(A); Hours of Credit***

Rule §19.1010(a)(2)(A) mandates that the calculation of hours in Texas is calculated in one of two ways: the average of at least five time testers, or the average of approved credit in at least three other states.

Reason for review:

Texas is the only state that requires an education provider to pilot test a course to get a course approved in their state.

Issues related to the rule and priority for TDI:

The five time tester requirement is an issue because it is difficult to find five qualified individuals that are Texas producer licensed to do the time test. There is a significant delay in getting a course submitted due to waiting on the time tests to be completed.

If a Texas home state provider does not pilot test the course, they must first get it approved in at least 3 other states before they can submit to Texas. This causes a delay to go nationwide because now 3 other states must perform a substantive review of the course in order to get the home state approval in Texas and use reciprocity with remaining states.

Improvement on the rule:

It is our recommendation to remove these 2 methods of calculation and instead, calculate the number of CE credit hours using the NAIC Recommended Guidelines for Online Courses. Most states use a formula of 9,000 words per CE credit hour for a basic course. A factor of 1.25 (7,200 words per hour) is applied to intermediate level CE courses and a factor of 1.5 (6,000 words per hour) is applied for advanced level CE courses. This would simplify the process and allow for a quicker approval and release date which makes the courses available to TX producers much sooner.

Rule: ***28 Texas Administrative Code, Section Rule §19.1006(a); Course Criteria***

Rule §19.1006(a) states the following:

To be certified as a continuing education course, the course content shall be designed to enhance the knowledge, understanding, and/or professional competence of the student as to one or more of the following topics: insurance principles and coverages; applicable laws, and rules; recent and prospective changes in coverages; technical policy provisions and underwriting guidelines and standards; law and the duties and responsibilities of the licensee; consumer protection; or insurance ethics. The course content may also include instruction on management of the licensee's insurance agency.

Reason for the review:

Currently, Texas takes a restrictive view on approved topics. This rule restricts the topic area to exclude areas which the modern insurance professional is expected to understand by their clients or the industry. They expect producers to understand how the products the producer is offering fit in the consumers overall financial goals. They do not want a producer that simply knows basic product features and provisions. Topics on estate planning, retirement planning, needs based planning, and other financial planning topics should be approved topics.

Issues related to the rule and priority for TDI

While the narrow topic list may be appropriate for a newly licensed producer, it does not reflect the "real life" of an experienced or seasoned producer whose business often overlaps with other financial products and topics, including estate planning, wealth accumulation and transfer, tax planning and qualified plans.

Rules and regulations must reflect the increased complexity of the insurance industry and melding of insurance and financial services' activities of an insurance producer. As previously mentioned, consumers demand and expect producers to have a broader base of knowledge than ever before. By having an overly restrictive list of approved topics, the rule is putting consumers at risk and defeating the purpose of insurance continuing education which is to "*… to enhance the knowledge, understanding, and/or professional competence of the student…*" Producers must know more than just policy provisions, laws, and ethics if they are going to provide competent professional guidance to Texas consumers.

For Example: A provider submitted an IRA course for CE approval. The course was denied as it was not related to insurance. The provider responded that IRAs can be funded with annuities (an insurance product) and therefore a producer MUST know the features of an IRA in order to ethically fund an IRA with an annuity. The course was rejected even after the response. Ironically, candidates for licensing in Texas are tested on retirement plans on the state exam. If they are required to know the information to become licensed, why is it not allowed as a topic for continuing education?

Improvement on the rule:

We recommend that Texas expand their approved topic/content list to include the recommended NAIC best practices on approved CE approved topics.

September 30, 2019

Texas Department of Insurance
Via Email to: comments@tdi.texas.gov

Re: Proposed Amendment to Rule 15.106(b)(3)

Pursuant to your request to identify rules which are unreasonably difficult for compliance, as a current surplus lines licensee, past president of the Texas Surplus Lines Association, and one of the founders of the Surplus Lines Stamping Office of Texas (SLTX), I strongly suggest that the Texas Department of Insurance (TDI) revise Rule 15.106(b)(3) to remove the requirement to identify policy limits in filing policies with the Texas Stamping Office.

Justification for Modification

When the new requirement to include policy limits in filings at the Stamping Office was considered in 2017, the industry failed to recognize the burden the new rule would place on compliance as it was assumed that limits, like other required data, could be easily collected through digital software. In practice the new requirement requires manual input by trained staff who must make a professional determination of the limit, the type of line, the limit applies to and then aggregate different limits for different covered risks to comply. Industry estimates are that compliance will typically cost $2-5 per policy to comply which equates to $2-5 million for the industry. Further, just hiring a data entry clerk to capture the data or complete the excel reports is going to cost anywhere from $26,500-$50,000 a year depending on location and experience/knowledge of the data entry clerk. This burden is placed on wholesalers, many of whom are small businesses with 2-10 employees who cannot afford the added cost of compliance. Large wholesalers who operate in multiple states will have the option to write many of the same policies in other states and avoid the increased difficulties with compliance created by the new rule. Furthermore, we believe the data will be of limited use as the complexity of surplus lines policies make it difficult to precisely allocated the risk to lines of insurance, and many policies cover both in-state and out of state risk devaluing any utility of aggregate coverage numbers.

To reiterate, as stated in my letter to the then current General Manager of the Surplus Lines Stamping Office and then current Chairman of the Board of Directors of the Surplus Lines Stamping Office of March 25, 2019:

*This is a “manual” operation, requiring that each policy be viewed separately and entered on the spreadsheet format. The cost to even a small agency is prohibitive, both financially and in terms of time required to compile and complete the spreadsheet.
*The policy limit data itself seems to be of very questionable value. Many surplus lines policies have multiple limits and sublimits, and there are vast differences in policies. What purpose does this serve?

*The function and nature of the surplus lines industry is to be nimble in providing new and unique coverages for those insureds that cannot fulfill their coverage needs in the admitted market. Over the years most “new” coverages have been developed in the surplus lines market until they have become more standardized and migrated to the admitted market. Employment Practices Liability and Cyber coverages are but a few examples. This implies rate and form freedom, and as much as possible, freedom from unnecessary administrative burdens. This new filing requirement may have a chilling effect on surplus lines agents and carriers’ willingness and ability to provide the very innovation that is required of surplus lines insurance to fulfill its function.

*SLTX is currently unable to accept the requested data in their current or the proposed new electronic filing system. This seems to shift the burden entirely to the surplus lines agent, which is the party least likely to be able to absorb the cost.

The current filing requirement and the manner and cost of compliance does not seem to be a good solution to a situation which may in fact not really be a problem that needs treated.”

Recommendation

Amend Rule 15.106(b)(3) as follows:

Proposed change:
b) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus lines insurance policy" as used in this section, includes:
(1) a declarations page;
(2) a listing of all participating insurers on the policy;
(3) all coverage parts and schedules~~, including limits;~~

Respectfully submitted,

Stephen D. Sprowls, CPCU, RPLU+
President
Professional Lines Underwriting Specialists, Inc.
1114 Lost Creek Blvd., Ste. 215
Austin, TX 78746

From: Joel Cavaness [redacted]
Sent: Friday, September 20, 2019 7:45 AM
To: Comments <Comments@tdi.texas.gov>
Cc: Kyriakoula Liosatos [redacted]
Subject: 15.106(b)(Proposed Amendment to Rule 3)

To whom it may concern,

Pursuant to your request to identify rules which are difficult for compliance, Risk Placement Services Inc. strongly suggests that the Texas Department of Insurance (TDI) revise Rule 15.106(b)(3) to remove the requirement to identify policy limits in filing policies with the Texas Surplus Lines Stamping Office.

When the new requirement to include policy limits in surplus lines filings at the TX Surplus Lines Stamping Office was considered in 2017, the industry failed to recognize the burden the new rule would place on compliance. It was assumed that limits, like other required data could be easily collected through digital software.

In practice the new requirement requires software companies to upgrade their current systems for their clients. Most software companies however, do not have the resources needed in upgrading their software leaving companies to manually capture the required data. It requires manual input by trained staff who must review all carrier issued policies, make a professional determination of the limit, the line of coverage the limit applies to, to comply. Industry estimates are that compliance will typically cost $2-5 per policy to comply which equates to $2-5 million for the industry. Further, just hiring a data entry clerk to capture the data or complete the excel reports is going to cost anywhere from $30,000-$50,000 a year depending on location and experience/knowledge of the data entry clerk. This burden is placed on wholesalers, many of whom are small businesses who cannot afford the added cost of compliance. Large wholesalers who operate in multiple states will have the option to write many of the same policies in other states and avoid the increased difficulties with compliance created by the new rule.

Furthermore, we believe the data will be of limited use as the complexity of surplus lines policies make it difficult to precisely allocated the risk to lines of insurance, and many policies cover both in-state and out of state risk devaluing any utility of aggregate coverage numbers.

As a larger wholesale company our suggestion would be to remove the requirement to identify policy limits in filing processes with the TX Surplus Lines Stamping Office.

Sincerely,

Joel Cavaness
President - Risk Placement Services Inc.

Rolling Meadows

Joel Cavaness
President
Direct: 630 285 4303 | Fax: 630 285 4020
Risk Placement Services, Inc.
2850 Golf Road, 10th Floor | Rolling Meadows | IL | 60008

Regan Ellmer

From: Comments
Sent: Wednesday, September 25, 2019 9:09 AM
To: Libby Elliott; Regan Ellmer
Subject: FW: Suggestions for rules that need changing/updating
Attachments: TX DOI Submission Items Sentry Insurance.docx

From: Gualderama Amanda <[redacted]>
Sent: Tuesday, September 24, 2019 4:11 PM
To: Comments <Comments@tdi.texas.gov>
Subject: Suggestions for rules that need changing/updating

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown or unexpected emails.

Hello,

Attached are suggestions for rules that need changing or updating. We've attempted to follow the format with 6 recommendations, each on a separate page. Please let me know if you have any questions regarding our submissions. Thank you,

Amanda Gualderama
Regional Government Affairs Director | Government and Regulatory Affairs
916-838-4947
[redacted]

Sentry Insurance Government Affairs
1215 K Street, Suite 1732
Sacramento, CA 95814

Sentry

sentry.com

Citations:

TX R 28 TAC § 19.602

TX S § 4101.002

TX S § 4101.051

TX S § 4101.101

Concern:

The delay (weeks) between successfully passing an adjuster exam and receiving the license to handle claims is too long. Unable to handle claims until license received. Recent feedback indicates the delay has been shortened but any delay is unnecessary.

Recommendation:

Permit handling of claims upon successful exam pass rather than formal issuance of license. An alternative could be passing of exam and sponsorship by a licensed adjuster to permit claims handling immediately.

Citations:

TX Bulletin B-0014-00

Concern:

May not apply betterment to vehicles on first-party (insured) vehicles, personal lines policy types. For example, tire needs replacement due to accident. Even though tire is worn from mileage, we owe for full replacement cost. The vehicle owner is being put in a better position than they were prior to the loss. This betterment is permitted when settling third-party claimants. It is also permitted on commercial lines auto policies, first and third-party losses.

Recommendations:

Insurance indemnification is meant to put a party back to their pre-loss position. The current regulation puts some in a better than pre-loss position. Permitting first-party betterment on personal lines policies follows the basic premise of indemnification.

Citations:

Texas Transportation Code Sec. 502.040

Concern:

Purchaser of a vehicle must file an application for transfer of title within 30 days. In the case of total loss settlements, the insurer is the purchaser unless the owner retains the salvage. A $25 late transfer penalty applies if exceeds 30 days. Add $25 for each additional 30-day period. These delays are most often caused by the vehicle owner and out of the insurance company's control.

Recommendations:

The purpose of the late fee is unclear. Insurance companies should be excluded from this or add a provision that permits insurance companies to control and prevent such delays.

Citations:

TAC 28 Part 2 Chapter 133 Subchapter G Rule 133.502 Electronic Medical Billing Supplemental Data Requirements

TAC 28 Part 2 Chapter 133 Subchapter B Rule 133.10 Required Billing Forms/Formats – Provider License Numbers

TAC 28 Chapter 134 Subchapter I Rules 134.800-134.808 Medical Bill Reporting

Concern:

Feedback received during a previous Texas Department of Insurance audit specified that if a medical bill was received with missing or inaccurate provider license numbers and the medical bill listed basic provider information such as the provider name and address, that it would be appropriate to utilize various search methodologies in order to locate the correct provider number.

The methods to obtain the missing provider license numbers or to confirm a provider license number include searching for the provider name and address on several different websites and/or locating the provider license number on a previously submitted medical bill.

The various websites utilized in searching provider license information often yield inconsistent or non-matching search results increasing the likelihood of delays and incorrect information being reported. (listed below)

Recommendation:

- Require the provider to submit the bill with the correct license number(s). Medical bills received without the correct license number will be returned/rejected as incomplete.
- Submit the bill with the provider information but utilize the license type and jurisdiction code (e.g. MDTX) when reporting. Rule 133.10 (i).
- Provide a single site for verifying license numbers. Automate the process by making data available in an electronic format that could be uploaded into bill review software (similar to the Fee Schedule updates process).

Websites:

Texas Medical Board
https://public.tmb.state.tx.us/HCP_Search/SearchNotice.aspx
Texas Board of Nursing
https://www.bon.texas.gov/forms/rning.asp
Texas Professional Profiling System
https://www.texasonline.state.tx.us/NASApp/txops/ProfilingSearchManager
Executive Council of Physical Therapy and Occupational Therapy Examiners
https://www.ptot.texas.gov/page/home
Texas State Board of Pharmacy
http://www.pharmacy.texas.gove/dbsearch/pht_search.asp
NPPES website
https://npiregistry.cms.hhs.gov/

Citations:

TAC 28 134.203 Medical Fee Guidelines for Professional Services

TAC 28 134.204 Medical Fee Guidelines for Division Specific Services

Concern:

Common medical billing patterns and/or requests for reconsiderations indicate providers may be confused regarding which modifiers to utilize and often bill Evaluation & Management Office Codes in addition to Designated Doctor Examinations (CPT 99455) and Maximum Medical Improvement Examinations (CPT 99456). The process for medical providers when billing and for carriers/bill review is cumbersome and confusing and makes it difficult to ensure providers are paid accurately since it requires intense scrutiny of the medical reports to ensure the billing was accurate. Changes to the rules could reduce the volume of reconsideration requests and/or medical bill disputes.

Recommendation:

- Flat Fee (inclusive).
- Create additional and specific procedure codes possibly based on complexity and length of time versus use of modifiers/multiple combinations of modifiers (e.g. similar to CA reimbursement of med-legal examination/evaluation guidelines)

Citation:

TAC 28 Part 2 Chapter 134 Subchapter I Rule §134.802(a)(3)

Concern:

Only one claim administrator claim number may be reported through the life of the workers' compensation claim as indicated in the IAIABC Guide. The Division emphasizes that the claim administrator claim number must not change with the acquisition of claims, claim transfer to a third-party administrator, business mergers, or any other reason. The insurance carrier is responsible for ensuring that its agents, including trading partners, have the required data for submission in a medical EDI record. However, there is no simple way to correct submissions received with incorrect claim numbers or to cross reference or cancel erroneous claim numbers.

Recommendation:

- Utilization of the state assigned jurisdictional claim number (JACN) as the common factor in compiling all medical billing data for the life of the claim. This is consistent with how other jurisdictions are handling.
- Allow Carriers to report new/current claim number with the use of the Replacement Claim Administrator Claim Number which would allow the ability to cross-reference the prior Claim Administrator Claim Number (per the IAIABC EDI Medical Bill Reporting Guide) so the state can connect with the jurisdictional assigned claim number.

SEGMENT:	**REF Reference Information**
WC NAME:	REPLACEMENT CLAIM ADMINISTRATOR CLAIM NUMBER
LEVEL:	Detail
POSITION:	0350
LOOP:	2010CA
USAGE:	Situational. Required when submitting a corrected and verified original record (CLM19 = '02') or a replacement record (CLM19 = '05') and the claim administrator claim number is different than the number reported in previous records related to this medical bill.
MAX USE:	1
PURPOSE:	To specify identifying information.
NOTE:	This segment is intended to provide information to the jurisdiction when the claim administrator changes its claim number due to acquired claims or a change in system, third party administrator, or other similar matters. After the submission of the corrected and verified original record, subsequent records related to the individual medical bill will report the "new" claim number in the Claim Administrator Claim Number REF segment and this segment will not be sent.
EXAMPLE:	REF*9E*WC12345678~

Rule: ***28 Texas Administrative Code, Section Rule §19.902; One Agent, One License***
This rule requires resident business entities (agencies) to register each additional branch location of the agency. Thirty-eight (38) states DO NOT have any requirements pertaining to branches. Twelve (12) states, including Texas, have some type of requirement for a branch location:

3 states require a license (CA-adjusters only, GA, and WA)
5 states require a notification listing of locations (FL, LA, MO, NY, OR)
2 states require a registration (ME, MI)
2 states require a registration for resident business entities (agencies) (NJ, TX)

Reason for Review:
Since the enactment of the Gramm Leach Bliley Act (GLBA) and the NAIC's Uniform Licensing Standards, states have been eliminating requirements that are considered burdensome and unnecessary. We believe this requirement is unnecessary as TDI already has the regulatory oversight over the activities of the agency, regardless of the multiple locations that operate under the same federal identification number (FEIN) the agency may have. Additionally, elimination of this requirement would move the TDI forward with streamlining its license processes, consistent with the majority of states as well as leveling the playing field for its TX resident agencies as this requirement does not pertain to nonresidents.

Issues related to the rule and priority for TDI
The issues relating to this should be a priority of the TDI due to the facts that administrative costs associated with this requirement are labor intensive, inadequate, cumbersome, and challenging due to the inability to immediately access online records to file information or verify that the state has processed the agency record for each branch location as records are not accessible either through the state system or NAIC Producer Database (there is an on-line portal system inquiry available, taking a minimum of 3 weeks to receive a response regarding the branch locations associated to the agency's record). As a result, confirming branch office locations increases the number of telephone and email inquiries to the TDI from individual agents, carriers, agencies and consumers; and

Improvement on the rule
It is our opinion that the only way to improve the rule is to **repeal the branch location** requirement.

28 Texas Administrative Code, Section Rule §19.902 (a) is amended to read:

(a) Only one license of the same type permitted. No agent may hold more than one license of the same type currently in effect. An agent doing an insurance business subject to the provisions of this subchapter shall have the agent's license certificate issued in the agent's true name. If an individual is authorized to act as a particular type of agent, that individual need not obtain an additional license in order to RULE §19.902 participate in a licensed partnership or corporate agency of the same type, but the partnership or corporation must obtain a separate license. Any licensed agent may [HAVE ADDITIONAL OFFICES OR] do an insurance business under assumed names without obtaining an additional license; provided, however, each agent must furnish the

SILA PO Box 498, Zionsville, IN 46077 (800) 428-8329, [redacted]

State Board of Insurance with a certification [IDENTIFYING ANY AND ALL OFFICES FROM WHICH THE AGENT WILL CONDUCT AN INSURANCE AGENCY BUSINESS, AND] showing any and all assumed names which the agent will utilize in doing an insurance agency business [AT EACH OF THOSE OFFICES]. Where such a filing is required under the Assumed Business or Professional Name Act (Texas Business and Commerce Code, §36.01, et seq.), or any similar statute, the agent shall provide the State Board of Insurance with a copy of the valid assumed name certificate reflecting proper registration of each assumed name utilized by the agent.

Rule: ***28 Texas Administrative Code, Section Rule §19.1006(a); Course Criteria***

Rule §19.1006(a) states the following:

To be certified as a continuing education course, the course content shall be designed to enhance the knowledge, understanding, and/or professional competence of the student as to one or more of the following topics: insurance principles and coverages; applicable laws, and rules; recent and prospective changes in coverages; technical policy provisions and underwriting guidelines and standards; law and the duties and responsibilities of the licensee; consumer protection; or insurance ethics. The course content may also include instruction on management of the licensee's insurance agency.

Reason for the review:

Currently, Texas takes a restrictive view on approved topics. This rule restricts the topic area to exclude areas which the modern insurance professional is expected to understand by their clients or the industry. They expect producers to understand how the products the producer is offering fit in the consumers overall financial goals. They do not want a producer that simply knows basic product features and provisions. Topics on estate planning, retirement planning, needs based planning, and other financial planning topics should be approved topics.

Issues related to the rule and priority for TDI

While the narrow topic list may be appropriate for a newly licensed producer, it does not reflect the "real life" of an experienced or seasoned producer whose business often overlaps with other financial products and topics, including estate planning, wealth accumulation and transfer, tax planning and qualified plans.

Rules and regulations must reflect the increased complexity of the insurance industry and melding of insurance and financial services' activities of an insurance producer. As previously mentioned, consumers demand and expect producers to have a broader base of knowledge than ever before. By having an overly restrictive list of approved topics, the rule is putting consumers at risk and defeating the purpose of insurance continuing education which is to "*… to enhance the knowledge, understanding, and/or professional competence of the student…*" Producers must know more than just policy provisions, laws, and ethics if they are going to provide competent professional guidance to Texas consumers.

For Example: A provider submitted an IRA course for CE approval. The course was denied as it was not related to insurance. The provider responded that IRAs can be funded with annuities (an insurance product) and therefore a producer MUST know the features of an IRA in order to ethically fund an IRA with an annuity. The course was rejected even after the response. Ironically, candidates for licensing in Texas are tested on retirement plans on the state exam. If they are required to know the information to become licensed, why is it not allowed as a topic for continuing education?

Improvement on the rule:

We recommend that Texas expand their approved topic/content list to include the recommended NAIC best practices on approved CE approved topics.

SILA PO Box 498, Zionsville, IN 46077 (800) 428-8329, [redacted]

Rule: ***28 Texas Administrative Code, Section Rule §19.1011(e); Requirements for Successful Completion of Continuing Education Courses***

RULE §19.1011(e) states the following:

(e) Providers shall issue certificates of completion to students who successfully complete a certified course. The provider must issue the certificate in a manner which shall ensure that the student receiving the certificate is the student who took the course, issue the certificate within 30 days of completing the course, and complete the certificate to reflect the date the student took the course/examination. Providers shall not allow a student, or any person or organization other than the provider giving the course, to prepare, print, or complete a certificate of completion.

Reasons for the review:

Texas is the only state who does not allow electronic certificates to be provided to the licensee.

Issues related to the rule and priority for TDI:

Continuing Education (CE) Providers would like to provide electronic certificates of completion for Texas Insurance Continuing Education courses. This allows the student immediate access to the certificate. Currently, CE Providers may not allow a student, or any person or organization other than the provider giving the course, to prepare, *print*, or complete a certificate of completion.

Improvement on the rule:

We recommend that the word “print” be removed from **RULE §19.1011(e)**.

SILA PO Box 498, Zionsville, IN 46077 (800) 428-8329, [redacted]

Rule: ***28 Texas Administrative Code, Section Rule §19.1010(a)(2)(A); Hours of Credit***

Rule §19.1010(a)(2)(A) mandates that the calculation of hours in Texas is calculated in one of two ways: the average of at least five-time testers, or the average of approved credit in at least three other states.

Reason for review:

Texas is the only state that requires an education provider to pilot test a course to get a course approved in their state.

Issues related to the rule and priority for TDI:

The five-time tester requirement is an issue because it is difficult to find five qualified individuals who are Texas producers licensed to do the time test. There is a significant delay in getting a course submitted due to waiting on the time tests to be completed.

If a Texas home state provider does not pilot test the course, they must first get it approved in at least 3 other states before they can submit to Texas. This causes a delay to go nationwide because now 3 other states must perform a substantive review of the course in order to get the home state approval in Texas and use reciprocity with remaining states.

Improvement on the rule:

It is our recommendation to remove these 2 methods of calculation and instead, calculate the number of CE credit hours using the NAIC Recommended Guidelines for Online Courses. Most states use a formula of 9,000 words per CE credit hour for a basic course. A factor of 1.25 (7,200 words per hour) is applied to intermediate level CE courses and a factor of 1.5 (6,000 words per hour) is applied for advanced level CE courses. This would simplify the process and allow for a quicker approval and release date which makes the courses available to TX producers much sooner.

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Rule: ***28 Texas Administrative Code, Section Rule §19.1011(d)(1); Requirements for Successful Completion of Continuing Education Courses***

Rule §19.1011(d)(1) states that the final examination or interactive inquiries must reasonably evaluate the student's understanding of the course content. At least 70% of the examination questions or interactive inquiries must be based at the application level. The remainder of the questions may be based at the knowledge level.

Reason for review:

Texas is the only state that has this requirement for the exams. This requires providers to create and maintain special exams just for Texas. Some education providers will choose not to offer the course in Texas because they don't want to create application-based questions and maintain two separate exam banks. Insurance CE providers who also work in other industries say this is not a common practice in other industries.

Issues related to the rule and priority for TDI:

Placing a higher emphasis on application-based questions is not educationally supported. Application-based questions are not intrinsically superior to recognition or recall questions in measure mastery of a subject.

The 70% rule does not take into consideration that some topics, when appropriately developed, do not lend themselves to application-based questions. A student's understanding and acclimation of these kinds of topics and learning points are quite often better assessed through "knowledge-based" questions (typical "recognition and recall" question). Due to the higher complexity of this type of question, they are often seen by agents as "trick questions".

Aside from the additional course development expense of this requirement, another issue is the determination of what qualifies as an application question. This is very subjective decision and there is no consistency among course reviewers. On several occasions, the course approval vendor rejected courses because they did not consider certain questions to be application-based. In these situations, the provider received a denial and appealed the decision that the questions did not qualify as application-based questions. In many cases, the appeal was not successful, and providers had to rewrite questions and send the course back through the editing process. This difference of opinion (of what is considered an application-based question) results in increased course development costs and delays in releasing a new or updated course.

The 70% application question requirement is even more onerous on classroom equivalent (CLEQ) courses where the "interactive inquiries" must also be 70% application questions, which significantly increases the number of questions that must be written for a classroom equivalent course. Each inquiry period must have 5 questions. Each inquiry period has a 50% new question requirement, so 10 questions must be written to display 5 questions per inquiry period. Each hour of classroom equivalency must have a minimum of 4 inquiry periods, therefore, every classroom equivalent (CLEQ) course hour requires 40 questions, 70% of which must be application based. For example, a 5-hour CLEQ course requires us to write 200 questions, of which 140 must be application questions.

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Improvement on the rule:

It is our recommendation that **rule §19.1011(d)(1)** be stricken from the code. This would allow education providers the latitude to develop questions they feel are meaningful without the concern that the state approval vendor will not consider a question to be application-based. It also eliminates the additional expense to the state and education providers caused by subjective disagreements as to whether a question is an application question or not.

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Rule: ***28 Texas Administrative Code, Section Rules §19.1003(a), §19.1003(a)(B), and §19.1003(a)(C); Licensee Hour and Completion Requirements***

Rule §19.1003(a) and §19.1003(a)(B) states that each licensee (with a few exceptions) must complete 24 hours of continuing education which must include at least 2 hours in certified ethics or consumer protection courses.

Reason for review:

Texas is one of a handful of states that does not meet the Uniform Licensing Standard regarding required CE hours

***Improvement on the rule*:**

We recommend that Texas aligns the requirement to meet the Uniform Licensing Standard of 24 hours of CE which must include 3 hours of ethics. Changing the requirement would meet uniformity standards.

Rule §19.1003(a)(C) requires TX licensees to complete at least 50% of the CE requirement in certified classroom or classroom equivalent courses.

Reason for review:

Texas is one of 3 states that has this requirement. This presents challenges with course approvals of classroom equivalent courses under **Rule §19.1009(h)** and the 12-credit hour limit under **Rule §19.1010(a)(D**).

Issues Relating to the rule and priority for TDI:

By limiting the approved credit hours to 12 credits based on the 50% classroom requirement, Texas - based providers are not able to offer their courses nationally for more credits (which puts them at a disadvantage with their competitors) unless they designate another home state and submit the course in that state an request more hours than their home state allows.

Improvement on the rule:

It is our recommendation to remove this requirement from **Rule §19.1003(a)(C).**

Rule: ***28 Texas Administrative Code, Section Rule §19.1010(a)(2)(D); Hours of Credit***

RULE §19.1010 (a)(2)(D) states that the TDI will not certify more than 24 credit hours for any one classroom equivalent course or 12 credit hours for any one self-study course.

Reason for review:

Texas is of only a few states with this requirement. Self-study Continuing Education (CE) Providers domiciled in Texas have a need to offer more than 12 hours of CE credit for licensees outside of Texas.

Issues related to the rule and priority for TDI:

Continuing Education providers who are domiciled in Texas have difficulties submitting courses for more than 12 hours in other states. They must submit the course in another state as a resident home state submission. This usually leads to providers having to send more documentation and takes additional time for CE providers in Texas to get courses approved.

Improvement on the rule:

The SILA Education and Training Subgroup would like to request that RULE §19.1010(a)(2)(D) be struck from the Texas Administrative Code. Instead, we recommend that Texas use the NAIC Recommended Guidelines for Online Courses Acceptable Procedures to determine Appropriate Number of Credit Hours as follows:

Method A

- 600-700 words (standard font size) = one text page
- Textbooks/workbooks/other printed material – one credit for every 15 pages
- 3 screens with an aggregate total of approximately 600-700 words – one text page
- 45 screens – one hour of credit
- Divide total screens by 45 – total number of credit hours
- Multiply number of hours by 1.00 for a basic level course; 1.25 for an intermediate level; 1.50 for an advanced course for additional study time = total number of credit hours (fractional hours rounded up if .50 or above and rounded down if .49 or less)

Method B

- Divide total number of words by 180 (documented average reading time) = number of minutes to read material
- Divide number of minutes by 50 = credit hours
- Multiply number of hours by 1.00 for a basic level course; 1.25 for an intermediate level; 1.50 for an advanced course for additional study time = total number of credit hours (fractional hours rounded up if .50 or above and rounded down if .49 or less)

Method C

- Course that is part of a nationally recognized professional designation
- Credit hours equivalent to hours assigned to the same classroom course material

Texas Administrative Code, Title 28 Chapter 15 Subchapter B, Rule 15.106(b)(3): Stamping Office Filing and Fees

Reason for Review:

Pursuant to your request to identify rules which are unreasonably difficult for compliance, SILA strongly suggests that the Texas Department of Insurance (TDI) revise Rule 15.106(b)(3) to remove the requirement to identify policy limits in filing policies with the Surplus Lines Stamping Office of Texas (SLTX).

Texas House Bill No. 1405 was passed by the Senate on May 20, 2013 and became effective ***January 1, 2014***. As a result of the passage of HB 1405, the following were enacted by the Legislature of the State:

- Texas Insurance Code Title 3 Subtitle B Chapter 225 Section 225.006 Collection of Tax by Agent
- Title 6 Subtitle I Chapter 981 Subchapter A General Provisions
    - Section 981.105 (a) and (b)
    - Section 981.213
    - Section 981.215 (a)
    - Section 981.223 (a)

However, the Texas Department of Insurance under the Texas Administrative Code, Title 28 Chapter 15 Subchapter B, Rule 15.106 was not effective until ***December 30, 2018***, nearly five (5) years after the HB 1405 became effective.

Two weeks after TDI adopted Rule 15.106, surplus line brokers were notified that policy limits were to be captured and reported to SLTX. Moreover, surplus line brokers were required to go back and capture data from December 30, 2018. Even under the most normal of conditions, implementing Rule 15.106 in this fashion placed an undue and unnecessary burden on the insurance industry.

Nowhere in the amended statutes does it explicitly state that Policy Data Limits must be submitted to TDI or SLTX. Title 3 225.006 is referring to the *collection of tax* and Title 6 981.215 is referring to s*urplus lines agent records.* Actual policy documentation is no longer required and has not been for many years so the term “true and correct copy of a surplus lines insurance policy” is a debatable point. The agent reports the policy information online directly with the SLTX or through a Data Export system to the SLTX. In addition, the SLTX audits brokers on a random basis and require the submission of policies for review.

Agency Management Systems (AMS) are not able to support or implement any change ‘on demand’, especially agencies that utilize a Data Export System to submit large amounts of data at the same time. This leaves the agencies to report the Policy Limit data manually on an Excel spreadsheet. For agencies who report thousands of new and renewal policies each year, this manual process is extremely time consuming and burdensome. The only option is to hire additional staff to comply with Rule 15.106 or implement custom changes to AMS systems, both of which are not viable options. In fact, agencies have hired additional staff to comply with Rule 15.106, depleting work hours that could have been better served towards existing business and new business opportunities.

Improvement on the rule:

It is our recommendation to repeal Rule 15.106(b)(3).

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From: Robert Howey <[redacted]>
Sent: Thursday, September 19, 2019 9:42 AM
To: Comments <Comments@tdi.texas.gov>
Subject: Proposed Amendment to Rule 15.106(b)(3)
Importance: High

Gentlemen,

Re: Proposed Amendment to Rule 15.106(b)(3)

Pursuant to your request to identify rules which are unreasonably difficult for compliance, I as President of Southwest Risk, strongly suggest that the Texas Department of Insurance (TDI) revise Rule 15.106(b)(3) to remove the requirement to identify policy limits in filing policies with the Texas Stamping Office.

Comments and thoughts regarding modification :

- When the new requirement to include policy limits in filings at the Stamping Office was considered in 2017, the industry failed to recognize the burden the new rule would place on compliance as it was assumed that limits, like other required data could be easily collected through digital software.
- The new requirement, unfortunately requires us to manually input the data by trained staff who must make a professional determination of the limit, the type of line, the limit applies to and then aggregate different limits for different covered risks to comply.
- The added financial, time and staffing burdens on our organization have been costly and untimely distractions.

We also believe the data will be of limited use as the complexity and variable nature of surplus lines policies make it difficult to precisely and accurately allocate the risk to lines of insurance, and the many policies covered both in-state and out of state risks, thus devaluing the hoped for value of aggregate coverage numbers.

Should you have any questions we will be happy to further discuss.

Respectfully yours,

Rob Howey
President

Southwest Risk, LP
[redacted]
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9/26/2019

This email is in response to the Texas Department of Insurance August 29, 2019 memo titled “A Fresh Look at Insurance Rules” requesting input from stakeholders on Texas rules that “need work”. We commend the Department of Insurance for announcing this new initiative, and the opportunity to provide comments is greatly appreciated.

We respectfully submit the following input to TDI:

Texas Insurance Code, Title 13. Regulation of Professionals Sec. 4052.052
Under the Texas Insurance Code, Title 13. Regulation of Professionals Sec. 4052.052 (b) it states “The department may not issue a life and health insurance counselor license to a person unless the person has passed each part of the examination.”

Texas is one of the few states that still requires a health insurance agent to also obtain a license in life insurance. Many insurance producers, such as our agencies, only sell health insurance policies. This rule creates a significant burden on our organization in the recruitment, training, and licensing of agents who must obtain a life insurance license when they only sell health insurance.

We suggest updating the requirement that producers pass each part of the examination, and instead allow a producer to only pass the life or health portion.

Adoption of NAIC Producer Licensing Model Act
We respectfully request that Texas fully adopt the Producer Licensing Model Act published in January 2005 by the National Association of Insurance Commissioners. Its adoption would simplify and align compliance with other states’ licensing laws and regulations.

Please contact us if more information is needed.

Sue Anderson
Senior Compliance Counsel
[redacted]

October 1, 2019

RE: A Fresh Look at Insurance Rules: TAHP Requests for Consideration

Chief Clerk
Texas Department of Insurance
Via email: chiefclerk@tdi.texas.gov

The Texas Association of Health Plans (TAHP) is the statewide trade association representing health insurers, health maintenance organizations, and other related healthcare entities operating in Texas. Our members provide health and supplemental benefits to Texans through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid.

TAHP advocates for a sound and competitive health insurance market that maximizes private market competition, consumer choice and affordable coverage options. This includes a reasonable and fair regulatory environment that protects Texas families and businesses but does not unnecessarily raise health care costs or create additional administrative burden. We support and appreciate the Department's initiative to identify rules that need to be updated or changed. Every Texan deserves access to affordable, high quality health coverage, but health costs are already too high. This initiative is an opportunity to identify rules that may no longer provide a value for Texans or that are unnecessarily driving up the costs of health care in Texas. TAHP supports reasonable state regulations that protects consumers while allowing HMOs and insurers the flexibility required to offer valuable and affordable health care plans. TAHP's below recommendations identify regulatory requirements that directly raise health care costs or create additional administrative costs, but do not provide a clear and sufficient benefit and value to Texas consumers. Please see our recommendations below.

HMO (Ch. 11) Rules

- **§11.1402 Notification to Physicians and Providers**
  - Subsection (a) of the rule implements the provisions of Tex. Ins Code 843.305, which requires HMOs to provide a 20-day period each year during which any provider can apply to be in the HMO's provider network. But subsection (b) further requires HMOs to publish the notices on both their websites and **newspaper "public notice" sections for at least five consecutive days during the period of January 2 through January 23 of each calendar year.** Subsection (d) further requires HMOs to file copies of the published notices and other information with the department within 30 days of publication.
  - In its 2016 re-write of the HMO rules, the department proposed to replace the

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newspaper publishing requirement with a requirement that HMOs include the notices on their websites. But the department re-adopted the newspaper requirement in the final rule, providing no justification other than to state that one commenter supported the proposed change and *one* commenter "encouraged the department to require HMOs to publish the notice of an application period to physicians and providers both by newspaper and on the HMO's website, noting that publication on the HMO's website is not even minimal public outreach. That commenter urged that the publication be for a minimum of 10 days rather than five days, and supported requiring that the notice be filed with the department." Note that section 843.305, the cited statutory authority for the rule, does not require "public notice" – health care providers are not the "public," but rather are sophisticated parties that are well aware of the existence of HMO provider networks.

- Issue: The newspaper publishing requirement is outdated, expensive, and completely unnecessary. Health plans can spend about $20,000 on newspaper ads each year that provide zero value. The reality is that physicians and health care providers simply do not respond to these newspaper notices. It is highly unlikely that they even see them. The department should not continue to require HMOs to waste money, which results in higher premiums but provides no value to enrollees.
- Proposed solution: This rule should continue to require website publishing but should be amended to remove the outdated requirements for newspaper notices and filing of newspaper affidavits. We further recommend that HMO's not be required to file the notices, but to make them available to the department.

- **§ 11.504. Disapproval of an Evidence of Coverage.**
  - Subsection (a)(7) provides that that an EOC form may be disapproved if it is contrary to the law "or policy" of this state.
  - Issue: This provision is inappropriately vague and contrary to the rulemaking requirements of the Administrative Procedures Act.
  - Solution: Subsection (a)(7) should be amended to read: "… if it is contrary to the law or policy of this state."

- **§ 11.506. Mandatory Contractual Provisions: Group, Individual, and Conversion Agreement and Group Certificate. Subsection (b)(2) Benefits. (B) Deductibles.**
  - This rule prohibits HMO benefit plans from including deductibles unless they are "consumer choice" plans (except in cases involving emergency care, services that are not available in the HMO's delivery network, services performed out of the HMO's service area or for services performed by a physician or provider who is not in the HMO's delivery network).
  - The Insurance Code provides no statutory authority for allowing deductibles only in such limited situations. In fact, statutory language implies otherwise -- Insurance Code section 1271.052 requires that an HMO evidence of coverage must state: … (3)

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any limitation on the services, kinds of services, benefits, or kinds of benefits to be provided*, including any deductible or copayment feature.* Additionally, some mandates seem to assume a deductible applies. For example, section 1358.054 (cited as statutory in the adopted order for the HO rules re-write) specifically provides that a health benefit plan *may require a deductible* for the diabetes mandate*;* section 1451.256 (also cited) provides that a health benefit plan may not impose a copayment or deductible for direct access to the health care services *unless the same* copayment or *deductible is imposed for access to other health care services provided under the plan.*

- Issue: Requiring an HMO benefit plan to be considered and labeled as a "consumer choice" plan in order to include a deductible creates significant consequences for the individual market in light of the federal Affordable Care Act and the department rules that require the offer of a non-consumer choice plan in the same "category" and using the same sources and methods of distribution. The Texas Legislature recognizes the need for deductibles to reduce premiums costs and strongly supports High Deductible Health Plans. Requiring HMO benefit plans to be labeled and treated as "consumer choice" plans simply because they include deductibles raises costs and creates unnecessary obstacles to obtaining high-value HMO plans.
- Proposed solutions: Amend this subsection as follows: (B) Deductibles. A deductible must be for a specific dollar amount of the cost of the basic, limited, or single health care service. Except for a consumer choice benefit plan authorized by Insurance Code Chapter 1507 (concerning Consumer Choice of Benefits Plans), an HMO may not charge a deductible for services received in the HMO's delivery network. Except in cases involving emergency care and services that are not available in the HMO's delivery network, as described in §11.1611, an An HMO may charge an out-of-network deductible for services performed out of the HMO's service area or for services performed by a physician or provider who is not in the HMO's delivery network.

- **HMO Complaint Procedures under 843.252**
  This statute requires HMOs to send acknowledgement letters within five business days, and to resolve complaint within 30 calendar days, of receiving a complaint. HMOs are often able to fully resolve a complaint within the first five business days. If an HMO is able to resolve and send notice of the resolution of a complaint within that time frame, the complaint acknowledgement letter should not be required because it creates an unnecessary administrative burden and can confuse enrollees.

Provider Termination Appeals and Member Notices

§11.901 Required and Prohibited Provisions; §3.3706 Designation as a Preferred Provider, Decision to Withhold Designation, Termination of a Preferred Provider, Review of Process

- The Insurance Code in 843.306 requires an HMO to provide a written explanation of the

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reasons for a provider termination. It also provides that on request (before the effective date of the termination and within a period not to exceed 60 days), a physician or provider is entitled to an advisory review panel, except in a case involving:

(1) imminent harm to patient health;
(2) an action by a state medical, dental or licensing board that effectively impairs the physician's or provider's ability to practice; or
(3) fraud or malfeasance.

- Rule 11.901 imposes timing requirements for an HMO's notice to a provider of termination (at least 90 days) and a provider's request for an advisory review panel (within 30 days of receiving the termination notice) in order to meet the statutory 60-day timeframe for completing the review prior to the effective date of the termination. However, the rules apply the 90-day advance notice requirements to all terminations, including those involving imminent harm, etc., for which an advisory review panel is not available. Last year the department proposed to repeal the 30- and 90-day provisions but withdrew the proposal. TAHP strongly supported repeal of the 90-day advance notice requirement for terminations for which the Insurance Code provide exceptions to the advisory review panel requirements. There is no statutory authority for such a requirement, and it is not in the public interest to require HMOs to keep providers in the network for an additional 90 days or more in cases involving imminent harm to patient health, licensing board actions or fraud or malfeasance.
- We also request clarification that when an HMO has sent timely advance notice of termination (i.e., at least 90 days), it can require a provider requesting an appeal panel review (if available) to make the request within 30 days of receiving the termination notice so that the HMO may complete the review within the statutory timeframe of a 60-day period prior to the termination.
- In general, both the HMO and PPO rules are not clear regarding when health plans may and should inform enrollees of provider terminations from networks. The rules should be clarified to address the member notices in light of the prohibitions on sending notices when the provider has requested an appeal.

Utilization Review Rules (Ch. 19)

- General comment: Health plans have difficulty determining how, when, and which of the chapter 19, subchapter R, rules apply to Medicaid and CHIP plan. Additionally, because some chapter 19 rules refer to chapter 4201 of the Insurance Code, it is difficult to determine if they apply to health plans operating under Chapters 843 (HMO) and 1301 (PPO and EPO), which are also implemented (in part) in these rules. It would be very helpful if the department could provide clarification on these issues in its rules.
- For example, §19.1709 (Notice of Determinations Made in Utilization Review) refers to the provisions in chapter 4201, subchapter G (Notice of Determinations), which base notice requirements on receipt of "all information necessary to complete the review." The rule does

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not reference the statutory preauthorization timelines established in 1301.135 and 843.348 for PPO, EPO and HMO plans, which are based on the receipt of a preauthorization request. It is also not clear if this rule applies to Medicaid and CHIP plans.

- **§19.1703 Definitions**
  We suggest the following clarifications to definitions:
  - (b)(23) Preauthorization--A form of prospective utilization review by a payor or its URA of health care services proposed to be provided to an enrollee as required by the terms of the health benefit plan or health insurance policy.
  - Proposed new definition for Prospective Utilization Review: A form of utilization review for the preauthorization of health care services as required by the health benefit plan or health insurance policy
  - (b)(26) Reasonable opportunity--At least one documented good faith attempt to contact the provider of record that provides an opportunity for the provider of record to discuss the services under review with the URA during normal business hours prior to issuing a prospective, concurrent, or retrospective utilization review adverse determination:
    (A) no less than one working day prior to *issuing* a prospective utilization review adverse determination;
    (B) no less than five working days prior to *issuing* a retrospective utilization review adverse determination; or
    (C) prior to *issuing* a concurrent or post-stabilization review adverse determination.

  Please provide clarification regarding what "issuing" means in this context.

- **§ 19.1704 Certification or Registration of URAs**
  - Subsection (b)(1) (Application form) references the URA application "for application for, renewal of, and reporting a *material change* to a certification or registration as a UA in this state." The term "material change" is unclear and clarification is needed.
  - Subsection (h) (Renewal requirements) requires biennial renewals of URA certifications and registrations.
    - Issue: There is inconsistency between different reviewers and filings. Health plans and affiliates prefer to have consistent UR policies and procedures, but different reviewers often take inconsistent positions on various affiliates' filings, which leads to inconsistent results.
    - Proposed solution: The department's rules should be clarified so that regulators, health plans and other interested parties can have consistent understandings of the requirements.

- **§ 19.1707 URA Contact with and Receipt of Information from Health Care Providers**
  - Subsection (b) provides that a URA *must* request all relevant and updated information and medical records to complete the review.

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- We recommend that this be changed to "may," because in some circumstances, only specific limited information is required to approve a request.

- **§ 19.1709 Notice of Determination Made in Utilization Review**
  - Subsection (d)(3) (Prospective and concurrent review; Required time frames) provides that except as otherwise provided by the Insurance Code, the time frames for notification of the adverse determination begin from the date of the request and must comply with Insurance Code §4201.304. A URA must provide the notice to the provider of record or other health care provider not later than one hour after the time of the request when denying post-stabilization care subsequent to emergency treatment as requested by a provider of record or other health care provider. The URA must send written notification within three working days of the telephone or electronic transmission.
  - The rules are not clear and should be clarified regarding whether "hospitalized" in Insurance Code section 4201.304(a)(1) has the same meaning as "inpatient" as used in section 843.348(e).
  - It would be helpful for the department to confirm that once a patient has become "hospitalized" (inpatient), the one-hour time frame in Insurance Code section 4201.304(a)(3), and this rule, no longer applies.

Network Access Filings

§§ 3.3709; 11.1610 Annual Network Adequacy Report

- The department's network filing requirements, which are not reflected in its rules, create excessive and unnecessary administrative burdens. Additionally, the filing requirements are a "moving target," being changed with notice, and are inappropriately used as a method to collect unrelated information.
  - The VAST MAJORITY of so-called health plan "network gaps" are based on no licensed providers in the area. The department uses lists of licensed providers from state licensing agencies to review the network filings and so is aware of where licensed providers are located and where there are none available, but all health plans are required to provide maps with this same information to TDI.
  - Health plans submit the filings using the latest templates provided by the department only to have the department routinely "reject" the filings or cite "objections" based on new requirement for which TDI has never provided notice, including requiring new provider demographic information and requiring maps and listings for provider types that have never been requested in prior filings. This unnecessarily slows down the approval process for health plans, who are required to create and file information that they were not informed would be required.
  - The department has also engaged in inappropriate *ad hoc* rulemaking to create new network access *standards* through the access plan filing process. Examples include:

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  - Home health care providers are inappropriately evaluated according to provider location (services are provided in enrollees' homes and so provider office location is not relevant).
  - The department objects to multiple location listings for a provider but many providers practice in multiple locations.
  - TDI generally allows only one specialty classification for each provider, but some physicians have multiple specialties. This will be especially problematic with regard to assistant surgeons (which is not a recognized specialty) under SB 1742.
  - Credentialing verifications for facility-based providers are now being required through this process, ignoring the long-standing and department-recognized practice of health plans relying on network hospitals to credential these providers. A requirement to directly credential all network facility-based providers is cost prohibitive and unnecessary due to the thorough process required for these providers to obtain privileges to practice at contracted facilities and could delay providers being added to networks, potentially leading to access issues. Additionally, this is not an appropriate manner to impose a new credentialing requirement.
  - The current template requires health plans to show each hospital-based provider's current hospital and practice group affiliations together. This is not workable for providers who have multiple group and hospital affiliations.
- Medicaid plans must submit two different filings in different formats for essentially the same information. This dual bureaucracy creates unnecessary additional administrative costs but provides no additional protections for consumers.
- Proposed solutions:
  - Develop a more deliberative, consistent, and transparent process for network access filing requirements **with advance notice of changes and an opportunity for comment**.
  - Eliminate redundant or unnecessary information that is already available to TDI, including data on where licensed providers are not available.
  - Work with HHSC to coordinate and avoid redundant network access filings.

§ 11.302 Service Area Expansion or Reduction Applications

- The rule requires "an" application for a service area expansion or reduction, but the department requires multiple filings. This creates unnecessary administrative burdens for both the HMOs and the department and, more importantly, delays new HMO plans being offered to consumers, reducing access to coverage.
- Proposed solution: Limit filings to a more manageable amount for the agency and health plans. Approve the filings without requiring that they be resubmitted again prior to the next annual filing date.

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Out-of-Network Provider Payments
§§ 3.3708(b)(1), 3.3708(b)(3), 3.3708(e), 3.3725 (d)-(e), and 11.1611(d))

- These rules establish out-of-network payment standards that apply in certain circumstances. 3.3708 sets payments for PPO plans "at a minimum, at the usual or customary *charge* for the service less any patient coinsurance, copayment, or deductible responsibility under the plan." This rule requires PPOs, if "no preferred provider is reasonably available to the insured," (defined to include circumstances requiring emergency care) to pay non-network providers based upon provider *charges*, as opposed to other benchmarks for payment that better achieve medical cost containment such as a percentage of Medicare or a negotiated rate. Department rules also create a "hold harmless" requirement for HMO and EPO plans, under which the health plan must pay up to the submitting provider's full billed charges as necessary to avoid balance billing of the enrollee.
- Issue: These rules are not authorized by the Insurance Code and have not led to the intended results. Instead they have had the unintended effect of encouraging providers to either demand exorbitant rates or to leave or refuse to join health plan provider networks so that they may seek higher payments under the rules rather than negotiate for fair rates. This results in higher claims costs and higher premiums. Basing reimbursement requirements on unregulated and excessive billed charges, which have little to no connection to market rates or actual value, has skewed the market for the services covered by the rules.
- Solution: Repeal these rules and replace with rules based on the usual and customary rate as directed in SB 1264.

Data Reports and Form Filings

- **§ 3.4 General Submission Requirements**

Subsection (o) requires submission of policies that are issued outside of Texas, along with "certification and evidence that the master policy for the group was lawfully issued and delivered in a state in which the company was authorized to do insurance business." This has resulted in confusion and overregulation of policies for which the department has no jurisdiction. We recommend that this subsection be repealed.

- **§ 3.7 Form Acceptance and Procedures**
    - Subsection (b)(2) (Date for exempt filings) provides that exempt filings "are considered exempt as of the date received by the department; however, such filings are subject to audit as specified in §3.4008 of this chapter (relating to Procedures for Corrections to Non-Compliant Exempt Forms)."
    - Issue: This provision allowing the department to audit forms that may have been in use for a long period of time creates uncertainty in the market.
    - Proposed solution: This rule should be amended to limit the audit period for certain exempt filings. The department should engage with health plans and review both its procedures and rules regarding exempt filings.

TAHP
The Texas Association of Health Plans

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- **§ 3.9803 Provider Network Contracting Entity Exemption of Affiliates Form Required**
  - Section 1458.051 of the Insurance Code requires "contracting entities" to register as such with the department; insurers and HMOs that act as "contracting entities" must file an application for an exemption from registration, accompanied by a list of affiliates that must be updated annually. Under 1458.055, the department must grant an exemption from registration for affiliates of a contracting entity that is an insurer or HMO if certain findings are made. The information disclosures in 1458.02 are required only for contracting entities required to register under 1458.051.
  - The rules adopted under these statutes provide an "exemption" from registration as directed by the statutes, but the department's exemption request form requires more information than the registration from which it is being exempted. The rules also require an HMO or an insurer *with no affiliates* to submit the "*exemption of affiliates*" form. The same $1,000 filing fee is required for the registration and the exemption application.
  - This rule and the registration form should be amended to reflect an actual exemption from registration as directed by the statutes.

- **§ 21.3544 Required Annual Reporting (Consumer Choice Health Benefit Plans)**
  - This rule requires health plans offering consumer choice plans to file Form CCP2 each year certifying information about those plans, including (5) the number of consumer choice plans issued to individuals that were uninsured for at least two months prior to issue, and the number of Texas covered lives under those plans.
  - This information is not needed and is not readily available to health plans and should not be required. Chapter 1507 of the Code, governing consumer choice plans, includes no reporting requirements at all.

- **§ 21.2821 Reporting Requirements (Clean Claims)**
  - This rule requires quarterly reporting for 23 prompt payment statistics.
  - It is very difficult for health plans to reconcile clean claims received vs. clean claims paid on a quarterly basis due to adjustments and claim resubmissions. We recommend annual and not quarterly reporting, with sufficient time after the close of the reporting period for reconciliations, in order to provide more consistency.

- **§ 21.4507 Data Required (Health care Reimbursement Rate Information)**
  TAHP appreciates the improvement in the rules and data requested but would appreciate further discussion with the department on a few technical items, including the difficulty in "mapping" to the four predefined categories based on procedure codes, modifiers, revenue codes, and ICD codes because there are so many variables. A proposed solution would be to report the values for each separately.

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Chapter 21, Subchapters Q and PP (Complaint Records to be Maintained; Out-of-Network Claim Dispute Resolution)

The Insurance Code and department rules both define "complaints" as "primarily expressing a grievance" concerning coverage. The department defined "mediation" as a process promoting agreement between an insurer and an out-of-network provider. An enrollee's request for mediation is not necessarily an expression of grievance against the insurer and should not automatically be classified as a complaint by the department.

TAHP appreciates the opportunity to submit this information for your consideration. We look forward to working with you on these issues. Please contact me with any questions or to discuss further.

Regards,

Jamie Dudensing
CEO
Texas Association of Health Plans

cc: Melissa Eason
Regulatory counsel

Chief Clerk
Hobby 1, Room 1210A
MC 112-2A, P.O. Box 149104
Austin, Texas 78714-9104

October 1, 2019

Re: Texas Association of Health Underwriters (TAHU) Response to Texas Department of Insurance's (TDI) Fresh Look at Insurance Rules

To The Chief Clerk,

Thank you for the opportunity to provide suggestions to refresh the current insurance related rules. On behalf of the Texas Association of Health Underwriters (TAHU), we submit these suggested rule changes and updates.

1. **RULE CITATION:** 28 TAC Section 21.3530 - **CONSUMER CHOICE BENEFIT PLAN DISCLOSURE**

REASON FOR REQUESTED REVISION: The current version of this rule requires the consumer to read and sign a disclosure stating that the policy they are purchasing "does not include all state mandated health insurance benefits" even when, in some instances, the plan the consumer is purchasing DOES include coverage for all state mandated benefits. The problem frequent arises with HMO products that have a deductible if the copayment is too high versus the total cost of services provided, or the deductibles to some serves provided by HMO parcipating providers in the HMO service area or an annual deductible applies or benefit limits apply.

PROBLEMS CAUSED BY CURRENT RULE: The disclosure as drafted causes confusion with consumers because it states that the consumer does not include certain benefits that they actually do have coverage for.

DESCRIPTION OF OUR SUGGESTED REVISION: TAHU suggests that the disclosure language be revised to read that the policy the consumer is puchasing "May include some coverage limitations that differ from state mandated benefit levels." Additionally, agents could be given a choice to use the existing language for cases where certain coverages are actually excluded or this new language where copays, deductibles or cost sharing simply alters the financial amount of coverage from what is mandated by the state but coverage is required.

2. RULE CITATION: 28 TAC Section 21.4003(c) providing that "if an individual or enrollee ceases to be part of the group eligible for coverage within seven days prior to the end of the month, then the group policyholder or contract

holder will be deemed to have notified the health carrier in that same month as long as the carrier receives notification within the first three days of the subsequent month, not including Saturdays, Sundays and legal holidays."

REASON FOR REQUESTED REVISION: Many carriers only allow one EDI feed per week. This results in many employer groups entering a termination within the required time allowed under Section 21.40003(c) bu the carrier claims they are not made aware of the termination in sufficient time to process it (because they will only accept an EDI feed once a week and they require it before the end of the first three days of the next month.

PROBLEMS CAUSED BY CURRENT RULE: The rule was written when EDI feeds were not used as commonly and when they were limited to use with only large group plans. However, as technology has evolved, EDI feeds are used more and more frequently and with small group plans. Thus, the agents are experiencing more and more issues of the carriers refusing to recognize a termination and issue a refund because they did not receive it within the first three days. This commonly happens because they only accept a feed once a week and it often falls on day 1 or 2 of the three day period. Often carriers refused to work with plans to process a retro term (which is actually a timely term) in these instances. This results in the groups having to pay for coverage they timely gave notice of termination on and having no recourse by which to pursue a refund.

DESCRIPTION OF OUR SUGGESTED REVISION: TAHU suggests that th rule be revised to read: **providing that "if an individual or enrollee ceases to be part of the group eligible for coverage within seven days prior to the end of the month, then the group policyholder or contract holder will be deemed to have notified the health carrier in that same month as long as the carrier receives notification within the first three days of the subsequent month, not including Saturdays, Sundays and legal holidays. Carriers are prohibited from restricting EDI feed transmissions to receipt that falls before the end of the expiration of the first three days of the month.**

TAHU appreciates the Department's decision to offer us this opporutnity to suggest rule revisions. We are happy to answer any questions you might have about our suggestions. Thank you for your time on this matter

Sincerely,

Shannon P Meroney
President, Meroney Public Affairs
On behalf of
Texas Association of Health Underwriters (TAHU)

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Austin
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Saint Paul

October 1, 2019

The Honorable Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
c/o Chief Clerk
MC 112-2A
333 Guadalupe St.
Austin, Texas 78701

via email: comments@tdi.texas.gov

Re: TDI Rule Review Input

Dear Commissioner Sullivan:

This letter is sent on behalf of my client the Texas Association of Life and Health Insurers (TALHI), a trade association comprised of over 100 life and health insurers doing business in Texas. My client and I appreciate the opportunity to provide suggestions to you concerning specific agency rules that will assist in best practices, consumer protection, modernization, and user-friendly processes.

I reviewed several chapters in Title 28, Part 1 relating to Texas Department of Insurance rules and prepared a worksheet reviewing all subchapters, divisions and sections in Chapters 1, 3, 5, 7, 13, 19, 21, 22, and 26. This worksheet was provided to TALHI members and key committees as a guide to assist them in formulating specific recommendations to you. This review showed that many sections need to be updated to reflect statutory changes as a result of recodification. Some, but not all, of these sections are included in the specific recommendations attached to this letter. The longer worksheet is available to you or your staff if needed.

In completing this process, we have also received comments from some members expressing hope that you will also review the use of informal rules being used by the agency. These are often encountered in form and rate filings and other filings made with the Department. Some of the on-line checklists contain requirements not adopted through the formal rulemaking process. The use of informal rules makes compliance difficult for companies attempting to follow Texas regulations and know with certainty what rules will be applied in various filings made with the Department.

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Several members also continue to have problems with timely processing of policy form approval. In addition, members continue to have been problems with exempt forms because of recent practice to audit all exempt form filings. This defeats the purpose of having an exempt form filing procedure. We hope changes suggested as a High Priority in the attached document will be a priority for the Department to consider.

We have not made specific comments on rules relating to individual or group health insurance. It should be clear though that the current regulations are often conflicting and overlapping with provisions in Chapter 3, 21 and 26 applicable to various types of health insurance products. Clarifying these rules in a consistent and easy to view will be a helpful step in modernization and allowing easier compliance by insurers.

Please contact me if you have questions or need additional information in support of these recommendations.

Sincerely,

/s/ Jay Thompson
Jay A. Thompson

Cc: Jennifer Cawley, Exec. Dir., TALHI

TEXAS ASSOCIATION OF LIFE AND HEALTH INSURERS (TALHI)
RULE REVIEW SPECIFIC COMMENTS

28 TEXAS ADMINISTRATIVE CODE

CHAPTER 1
Subchapter A
Division 1. General Procedural Rules

SECTION	Description	Adopted/Amended	Suggested Action
1.1-1.13	General Procedures Rules	1976/1984	Consider updating or repealing.
1.14	Motions During Hearings	1976	Consider updating or repealing
1.16-1.38	General Procedures Rules	1976/1984	Consider updating or repealing
1.39	Form of Briefs	1976	Consider updating or repealing
1.40-1.81	Genl Procedural Rules	1976/1984	Consider updating or repealing
1.82-1.87	Discovery rules	1993	Consider updating or repealing
1.88	Response to Notice	1996/1997	Consider updating or repealing
1.89	Default	1996	Consider updating or repealing
1.90	SOAH MOU	1993/1995/1996	Update to more accurately reflect current procedures with SOAH rules.

General Comments: These procedural rules do not necessarily reflect hearings conducted by TDI, such as appeals of financial examinations under Chapter 401 or appeals of market conduct examinations under Chapter 751. There are numerous statutory references that have been recodified or amended.

Subchapter A
Division 2. Rule Making Procedures /High Priority

SECTION	Description	Adopted/Amended	Suggested Action
1.209	Phone #	2015	Update and Amend

General Comments*: If the phone numbers listed in Section 1.209 are not correct, Section 1.209 should be promptly updated with correct phone numbers*.

Subchapter C
Assessment of Maintenance Taxes and Fees, 2017

SECTION	Description	Adopted/Amended	Suggested Action
1.414	Fees	1994/2017	Either repeal or update

General Comments: Maintenance tax rates are set every year. The last update for this rule was in 2017. Is it still necessary to maintain set the maintenance tax rate by rule? If so, this should be done consistently.

TEXAS ASSOCIATION OF LIFE AND HEALTH INSURERS (TALHI)
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Subchapter F
Summary Procedures for Routine Matters/ High Priority

SECTION	Description	Adopted/Amended	Suggested Action
1.701	Purpose	1985/1985	Amend to correct statute
1.702	Designated Activities	1985/1993/2003	Update and Amend to the proper activities that are delegated. There appear to be no activity in financial even though this is routinely done through delegation orders.
1.703	Delegation	1985/1993/2003	Update and Amend
1.705	*Review*	1985/1992/2003	Update and Amend

General Comments: The statute was enacted to allow the Commissioner to delegate certain routine functions by rule. However, the practice of using rules to delegate functions has largely been ignored and the Commissioners have regularly issued "delegation orders" instead. This is particularly true in financial transactions, holding company transactions, and others. After the death of Commissioner Mattax, delegation orders were used for several months even though there could have been serious legal questions on the use of orders. How far can delegation orders be used when the Legislature has specifically required the Commissioner to delegate through formal rules?

There have been a few problems in form filings in life and health. These problems have been encountered where disputes on objections to a particular form filing. In practice, forms may be disapproved by lower level staff instead of the delegated person in the rule. The review procedure is seldom if ever used and the procedures for a hearing are not clear.

Because of the use of SERFF for all filings, a filing may be closed in SERFF before an opportunity to request hearing or other review. In other instances, where appeals may have been requested, no procedure has been in place for a prompt review or appeal of disputed differences. The procedure to close a SERFF filing requires insurers to make a new filing and pay a new fee for filings that could have been corrected. Insurers should be able to make corrections before a filing is closed in SERFF.

Finally, the title of the person who receives a delegation should be corrected and updated.

TEXAS ASSOCIATION OF LIFE AND HEALTH INSURERS (TALHI)
RULE REVIEW SPECIFIC COMMENTS

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Subchapter G
Notice and Processing Periods for Permit Applications /Medium Priority

SECTION	Description	Adopted/Amended	Suggested Action
1.801-1.813	Permit Applications	1989	Update with correct statutory references and current procedures. Update and Amend/
1.807	Company License	1989	TDI allows itself 180 days to issue or deny an application for license. This should be able to be done more efficiently.
1.808	Foreign License	1989	TDI allows itself 180 days to issue or deny an application for license. This should be able to be done more efficiently.

General comments: The statutory references in this subchapter need to be updated as well as definitions, which still include the Board. The TDI has recently made significant improvements in processing of agent license applications. Applications for company licenses in Sections 1.807-1.808 needs review and if there are rules being applied but not included these should be included in any formal rule. Some companies report that the standards for obtaining a license are frequently subject to informal internal rules such as minimum reinsurance or other requirements before a license can be obtained. UCAA applications are generally used now for company license applications. Rules should be amended to reflect that current procedures and checklists.

TEXAS ASSOCIATION OF LIFE AND HEALTH INSURERS (TALHI)
RULE REVIEW SPECIFIC COMMENTS

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CHAPTER 3
Subchapter A
Submission requirements for Filings & Actions Related to Such Filings/ High Priority

SECTION	Description	Adopted/Amended	Suggested Action/Priority
3.1-3.8	Submissions	2003	Amend and Update
3.3	Transmittal Info	2003	Amend and repeal Section 3.3(b)(2)(K)(i). Texas is the only state requiring separate policy and certificate forms with unique numbers filed for each group type. A similar amendment is needed in Section 3.6(c)(2).
3.4(o)	Filing of forms outside of Texas	2003	Repeal or amend for efficiency purposes.

SERFF: These rules should be amended and updated to reflect the filing of policy forms through SERFF.

Separate group types: Several insurers have reported problems with the requirement for unique and identifying form numbers for each group type. Texas is the only state requiring this. Except for replacing employment terminology and membership terminology, policy and certificate forms do not vary significantly from group type. There would be several efficiency advantages to making this slight change including the need for fewer forms to be reviewed and retained by TDI. This also helps insurers that use automated issue systems. Requiring separate forms based on group type alone, requires more time, resources in issues systems and increases error if there is an internal change in products standards. Section 3.6(c)(2) contains a similar provision. This requirement is not statutory but embedded in TDI rules.

Section 3.4 general submission requirements. Section 3.4(o) requires submission of policies issued outside of Texas. This has resulted in confusion and overregulation of policies not regulated by TDI.

Audits of exempt filings: Rule 3.7(b)(2) should be amended to impose some type of reasonable audit period for certain exempt filings. TALHI would encourage TDI to review both its procedures and rules in this and other sections on exempt filings. There have been numerous complaints about audits conducted long after an exempt filing has been made and requirement to amend old forms that are difficult, if not impossible, in some instances to locate individuals who received certain forms. Procedures for approval/disapproval are confusing especially as regards the opportunity for hearing on disputed grounds for disapproval.

Checklists: Insurers also report that checklists online may contain requirements that are not in rule or statute. There are also other unpublished requirements seen in objections for reviewers. The use of unpublished rules presents problems for voluntary compliance and TALHI

members urge the TDI to eliminate the use of unpublished rules to allow for better compliance, communication and efficiency.

Some of the most recent checklists include conclusions of law that are not correct and not supported by either case law or statutes. (See discussion in current checklists on Arbitration and references to "open courts" in Ch. 541 or 544. There is no open court provision and Texas case law permits arbitration of even Ch. 541 claims). Examples of why this is an informal rule in the current checklist includes:

- In 2003, the NAIC Consumer Protections Working Group considered a NAIC model law prohibiting pre-dispute arbitration clauses in personal insurance policies. Texas Insurance Commissioner Jose Montemayor, a member of this working group, stated that "arbitration has made products more available and has led to product discounts, and that a prohibition of arbitration would violate Texas law and public policy."
- The NAIC Working Group proposal was strongly opposed by life and health insurers, property/casualty insurers, and various national insurance trade associations. In March 2004, the proposal to prohibit the use of pre-dispute binding arbitration in personal lines insurance contracts was defeated by an 11-5 vote.
- Common law arbitration has been sanctioned by Texas courts since the time of the state's first constitution in 1845. A long line of Texas Supreme Court decisions favor arbitration.
- In 1968 in the case styled *Carpenter v. North River Insurance Co*[1], the Houston Court of Appeals upheld an arbitration clause in an insurance policy involving uninsured motorist coverage.
- In 1996, in the case styled *Southwest Health Plan, Inc. and Aetna Health Plans of Texas Inc. v. Sparkman*[2], the Fort Worth Court of Appeals upheld an arbitration clause in a health insurance policy and further held that all claims including contract, tort, bad faith, and DTPA claims were subject to arbitration. This case directly contradicts TDI's "checklist" that the arbitration precludes exercising rights under the DTPA or Ch. 541.

Form and acceptance procedures have been often difficult and slow. Virtually every comment from a reviewer starts as "objections" even if it is only a request for additional information. For example, reviewers frequently style an objection to a filing as a violation of Section 3.6(d). This section only provides the TDI to request any additional information necessary for a review of any filing.

TALHI would suggest that an advisory committee be established to review amended procedures and checklists in order that prompt review and approval of policy forms can be accomplished. This is one area where it has been difficult for carriers to know in advance the

[1] 436 S.W.2d 549 (Tex. Civ. App.—Houston, 1968)
[2] 921 S.W. 2d 355 (Tex. Civ. App.—Fort Worth, 1996)

rules and processes. The current procedures have been unreasonably difficult and ambiguous and should be updated.

Recodification: There are also several statutory references that should be updated to reflect the current statute as a result of recodification.

Subchapter B
Individual Life Policy Form Checklist and Affirmative Requirements /High Priority

SECTION	Description	Adopted/Amended	Suggested Action
3.101-108	Individual Life	1976/1982	Update Statutory References
3.101	payment of Premium	1976/1982	Even though this is based on a statutory requirement, the requirement for receipts signed by officers is outdated and does not reflect payment by bank drafts and other means. Consider updating.
3.109	Automatic Premium loans	1976	This may need to be updated.
3.111	Reinstatement	1976/1982	
3.112	Payment of Claims	1976	Update to be consistent with current law
3.113	Family group	1976/1982	This should be clarified that this is not a group but individual policy.
3.125	Premium Paid in Advance	1976/1982	Repeal. Texas is the only state that prohibits surrender charges on premium deposit accounts. This allows insurers to offset disintermediation risk and offer more favorable rates of return.
3.126	Annuity	1976/1982	Amend and clarify certain annuity contracts that may not apply, such as variable annuity.

General Comments: The subsection is entitled checklist for individual life. Despite this, TDI publishes its own informal checklists and often applies requirements for individual life to some group policies as well. This is often confusing and inconsistent with the formal regulations. This subchapter should be updated.

As noted above, it is recommended that Section 3.125 be repealed.

Separate accounts: Section 3.126 should be updated and clarified**.** Members report problems on variable annuity contracts involving separate accounts created in other states. For decades the regulation of separate accounts was only required for domestic insurers. Recently,

TEXAS ASSOCIATION OF LIFE AND HEALTH INSURERS (TALHI)
RULE REVIEW SPECIFIC COMMENTS

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TDI has started requiring Commissioner's Orders on certain filings. This is not articulated in any rule and the requirements for an Order have fluctuated and not part of any rule.

Subchapter C
Approval, Disapproval and Withdrawal of participating Policy Forms /High Priority

SECTION	Description	Adopted/Amended	Suggested Action
3.201-3.204	"Certain Participating Policies"	1976	Update this section. References still include old law and the board. It appears some participating policies may be authorized.

General Comments: This has been mentioned as a priority by several members.

Subchapter D
Indeterminate Premium Reduction Policies. /High Priority

SECTION	Description	Adopted/Amended	Suggested Action
3.301-3.311	Indeterminate Premium	1976/1982	Update and amend to current law. Also update to match disclosure requirements enacted in 2019 for cost of insurance changes

General Comments: This has been mentioned as a priority by several members.

Subchapter E
Group Life, Group A & H Policies & Certificates /High Priority

SECTION	Description	Adopted/Amended	Suggested Action
3.408	Mandatory Provisions	1989	Repeal and recodify into sections for applicable group health policies. Delete references to Board.

General Comments: This has been mentioned as a priority by several members.

Subchapter G
Plain Language Requirement for Health Benefit Policies/ High Priority

SECTION	Description	Adopted/Amended	Suggested Action
3.602	Requirements	1994	Amend to be consistent with current standards used for reviewing form filings.

General Comments: TALHI applauds the Commissioner's plain language initiative, but companies' experience has been that this initiative as applied by staff is not always consistent with these rules. To assist filers to better understand the rules before they file, these should be reflected in amendments to this rule. Similar provisions should be added for other products other than just health insurance.

Subchapter H
Variable Annuities /High Priority

SECTION	Description	Adopted/Amended	Suggested Action
3.701-3.706	Variable Annuity	1985	Update to correct statutory provisions

General Comments: The provisions in Section 3.704 relating to separate accounts demonstrates a problem encountered by some non-domestic insurers. This section and applicable statutory provisions regulate separate accounts for domestic life insurers. However, some non-domestic carriers have experienced long delays and difficulty with form approvals because these and other rules were applied to forms involving separate accounts established outside of Texas by foreign insurers. This type of ad hoc rulemaking makes compliance difficult. The TDI should revisit how its rules should be applied on separate accounts for foreign insurers.

Subchapter I
Variable Life Insurance /High Priority

SECTION	Description	Adopted/Amended	Suggested Action
3.801-3.804	Filing	1985/2001	Update to correct statutory provisions and to reflect current filing under SERFF.
3.805	Reserve	1985	Update with correct statutory cites and any reserve changes require and more recently enacted.

General Comments: This has been mentioned as a priority by several members.

Subchapter J
Required Reinstatement for Mental Incapacity for Individual Life Policies Without Non-Forfeiture Benefits

SECTION	Description	Adopted/Amended	Suggested Action
3.901-3.911	Misc.	1996	Update to correct statutory provision.
3.912	procedures	1996	Update to current procedures required

Subchapter K
Maximum Guaranteed Interest Rates Annuities, Endowment & Misc. Funds

SECTION	Description	Adopted/Amended	Suggested Action
3.1001-3.1002	Authority/Scope	1976/1982	Update to correct statutory provision.
3.1004	policy Form Review	1976/1982	Update to reflect current procedures. Change references to

			standard valuation law to correct references.
3.1005	Reserve	1976/1982	Update references to standard valuation law.
3.1006	Early Warning	1976/1982	Update to eliminate references to board; update standard valuation law

Subchapter L
Strengthen Reserves, Art. 3.28

SECTION	Description	Adopted/Amended	Suggested Action
3.1101	Art. 3.28	1976/1982	Update to correct statutory references

Subchapter N
Non-forfeiture Standards for Individual Life in Employer Pension Plans/ High Priority

SECTION	Description	Adopted/Amended	Suggested Action
3.1301-1304	Reserve Stds	1984/1989	Update or Repeal. See, 3.1307. Use 1980 Tables.
3.1305	Unfair Discrimination	1984/1987	Update statutory reference
3.1307	2001 CSO Table	2003	This appears to replace 3.1301-3.1306 with 2001 tables. Have these been replaced by PBR?

General Comments: This has been mentioned as a priority by several members.

Subchapter O.
Smoker-Nonsmoker composite Mortality Tables/ High Priority

SECTION	Description	Adopted/Amended	Suggested Action
3.1401-3.1406	Tables	1984	Repeal or update. These sections refer to the 1980 tables and appear to be been replaced by 2001 tables.
3.1406	2001 CSO	2003	update if this has been replaced by PBR.

Subchapter Q. Actuarial Opinion and Memorandum Regulation

SECTION	Description	Adopted/Amended	Suggested Action
3.1601-3.1608	Opinion & Memo Requirements	2005	Do these need to be updated to be consistent and uniform under NAIC requirements?

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Subchapter S
Minimum Standards for Individual A & H Policies

SECTION	Description	Adopted/Amended	Suggested Action/Priority
3.3001-3.3049	A & H	1977/1997	Update statutory references
3.3050	Renewability	1977/1997	Update applicability to distinguish certain group and individual.
3.3051	Subsequent Conditions & Eligibility	1977	These appear to be out of date and need to be updated. Distinguish between group and individual
3.3052	Termination	1977/1997	Update statutory references
3.3054	Pre-existing Conditions	1977/1997	Update for applicability to types of policies that may be subject to federal law changes.
3.3055-3.3057	Waiting periods, limitations, exclusions	1977/1983	Review for possible changes based on federal law changes and applicability.
3.3058-3.3060	elimination, Disability, conversion	1977	Review for possible changes based on federal law changes and applicability.
3.3061	Replacement	1977/1997	Review for possible changes based on federal law changes and applicability to individual or group accident policies.
3.3062	Conditional Receipts	1977	No change
3.3070	General	1977/1997	Update statutory references
3.3071	Basic Hospital	1977/1997	Review for possible changes based on federal law changes and applicability
3.3072	Basic Medical Surgical	1977, 1978, 1997	Review for possible changes based on federal law changes and applicability
3.3073	Hospital Confinement	1977/1997	Review for possible changes based on federal law changes and applicability
3.3074	Major medical	1977/1978/1997	Review for possible changes based on federal law changes and applicability. Review on whether this is needed in light of Ch. 26.
3.3075	Disability	1977	Review for possible changes based

			on federal law changes and applicability
3.3076	Accident Only	1977	Review for possible changes based on federal law changes and applicability
3.3077	Specified Disease	1977	Review for possible changes based on federal law changes and applicability
3.3079	Limited Benefits	1977/1997	Review for possible changes based on federal law changes and applicability
3.3080	Supplemental	1977	
3.3081	Nonconventional	1977/1997	What is this? Has TDI ever approved a policy under this section?
3.3090	Outline of Coverage	1977/1983/1997	Consider updating, amending and specifying better applicability. This seems to be required on all policies.
3.3091	Notice of Outline of Coverage	1977/1983	Consider updating, amending or repealing. Better rule on applicability is also needed.
3.3092	format, Readability	1977/1983/1997	Update readability to current plain language standards used by TDI
3.3092	Prescribed Outlines of Coverage	1977/1983	If this is maintained, why are earlier rules even required?
3.3100	Readability	1977	Repeal. This seems duplicative of other provisions
3.3101	Form for Readability	1977	Repeal. This seems duplicative of other provisions.
3.3102	Language Readability	1977	Repeal and consolidate with current standards.
3.3110	Effective Date	1977/1978/1997	Repeal. This may no longer be necessary as a separate rule provision. Statutory references are also outdated.

General Comments: This subchapter is a good example of outdated rules that are overly broad and do not fit all individual or group A & H type of policies. There are also other rules for group major medical in Chapter 21 and in Chapter 26. This makes compliance difficult to understand and also makes timely review and approval difficult. TALHI would suggest a working group to streamline the rules and checklists. There are numerous rules on outlines, readability that seem

duplicative and also appear to be inconsistent with new requirements on the Commissioner's plain language initiative.

Subchapter Y
Standards for Long Term Care Insurance
Divisions 1, 2, 3 and 4

SECTION	Description	Adopted/Amended	Suggested Action/Priority
3.3801-3.3874	LTC Rates and Forms	1990/1992/1999/2009	Changes should reflect efforts at NAIC and changes on rate filings and procedures.

Subchapter Z
Exemption from Review of Certain Forms and Expedition of Review/ High Priority

SECTION	Description	Adopted/Amended	Suggested Action/Priority
3.4001	Purpose	1983/1985	Update statutory provisions
3.4002	Forms filed	1983/1985	Update statutory provisions
3.4004	Exempt Forms	1983/1996/2000	Update statutory provisions and forms that would be "actually exempt"
3.4006	New, common, and unusual	1983	Consider amending or repealing. This has been used after the fact to justify ex post facto type reviews for forms listed as exempt.
3.4008	Corrections to Exempt Forms	1983/1996/2000	Update procedures on TDI reviews. Establish some type of limitation period for TDI audits and corrective actions.
3.4009	Sanctions	1983/1996	Update procedures to afford for due process and hearing.

General Comments: Insurers have had problems based primarily on audits of forms allowed to be filed as exempt. In some instances, new checklists may have been applied to the filings during audits and in others corrections and compliance has been unduly burdensome. Procedures should be put in place to limit time period for audits. The statute allowing certain forms to be filed as "exempt" was enacted because of long delays by the Department in reviewing and approving forms. The actual application of the statute by staff has recently been to discourage rather than encourage filing forms under the exempt category. Priority on reviewing changes should be HIGH.

Subchapter AA
Limited Exemption from Art. 3.42

SECTION	Description	Adopted/Amended	Suggested Action/Priority
3.4101-3.4105	Exemption	1982	Update statutory provisions. How

			has this been applied? It appears to exempt certain group filings but the process for exemption may essentially be longer than filing itself. Review is needed to implement and streamline procedures.

Subchapter CC
Standards for Acceleration of Life insurance Benefits for Individual and Group Policies & Riders

SECTION	Description	Adopted/Amended	Suggested Action/Priority
3.4301-3.4317		1996/1999/2008/	May need to update nonforfeiture to be consistent with current law; tax provisions in 3.4315 may need to be updated;

Subchapter EE
Valuation of Life Insurance Policies

SECTION	Description	Adopted/Amended	Suggested Action/Priority
3.4501-3.4508	Reserves and Value	2000	This may need update in light of PBR.
3.4509	2001 CSO	2003	same

Subchapter FF
Credit Life and Credit Accident & Health Insurance
Divisions 1-14/ High Priority

SECTION	Description	Adopted/Amended	Suggested Action/Priority
3.5101-3.5111	General, application & policy	1980/1992/2003 2005	Consider amending or clarifying Sections 3.51059(d) and 3.5105(e), which seem to contradict each other on statements during enrollment. Amend 3.5105(b)(7) to allow acceptance of applications to 60-days for all types of transactions (open-end and closed-end) to allow for a timely review of applications by the insurer upon receipt of the applications from the lender (which usually has a one month lag from the effective date). The current rule only allows for 45 days.

3.5201-3.5205	Rates & Forms	1980/1992/2005	Update procedure for presumptive rate proceedings
3.5302-3.5307	Presumptive Life Benefits	1980/1991/1996 2005	Update statutory references. Amend Sec. 3.5302(a) by removing "spouse or business partner" in the joint borrower definition so that it can be any individual jointly and severally liable for repayment. Add a section similar to Sec. 3.5501(3)(A) on pre-existing conditions for credit life.
3.5501-3.5502	Presumptive A & H	1996/2005	See comment above on Sec. 3.5501(3)(A) – Please apply this credit disability pre-existing condition reference to credit life insurance as well.
3.5601-3.5611	Deviation	1980/2003/2005	Update form references if changes;
3.5801-3.5906	Other/Refunds	1980/1992/2005	No change
3.6001-3.6011	Agents, Insurers	1980/2005	Some notices may need to be updated for correct phone #, website for TDI and OPIC.
3.6101	Reserves	1980/2012	
3.6201-3.6403	Misc.	1980	Some of these seem unnecessary such as effective date, savings clause and severability.

Subchapter GG
Minimum Reserve Standards for Individual and Group A & H

SECTION	Description	Adopted/Amended	Suggested Action/Priority
3.7001-3.7010	Reserve	1992/2010/2012	Review for any updates for consistent with national or NAIC standards

Subchapter JJ
2001 CSO Mortality Table

SECTION	Description	Adopted/Amended	Suggested Action/Priority
3.9101-3.9106	2001 CSO Tables	2003	This appears to replace other provisions in Ch. 3 relating to the 2001 CSO table. Review and determine if others need to be repealed.

TEXAS ASSOCIATION OF LIFE AND HEALTH INSURERS (TALHI)
RULE REVIEW SPECIFIC COMMENTS

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Subchapter MM
Preferred Mortality Tables

SECTION	Description	Adopted/Amended	Suggested Action/Priority
3,9401-3.9404	CSO Tables	2007/2010	Consider reorganizing and clarifying to distinguish preferred from other tables and new rules.

Subchapter OO
Preneed Life Minimum Mortality Standards and Reserve Liabilities
And Nonforfeiture Tables

SECTION	Description	Adopted/Amended	Suggested Action/Priority
3.9601-3.9606	Reserve	2008	Consider reorganizing and clarifying.

Subchapter PP
Annuity Disclosures

SECTION	Description	Adopted/Amended	Suggested Action/Priority
3.9701-3.9712	Annuity Guides	2011	Update when NAIC models are updated.

Subchapter RR
Valuation Manual

SECTION	Description	Adopted/Amended	Suggested Action/Priority
3.9901-3.9902	NAIC Model	2017	Keep this rule. Review whether other older rules should be repealed or clarified with new PBR manual.

TEXAS ASSOCIATION OF LIFE AND HEALTH INSURERS (TALHI)
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CHAPTER 5
PROPERTY AND CASUALTY INSURANCE

Subchapter G. Workers Compensation Insurance
Division 1. Sale of Substitutes to Workers Compensation Insurance/ High Priority

SECTION	Description	Adopted/Amended	Suggested Action/Priority
5.6302	Sale of Substitutes	1992	1. Repeal and replace current rule. 2. The 2019 proposed rule is too broad. 3. TALHI will continue to be part of any working group of stakeholders to submit a new proposal by Oct. 15 or work on legislation for 2021.

General Comments: TALHI appreciates the Department's work on amending this rule and we look forward to being a part of the stakeholder group.

Chapter 7
Corporate and Financial
Subchapter A. Examination and Financial Analysis /Medium Priority

SECTION	Description	Adopted/Amended	Suggested Action/Priority
7.5	Discrimination in certain health policies.	1976/1984	*Repeal this rule. It is no longer necessary.* *Priority: Medium. This can cause confusion for insurers and consumers.*
7.24	Valuation under 4.11	1985	Update statutory references
7.25	Out of state Records	2000	Update statutory references
7.65-7.70	Annual Statement Blanks	various	Repeal. TDI is no longer adopting blanks by rule.
7.83	Appeal of Exams	1999	1. Update statutory references and titles. 2. Amend the rule to establish or adopt by reference appeal procedures for exam appeals. 3. Update provisions on confidentiality.

General comments: Section 7.5 is out of date and references statutory provisions were amended in 1995 and subsequently recodified. The anti-discrimination mentioned in this rule is no longer applicable only to health insurance as a result of changes enacted in 1995.

Sec. 7.83 has provisions that are outdated. The rule is used for financial exam appeals but has no specific procedures for how the appeal is conduct. The procedures used have been modified over the years through ad hoc means. Confidentiality language in the rule does not match current language in Ch. 401 and should be updated.

Subchapter E
Admission Procedures for Foreign Insurance Companies

SECTION	Description	Adopted/Amended	Suggested Action/Priority
7.501-7.507	Foreign admission	1982	Update statutory references. Update the rule to be consistent with current forms, procedures and checklist on TDI website.

Subchapter I
Insider Trading and Proxy Regulation

SECTION	Description	Adopted/Amended	Suggested Action/Priority
7.901	SBI Rules	1976/1982	Repeal. If a rule is needed, this should be done by new rule. Federal and state securities law should govern this.

Subchapter J
Examination Expenses and Assessments

SECTION	Description	Adopted/Amended	Suggested Action/Priority
7.1001	Assessments	2012/2013/2014/2015/ 2016/2017	These assessments are authorized under Ch. 401 for financial exams. Amend this rule to clarify that this does not apply to market conduct exams under Ch. 751. This has been applied to some foreign insurers who have undergone only market conduct exams.

TEXAS ASSOCIATION OF LIFE AND HEALTH INSURERS (TALHI)
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Subchapter L.
Procedures for Life Insurers Writing Reinsurance for P & C Risks

SECTION	Description	Adopted/Amended	Suggested Action/Priority
7.1201-7.1206	procedures	1989	Update statutory references

Subchapter M
Regulatory Fees /High Priority

SECTION	Description	Adopted/Amended	Suggested Action/Priority
7.1301	Fee Schedule	1988/1992/1995/1996/2002	Update statutory references. Update procedures and filings under SERFF.

General Comments: Life and health insurers often have situations where a filing is closed on SERFF by a reviewer. There has been no opportunity for hearing or ability to cure legitimate objections. Once closed, an insurer is required to make a new filing and submit an additional filing fee. This is inefficient and not in compliance with other TDI rules of procedure.

Subchapter T
Permissible Payments to Sponsoring Organizations

SECTION	Description	Adopted/Amended	Suggested Action/Priority
7.2001	Sponsorships	1995	Update statutory references.

Chapter 13
Miscellaneous Insurers and Other Regulated Entities
Subchapter B
Stipulated Premium Companies

SECTION	Description	Adopted/Amended	Suggested Action/Priority
13.1-13.102	Various	1976/1983	Update statutory references. Update applicable reserve requirements to assist in compliance.

TEXAS ASSOCIATION OF LIFE AND HEALTH INSURERS (TALHI)
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Chapter 19
Agent Licensing
Subchapter A Disciplinary Hearings

SECTION	Description	Adopted/Amended	Suggested Action/Priority
19.1-19.2	General	1976/1983/1984	Repeal. These are not needed.

Chapter 19
Subchapter J
Standards of Conduct for Licensed Agents /High Priority

SECTION	Description	Adopted/Amended	Suggested Action/Priority
19.901	conduct	1987/1990	Amend the definition of assumed name. This is inconsistent with definitions in the Business & Comm. Code and has caused considerable confusion in recent market conduct exams relating to duties of insurers and agents on filing requirements.

General Comments: Sec. 19.901(3) defines assumed name as any name other than a true name. The assumed name provisions in other laws have been amended and do not require filing of an assumed name for a sole proprietorship if it is the last name and describes the business. For example, John Doe has an agency called the Doe Insurance Agency. TDI requires a filing for this. There is no list of assumed names searchable for this and TDI market conduct examiners frequently cite the failure of an agent to file assumed name and place the violation on the insurer.

Chapter 19
Subchapter K
Continuing Education, Adjuster Pre-licensing Education Programs and Certification Courses

SECTION	Description	Adopted/Amended	Suggested Action/Priority
19.1028	Annuity Certification Course	2010	Amend and Update. The statutory requirements for continuing education for agents for annuity suitability was updated in 2011.
19.1029	Annuity Continuing Ed		Amend and Update. See comments above.

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General Comments: Even though the rules above should be updated, several TALHI members have requested that TDI consider recommending a statutory change to the on going CE requirements for agents.

Tex. Ins. Code § 1115.056 was amended in 2011 to require 4-hour initial CE, which is consistent with the NAIC annuity training model requirements. HB 2277 as passed in 2011 made changes to the statutes relating to certification and training of agents for certification. We have received comments from several members that the statutory provisions should be amended to delete or modify the 8-hour requirement for specialized CE for Texas resident agents. This has created numerous problems and Texas is an outlier on this compared to other states. Only Texas and California, have imposed this 8-hour CE requirements. HB 2277 amended Tex. Ins. Code § 4004.202(b) relating to resident agents and required a resident agent to complete 8 hours of continuing education specifically relating to annuities.

Amendments to the law enacted by HB 2277 made it clear that if you are a currently licensed resident agent and have taken a Department approved four-hour annuity training course, you are not required to take it again.

In other states either a Texas resident or non-resident agent may meet the Texas annuity initial training requirement by having completed an initial training course that has been approved in Texas or in a state that is also compliant with the National Association of Insurance Commissioners (NAIC) annuity training model requirements.

Several brokers, agents and companies have recommended revising the statutes to remove the ongoing CE requirement for TX resident producers to align the training to be consistent with most other states. This would eliminate confusion and misinterpretation of the requirements and provide an ease of business for all parties.

Chapter 21
TRADE PRACTICES
Subchapter A
Unfair Competition and Practices

SECTION	Description	Adopted/Amended	Suggested Action/Priority
21,2-21,4	General	1976/1982	Update statutory references

Chapter 21
Subchapter B
Advertising
Divisions 1,2

SECTION	Description	Adopted/Amended	Suggested Action/Priority
21.101-21.122	General Advertising rules	1981/1987/2010	Update statutory references Review and update with NAIC models if needed.

TEXAS ASSOCIATION OF LIFE AND HEALTH INSURERS (TALHI)
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Subchapter C
Unfair Claim Settlement Practices

SECTION	Description	Adopted/Amended	Suggested Action/Priority
21.201-21.205	General rules	1976/1982/1992/1998	Update statutory references

Subchapter E
Sex and Marital Status

SECTION	Description	Adopted/Amended	Suggested Action/Priority
21.401-21.409	Definitions & other provisions	1978/1985	Repeal or amend to be consistent with current statutory provisions. Delete references to board. Update statutory references if maintained.

Subchapter H
Unfair Discrimination

SECTION	Description	Adopted/Amended	Suggested Action/Priority
21.701-21.705	definitions	1983/1985/1990/1992 1997	Update statutory references

Chapter 21
Subchapter K
Continuing Education Programs

General comments: In the past**,** TALHI and other groups seeking certification for CE programs frequently have often encountered unreasonably long delays in obtaining approval from TDI. It was reported at the TALHI annual meeting that processing is now 3-5 days. This is a significant improvement. TDI should consider if any rule amendments are necessary to maintain this efficiency. Maintaining this improved processing time for approving courses benefits both program providers and participants**.**

Subchapter N
Life Insurance Illustrations/High Priority

SECTION	Description	Adopted/Amended	Suggested Action/Priority
21.2201-21.2214	Life Illustration	1998	Update statutory references in §21.2212 Review NAIC models to determine if updates are needed
21.2207	Basic Standards	1998	Update or amend to clarify what is required for a new illustration as compared to an in-force illustration.
21.2210	Annual report	1998	Update or amend to clarify that

			numeric summaries are not required for in-force illustrations.

General Comment: Some TALHI members report that Texas is the only state that imposes a requirement to have a both a numeric summary and extended numeric summary in an in-force illustration. The in-force can be requested after the policy is issued and is mentioned in Section 21.2210 and also in legislation in 2019 that allows an owner to request an in-force illustration when there has been an adverse change in a non-guaranteed element. The problem with the current regulations is the confusion created. Sec. 21.2210 that does not specifically require a numeric summary except for the reference to Section 21.2206 that requires the extended numeric summary. Section 21.2207 requires an extended numeric summary when used in conjunction with a numeric summary. Because of the confusion, some carriers have interpreted Texas law to require both a numeric and extended numeric summary with an in-force illustration. This is not required by any other state. Accordingly, it is recommended these regulations be amended to clarify this point and make it easier for carriers to comply.

Regan Ellmer

From: Comments
Sent: Monday, September 23, 2019 11:01 AM
To: Libby Elliott; Regan Ellmer
Subject: FW: Proposed Amendment to Rule 15.106(b)(3)
Attachments: TDI Request for Rule ModificationRule15.106(b)(3).pdf

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From: Bart Koch <[redacted]com>
Sent: Friday, September 20, 2019 4:04 PM
To: Comments <Comments@tdi.texas.gov>
Subject: Proposed Amendment to Rule 15.106(b)(3)

Good afternoon. Pleased see the attached request for consideration.

Thank you and have a wonderful weekend,

Bart

Bart Koch
TAGA
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Cedar Park, TX 78630
512-531-1712
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512-342-2803 Fax
www.taga1.com

TAGA
Tejas American General Agency

Sent Via Email to : **comments@tdi.texas.gov**

Re: Proposed Amendment to Rule 15.106(b)(3)

Thanks for your request to identify rules which are unreasonably difficult for compliance. We respectfully request that the Texas Department of Insurance (TDI) revise Rule 15.106(b)(3) to remove the requirement to **identify policy limits** in filing policies with the Texas Stamping Office.

Justification for Modification

When the new requirement to include policy limits in filings at the Stamping Office was considered in 2017, the industry failed to recognize the burden the new rule would place on compliance as, it was assumed that limits, like other required data could be easily collected through digital software .In fact, our software vendor opted to discontinue support for programmatic electronic filing due to the complexities involved. This resulted in manual input by trained staff who must make a professional determination of the limit, the type of line, the limit applies to and then aggregate different limits for different covered risks to comply and totally removes the electronic efficiency gains.

Industry estimates are that compliance will typically cost $2-5 per policy to comply which equates to $2-5 million for the industry. Further, just hiring a data entry clerk to capture the data or complete the excel reports is going to cost anywhere from $26,500-$50,000 a year depending on location and experience/knowledge of the data entry clerk. This burden is placed on wholesalers, many of whom are small businesses with 2-10 employees who cannot afford the added cost of compliance. Large wholesalers who operate in multiple states will have the option to write many of the same policies in other states and avoid the increased difficulties with compliance created by the new rule.

Furthermore, we believe the data will be of limited use as the complexity of surplus lines policies make it difficult to precisely allocated the risk to lines of insurance, and many policies cover both in-state and out of state risk devaluing any utility of aggregate coverage numbers.

Recommendation

Amend Rule 15.106(b)(3) as follows:
Proposed change:
b) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus lines insurance policy" as used in this section, includes:
(1) a declarations page;
(2) a listing of all participating insurers on the policy;
(3) all coverage parts and schedules~~(including limits);~~Delete highlighted text

Sincerely,

Bart Koch

Bart Koch,CIC, AAI

Managing Member

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Texas Children's Health Plan Inc.
www.texaschildrenshealthplan.org

P. O. Box 301011
Houston, Texas 77230-1011

October 1, 2019

Submitted Via Electronic Mail: Comments@tdi.texas.gov

Commissioner Kent Sullivan
Attn: Chief Clerk
Texas Department of Insurance
333 Guadalupe Street
Austin, TX 78701

Dear Commissioner Sullivan:

Texas Children's Health Plan, Inc. ("TCHP"), a health maintenance organization licensed by the Department of Insurance, appreciates the opportunity to submit for the Department's consideration suggestions regarding regulations that TCHP believes could benefit from review, clarification and/or revision. TCHP operates in the Houston metropolitan area and in southeast Texas as a Medicaid and CHIP HMO only.

As described on the Department's website posting on August 29, 2019, please consider the following suggestions as "Stage 1 Submissions":

1. 28 Tex. Admin. Code § 11.1607 ("Accessibility and Availability Requirements"). This regulation describes the provider network accessibility and adequacy standards that must be met by every health benefit plan offered by a Texas-licensed health maintenance organization. Subsection (h) of this regulation specifies the mileage standards that the Department applies in determining whether an HMO provider network is adequate. Specifically, primary care providers and general hospital care must be available within 30 miles of a member's residence, and specialty care, special hospitals, and single health care service plan physicians and providers must be available within 75 miles. These standards differ from and conflict with the time and mileage standards imposed on Medicaid managed care organizations ("MCOs") such as TCHP by the Texas Health and Human Services Commission in its managed care services contracts with the MCOs. In the Uniform Managed Care Contract ("UMCC") (covering the "STAR" Medicaid program), at Attachment B-1, Section 8.1.3.2, HHSC sets forth a number of specific travel time and distance standards that TCHP and other Medicaid MCOs must meet with respect to various network provider types that differ from TDI's standards found in § 11.1607(h).

   In § 11.1607(l), the regulation currently exempts HMOs participating in the CHIP Perinatal Program from compliance with the access standards of § 11.1607(h) ("Notwithstanding subsection (h) of this section, an HMO that has a contract with the Health and Human Services Commission is not required to meet the access requirement prescribed in this section for covered services provided to participants in the Children's Health Insurance Program Perinatal Program.").

We believe it is appropriate and would provide much needed clarity if the Department were to revise § 11.1607, perhaps at subsection (l), to exempt HMOs that have a contract with the Health and Human Services Commission for any Medicaid program from the access standards of this Section 11.1607. We believe that a Medicaid health benefit plan is in compliance with access and availability standards if it meets the standards established by HHSC, the state Medicaid agency, in the UMCC or other Medicaid managed care contracts (e.g., STAR Kids, STAR Health) and should not be subject to conflicting standards.

One example of the conflict caused by the lack of this exemption or waiver language for Medicaid health plans is the access standard for specialty care. Under the UMCC contract with HHSC, a Medicaid HMO must provide the following access to cardiologists and orthopedic specialists as follows: within 20 miles or 30 minutes for members living in Metro counties; within 35 miles or 50 minutes for members living in Micro counties; and, within 60 miles or 75 minutes for members living in rural counties. TDI's access standard is within 75 miles for all members.

A second example of the conflict pertains to pediatricians, who TDI considers to be primary care providers. However, HHSC does not require access to pediatricians within 30 miles in all cases. Under the UMCC, access to a choice of pediatricians must be available to child members within the following number of miles or travel time of the Member's residence: Members residing in a Metro County, within 20 miles or 30 minutes; Members residing in a Micro County, within 35 miles or 50 minutes; and, for Members residing in a Rural County, within 60 miles and 75 minutes.

2. 28 Tex. Admin. Code § 11.1610 ("Annual Network Adequacy Report"). This regulation describes the annual report that every licensed health maintenance organization must file each year to demonstrate to the Department that the HMO maintains a network of contracted and credentialed providers in its approved service area that meets accessibility and adequacy standards. Similar to, or as a companion to, our suggestion that Section 11.1607 be revised to reflect the exemption of Medicaid health plans from the Department's network access and adequacy standards because of HHSC's superseding access requirements, TCHP believes that this regulation should be revised to include a waiver or an exemption for health maintenance organizations that are Medicaid and/or CHIP only HMOs. Through its contract with Medicaid HMOs, the Health and Human Services Commission requires the submission of provider lists, provider maps and other documents needed by the Commission to monitor Medicaid HMOs' compliance with the provider access standards contained within the contracts. Those access standards are generally stricter than the standards set forth in 28 Tex. Admin. Code § 11.1607.

3. 28 Tex. Admin. Code § 7.1301 ("Regulatory Fees). This regulation contains a lengthy list of filing fees that apply to various filings made by regulated insurers, including health maintenance organizations, under a broad range of Texas insurance statutes. This section is referenced daily by regulated entities in determining the appropriate filing fee to submit to the Department with a corresponding filing.

It needs to be reviewed and revised because the statutory citations have not been updated since the insurance statutes were most recently recodified. The citations are outdated and incorrect. The citations refer to articles and sections of the Insurance Code that no longer exist (e.g., Insurance Code Article 21.49-1 and Health Maintenance Organization Act § 32). These incorrect citations cause licensed entities to look to the filing fee amounts listed in the Department's various adopted Transmittal Forms and Checklists, which are incomplete, or to contact the Department to verify the correct amount to submit with a particular filing. The regulation could be greatly improved by replacing each outdated statutory citation with its replacement citation and by adding any additional citations to statutory sections that list other filing fees that apply to Department of Insurance filings.

4. 28 Tex. Admin. Code Chapter 3, Subchapter HH (Standards for Reasonable Cost Control and Utilization Review for Chemical Dependence Treatment Centers). This set of regulations, setting forth the standards and the criteria to be used by payors (including health insurers and health maintenance organizations) and providers in determining the reasonable scope and level of coverage to be provided for the treatment of "chemical dependency," has not been revised or updated since the 1990s. Medicaid HMOs such as TCHP are required by their contracts with HHSC to refer to these regulations when conducting utilization review for chemical dependency. UMCC Attachment B-1, Section 8.1.15.6 ("Chemical Dependency") states, "The MCO must comply with 28 Tex. Admin. Code §§3.8001 et seq., regarding utilization review for Chemical Dependency Treatment. Chemical Dependency Treatment must comply with the standards set forth in 28 Tex. Admin. Code Part 1, Chapter 3, Subchapter HH." HHSC is relying upon the Department to maintain relevant, current, clinically appropriate standards of utilization review for chemical dependency and/or substance use disorders. It is our understanding that the Department has sanctioned at least one behavioral health utilization review delegate for relying upon the criteria set forth in 28 Tex. Admin. Code Chapter 3, Subchapter HH and for not having adopted more current, evidence-based criteria to use in evaluating services during the utilization review process. We believe it would be beneficial for all health plans – commercial, Medicaid, and CHIP plans – all of which are directed to utilize these standards – to have the Department review these regulations, some of which were adopted in nearly 30 years ago, and to rewrite them as is appropriate, with input from behavioral health, substance use disorder, and health plan stakeholders, in order to modernize them.

Thank you for your consideration of Texas Children's Health Plan's suggestions. Please do not hesitate to contact me at [redacted] if there is any additional information I can provide to assist the Department in this endeavor.

Sincerely,

Johnna Carlson
Director of Government Programs
Texas Children's Health Plan

From: Company Compliance [redacted]
Sent: Friday, August 30, 2019 8:51 AM
To: Comments <Comments@tdi.texas.gov>
Cc: Susana Ramos [redacted]
Subject: Stage 1 Submissions - Updating Rules

Dear Chief Clerk:

Attached are several advertising and trade practice suggestions for updating. While we recognize these are not high priority, they may be able to be updated without a lot of work, either.

Rule 21.101 and Code 5 Sec 541.053 are suggesting alignment of language among various advertising requirements to include at least "Internet" as a media across the board.

Rule 21.116 and 21.107 are asking for clarification on existing language.

Please let me know if you have questions on any of these comments.

C. J. Rathbun

Family1
PRENEED FUNERAL PRODUCTS & SERVICES

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Sec. 541.053. DEFAMATION OF INSURER.

(b) This section applies to any oral or written statement, including a statement in any pamphlet, circular, article, or literature.

- Possibly in 2003, “over a radio or television station; and In 2007, “internet; or any other manner” were added to Sec. 541.052 (b)(3-5) regarding False Information and Advertising. Should the 541.053 section be updated to include similar language?
- While most Compliance folks recognize the application of the same media to any advertising prohibition, it could be helpful to update it officially.
- “This section applies to any oral or written statement, including a statement in any pamphlet, circular, article or literature; over a radio or television station; through the Internet; or in any other manner.” It would seem even more current to say, “electronically or through the Internet; or in any other manner.” To incorporate social media and whatever comes next, but at least the first portion of this recommendation would bring it up to alignment with other sections.

RULE §21.101

(1) "Advertisement" includes, but is not limited to:

(A) printed and published material, audio visual material and electronic media, descriptive literature of an insurer or agent used in direct mail, newspapers, magazines, radio, telephone and television scripts, billboards, and similar displays; and

(B) descriptive literature and sales aids of all kinds issued by an insurer or agent for presentation to members of the public, including circulars, leaflets, booklets, depictions, illustrations, and form letters;

- This language does not appear to have been updated with similar language as in 541.052 (b)(4-5) that now includes “Internet and in any other manner.”
- It is problematic in not being aligned and also potentially being leverage for marketers to claim electronic communications are exempt.
- Perhaps “(A) printed and published material, audio visual material and electronic media, descriptive literature of an insurer or agent used in direct mail, newspapers, magazines, radio, telephone and television scripts, billboards, ~~and similar displays~~ electronic or internet distribution, or in any other manner; and

RULE §21.107 Testimonials, Appraisals, or Analyses

(e) A testimonial, recommendation, or endorsement made by a person or entity who is not a spokesperson shall represent the current opinion of the author and shall reflect the author's personal opinions of or experiences with the insurer or its products.

- Best practice in the industry is to renew the testimonial with the person who provided it on an annual basis. Should Texas provide guidance to this end, or is less frequently considered “current”? Texas has specified that a current source of statistics is five years or newer; however this seems overly long for a testimonial.
- Pushback from Marketing can be an issue because “five years or newer” is the only definition Texas has provided for what is considered “current” and managing this process annually means more hoops and signatures for them to navigate.
- Suggested revision is to add a sentence after the quoted portion above: “Current opinion means one that has been confirmed at least annually.”

RULE §21.116 Special Enforcement Procedures for Rules Governing Advertising and Solicitation of Insurance

(a) Advertising file. Each insurer, domestic and foreign, doing an insurance business in Texas shall maintain at its home office or principal (executive) office, a complete file containing a specimen of every institutional advertisement, invitation to inquire advertisement, or invitation to contract advertisement disseminated in this state, with a notation attached to each such advertisement indicating the manner and extent of distribution and the form number of any policy advertised in Texas. Foreign insurers that have established an office in Texas who transact an insurance business in this state may maintain the advertising file at that location. Each insurer shall notify the Texas Department of Insurance where the advertising file is being maintained and that access thereto will be provided, and each insurer shall also notify the Texas Department of Insurance in the event the location of such file is planned to be changed and immediately when changed. The advertising file is subject to regular and periodic inspection by the Texas Department of Insurance. All advertisements shall be maintained for a period of not less than three years.

- Many states have clarified that this is X many years *after last use.* Should Texas so specify?
- In spite of potential pushback from marketing, Compliance will enforce the *after last use* consideration at this Company as opposed to three years after creation, but would like clarification that Texas does require that.

September 30, 2019

Via Email to: comments@tdi.texas.gov

Re: Proposed Amendment to Rule 15.106 (b)(3)

Pursuant to you request to identify rules which are unreasonable difficult for compliance, Texas Specialty Underwriters, Inc. strongly suggests that the Texas Department of Insurance (TDI) revise Rule 15.106(b)(3) to remove the requirement to identify policy limits in filing policies with the Texas Stamping Office.

Justification for Modification

When the new requirement to include policy limits in filings at the Stamping Office was considered in 2017, the industry failed to recognize the burden the new rule would place on compliance as it was assumed that limits, like other required data could be easily collected through digital software. In practice the new requirement requires manual input by trained staff who must make a professional determination of the limit, the type of line, the limit applies to and then aggregate different limits for different covered risks to comply.

Industry estimates are that compliance will typically cost $2-5 per policy to comply which equates to $2-5 million for the industry. Further, just hiring a data entry clerk to capture the data or complete the excel reports is going to cost anywhere from $26,500-$50,000 a year depending on location and experience/knowledge of the data entry clerk. This burden is placed on wholesalers, many of whom are small businesses with 2-10 employees who cannot afford the added cost of compliance. Large wholesalers who operate in multiple states will have the option to write many of the same policies in other states and avoid the increased difficulties with compliance created by the new rule.

Furthermore, we believe the data will be of limited use as the complexity of surplus lines policies make it difficult to precisely allocate the risk to lines of insurance, and many policies cover both in-state and out of state risk devaluing any utility of aggregate coverage numbers.

Recommendation

Amend Rule 15.106(b)(3) as follows:

510 Turtle Cove Blvd., Suite 200, Rockwall, TX 75087 (800)4427050 (TX) v: (972)771-5653 f: (972)722-5392

Proposed change:

B) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus lines insurance policy" as used in this section, includes:

(1) a declarations page;
(2) a listing of all participating insurers on the policy;
(3) all coverage parts and schedules, ~~including limits~~

Sincerely,

Brent Davis, CIW
President

Bd/la

Sent Via Email to: comments@tdi.texas.gov
From: Jean Patterson, Executive Director, Texas Surplus Lines Association
Re: Proposed Amendment to Rule 15.106(b)(3)
Date: 9/30/2019

Pursuant to your request to identify rules which are unreasonably difficult for compliance, the Texas Surplus Lines Association (TSLA) requests that the Texas Department of Insurance (TDI) revise Rule 15.106(b)(3) to remove the requirement to identify policy limits in filing policies with the Surplus Lines Stamping Office of Texas. For over 60 years, the TSLA has represented the surplus lines brokers in Texas to promote, advocate and preserve the value of wholesale distribution and the Excess & Surplus Lines Insurance Industry. As the primary stakeholder representing the surplus lines industry in Texas the TSLA initiated the process to form the Surplus Lines Stamping Office of Texas in 1987 and sees this rule modification as the most important issue the industry has faced in recent memory.

Justification for Modification

When the new requirement to include policy limits in filings at the Stamping Office was considered in 2017, the industry failed to recognize the burden the new rule would place on compliance as, it was assumed that limits, like other required data could be easily collected through digital software. In practice the new requirement requires manual input by trained staff who must make a professional determination of the limit, the type of line, the limit applies to and then aggregate different limits for different covered risks to comply.

Industry estimates are that compliance will typically cost $2-5 per policy to comply which equates to $2-5 million for the industry. Further, just hiring a data entry clerk to capture the data or complete the excel reports is going to cost anywhere from $26,500-$50,000 a year depending on location and experience/knowledge of the data entry clerk. This burden is placed on wholesalers, many of whom are small businesses with 2-10 employees who cannot afford the added cost of compliance. Large wholesalers who operate in multiple states will have the option to write many of the same policies in other states and avoid the increased difficulties with compliance created by the new rule.

Furthermore, we believe the data will be of limited use as the complexity of surplus lines policies make it difficult to precisely allocated the risk to lines of insurance, and many policies cover both in-state and out of state risk devaluing any utility of aggregate coverage numbers.

Recommendation

Amend Rule 15.106(b)(3) as follows:

Proposed change:

b) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus lines insurance policy" as used in this section, includes:

(1) a declarations page;

(2) a listing of all participating insurers on the policy;

(3) all coverage parts and schedules~~, including limits~~;

TEXAS SURPLUS LINES ASSOCIATION, INC.
Great Hills Corporate Center • 9020-I Capital of Texas Highway North • Suite 370 • Austin, Texas 78759
(512) 343-9058 • FAX (512) 343-2896 • www.tsla.org

Regan Ellmer

From: Comments
Sent: Wednesday, October 2, 2019 10:36 AM
To: Libby Elliott; Regan Ellmer
Subject: FW: Request for proposals to modify rules

Importance: High

From: Lana Parks <[redacted]com>
Sent: Tuesday, October 01, 2019 4:40 PM
To: Comments <Comments@tdi.texas.gov>
Subject: Request for proposals to modify rules
Importance: High

Sent Via Email to: comments@tdi.texas.gov

Re: Proposed Amendment to Rule 15.106(b)(3)

Pursuant to the TDI request to identify rules which are burdensome, and cost prohitive, The Parks Group, Inc. respectfully requests that Texas Department of
Insurance (TDI) revise Rule 15.106(b)(3) to suspend / remove the requirement to identify and report policy limits in conjunction with the filing of policies with
the Surplus Lines Stamping Office of Texas.

This rule applies for policies effective on and after December 30, 2018. We have previously written letters to the Board of Directors of the SLTX expressing
our concerns in efforts to comply with this Rule change. This rule went into effect without any means of a simple reporting solution. While the SLTX stated
their website had a portal to report a limit on each policy, it was not an actual portal but a spreadsheet. Several months later, the SLTX did provide a box
to report the limit, but it is still a manual input by our staff for each policy as we must individually review every policy and obtain the highest aggregate
limit. This new process takes an average of seven minutes per policy.

We currently report our policy data through the EFS System monthly. However, Vertafore, our software vendor, does not and will not support the electronic
transfer of the policy limit. Therefore, we have no alternative but to report each policy limit manually. This is very time consuming and we are a small MGA
with seven staff members.

We are in the process of looking at new computer systems, but they are very expensive, and it would take months, not to mention at significant
expense, to convert our data over to a new system.

Additionally, there are no guarantees that our new system will interface with the SLTX website. As of today, we have been able to manually report limits

for policies effective for the months of December 2018 to March 2019. This leaves policies effective April – September still to report, and these months are
our larger production months; meaning more data / policies to report.

Additionally, we do not feel the one policy limit is meaningful as it does not provide the full picture of each policy exposure. The complexity in each policy
will cause the data to be misleading and not useful. Additionally, some policies have both Texas and other state exposures, but these exposures are
not captured in one policy limit. Also, we have many policies that have multiple locations requiring us to manually add each exposure to obtain a total limit.
We have one schedule that has 142 locations.

We would like to recommend the Rule be amended as follows:

Amend Rule 15.106(b)(3) as follows: Proposed change: b) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus
lines insurance policy" as used in this section, includes: (1) a declarations page; (2) a listing of all participating insurers on the policy; (3) all coverage
parts and schedules, (delete "including limits")

Thank you very much for giving us the opportunity to comment and please help us reduce the cost of compliance by removing this Rule. We do not want
to have to pass down our additional cost of compliance with our policyholders.

Sincerely,
Lana Parks

Lana Parks, CPCU, CIC
The Parks Group, Inc.
PO Box 1670
Arlington, TX 76004-1670
817.608.0150
[redacted]
www.parksgroup.com

BURTON&BEDELL

October 1, 2019

Chief Clerk
Hobby 1, Room 1210A
MC 112-2A, P.O. Box 149104
Austin, TX 78714-9104

RE: Call to Identify Rules That Need Updating

Dear TDI Staff:

I am submitting this package on behalf of the Texas Land Title Association (TLTA) in response to Commissioner Sullivan's call for insurance rules and regulations that need updating. TLTA has identified 12 issues that the association recommends reviewing. Each issue is described in a separate exhibit, and includes a short description of the association's reasons for recommending these rules for review and proposed amendments to address the issue. These proposals were approved by the TLTA Board on September 25, 2019.

TLTA appreciates this opportunity to work with TDI on updating the rules and regulations that govern the business of title insurance in Texas. If you have any questions regarding these proposals or if you would like any additional information please contact me at [redacted] or (512) 800-5594. Again, we appreciate this opportunity and look forward to working with you.

Sincerely,

Kergin B. Bedell
Burton & Bedell, PLLC
Counsel for the Texas Land Title Association

ENCLOSURES

TLTA PROPOSED RULE CHANGES

Table of Contents

TLTA
PROPOSED RULE CHANGES
EXHIBIT 1
RATE RULE R-11

CITATION

Section III, Rate Rule R-11 Loan Policy Endorsements of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

ISSUE AND JUSTIFICATION

The Texas Land Title Association suggests amending Rate Rule R-11. Rate Rule R-11 establishes the premium that a title insurance agent may collect when a T-3 Endorsement (assignment of mortgage) is issued as provided in Procedural Rules P-9b(1) and P-9b(2), the T-38 Endorsement (Partial Release, Release of Additional Collateral, Modification Agreement, Reinstatement Agreement, or Release from Personal Liability) that is issued as provided in Procedural Rule P-9b(3), and the T-3 Endorsement (Down Date Endorsement) that is issued with a lender's title insurance policy. The current rates are inadequate and do not reflect the costs and risk associated with issuing these endorsements resulting in an inequitable shift of burden to the average consumer vis-à-vis the rate base.

The T-3 (Assignment of Mortgage) Endorsement updates the policy to reflect the documents recorded between the initial closing and the sale of a loan. The endorsement brings coverage forward from the original policy date to the date of the endorsement – including coverage for real property taxes – and extends the coverage to include the validity of the assignment to the new insured. Currently, under Rate Rule R-11 the premium for this endorsement is fixed at the minimum basic premium and does not differentiate between a loan that is sold within one year of the initial closing and a loan that is sold several years after the initial closing. TLTA's proposed change seeks to remedy this by increasing the rate an additional $100 for each twelve-month period after the first anniversary of the date of the original policy. By tying any rate increase to the length of time between the original closing and the issuance of the endorsement, this proposal fairly allocates the increased premium to transactions in relation to the expenses and risks associated with issuing the assignment of mortgage endorsement.

The T-38 Endorsement (Partial Release, Release of Additional Collateral, Modification Agreement, Reinstatement Agreement, or Release from Personal Liability) are requested when lenders, or borrowers find it more advantageous to rearrange existing financing rather than refinancing the debt into a new loan. It provides that the modification of the earlier agreement has not eliminated coverage under the original title insurance policy.

Issuing this endorsement requires significant work after the initial closing has occurred. The title agent must identify, retrieve, and review the old file, and then review the modification instrument to ensure it is consistent with Procedural Rule P-9.b.3. These instruments will range from three (3) pages in a typical residential transaction, to fifty (50) or more pages in a transaction involving non-residential property. Finally, if the instrument does not meet the requirements of Procedural Rule P-9, the title agent must work with the lender's staff to amend the documents. In addition to these administrative costs the issuance of this endorsement results in the assumption of additional risk. To address these expenses, TLTA suggests increasing the premium for this endorsement to the minimum basic premium rate. Additionally, TLTA proposes increasing the additional fee of $10.00 per year between the issuance of the endorsement and the original policy to $25.00 per year to reflect the additional work and risk associated with the passage of time.

The T-3 Endorsement (Down Date Endorsement) that is issued with a lender's title insurance policy can be issued with a policy insuring any type of property under construction, and brings coverage forward from the original policy date or the date of a previously-issued endorsement. The endorsement provides affirmative coverage regarding the nature of three categories of documents recorded in the period between the original policy (or a previously issued endorsement) to the date of the endorsement. Currently, Rate Rule R-11 does not differentiate between the rate charged for this endorsement in transactions involving residential real property and other types of properties.

This rating scheme overlooks the significant differences between the expenses and risk associated with issuing this endorsement in a transaction involving residential real property and the expenses and risk associated with issuing this endorsement in other transactions. Construction projects involving residential real property are generally completed in less than a year and only a few documents are usually recorded during the construction period. The necessary title search is usually less complicated, and the results can typically be reviewed by an average examiner. In contrast, construction projects on non-residential property often stretch out over multiple years, during which any number of documents may be recorded. The property record search for these transactions is typically longer and the review requires more time and expertise. TLTA suggests amending the rate rule for this endorsement to differentiate between transactions involving residential real property and transactions involving other property. TLTA suggests leaving the premium for this endorsement for transactions involving residential real property unchanged and increasing the cost of the endorsement for other transactions to $100.00.

In many instances, the current rates established under Rate Rule R-11 do not sufficiently reflect the expenses and risks associated with issuing these endorsements. TLTA suggests amending the rates for these endorsements to acknowledge common scenarios that alter the expenses and risks associated with issuing these endorsements. Revising the rates in this way allows title insurance professionals to recoup these expenses with premium from the sale of the endorsement rather than

shifting these expenses to the general expense base and impacting the premium rate for all Texas title insurance consumers.

PROPOSED REVISIONS

RATE RULE R-11: LOAN POLICY ENDORSEMENT

Applicable only as provided in rule P-9

a. Endorsement issued as provided in Rules P-9b(1) and P-9b(2)--The minimum Basic Premium Rate shall be charged for each T-3 Endorsement (Assignment of Mortgage) issued within one year after the date of the original policy. If issued after the one year period, an additional $100.00 shall be charged for each twelve-month period thereafter, or a part thereof. In no event, however, shall such premium exceed 50% of the premium applicable to the original Loan Policy under the Schedule of Basic Rates.

b. Endorsement issued as provided in Rule P-9b(3)~~--A premium of $100.00~~ The minimum Basic Premium Rate shall be charged for each Endorsement Form T-38 Partial Release, Release of Additional Collateral, Modification Agreement, Reinstatement Agreement, or Release from Personal Liability issued within one year after the date of the original policy. If issued after said one year period, an additional ~~$10.00~~ $25.00 shall be charged for each twelve-month period thereafter, or a part thereof. In no event, however, shall such premium exceed 50% of the premium applicable to the original Loan Policy under the Schedule of Basic Rates. *

c. ~~Endorsement issued as provided in Rule P-9b(4)--A premium of $50.00 shall be charged for the issuance of each~~ Endorsement Form T-3 for Down Date Endorsement provided for in Rule P-9b(4)~~.~~, a premium for each endorsement shall be charged as follows:

1. Residential Real Property - $50.00
2. Other [land/real property/property] - $100.00

d. Endorsement issued as provided in Rule P-9b(6)--A premium of $20.00 shall be charged for the issuance of each Endorsement Form T-33 Variable Rate Mortgage Endorsement or Form T-33.1 Variable Rate Mortgage – Negative Amortization Endorsement authorized by Rule P-9b(6) except that such additional premium charge shall not be made if an additional premium charge has been made for the Loan Policy (to which the Endorsement is attached).

e. Endorsement issued as provided in Rule P-9b(7)--A premium of $20.00 shall be charged for the issuance of Endorsement Form T-31 Manufactured Housing Endorsement as provided for in Rule P-9b(7). A premium of $50.00 shall be charged for

the issuance of Endorsement Form T-31.1 Supplemental Coverage Manufactured Housing Unit Endorsement as provided for in Rule P-9b(7).

f. Endorsement issued as provided in Rule P-9b(8)--A premium of $50.00 shall be charged for the issuance of each Endorsement Form T-35 Future Advance/Revolving Credit Endorsement provided for in Rule P-9b(8).

g. Endorsement issued as provided in Rule P-9b(9)--A premium of $25.00 shall be charged for the issuance of each Endorsement Form T-36 Environmental Protection Lien provided for in Rule P-9b(9).

h. Endorsement issued as provided in Rule P-9b(10)--A premium of $25.00 shall be charged for the issuance of the Endorsement Form T-39 Balloon Mortgage Endorsement provided for in Rule P-9b(10) if the endorsement is issued at the time of the issuance of the loan policy. A premium of $50.00 shall be charged for the issuance of the endorsement provided for in Rule P-9b(10) if the endorsement is issued subsequent to the issuance of the loan policy.

i. Endorsement issued as provided in Rule P-9b(11)--When the First Loss Endorsement (Form T-14) is issued with a Loan Policy of Title Insurance (Form T-2) in accordance with Rule P-9b(11), the premium for the First Loss Endorsement (Form T-14) shall be $25.00.

j. Endorsement issued as provided in Rule P-9b(13)--When the Loan Policy Aggregation Endorsement (Form T-16) is issued with a Loan Policy of Title Insurance (Form T-2) in accordance with Rule P-9b(13), the premium for the Loan Policy Aggregation Endorsement (Form T-16) shall be $25.00.

k. Endorsement issued as provided in Rule P-9b(14)--When the Planned Unit Development Endorsement (Form T-17) is issued with a Loan Policy in accordance with Rule P-9b(14), the premium for the Planned Unit Development Endorsement (Form T-17) shall be $25.00. If the Company issues the Planned Unit Development Endorsement (Form T-17) on two or more title insurance policies which are issued simultaneously covering the same land, then the premium for the Planned Unit Development Endorsement (Form T-17) shall be charged only for one Planned Unit Development Endorsement (Form T-17).

l. Endorsement as provided in Rule P-9b(15)--When the Condominium Endorsement (Form T-28) is issued with a Loan Policy in accordance with Rule P-9b(15), the premium for each Condominium Endorsement (Form T-28) shall be $0.00.

TLTA
PROPOSED RULE CHANGES
EXHIBIT 2
RATE RULE R-15

CITATION

Section III, Rate Rule R-15 Owner's Policy Endorsements of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

ISSUE AND JUSTIFICATION

Rate Rule R-15.b. establishes the premium that a title insurance agent may collect for each T-3 Endorsement (down date endorsement) that is issued with an owner's title insurance policy. The down date endorsement brings coverage forward to the current certification date from the date of the policy or the last down date endorsement. The endorsement increases coverage by reflecting the current amount of insurance. This endorsement is issued on commercial and residential transactions where construction improvements are immediately contemplated. The expenses and risk associated with issuing this endorsement on residential real property transactions, as compared to other transactions, is significantly different. Currently, Rate Rule R-15 does not differentiate between the rate charged for this endorsement in a transaction involving residential real property and other types of property.

The Texas Land Title Association (TLTA) suggests revising Rate Rule R-15, to establish distinct rates for this endorsement in transactions involving residential real property and non-residential property. Non-residential property transactions, such as commercial construction projects, involve significantly more documents. Searching and examining these records involves substantially more time, from more experienced examiners. TLTA proposes increasing the premium for this endorsement to $100.00 for transactions involving non-residential property, while leaving the charge for this endorsement on residential real property unchanged.

Increasing the rate in this manner appropriately compensates the title insurance agent and title insurance company for the expenses and risks associated with transactions involving more complicated and voluminous property records. The proposed amendment avoids a scenario where the cost of these expenses and risks are pushed onto residential real property consumers and shifts them appropriately to the consumers whose transactions require the additional service and involve additional risk.

PROPOSED REVISIONS

Rate Rule R-15. Owner's Policy Endorsements -

a. **Increased Value** – When requested by the Insured, and upon compliance with Rule P-9a(2), endorsement form T-34 shall be attached to the Owner's Policy upon payment of a premium for such endorsement which shall be the Basic Rate computed on the new amount less the premium paid for the Owner's Policy and any form T-34 endorsements previously attached thereto, but in no event less than the then applicable minimum policy Basic Premium Rate.

b. **Increase in Coverage During Construction** - ~~A premium of $50.00 shall be charged for each~~ T-3 Endorsement issued according to Instruction VIII, as provided in Rule P-9a(3)~~.~~ – A premium for each endorsement shall be charged as follows:

1. Residential real property - $50.00
2. Other [land/real property/property] - $100.00

c. **Manufactured Housing Unit** - A premium of $50.00 shall be charged for each T-31.1 Endorsement issued, as provided in Rule P-9a(4).

TLTA
PROPOSED RULE CHANGES
EXHIBIT 3
RATE RULE R-30

CITATION

Section III, Rate Rule R-30 Premium for Access Endorsement (T-23) of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

ISSUE AND JUSTIFICATION

Rate Rule R-30 establishes the premium that a title insurance agent may collect when a T-23 Endorsement (access endorsement) is issued pursuant to Procedural Rule P-54. The access endorsement expands coverage by confirming that the property has access to a specific street or road. Some transactions, however, may require over a hundred access endorsements. Currently, if the transaction requires one, three, or one hundred access endorsements the title agent may only charge $100.00 for the endorsements. This choice was not deliberate, but a mistaken consequence of the original wording.

When Rate Rule R-30 was proposed, the agenda item contained a typographical error. The access endorsement was proposed and adopted at the same time as the T-25 contiguity endorsement and its corresponding Rate Rule R-32. The same rate and language was proposed for both endorsements. In the case of the contiguity endorsement, all the desired coverage may be accomplished through a single endorsement. Thus, restricting the amount charged for a contiguity endorsement on a per policy basis is reasonable. The access endorsement, however, names the specific street, road, or highway from which access to the property is gained. Therefore, a separate endorsement is necessary to confirm the property has access from each street, road, or highway. The rate provided for in Rate Rule R-30 is adequate to support the work associated with the search and examination that is necessary to issue a single access endorsement. The rate, however, is not sufficient for transactions that require multiple access endorsements.

The Texas Land Title Association (TLTA) suggests changing Rate Rule R-30 from a per policy charge to a per endorsement charge. This change would only impact transactions that require multiple access endorsements. These primarily involve large commercial projects and unplatted lots. Amending the rate rule in this way appropriately compensates the title insurance agent and title insurance company for the expenses associated with issuing multiple access endorsements. Additionally, the proposed amendment allows title insurance agents to collect the premium necessary to support

the work associated with each endorsement from the consumer that requested or needed the endorsement, rather than shift the expenses into general expenses and costs that factor into the promulgated basic rate that each Texas title insurance consumer must pay.

PROPOSED REVISIONS

R-30. Premium for Access Endorsement (T-23)

When the Access Endorsement (T-23) is issued with a Mortgagee Policy of Title Insurance (T-2) or Owner Policy (T-1) in accordance with Rule P-54, the premium for the Access Endorsement (T-23) shall be $100 for each ~~policy~~ endorsement.

TLTA
PROPOSED RULE CHANGES
EXHIBIT 4
FORM T-1R

CITATION

Section II, Insuring Forms, Form T-1R: Residential Owner's Policy of Title Insurance One-to-Four Family Residences of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

ISSUE AND JUSTIFICATION

Section B, Item 3 of the Form T-1R: Residential Owner's Policy of Title Insurance One-to-Four Family Residences includes a parenthetical that reads "(Applies to the Owner's Policy only)." This language appears to have mistakenly been taken from Section B, Item 3 of Form T-7: Commitment for Title Insurance. The language is appropriate in Form T-7, but is unnecessary in Form T-1R.

The Texas Land Title Association ("TLTA") suggests revising Form T-1R to remove the unnecessary parenthetical.

PROPOSED REVISIONS

Form T-1R: Residential Owner's Policy of Title Insurance One-to-Four Family Residences

SCHEDULE B

EXCEPTIONS

We do not cover loss, costs, attorneys' fees and expenses resulting from:

1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception.):

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.

3. Homestead or community property or survivorship rights, if any, of any spouse of any insured. ~~(Applies to the Owner's Policy only.)~~

4. ...

TLTA
PROPOSED RULE CHANGES
EXHIBIT 5
FORM T-16

CITATION

Section II, Insuring Forms, Form T-16: Loan Policy Aggregation Endorsement of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

ISSUE AND JUSTIFICATION

The current aggregation endorsement, T-16, does not adequately address the aggregation of multiple policies in various states. When Texas policies are aggregated with policies from other states, the Form T-16 does not correlate well with the ALTA 12.1-06. The language of the T-16 creates confusion and misunderstanding among insurers and consumers as to how the Texas coverage correlates with policies from other states.

The Texas Land Title Association ("TLTA") suggests that the Commissioner of Insurance adopt the ALTA 12.1-06 aggregation endorsement for multi-state transactions as Form T-16.1 for use only in multi-state situations.

PROPOSED REVISIONS

Form T-16.1: Aggregation – State Limits – Loan Policy Endorsement

AGGREGATION – STATE LIMITS – LOAN POLICY ENDORSEMENT

Issued by

Attached to Policy No.:

File No.:

1. The following policies are issued in conjunction with one another:

POLICY NUMBER	STATE	AMOUNT OF INSURANCE
		$
		$
		$

2. The amount of insurance available to cover the Company's liability for loss or damage under this policy at the time of payment of loss shall be the Aggregate Amount of Insurance defined in Section 3 of this endorsement.

3. The Aggregate Amount of Insurance under this policy is either:

a. $ _____; or.

b. If the Land is located in one of the states identified in this subsection, then the Aggregate Amount of Insurance is restricted to the amount shown below:

STATE	AGGREGATE AMOUNT OF INSURANCE
	$
	$

4. Section 7(a)(i) of the Conditions of this policy is amended to read:

7. **OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

a. to pay or tender payment of the lesser of the value of the Title as insured or the Aggregate Amount of Insurance applicable under this policy at the date the claim was made by the Insured Claimant, or to purchase the Indebtedness.

i. To pay or tender payment of the lesser of the value of the Title as insured at the date the claim was made by the Insured Claimant, or the Aggregate Amount of Insurance applicable under this policy, together with any cost, attorneys' fees, and 83 costs and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

5. Section 8(a) and 8(b) of the Conditions of this policy are amended to read:

8. **DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

a. The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

i. the Aggregate Amount of Insurance for the State where the Land is located,

ii. the Indebtedness,

iii. the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or

iv. if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

b. If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured, the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as the date it is settled and paid.

6. Section 10 of the Conditions of this policy is amended to read:

10. **REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**

a. All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the applicable Aggregate Amount of Insurance by the amount of the payment.

b. If this policy insures the Title to Land located in a state identified in Section 3 b. of this endorsement:

i. all payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Aggregate Amount of Insurance by the amount of the payment; but

ii. a payment made for loss or damage on Land insured in one of the policies identified in Section 1 on Land located outside this state shall not reduce the Aggregate Amount of Insurance in Section 3.b. of this endorsement until the Aggregate Amount of Insurance in Section 3.a. is reduced below the Aggregate Amount of Insurance in Section 3.b .

c. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Aggregate Amount of Insurance afforded under this endorsement except to the extent that the payments reduce the Indebtedness.

d. The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company under this policy, except as provided in Section 2 of these Conditions, but it will not reduce the Aggregate Amount of Insurance for the other policies identified in Section 1 of this endorsement.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

IN WITNESS WHEREOF, the Company has caused this endorsement to be issued and become valid when signed by an authorized officer or licensed agent of the Company.

Date:

By:

Authorized Countersignature

TLTA
PROPOSED RULE CHANGES
EXHIBIT 6
FORM T-19

CITATION

Section II, Insuring Forms, Form T-19.2 and Form T-19.3: Minerals and Surface Damage Endorsement of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

ISSUE AND JUSTIFICATION

The Texas Land Title Association suggests revising Form T-19.2 and T-19.3. These endorsements were adopted based upon the existing Form T-19 and T-19.1 endorsements. Recently, the Form T-19 and T-19.1 endorsements were updated to conform with the national ALTA T-19 and T-19.1 form equivalents. The proposed amendments to update the T-19.2 and T-19.3 reflect the changes previously made to the Form T-19 and T-19.1. Additionally, they add the term "flood" in the list of items that are excluded from coverage which is an additional update conforming to the corresponding current ALTA forms.

PROPOSED REVISIONS

FORM T-19.2: Minerals and Surface Damage Endorsement

Minerals and Surface Damage Endorsement (T-19.2)

Attached to Policy No. _____ ; Applies to Parcel(s) _____ Issued by:
_____ TITLE INSURANCE COMPANY
Herein called the Company

The Company insures the insured against loss which the insured shall sustain by reason of damage to improvements (excluding lawns shrubbery, or trees) located on the Land on or after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of coal, lignite, oil, gas or other minerals excepted or excluded on Schedule A, Item 2 or excepted in Schedule B. ~~This endorsement does not insure against loss resulting from subsidence.~~

<u>This endorsement does not insure against loss or damage (and the Company will not pay costs, attorney's fees, or expenses) resulting from:</u>

a. contamination, explosion, fire, fracturing, vibration, earthquake, flood, or subsidence; or

b. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

_____ TITLE INSURANCE COMPANY

By:_____
Authorized signatory

FORM T-19.3: Minerals and Surface Damage Endorsement

Minerals and Surface Damage Endorsement (T-19.3)

Attached to Policy No. _____ ; Applies to Parcel(s) _____ Issued by:
_____ TITLE INSURANCE COMPANY
Herein called the Company

The Company insures the insured against loss which the insured shall sustain by reason of damage to permanent buildings located on the Land on or after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of coal, lignite, oil, gas or other minerals excepted or excluded on Schedule A, Item 2 or excepted in Schedule B. ~~This endorsement does not insure against loss resulting from subsidence.~~

This endorsement does not insure against loss or damage (and the Company will not pay costs, attorney's fees, or expenses) resulting from:

a. contamination, explosion, fire, fracturing, vibration, earthquake, flood or subsidence; or

b. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

_____ TITLE INSURANCE COMPANY

By:_____
Authorized signatory

TLTA
PROPOSED RULE CHANGES
EXHIBIT 7
FORM T-1, FORM T-1R, FORM T-2, FORM T-2R

CITATION

Section II, Insuring Forms, Form T-1: Owner's Policy of Title Insurance of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

Section II, Insuring Forms, Form T-1R: Residential Owner's Policy of Title Insurance One-to-Four Family Residences of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

Section II, Insuring Forms, Form T-2: Loan Policy of Title Insurance of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

Section II, Insuring Forms, Form T-2R: Texas Short Form Residential Loan Policy of Title Insurance Addendum of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

ISSUE AND JUSTIFICATION

In 2008, TDI adopted changes to Form T-1, Form T-1R, Form T-2, and Form T-2R to make the Texas forms consistent with the 2006 American Land Title forms used in other jurisdictions. These changes have upset the traditional operations of the Texas "survey coverage deletion." The Texas Land Title Association suggests amending the language of Schedule B for each form listed above to ensure that the coverage for risks described in Covered Risks paragraph 2.(c). is deleted from the policy if "survey coverage" is not obtained for that policy.

PROPOSED REVISIONS

SCHEDULE B

EXCEPTIONS FROM COVERAGE

...

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements. Covered Risk 2(c) is hereby deleted.

TLTA
PROPOSED RULE CHANGES
EXHIBIT 8
FORM T-50

CITATION

Section V, FORM T-50: INSURED CLOSING SERVICE of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

ISSUE AND JUSTIFICATION

The American Land Title Association (ALTA) has recently made significant revisions to its model Closing Protection Letter, the national equivalent to Form T-50. The Texas Land Title Association (TLTA) recommends revising Form T-50 to adopt appropriate revisions made to the ALTA Insured Closing Service Letter to maintain consistency as much as possible with the rest of the country. For example, Form T-50 currently does not include important exclusions for computer related fraud. These exclusions are, however, now included in the ALTA Insured Closing Service Letter. The proposed language incorporates many, but not all the changes adopted by ALTA.

PROPOSED REVISIONS

Please see the attached template. Please note, TLTA is still working with its members to identify the best way to merge the new ALTA language with the existing Texas Form T-50. The proposed language is TLTA's best attempt to date, but as the rule making process proceeds, TLTA may suggest additional changes.

INSURED CLOSING SERVICE LETTER (T-50)

BLANK TITLE INSURANCE COMPANY

Name and Address of Addressee:

Date:

Name of Issuing Agent (hereafter, the "Issuing Agent"):

[~~Name~~ Identity of Issuing Agent appears here.]

Transaction (the "Real Estate Transaction"):

[Includes GF No., Property, and Borrower's Name]

Re: Insured Closing Service

Dear

~~Blank Title Insurance Company (the "Company"), agrees, subject to the Conditions and Exclusions set forth below, to reimburse you for actual loss incurred by you in connection with closings of real estate transactions conducted by the Issuing Agent, provided:~~

In consideration of your acceptance of this letter, Blank Title Insurance Company (the "Company"), agrees to indemnify You for actual loss of Funds incurred by You in connection with the closings of the Real Estate Transaction conducted by the Issuing Agent on or after the date of this letter, subject to the Requirements, Conditions and Exclusions set forth below: ~~and provided:~~

REQUIREMENTS

1. ~~(A)~~ ~~title insurance of the Company is specified for your protection in connection with the closing.~~ The Company issues or is contractually obligated to issue a Policy for Your protection in connection with the closing of the Real Estate Transaction;
2. ~~(B)~~ ~~you are to be the lender secured by a mortgage (including any other security instrument) of an interest in land, its assignees or a warehouse lender; and~~ You are to be a lender secured by the insured mortgage. ~~or (ii) purchaser or lessee of the Title~~
3. ~~(C)~~ the aggregate of all Funds You transmit to the Issuing Agent for the Real Estate Transaction does not exceed $ 3,000,000 [with approval of the Company, a larger number may be substituted] ; and
4. ~~(D)~~ ~~provided the loss arises out of further,~~ Your loss is solely caused by:

   a. ~~1.~~ ~~Failure of the Issuing Agent to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain the other document affects the status of the title to that interest in land or the validity, enforceability and priority of the lien of the Insured Mortgage mortgage on that interest in land, and not to the extent that your instructions require a determination of the validity, enforceability or the effectiveness of the other document, or~~ A failure of the Issuing Agent to comply with Your written closing instructions that relate to:

(i) ~~(a)~~ the disbursement of Funds necessary to establish the status of the Title to the land or the validity, enforceability, or priority of the lien of the Insured Mortgage; or

(ii) ~~(b)~~ the obtaining of any document, specifically required by You, but only to the extent that the failure to obtain the document adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage or to the title to the [land?]; or

b. ~~2.~~ ~~Fraud or dishonesty of the Issuing Agent in handling your funds or documents in connections with the closing to the extent that the fraud or dishonesty relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land.~~ Fraud, theft, or dishonesty, or misappropriation of the Issuing Agent in handling Your funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation ~~relates to~~ adversely affects the status of the Title to the Land or to the validity, enforceability, or priority of the lien of the Insured Mortgage.

~~If you are a lender protected under the foregoing paragraph, your assignee and your warehouse lender in connection with a loan secured by a mortgage shall be protected as if this letter were addressed to them.~~

Conditions and Exclusions

1. Your transmittal of Funds or documents to the Issuing Agent for the Real Estate Transaction constitutes Your acceptance of this letter.

2. For purposes of this letter:

   a. "Commitment" means the Company's written contractual agreement to issue the Policy.

   b. "Funds" means the money received by the Issuing Agent for the Real Estate Transaction.

   c. "Policy" or "Policies" means the contract or contracts of title insurance, each in a form adopted for use in the State of Texas, issued or to be issued by the Company in connection with the closing of the Real Estate Transaction.

   d. "You" or "Your" means:

      The Addressee of this letter; ~~the borrower if the Land is solely improved by a one-to-four family residence~~ subject to all rights and defenses relating to a claim under this letter that the Company would have against the Addressee,

      (A) the assignee of the Insured Mortgage, provided such assignment was for value and the assignee was, at the time of the of the assignment, without Knowledge of facts that reveal a claim under this letter; and

      (B) the warehouse lender in connection with the Insured Mortgage, provided such assignment was for value and the warehouse lender was, at the time of the of the assignment, without Knowledge of facts that reveal a claim under this letter.

   e. "Indebtedness," "Insured Mortgage," "Knowledge" or "Known," "Land," and "Title" have the same meaning given them in the Loan Policy of Title Insurance (Form T-2).

3. ~~The Company will not be liable to you for loss arising out of:~~ The Company shall have no liability under this insured closing service letter for any loss arising from any ~~out of~~ :

~~A~~a. ~~Failure of the Issuing Agent to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in the binder or commitment shall not be deemed to be inconsistent.~~ failure of the Issuing Agent to comply with Your closing instructions that require title insurance protection inconsistent with that set forth in the Commitment. Your written closing instructions received and accepted by the Issuing Agent after issuing the Commitment that require the removal, where allowed by state law, rule, or regulation, of specific Schedule B Exceptions from Coverage or compliance with the requirements contained in the Commitment shall not be deemed to require inconsistent title insurance protection;

~~B~~ b. ~~Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent to comply with your written closing instructions to deposit the funds in a bank which you designated by name.~~ Loss or impairment of Your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except loss or impairment resulting from failure of the Issuing Agent to comply with Your written closing instructions to deposit the Funds in a bank that You designated by name~~;~~

~~C~~ c. ~~Defects, liens, encumbrances or other matters in connection with your loan transactions except to the extent that protection against those defects, liens, encumbrances or other matters is afforded by a policy of title insurance not inconsistent with your closing instructions.~~ Any constitutional or statutory lien or claim of lien that arises from services, labor, materials, or equipment, if any Funds are to be used for the purpose of construction, alteration, or renovation. This Section 3.c does not affect the coverage, if any, as to any lien for services, labor, materials, or equipment afforded in the Policy~~;~~

~~D~~ d. Defect, lien, encumbrance, or other matter in connection with the Real Estate Transaction. This Section 3.d does not affect the coverage afforded in the Policy;

e. ~~Fraud, dishonesty or negligence of your employee, agent, attorney or broker.~~ Fraud, theft, misappropriation, dishonesty or negligence by You or Your employee, agent, attorney or broker;

~~E~~ f. Fraud, theft, dishonesty, or misappropriation by anyone other than the Company or Issuing Agent;

g. ~~Your settlement or release of any claim without the written consent of the Company.~~ Your settlement or release of any claim by You without the Company's written consent;

~~F~~ h. ~~Any matters created, suffered, assumed or agreed to by you or known to you.~~ ~~A~~Any matters created, suffered, assumed or agreed to or ~~actually~~ known by You.

i. Failure of the Issuing Agent to determine the validity, enforceability, or the effectiveness of a document required by Your closing instructions. This Section 3.i does not affect the coverage afforded in the Policy;

j. Federal consumer financial law, as defined in 12 U.S.C. §5481 (14), actions under 12 U.S.C. §5531, or other federal or state laws relating to truth-in-lending, a borrower's ability to repay a loan, qualified mortgages, consumer protection, or predatory lending, including any failure of the Issuing Agent to comply with Your closing instructions relating to those laws;

k. federal or state laws establishing the standards or requirements for asset-backed securitization including, but not limited to, exemption from credit risk retention, including any failure of the Issuing Agent to comply with Your closing instructions relating to those laws;

l. The periodic disbursement of Funds to pay for construction, alteration, or renovation on the Land relating to the Real Estate Transaction; or

m. The Issuing Agent acting in the capacity of a qualified intermediary or facilitator for tax deferred exchange transactions as provided in Section 1031 of the Internal Revenue Code; or

n. Wire fraud, mail fraud, telephone fraud, facsimile fraud, unauthorized access to a computer, network, email, or document production system, business email compromise, identity theft, or diversion of Funds to a person or account not entitled to receive the Funds perpetrated by anyone other than the Company of Issuing Agent.

4. If the closing is to be conducted by an Issuing Agent, a Commitment in connection with the Real Estate Transaction must have been received by You prior to the transmittal of Your final closing instructions to the Issuing Agent.

~~2~~5. ~~When the Company shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability of the Company for reimbursement shall be reduced to the extent that you~~ You ~~have knowingly and voluntarily impaired the value of this right of subrogation.~~ When the Company shall have indemnified You pursuant to this letter, it shall be subrogated to all rights and remedies You have against any person or property had You not been indemnified. The Company's liability for indemnification shall be reduced to the extent that You have impaired the value of this right of subrogation.

6. The e Company's liability for loss under this letter shall not exceed the least of:

a. the amount of Your Funds;

b. the Company's liability under the Policy at the time written notice of a claim is made under this letter;

c. the value of the lien of the Insured Mortgage;

d. the value of the Title to the Land insured or to be insured under the Policy at the time written notice of a claim is made under this letter; or

e. the amount stated in Section 3 of the Requirements.

7. ~~If you are not a purchaser, borrower, or lessee,~~ The Company will be liable only to the holder of the Indebtedness at the time that payment is made.

8. Payment to You or to the owner of the Indebtedness under either the Policy or Policies or from any other source shall reduce liability under this letter by the same amount.

Payment in accordance with the terms of this letter shall constitute a payment pursuant to the Conditions of the Policy.

~~39.~~ ~~The Issuing Agent is the Company's agent only for the limited purpose of issuing title insurance policies. The Issuing Agent is not the Company's agent for the purpose of providing other closing or settlement services. The Company's liability for your losses arising from those other closing or settlement services is strictly limited to the protection expressly provided in this letter. Any liability of the Company for loss does not include liability for loss resulting from the negligence, fraud or bad faith of any party to a real estate transaction other than an Issuing Agent, the lack of creditworthiness of any borrower connected with a real estate transaction, or the failure of any collateral to adequately secure a loan connected with a real estate transaction. However, this letter does not affect the Company's liability with respect to its title insurance binders, commitments or policies.~~ The Issuing Agent is the Company's agent only for the limited purpose of issuing Policies. The Issuing Agent is not the Company's agent for the purpose of providing closing or settlement services. The Company's liability for Your loss arising from closing or settlement services is strictly limited to the contractual protection expressly provided in this letter. Other than as expressly provided in this letter, the Company shall have no liability for loss resulting from the fraud, theft, dishonesty, misappropriation, or negligence of any party to the Real Estate Transaction, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.

10. In no event shall the Company be liable for a loss if the written notice of a claim is not received by the Company within two years ~~one year~~ from the date of the transmittal of Funds. The condition that the Company must be provided with written notice under this provision shall not be excused by lack of prejudice to the Company;

~~5~~11. You must promptly send written notice of a claim under this letter to the Company at its principal office at _____.
~~The Company is not liable for a loss if the written notice is not received within two years from the date of the closing.~~ If the Company is prejudiced by Your failure to provide prompt notice, the Company's liability to You under this letter shall be reduced to the extent of the prejudice.

12. Whenever requested by the Company, You, at the Company's expense, shall:
(a) give the Company all reasonable aid in:
(i) securing evidence, obtaining witnesses, prosecuting, or defending any action or proceeding, or effecting any settlement; and
(ii) any other lawful act that in the opinion of the Company may be necessary to enable the Company's investigation and determination of its liability under this letter;

(b) deliver to the Company any records, in whatever medium maintained, that pertain to the Real Estate Transaction or any claim under this letter; and

(c) submit to an examination under oath by any authorized representative of the Company with respect to any such records, the Real Estate Transaction, any claim under this letter or any other matter reasonably deemed relevant by the Company.

13. The Company shall have no liability under this letter if:

a. the Real Estate Transaction has not closed within one year from the date of this letter; or

b. at any time after the date of this letter, but before the Real Estate Transaction closes, the Company provides written notice of termination of this letter to the Addressee at the address set forth above.

~~6~~14. ~~The protection herein offered extends only to real property transactions in Texas.~~, The protection of this letter extends only to real estate in Texas, and any court or arbitrator shall apply the law of the jurisdiction where the Land is located to interpret and enforce the terms of this letter. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law. Any litigation or other proceeding under this letter must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

15. There shall be no right for any claim under this letter to be arbitrated or litigated on a class action basis.

~~7~~[16. ~~Either the Company or you may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless you have a policy of title insurance for the applicable transaction with an Amount of Insurance greater than $2,000,000. If you have a policy with title insurance for the applicable transaction with an Amount of Insurance greater than $2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and you.~~ Either the Company or You may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than $2,000,000. There shall be no right for any claim under this letter to be arbitrated or litigated on a class action basis. If You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than $2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and You. ~~If the Real Estate Transaction solely involves a one-to-four family residence and You are the purchaser or borrower, the Company will pay the costs of arbitration.~~

~~Any previous closing protection letter or similar agreement is hereby cancelled, except for closings of your real estate transactions for which you have previously sent (or within 30 days hereafter send) written closing instructions to the Issuing Agent~~. This closing protection letter supersedes and cancels any previous letter or similar agreement for closing protection that applies to the Real Estate Transaction.

BLANK TITLE INSURANCE COMPANY

BY: _____

Authorized Signatory

(The name of a particular issuing agent may be inserted in lieu of reference to Issuing Agent contained in this letter and the words "Underwritten Title Company" may be inserted in lieu of Issuing Agent.)

TLTA
PROPOSED RULE CHANGES
EXHIBIT 9
PROCEDURAL RULE P-20

CITATION

Section IV, Procedural Rules, Procedural Rule P-20: Standard Exception Relating to Taxes of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

ISSUE AND JUSTIFICATION

Procedural Rule P-20: Standard Exception Relating to Taxes does not address the realities of many transactions. The language of subsection (b) does not allow for coverage for a "full tax deletion" for certain consumers in rural areas. The language of subsection (c), "not yet due and payable," does not adequately accommodate the mechanics of property tax liability in Texas for certain parts of the year.

The Texas Land Title Association suggests amending Procedural Rule P-20 to better address these situations. The proposed change will more adequately describe the assurances consumers are requesting.

PROPOSED REVISIONS

PROCEDURAL RULE P-20: Standard Exception Relating to Taxes

A. Taxes for the Current Year

1. In connection with the issuance or amendment (after issuance) of any Owner's Policy, Loan Policy, or of any Loan Title Policy Binder on Interim Construction Loan (Interim Binder), an exception must be shown on Schedule B to taxes and assessments for the current tax year by any taxing authority, and the Company may not insure that taxes for the current tax year are paid, unless:

a. Taxes are Paid or Collected at Closing. A company may insure that taxes for the current tax year are paid if:

1. All of the taxes for the current tax year have been assessed by the taxing authorities;

2. The Company has satisfactory evidence in its file that the assessed taxes for the current year have been paid by the owner or

3. If all of the taxes for the current year have not been paid:

i. The unpaid taxes are collected at closing by the Company; and

ii. The Company will pay the taxes in the ordinary course of business.

b. Owner's Tax Reserve/Escrow Account With Payoff Lender. A Company may insure that taxes are paid for the current tax year if:

1. The Company has satisfactory evidence in its file that the assessed taxes for the current year have been paid by the current lender from the owner's Reserve/Escrow Account held by lender, or

2. In the absence of satisfactory evidence in (1) above, a Company may accept:

i. A sufficient Indemnity executed by a responsible party,

ii. Together with a deposit of funds in an amount sufficient to pay the assessed taxes.

3. When following provision (2) above, the Company shall:

i. Pay the assessed taxes according to the terms of the Indemnity and before they become delinquent, or

ii. Upon receipt of satisfactory evidence that the assessed taxes for the current year have been paid, promptly pay the escrowed funds to the proper party.

2. If all taxes for the current year have not been assessed by the taxing authorities, the Company may not insure that taxes for the current year are paid.

B. ROLLBACK TAXES

1. In connection with the issuance or amendment (after issuance) of any Loan Policy or of any Loan Title Policy Binder on Interim Construction Loan (Interim Binder), and upon payment of the premium required under Rate Rule R-19, the words: "and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership", as contained in the standard tax exception may be deleted by:

a. Deletion of such words upon the policy or binder form, either by checking the appropriate box on a Form T-2 or T-2R or by lining through the words or by producing an electronic form with the words; or

b. By attachment to the policy or binder of endorsement form T-30.

The deletion of the above phrase from the standard tax exception is hereafter referred to as "insure or insuring against rollback taxes".

2. A Company may not insure against rollback taxes unless:

a. The Company has satisfactory evidence in its file that the assessed taxes for the current year are not based on an agriculture or open-space valuation; or

b. The transaction represents a loan that fully takes up, renews, extends, or satisfies one or more existing liens secured by real property which has improvements thereon designed principally for the occupancy of from one to four families and consists of not more than 25 acres that has an agricultural or open-space valuation by individual insureds and that the new loan amount is limited to satisfaction of the existing indebtedness plus reasonable closing costs and does not involve a change in land usage or ownership; or

c. (i) The rollback taxes have been assessed by all of the taxing authorities; (ii) The rollback taxes are collected at closing by the Company, and (iii) The Company will pay the roll back taxes in the ordinary course of business.

C. TAXES NOT YET DUE AND PAYABLE

In connection with the issuance of a Loan Policy or Loan Title Policy Binder on Interim Construction Loan (Interim Binder), upon payment of the premium in R-24, a Company may:

1. If satisfied that all taxes, standby fees and assessments by any taxing authority for the year ~~of the issuance of the Loan Policy or Interim Binder~~ specified in the standard tax exception are not yet due and payable, add the following ~~after the standard tax exception year~~: "Company insures that standby fees, taxes and assessments by any taxing authority for the year _____ are not yet due and payable." The addition may be made either by checking the appropriate box on a Form T-2 or by otherwise inserting the additional words into the form.

2. If a Company determines that some, but not all of the taxes are not yet due and payable for the year specified in the standard tax exception, the Company may add the following after the standard tax exception: "Company insures that standby fees, taxes and assessments by any taxing authority for the year _____ are not yet due and payable, as to [insert name of applicable taxing authority/authorities] only."

TLTA
PROPOSED RULE CHANGES
EXHIBIT 10
FORM T-54

CITATION

Section II, Insuring Forms, Form T-54: Severable Improvements Endorsement of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

ISSUE AND JUSTIFICATION

Currently *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* does not include a promulgated rate for Form T-54. Since the Commissioner of Insurance adopted Form T-54, the American Land Title Association (ALTA) has created more specific and transaction tailored endorsements to address the scenarios Form T-54 was intended to cover.

The Texas Land Title Association (TLTA) suggests repealing Form T-54 and replacing it with the six ALTA endorsements. Additionally, TLTA suggest adopting a corresponding Rate Rule for each endorsement. TLTA recommends a rate of 5% of the premium for each endorsement.

PROPOSED REVISIONS

PLEASE SEE ATTACHED FORMS

ENERGY PROJECT – LEASEHOLD/EASEMENT OWNER'S ENDORSEMENT (Form T-)

Attached to Policy No. _____

Issued by

[Title Company]

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. "Constituent Parcel" means one of the parcels of Land described in Schedule A that together constitute one integrated project.

b. "Easement" means each easement described in Schedule A.

c. "Easement Interest" means the right of use granted in the Easement for the Easement Term.

d. "Easement Term" means the duration of the Easement Interest, as set forth in the Easement, including any renewal or extended term if a valid option to renew or extend is contained in the Easement.

e. "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

f. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession or use insured by this policy, contrary to the terms of any Lease or Easement or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease or the Easement, as applicable, in either case as a result of a matter covered by this policy.

g. "Lease" means each lease described in Schedule A.

h. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.

i. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

j. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (*insert name of architect or engineer*) dated , last revised ,designated as (*insert name of project or project number*) consisting of sheets.

k. "Remaining Term" means the portion of the Easement Term or the Lease Term remaining after the Insured has been Evicted.

l. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate or the Easement Interest for the Remaining Term, as applicable, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease or Easement as computed in Section 3(b) below.

b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate, the Easement Interest, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent or use payments no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or

iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted, shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any

Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

b. Rent, easement payments or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate or the Easement Interest, as applicable, may be obligated to pay to any person having paramount title to that of the lessor in the Lease or the grantor in the Easement, as applicable.

c. The amount of rent, easement payments or damages that, by the terms of the Lease or the Easement, as applicable, the Insured must continue to pay to the lessor or grantor after Eviction with respect to the portion of the Leasehold Estate or Easement Interest, as applicable, from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease, sublease or easement specifically permitted by the Lease or Easement, as applicable, and made by the Insured as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees or easement or subeasement grantees on account of the breach of any lease or sublease or easement or subeasement specifically permitted by the Lease or the Easement, as applicable, and made by the Insured as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate or a replacement easement reasonably equivalent to the Easement Interest, as applicable.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or

contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

[Title Company]

ENERGY PROJECT – LEASEHOLD/EASEMENT – LOAN ENDORSEMENT (Form T-____.1)

Attached to Policy No._____

Issued by

[Title Company]

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. "Constituent Parcel" means one of the parcels of Land described in Schedule A that together constitute one integrated project.

b. "Easement" means each easement described in Schedule A.

c. "Easement Interest" means the right of use granted in the Easement for the Easement Term.

d. "Easement Term" means the duration of the Easement Interest, as set forth in the Easement, including any renewal or extended term if a valid option to renew or extend is contained in the Easement.

e. "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

f. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession or use insured by this policy, contrary to the terms of any Lease or Easement or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease or the Easement, as applicable, in either case as a result of a matter covered by this policy.

g. "Lease" means each lease described in Schedule A.

h. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.

i. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

j. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (*insert name of architect or engineer*) dated , last revised ,designated as (*insert name of project or project number*) consisting of sheets.

k. "Remaining Term" means the portion of the Easement Term or the Lease Term remaining after the Insured has been Evicted.

l. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

m. "Tenant" means the tenant under the Lease or a grantee under the Easement, as applicable, and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Tenant is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate or the Easement Interest for the Remaining Term, as applicable, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease or Easement as computed in Section 3(b) below.

b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate, the Easement Interest, and any Electricity Facility affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent or use payments no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or

iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy and thereafter is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in

computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

b. Rent, easement payments or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate or the Easement Interest, as applicable, may be obligated to pay to any person having paramount title to that of the lessor in the Lease or the grantor in the Easement, as applicable.

c. The amount of rent, easement payments or damages that, by the terms of the Lease or the Easement, as applicable, the Insured must continue to pay to the lessor or grantor after Eviction with respect to the portion of the Leasehold Estate or Easement Interest, as applicable, from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease, sublease or easement specifically permitted by the Lease or Easement, as applicable, and made by the Tenant as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees or easement or subeasement grantees on account of the breach of any lease or sublease or easement or subeasement specifically permitted by the Lease or the Easement, as applicable, and made by the Tenant as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate or a replacement easement reasonably equivalent to the Easement Interest, as applicable.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost

incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

[Title Company]

ENERGY PROJECT – LEASEHOLD – OWNER'S ENDORSEMENT (Form T .2)

Attached to Policy No.

Issued by

[Title Company]

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. "Constituent Parcel" means one of the parcels of Land described in Schedule A that together constitute one integrated project.

b. "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

c. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of any Lease or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.

d. "Lease" means each lease described in Schedule A.

e. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.

f. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

g. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (*insert name of architect or engineer*) dated , last revised ,designated as (*insert name of project or project number*) consisting of sheets.

h. "Remaining Term" means the portion of the Lease Term remaining after the Insured has been Evicted.

i. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate for the Remaining Term, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease as computed in Section 3(b) below.

b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or

iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent or damages that, by the terms of the Lease , the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease specifically permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease specifically permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

[Title Company]

ENERGY PROJECT – LEASEHOLD LOAN – LOAN ENDORSEMENT (Form T- .3)

Attached to Policy No.

Issued by

[Title Company]

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. "Constituent Parcel" means one of the parcels of Land described in Schedule A that together constitute one integrated project.

b. "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

c. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of any Lease or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.

d. "Lease" means each lease described in Schedule A.

e. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.

f. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

g. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (*insert name of architect or engineer*) dated , last revised ,designated as (*insert name of project or project number*) consisting of sheets.

h. "Remaining Term" means the portion of the Lease Term remaining after the Insured has been Evicted.

i. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

j. "Tenant" means the tenant under the Lease and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Tenant is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate for the Remaining Term, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease as computed in Section 3(b) below.

b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate and any Electricity Facility affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or

iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy and thereafter is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged

as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent or damages that, by the terms of the Lease , the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease specifically permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease specifically permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate.

f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

[Title Company]

ENERGY PROJECT – FEE ESTATE – OWNER'S ENDORSEMENT (Form T- .4)

Attached to Policy No.

Issued by

[Title Company]

1. The insurance provided by this endorsement is (a) only effective for the parcel or those parcels of the Land as to which the Title is fee simple and (b) subject to the exclusions in Section 6 of this endorsement and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

(a) "Constituent Parcel" means one of the parcels of Land described in Schedule A that together with any other parcel or parcels of Land described in Schedule A constitute one integrated project.

(b) "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

(c) "Ejected" or "Ejection" means (a) the lawful divestment, in whole or in part, of the Title to the Land or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement, as applicable, in either case as a result of a matter covered by this policy.

(d) "Plans" means the survey, site and elevation plans or other depictions or drawings prepared

by (*insert name of architect or engineer*) dated , last revised ,designated as (*insert name of project or project number*) consisting of sheets.

(e) "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. Valuation of Title as an integrated project:

(a) If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Ejection, then, as to that portion of the Land from which the Insured is Ejected, that value shall consist of (i) the value of the fee estate including any Electricity Facility existing on the date of the Ejection, and, if applicable, (ii) any reduction in value of another insured Constituent Parcel as computed in Section 3(b) below.

(b) A computation of loss or damage resulting from an Ejection affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Ejected.

(c) The Insured Claimant shall have the right to have the fee estate, any Constituent Parcel, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately.

(d) The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

(a) In the event of an Ejection, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Ejection, reduced by the salvage value of the Severable Improvement.

(b) The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees, or expenses) relating to:

(i) the attachment, perfection or priority of any security interest in any Severable Improvement;

(ii) the vesting or ownership of title to or rights in any Severable Improvement;

(iii) any defect in or lien or encumbrance on the title to any Severable Improvement; or

(iv) the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured is Ejected, the following items of loss, if applicable to that portion of the Land from which the Insured is Ejected, shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

(a) The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Ejection, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Ejection.

(b) Payments or damages for use and occupancy of the Land prior to the Ejection that the Insured may be obligated to pay to any person having paramount title to that of the Insured.

(c) The fair market value, at the time of the Ejection, of the estate or interest of the Insured in any lease or easement, as applicable, made by the Insured as lessor or grantor of all or part of the Title.

(d) Damages caused by the Ejection that the Insured is obligated to pay to lessees or easement grantees on account of the breach of any lease or easement, as applicable, made by the Insured as lessor or grantor of all or part of the Title.

(e) The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a fee estate in a replacement parcel of land reasonably equivalent to the parcel that is the subject of the

Ejection.

(f) If any Electricity Facility is not substantially completed at the time of Ejection, the actual cost incurred by the Insured up to the time of Ejection, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Ejected. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage, or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

[Title Company]

ENERGY PROJECT – FEE ESTATE – LOAN ENDORSEMENT (Form T- .5)

Attached to Policy No.

Issued by

[Title Company]

1. The insurance provided by this endorsement is (a) only effective for the parcel or those parcels of the Land as to which the Title is fee simple and (b) subject to the exclusions in Section 6 of this endorsement and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

(a) "Constituent Parcel" means one of the parcels of Land described in Schedule A that together with any other parcel or parcels of Land described in Schedule A constitute one integrated project.

(b) "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale, or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

(c) "Ejected" or "Ejection" means (a) the lawful divestment, in whole or in part, of the Title to the Land or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement, as applicable, in either case as a result of a matter covered by this policy.

(d) "Plans" means the survey, site and elevation plans or other depictions or drawings prepared

by
(*insert name of architect or engineer*) dated , last revised ,designated as (*insert name of project or project number*) consisting of sheets.

(e) "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

(f) "Vestee" means the party in which the Title is vested as stated in Schedule A and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.

3. Valuation of Title as an integrated project:

(a) If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Ejection, then, as to that portion of the Land from which the Vestee is Ejected, that value shall consist of (i) the value of the fee estate including any Electricity Facility existing on the date of the Ejection, and, if applicable, (ii) any reduction in value of another insured Constituent Parcel as computed in Section 3(b) below.

(b) A computation of loss or damage resulting from an Ejection affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Ejected.

(c) The Insured Claimant shall have the right to have the fee estate, any Constituent Parcel, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately.

(d) The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

(a) In the event of an Ejection, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Ejection, reduced by

the salvage value of the Severable Improvement.

(b) The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees, or expenses) relating to:

(i) the attachment, perfection or priority of any security interest in any Severable Improvement;

(ii) the vesting or ownership of title to or rights in any Severable Improvement;

(iii) any defect in or lien or encumbrance on the title to any Severable Improvement; or

(iv) the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy and thereafter is Ejected, the following items of loss, if applicable to that portion of the Land from which the Insured is Ejected, shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

(a) The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Ejection, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Ejection.

(b) Payments or damages for use and occupancy of the Land prior to the Ejection that the Insured may be obligated to pay to any person having paramount title to that of the Insured.

(c) The fair market value, at the time of the Ejection, of the estate or interest of the Insured in any lease or easement, as applicable, made by the Vestee as lessor or grantor of all or part of the Title.

(d) Damages caused by the Ejection that the Insured is obligated to pay to lessees or easement grantees on account of the breach of any lease or easement, as applicable, made by the Vestee as lessor or grantor of all or part of the Title.

(e) The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a fee estate in a replacement parcel of land reasonably equivalent to the parcel that is the subject of the Ejection.

(f) If any Electricity Facility is not substantially completed at the time of Ejection, the actual cost incurred by the Insured up to the time of Ejection, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Ejected. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage, or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

[Title Company]

TLTA
PROPOSED RULE CHANGES
EXHIBIT 11
FORM T-26.1 (NEW)
RATE RULE R-33.1 (NEW)
PROCEDURAL RULE P-57.1 (NEW)

CITATION

Section II, Insuring Forms of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

Section III, Rate Rules of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

Section IV, Procedural Rules of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

ISSUE AND JUSTIFICATION

Texans use a variety of estate planning strategies to preserve family ownership of land and lessen the impact of federal estate taxes. These strategies frequently include utilizing a variety of entities to own all or a portion of land. Although the current owner's policy forms (T-1 and T-1R) contemplate several situations where coverage is extended, practitioners of estate planning and elder law have requested an endorsement that specifically deals with the newer estate planning tools they are using with their clients. The Texas Land Title Association (TLTA) suggests adding an insuring form, rate rule, and procedural rule to address this need.

TLTA developed this proposal in coordination with estate planning practitioners. Based on comments TLTA repeatedly heard from these practitioners, the proposal is intended to allow for greater flexibility in tax planning, address three common conveyances, allow the endorsement to be issued up to 90 days after the conveyance, and in many respects, replace the need for the family to obtain an opinion letter from an attorney to determine if a conveyance would void coverage.

The proposed endorsement provides that a named family limited partnership or family limited partnership can be added to the named insured and that the company will not deny liability for coverage simple because of the conveyance of all or a portion of the land from the named insured to an estate planning entity. TLTA's proposal addresses three common scenarios: (1) adding coverage for a contribution of land by the named insured in the policy to a family limited partnership or family limited liability company; (2) Adding coverage of a gift by the named insured in the policy to a trust

whose beneficiaries are defined as family members; and (3) Adding coverage for distributions from a family limited partnership or family limited liability company which are gifts or reallocations of ownership in the named insured as long as the beneficiaries are defined as family members.

TLTA suggests a rate of the greater of 5% of the premium or $50.00 for this endorsement through a new Rate Rule. In addition to meeting a demonstrated consumer need, title agents and companies will incur additional costs and assume more risk by issuing this endorsement. The review of documents and statements from the insured establishing that the entities are composed of family members will add time and expense to the underwriting and claims handling process.

PROPOSED REVISIONS

ESTATE PLANNING ENDORSEMENT (Form T-26.1)

Attached to and Made a Part of Policy No. _____

Issued by:

BLANK TITLE INSURANCE COMPANY

The policy is hereby amended by adding to the named insured: {insert here name of family limited partnership, Family Limited liability Company or Trust added}. This endorsement does not change the Date of Policy, nor does it impose any liability on the Company for loss or damage resulting from (1) failure of such added insured to acquire an insurable estate or interest in the land, or (2) any defect, lien or encumbrance attaching by reason of the acquisition of an estate or interest in the land by such added insured.

[ ] Capital Contributions to Family Limited Partnerships or Family Limited Liability Companies: [if box is checked]

The Company hereby agrees that, notwithstanding anything to the contrary contained in this policy, in the event of loss or damage insured under this policy, the Company shall not deny liability under this policy or raise a defense to any claim made under this policy solely on the ground that, after the Date of Policy, the Insured contributes the Land to the Family Limited Partnership or the Family Limited Liability Company provided that all of the interests of the named insured as set out on Schedule A of the policy are held by parents and the children of a parent or by grandparents and their children, and their grandchildren existing at the time of the conveyance.

[ ] Gifts to a trust for the primary benefit of children and grandchildren [if box is checked]

The Company hereby agrees that, notwithstanding anything to the contrary contained in this policy, in the event of loss or damage insured under this policy, the Company shall not deny liability under this policy or raise a defense to any claim made under this policy solely on the ground that, after the Date of Policy, the Insured set out on Schedule A of the policy gives the Land to a Trust provided that initial trustees are the parents or an institutional trustee and beneficiaries of the trust are the parents the children of a parent or by grandparents for the benefit of their children, and grandchildren existing at the time of the conveyance

[ ] Distributions from a Family Partnership or Family Limited Liability Company or Trust [if box is checked]

The Company hereby agrees that, notwithstanding anything to the contrary contained in this policy, in the event of loss or damage insured under this policy, the Company shall not deny liability under this policy or raise a defense to any claim made under this policy solely on the ground that, after the Date of Policy the Managing Partners of a family partnership or limited liability company or the trustee(s) of a Trust named on Schedule A of the policy make gifts of or reallocation of ownership interest in the entity provided that initial Managing Partners or trustees are the parents or an institutional trustee and the beneficiaries of the trust are the parents, the children of a parent or are grandparents for the benefit of their children, and grandchildren existing at the time of the conveyance.

The Company reserves all rights and defenses under this policy which the Company would have had against the named insured or its constituent members before or after any capital contribution, gift, transfer, or reallocation of ownership interests.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

R-33.1 PREMIUM FOR ESTATE PLANNING ENDORSEMENT (T-26.1)

The premium for the ESTATE PLANNING Endorsement (T-26.1) shall be 5% of the current Basic Rate for the policy to which it is attached provided that the minimum premium shall be not less than $50.00.

P-57.1 ESTATE PLANNING ENDORSEMENT (Form T-26.1)

A. Company may issue its Estate Planning Endorsement (Form T-26.q) to an Owner's Policy of Title Insurance (Form T-1 or Form T-1R) by naming (i) a Family Partnership or Family Limited Liability Company, or (ii) a trust for the primary benefit children and grandchildren as an additional insured in the endorsement, if:

(i) its underwriting requirements are met,

(ii) it is paid the premium, prescribed in Rate Rule R-33.1, and

(a) all of the interests are held by parents and the children of the parent or by grandparents and their children and grandchildren, existing at the time of the conveyance; or

(b) initial trustees are the parents or an institutional trustee and beneficiaries of the trust are the parents the children of a parent or by grandparents for the benefit of their children and their grandchildren, existing at the time of the conveyance, and

(iii) the conveyance must be made by gift and not a sale.

B. The Estate Planning Endorsement can be issued any time within 90 days after the conveyance document is recorded.

C. The estate planning instrument must contain a warranty of title.

D. To issue the Estate Planning Endorsement, the Company may rely on a statement from the named insured in the policy that the beneficiaries of the various interests are children and grandchildren as the case may be. However, a claimant asserting that it is an additional insured must provide proof of family connections as well as trust and entity documents as requested by the Company if a claim is made.

Any matter covered in the Estate Planning Endorsement (Form T-26.1) may be insured only by the use of this endorsement.

TLTA
PROPOSED RULE CHANGES
EXHIBIT 12
PROCEDURAL RULE P-28

CITATION

Section IV, Procedural Rules, Procedural Rule P-28: Requirements For Continuing Education For Licensees and Professional Training for Management Personnel of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

ISSUE AND JUSTIFICATION

Recently, the Commissioner adopted revisions to P-28 as part of a licensing rule overhaul. Since the adoption, certain issues have been identified that are creating hardship for education providers and the licensees. The Texas Land Title Association (TLTA) suggests amending Procedural Rule P-28 to address these issues. Often there is a significant lag between the certification date and the date of presentation or publication. The proposed change provides for the term of the course offering and associated credit to be two years as intended by the rule without losing months due to this operational lag. Additionally, it is necessary to educate licensees on proper marketing behavior as well as teach them how best to educate the consumer about the nature, benefits, and mechanics of title insurance. Currently, the rule as interpreted has the effect of not allowing credit for this important educational material and subject matter. The proposed changes specifically allow for this subject matter to be a part of the continuing education of the licensee. Thirdly, oftentimes continuing education programs consist of multiple days. Yet, the course content can be divided up into meaningful hour segments. The ability to provide for partial credit of a given program on a per hour basis should be reinstated.

PROPOSED REVISIONS

PROCEDURAL RULE P-28: REQUIREMENTS FOR CONTINUING EDUCATION FOR LICENSEES AND PROFESSIONAL TRAINING FOR MANAGEMENT PERSONNEL

I. GENERAL

A. DEFINITIONS. In this rule:

1. "Licensee" means any individual required to complete continuing education under Texas Insurance Code §2651.204 or §2652.058.

2. "Management personnel" means each individual who is a designated on-site manager or who is responsible for the management of the day-to-day operations of the title insurance agent or direct operation in Texas.

3. "Provider" means an entity, association, or individual that offers title insurance continuing education or professional training courses and is:

a. a statewide title insurance association, statewide title insurance agents' association or professional association, or a local chapter of a statewide title insurance or title insurance agents' association or professional association;

b. an accredited college or university;

c. a career school or college as defined by Texas Education Code §132.001;

d. the State Bar of Texas;

e. an educational publisher;

f. a title insurance company authorized to do business in Texas, or a company owning one or more title insurance companies authorized to do business in Texas;

g. a Texas public school system; or

h. an individual appointed as an instructor by an entity or association described in this paragraph.

4. "TDI" means the Texas Department of Insurance.

5. "TDI Administrator" means an independent contractor contracted by TDI under Texas Insurance Code §2652.058 and §4004.104.

B. FORMS. All of the forms referred to in this rule are available on the TDI website and on request from TDI. Forms may be submitted electronically if such submission is available.

C. FEES. TDI or the TDI Administrator collects the nonrefundable fees established in 28 Texas Administrative Code §19.1012(b).

II. COURSES AND PROVIDERS

A. PROVIDER REGISTRATION.

1. A provider applicant seeking initial registration or renewal of a registration as a provider of title insurance courses must submit to TDI or the TDI Administrator an application on a form provided by TDI and the applicable provider original registration or renewal fee under 28 Texas Administrative Code §19.1012(b)(1). TDI may require the following items in order to approve or disapprove a provider's registration application:

a. the provider applicant's name, federal tax identification number, physical address, mailing address, and website address;

b. the name, telephone number, and email address of the provider applicant's designated authorized provider representative;

c. the name of the provider applicant's state of incorporation, domicile, or residence if the provider applicant is a corporation, partnership, limited liability company, or other legal entity not otherwise licensed or regulated by TDI;

d. all names used by the provider applicant to provide insurance related education courses in Texas;

e. a description of the provider applicant's student record system, including a description of the methods of documenting attendance;

f. the method used by the provider applicant for evaluating instructors;

g. a statement as to whether or not the provider applicant has had any certification or approval for a professional continuing education course, prelicensing education course, or a certification course revoked, suspended, or placed on probation, whether by agreement or as ordered in an administrative or judicial proceeding, by a court, financial or insurance regulator, or other agency of Texas, another state, or the United States;

h. a statement certifying that the provider applicant will comply with all provider and course requirements set forth in Procedural Rule P-28; and

i. other information as specified by TDI.

2. Failure to submit a completed application and all of the requested items will result in the rejection of the application.

3. Providers may only obtain one registration and may, but are not required to, certify and offer continuing education courses.

4. A provider registration expires two years after the date of issuance. The provider may renew its registration by complying with Procedural Rule P-28.II.A.1 up to 90 days in advance of the expiration date.

5. Within 150 calendar days from the effective date of this rule, providers who are currently offering certified title insurance continuing education courses, but are not registered as providers, must apply for registration. Providers may not apply for the certification of a continuing education course until the provider has applied for registration and been approved.

B. COURSE CERTIFICATION.

1. Providers must certify each title insurance continuing education course prior to offering the course by submitting to TDI or the TDI Administrator an application on a form provided by TDI and the applicable submission fee under 28 Texas Administrative Code §19.1012(b)(2). TDI may require the following items in order to approve or disapprove a course's certification application:

a. a certification by the provider that the course meets the minimum requirements of Procedural Rule P-28;

b. a statement identifying the knowledge, skills, or abilities the licensee is expected to obtain through completion of the course;

c. instruction method and instructional medium;

d. a detailed course outline with major topics and sub-topics, including the amount of time spent on each major topic;

e. the method of evaluation by which the provider measures how effectively the course meets its objectives and provides for student input;

f. the total number of course hours requested for approval, including:

i. the number of hours included in the total number of course hours requested for approval that will cover ethics topics;

ii. the method the applicant is using to determine the number of course hours;

iii. if using the method specified in Procedural Rule P-28.II.I.2.a, a list of the licensees and the time it took each licensee to complete the course; and

iv. if using the method specified in Procedural Rule P 28.II.I.2.b, a list of approved times in all other applicable states;

g. a sample of the certificate of completion providers will issue to students under Procedural Rule P-28.II.H.1;

h. if applying for certification of a classroom course that will consist of other than classroom instruction, lectures, or seminars, an explanation of how the course complies with Procedural Rule P-28.II.F.1;

i. if applying for certification of a classroom equivalent course, an explanation of how the course complies with Procedural Rule P-28.II.F.2 and II.G.2.

j. if applying for certification of a self-study course, a copy of one exam;

k. a copy of the provider's refund policy; and

l. any other information requested by TDI or the TDI Administrator.

2. Failure to submit a completed application and all of the requested items will result in the rejection of the application.

3. Providers must notify TDI or the TDI Administrator when a course is discontinued or no longer active, and when there is a change in the provider's name, address, or telephone number, in order for TDI or the TDI Administrator to maintain an up-to-date registry of courses and to prepare, if courses are to be available to the public, a list of such courses on request.

4. A course certification expires two years after the date of ~~certification~~ publication or presentation. If more than 25 percent of the course is changed, or if any change affects the course content breakdown as previously certified by TDI or the TDI Administrator, the course is considered revised and the provider must submit the course to TDI or the TDI Administrator for certification as a new course.

C. COURSE ASSIGNMENT.

1. A registered provider may request that a certified course be assigned to another registered provider by completing and submitting to TDI or the TDI Administrator a course assignment agreement form provided by TDI. TDI may require the following items in order to approve or disapprove a course's assignment:

a. the assignee and assignor providers' names and registration numbers;

b. the certified course's name, certification number, and expiration date;

c. a statement regarding whether there will be any of the following changes to the certified course:

i. a change of more than 25 percent of the certified course's content;

ii. a change to the number of certified course credit hours;

iii. a change to the type of certified course credit hours; or

iv. if for a self-study course, using an examination different from the examination developed by the assignor;

d. the effective date of the assignment;

e. the termination date of the assignment; and

f. any other information requested by TDI or the TDI Administrator.

2. A certified course may not be assigned, unless:

a. both assignee and assignor are registered providers under Procedural Rule P-28.II.A;

b. the course is not modified by:

i. changing more than 25 percent of the certified course content;

ii. changing the number of certified course credit hours;

iii. changing the type of certified course credit hours; or

iv. if a self-study course, using an examination different from the examination developed by the assignor; and

c. the assignment term is for not more than two years.

3. The assignor must deliver all information required for the certification of the course under Procedural Rule P-28.II.B to the assignee. The assignee must maintain all information required for the certification of the course for the period of assignment and must submit such information to TDI or the TDI Administrator on request.

4. Assignment of a certified course does not affect the certification period of the course.

5. Assigned courses are considered courses of the assignee for purposes of Procedural Rule P-28 and the assignee must comply with all requirements of Procedural Rule P 28 in relation to the assigned course, except that an assignee may not assign an assigned course.

6. TDI may not act on behalf of, or at the request of, any party in any dispute over a course assignment.

7. TDI will consider an assignment terminated only on the following events:

a. the date the assignment terminates as specified in the course assignment agreement form;

b. the written and signed request of both the assignor and assignee, which may be granted or given to an assignor by the assignee in advance or as a condition of assignment;

c. termination of the assignee's registration as a provider;

d. expiration of the course certification; or

e. the order of a court of competent jurisdiction finding that the assignee is not authorized to present the course or that the assignment agreement is terminated.

8. Assignees may not offer an assigned course after the course's certification expires, unless the originating assignor recertifies the course.

D. COURSE CRITERIA.

1. The purpose of continuing education is to increase the licensee's professional competence with regard to title insurance.

2. The course must have a stated purpose that reflects the goal(s) or the overall intent of the course.

3. The course must have specific written learning objectives, which support the achievement of the stated purpose of the course. The learning objectives are the desired outcomes for the learning process and identify the knowledge, skills, or aptitudes the licensee is expected to obtain.

4. The course must have a method of evaluation that measures how effectively the course meets its objectives.

5. Persons conducting a course should be knowledgeable and well versed on the topic(s), and when conducting a classroom course be able to conduct/instruct a class and provide appropriate feedback on questions.

6. The course content must be designed to increase the licensee's knowledge and understanding of one or more of the following:

a. title insurance principles and coverages;

b. title insurance law, rules, and regulations;

c. recent and prospective changes in coverages, law, regulations, and practice;

d. mortgage lending and closing transactions;

e. land title search or examination;

f. management of the licensee's title insurance business; ~~or~~

g. duties and responsibilities of the title insurance agent or escrow officer, including ethical conduct~~.~~; or

h. marketing rules and conduct and consumer education on title insurance.

7. A State Bar of Texas or State Board of Public Accountancy course is acceptable as a title insurance continuing education course as long as the course includes material pertaining to the business of title insurance, real property, surveys, mortgage lending, ethical conduct, or transfer of land titles.

8. Each course must be reviewed every two years by the provider and updated to remain relevant to the professional development of a licensee.

E. INSTRUCTOR REQUIREMENTS.

1. Providers must certify that course instructors are experienced and qualified in the subject to be taught, and certify that the instructors meet at least one of the following instructor criteria:

a. has been in the practice of teaching or co-teaching title insurance courses for at least three of the last five years and has the knowledge and experience in the subject the instructor will teach;

b. has been properly licensed as a licensee subject to continuing education requirements under the Texas Title Insurance Act or similar statutes of another state or jurisdiction for at least five years;

c. is the holder of a designation certification recognized by TDI which relates directly to the subject the instructor will teach;

d. has been engaged in a recognized profession that is pertinent to the subject areas to be taught, including, but not limited to, Certified Public Accountants or members of a state bar; or

e. is or has been employed by a title insurance company, title insurance agent, or direct operation for the last five years and has knowledge and experience in the subject the instructor will teach.

2. A provider must maintain, as a part of the provider's records, a written statement from each instructor certifying that the instructor is qualified as an instructor, the basis of qualification, and that the instructor will comply with all applicable course requirements.

F. TYPES OF COURSES. Continuing education courses must consist of one of the following:

1. Classroom Courses. Classroom courses may include real time lectures, seminars, audio, video, computer-based instruction, webinars, and teleconferences that meet the following requirements:

a. A disinterested third party attendant, an instructor, or a disinterested third party using visual observation technology must visually monitor attendance either inside or at all exits to the course presentation area at all times during the course presentation.

b. At least three students and an instructor must be involved in each presentation of the course; however, in circumstances involving remote presentations, all students and the instructor do not need to be in the same location. In the case of presenting recorded or text materials, the instructor making the live course presentation does not have to be the same instructor included on the recorded presentation or who prepared the text materials. Student attendees are not required to be licensees.

c. Question and answer and discussion periods must be provided by:

i. an instructor making a live presentation of the course to licensees in the same room or via real-time live audio or audio-visual connection, which must allow for immediate

student inquiries and responses with the presenting instructor; or

ii. an instructor who is present for the entire remote, recorded, or computer-based course presentation to students in the same room, which must allow for immediate inquiries and responses of students to the instructor.

d. The course pace is set by the instructor.

e. The course does not allow for independent completion of the course by students.

2. Classroom Equivalent Course. This type of course may consist of a digital media presentation, including internet or other computer-based presentations, that may be completed independently or in a group setting.

3. Self-study Courses. This type of course is primarily a text-based course, but may include audio, video, computer-based instruction, or any combination of these, in an independent study setting designed in such a manner as to ensure that the course cannot be completed by the typical enrollee in less time than the period for which the course is certified.

G. COURSE REQUIREMENTS FOR SUCCESSFUL COMPLETION.

1. For classroom courses, providers must use, at a minimum, attendance rosters or attendance forms to certify attendance and completion of a course. Each student must attend at least 90 percent of the course. Providers must establish a means to ensure that each student attended at least 90 percent of the course to receive credit. Attendance records must include, at a minimum, sign-in and sign-out sheets or signed attendance forms, and the legible names, addresses, and TDI license number of each student in attendance.

2. Credit for any course may be issued for less than the number of hours the course was assigned (i) to an instructor teaching a portion of the course who does not attend the full course and (ii) to a licensee for attending only a portion of the course. Providers must certify the actual number of hours taught or attended

on the certificates of completion or the certified transcripts it issues to teachers or licensees.

~~2.~~ 3. For classroom equivalent courses, providers must use a method to reasonably authenticate a student's identity and demonstrate participation to determine completion of a course. Methods of demonstrating participation may include, but are not limited to:

a. multiple-choice questions at the end of the course that reasonably cover the topics presented;

b. the display of unique keys, passwords, or symbols during the presentation that must be provided by the student at the end of a course; or

c. technological elements that ensure a student has watched and listened to an entire video and audio recording.

~~3.~~ 4. For self-study courses, providers must use a written, online, or computer-based examination as a means of completion for the course. Providers are not required to monitor the final examination. Course records for each examination attempt must include, at a minimum, the date the exam was taken, the final examination score, the examination version used, the legible name, address, and the TDI license number of each enrollee. A final examination must meet the following criteria:

a. Final examination questions may not be the same or substantially the same questions the enrollee previously encountered in the course materials or review exams.

b. Security measures must be in place to maintain the security and integrity of the examination and ensure that the enrollee is the individual who took the examination.

c. Answers to the examination may not be given to the enrollees at any time before, during, or after the course.

d. Examinations must be graded by an authorized staff member.

e. Enrollees are allowed to retake an examination if a 70 percent passing score is not achieved. The retest must be an alternate examination consisting of different questions from the original examination.

f. Final examinations must consist of three exams which are distributed alternatively to enrollees of the course, and are revised/updated every two years by the provider consistent with the course update/revision.

g. The final examination must be a comprehensive examination of the course and thoroughly test the enrollee's knowledge of the content of the course.

h. The final examination must consist of questions that do not give or indicate an answer or correct response and are the following types:

i. short essay questions requiring a response of five or more words;

ii. fill in the blank questions requiring a response from memory and not from an indicated list of potential alternatives; or

iii. multiple choice questions stemming from an inquiry with at least four appropriate potential responses and for which "all of the above" or "none of the above," or similar response, is not an appropriate option.

i. Each final examination must consist of at least 10 questions for each hour of credit. Providers may, at their discretion, have a greater number of final examination questions.

j. During final examinations, enrollees may use course materials or personal notes, but may not use another person's notes, answers, or otherwise receive assistance in answering the questions from another person.

k. Enrollees must mail or deliver the completed final examination directly to the provider.

H. PROOF OF COURSE COMPLETION.

1. Providers must issue certificates of completion to students who successfully complete a certified course within 30 calendar days of the completion of the course if requested by the student. The provider must ensure that the person receiving the certificate is the student who took the course. Only the provider of the course or a third-party vendor of the provider may prepare, print, or complete a certificate of completion. A certificate of completion must include the following:

a. a statement that the course is for title insurance continuing education;

b. the provider's name and provider number;

c. assignee's name and provider number, if applicable;

d. course name;

e. total number of approved credit hours and the number of approved ethics credit hours;

f. date of course completion; and

g. the TDI license number, if applicable, and name of the student completing the course.

2. The provider must report course completions in electronic format to TDI or the TDI Administrator within 30 calendar days of course completion.

I. CALCULATION OF CREDIT HOURS.

1. For a classroom course or classroom equivalent course, TDI will award up to 10 hours of credit for any one course. TDI will award credit at a rate of one hour for every 50 minutes of actual instruction time. All classroom courses must be at least one hour of credit in length. TDI will award additional partial hours of credit in half-hour increments with all periods of less than 25 minutes awarded no additional credit and periods of less than 50 minutes awarded one half-hour of additional credit. Actual instruction time is considered the amount of time devoted to the actual instruction/reading of the topic, and does not include breaks, meals,

introductions of speakers, explanatory or preparatory instructions, or evaluations of the course.

2. For a self-study course, TDI will award up to five hours of credit for any one course. A self-study course must be at least one hour of credit, 50 minutes, in length. TDI will award additional partial hours of credit in half-hour increments with all periods of less than 25 minutes awarded no additional credit and periods of less than 50 minutes awarded one half-hour of additional credit. Providers may not use the final examination or pre-tests for determining course hours. The provider must determine the number of credit hours using one of the following methods:

a. The average completion time of the individual course completion times of at least five licensees. The licensees used to calculate the average must be randomly selected. If the provider uses this method to determine the number of credit hours, the provider must retain the names, current TDI license numbers, and completion times of all licensees that were used by the provider.

b. The average number of hours of the credit hours assigned by all other states in which the course is certified or approved. A provider may not use this method to determine the number of credit hours unless the course is approved in at least three other states. ~~Providers may not include any hours allowed by other states for sales and marketing topics in calculating the average.~~

3. For applicable State Bar of Texas or State Board of Public Accountancy courses, TDI will award up to 10 credit hours for any one course. The number of awarded credit hours is determined by the number of credit hours approved by the State Bar of Texas or the State Board of Public Accountancy, but only those hours that pertain to title insurance, real property, surveys, mortgage lending, ethical conduct, or transfer of land titles. TDI will award ethics credit hours for courses or portions of courses approved by either the State Bar of Texas or the State Board of Public Accountancy for ethics credit. No self-study hours approved

by the State Bar of Texas or the State Board of Public Accountancy will be accepted.

4. TDI will award credit hours for the successful completion of accredited college, university, or law school courses. TDI will award eight credit hours per semester hour approved for the course by the college, university, or law school, but only for the portion of those hours which pertain to title insurance, real property, surveys, mortgage lending, ethical conduct, or the transfer of land titles.

5. TDI will award credit hours for licensees who instruct any portion of a certified continuing education course. The number of credit hours awarded is determined by the number of hours of course instruction up to a maximum of the number of credit hours approved for the course, plus an equal number of credit hours is awarded for course preparation. The provider is responsible for reporting the number of hours of course instruction.

6. TDI will not award credit hours for instructing or completing the same continuing education course more than once within the same reporting period.

III. CONTINUING EDUCATION COMPLIANCE

A. APPLICABILITY AND REQUIRED CREDIT HOURS.

1. Licensees must complete 10 credit hours of continuing education for each reporting period, unless otherwise exempt. Of the 10 required credit hours, licensees must earn at least two ethics credit hours. Credit hours may only be applied to a single reporting period and excess hours may not be carried forward to the next reporting period.

2. The reporting period is from the license issue date or last renewal date to the license expiration date.

3. New licensees with initial reporting periods of less than 24 months must complete a prorated amount of continuing education credit hours as follows:

LICENSE PERIOD	TOTAL REQUIRED HOURS	ETHICS
Less than 6 months	0	0
6 months up to and including 7 months	2	2

LICENSE PERIOD	TOTAL REQUIRED HOURS	ETHICS
8 months up to and including 9 months	3	2
10 months up to and including 11 months	4	2
12 months up to and including 14 months	5	2
15 months up to and including 16 months	6	2
17 months up to and including 19 months	7	2
20 months up to and including 21 months	8	2
22 months up to and including 23 months	9	2
(INCREMENTS ARE IN FULL MONTHS - DO NOT COUNT PARTIAL MONTHS)		

4. If a licensee is unable to attend classroom or classroom equivalent courses with reasonable convenience due to the remote location of the licensee's residence or business, the licensee may complete up to 50 percent of the required continuing education credit hours through self-study courses.

5. Licensees must complete at least 50 percent of their required continuing education credit hours in classroom or classroom equivalent courses, regardless of any other license type held by the licensee.

B. CONTINUING EDUCATION EXEMPTIONS AND EXTENSIONS.

1. Licensees who meet the criteria of illness, medical disability, or circumstances beyond the control of the licensee may apply for an extension of time for the licensee to comply with the continuing education requirements or an exemption from all or part of the requirements. Business reasons do not constitute circumstances beyond the control of the licensee. TDI will establish the duration of an extension when it is granted. If the circumstances supporting an extension

continue beyond the granted extension period, the licensee may reapply for an exemption or extension. The licensee's application must include the following:

a. a written statement of the exact nature of the illness, medical disability, or other extenuating circumstances beyond the control of the licensee that have prevented or will prevent the licensee from completing the required hours within the reporting period;

b. evidence regarding the illness, medical disability, or circumstances beyond the control of the licensee;

c. a written assessment of whether the condition is temporary or permanent, or if it is unknown whether the condition is temporary or permanent;

d. a written statement as to whether the licensee will be able to perform activities including any acts of a title insurance agent or escrow officer during the exemption or extension period being requested;

e. the estimated date when the licensee will be able to perform any activities including any acts of a title insurance agent or escrow officer in accordance with the medical reports or other documents pertaining to circumstances beyond the control of the licensee; and

f. any other information that may be of assistance in evaluating the request.

2. A military service member, military veteran, or military spouse, as defined by Texas Occupations Code §55.001, may apply under 28 Texas Administrative Code §19.803 for, and be granted, an extension to or exemption from the continuing education requirements of Procedural Rule P-28.III.A.

C. EVIDENCE OF COMPLIANCE.

1. If a course completion is not reported to TDI by the provider and reflected in TDI's records, licensees must maintain evidence that the licensee completed the course for a period of at least four years from the date of course completion for purposes of investigation or audit and must continue to maintain

evidence of compliance during any period in which the licensee has been notified by TDI or the TDI Administrator that the records or the licensee's compliance is the subject of an investigation or audit. Evidence of licensee compliance is subject to the review of TDI at any time.

2. Evidence of course completion may include a certificate of completion from a provider or a transcript from a college, university, or law school.

3. Providers must maintain all continuing education records, course certification records, attendance records, and course materials, including final examinations, for a period of at least four years. TDI or the TDI Administrator may review these records at any time. Providers must notify TDI if there is a change to the provider's information of record.

4. At the request of TDI or the TDI Administrator, providers must furnish course completion information in an acceptable electronic format to TDI or the TDI Administrator.

5. TDI or the TDI Administrator may conduct audits of any certified course or provider without prior notice to the provider. Staff from TDI or the TDI Administrator may attend courses without identifying themselves as employees or representatives of TDI. If compliance records are audited or reviewed and the validity or completeness of the records are questioned, the provider is allowed 30 calendar days from the date of notice to correct discrepancies or submit new documentation.

6. TDI will rely on provider submitted course completion records for determining and publishing continuing education compliance. A licensee must inform TDI of any inaccuracy in the licensee's compliance record.

D. FAILURE TO COMPLY.

1. A licensee's failure to comply with the requirements of Procedural Rule P-28 in the absence of a valid exemption or extension, or falsification of records of compliance by the licensee, may subject the licensee to disciplinary action after notice and hearing. Disciplinary action may include a fine, suspension,

revocation, or cancellation of a license in accordance with Texas Insurance Code Chapter 82, and any other applicable laws or statutes.

2. A provider's failure to comply with the requirements of Procedural Rule P-28, or falsification of records of compliance by the provider, may subject the courses of the provider to be removed from the list of certified courses. A provider may also be subject to disciplinary action after notice and hearing. Disciplinary action may include a fine, suspension, or revocation of the provider's registration in accordance with Texas Insurance Code Chapter 82, and any other applicable laws or statutes.

3. If a licensee does not meet the licensee's continuing education requirements by the 90th day after the licensing renewal date, the licensee's license is not eligible for renewal.

IV. PROFESSIONAL TRAINING PROGRAM FOR MANAGEMENT PERSONNEL

A. MANAGEMENT PERSONNEL REQUIREMENTS.

1. Except as provided in Procedural Rule P-28.IV.A.2 below, title insurance agent and direct operation management personnel must complete a professional training course that meets the requirements of Procedural Rule P-28.IV.B within 12 months immediately preceding the date of filing of the title insurance agent or direct operation license application.

2. An individual is exempt from the professional training requirements of Procedural Rule P-28.IV.A, if the individual has held in Texas for at least five years a position as management personnel with a title insurance agent, direct operation, or a comparable position.

3. Management personnel who are not exempt under the provisions of Procedural P-28.IV.A.2 must submit a provider-issued certificate of completion demonstrating compliance with Procedural Rule P-28.IV.A.1 with their license application.

4. Management personnel who are not exempt under the provisions of Procedural Rule P-28.IV.A.2 must maintain proof of completion of a professional training course for a period of four years from the date of completion of the course.

On request, management personnel must provide proof of completion of the professional training course to TDI or the TDI Administrator.

B. PROVIDER AND COURSE REQUIREMENTS.

1. Providers of professional training courses must comply with the registration requirements under Procedural Rule P-28.II.A before offering a professional training course for management personnel.

2. The provider must comply with the course certification requirements in Procedural Rule P-28.II.B.

3. A professional training course must be at least eight hours in length.

4. A professional training course must cover the following subjects:

a. the basic principles and coverages related to title insurance;

b. recent and prospective changes in those principles and coverages;

c. applicable rules and laws;

d. proper conduct, including ethical conduct, of the licensee's title insurance business;

e. accounting principles and practices and financial responsibilities and practices relevant to title insurance; and

f. the duties and responsibilities of a title insurance agent or direct operation.

5. Providers of professional training courses may assign courses under Procedural Rule P-28.II.C.

6. Providers of professional training courses must comply with Procedural Rules P-28.II.E and G.

7. Providers of professional training courses must issue certificates of completion to all students in compliance with Procedural Rule P-28.II.H.1, except the certificate of completion must include a statement that the course is for professional training for title insurance agent or direct operation management personnel.

8. Professional training course credit hours will be calculated under Procedural Rule P-28.I.

TEXAS MEDICAL ASSOCIATION

Physicians Caring for Texans

October 1, 2019

VIA ELECTRONIC MAIL to comments@tdi.texas.gov

Comments
Texas Department of Insurance
Austin, Texas

Re: TDI Rule Review

Dear Sir or Madam,

On behalf of our nearly 53,000 members, the Texas Medical Association ("TMA") appreciates this opportunity to comment on the Texas Department of Insurance's ("TDI" or "the Department") rule review initiative. TMA is a private, voluntary, nonprofit association of Texas physicians and medical students. TMA was founded in 1853 to serve the people of Texas in matters of medical care, prevention and cure of disease, and improvement of public health. Today, its mission is to "Improve the health of all Texans." TMA's diverse physician members practice in all fields of medical specialization.

1. **TMA Recommendations Regarding Rules Implementing Section 1271.055, Texas Insurance Code**

In response to TDI's request for rules that need to be updated or deleted, TMA first reiterates our comments from TDI's prior SB 1264 stakeholder notice regarding Issue #3. More specifically, in Issue #3, TDI noted the following:

> SB 1264 does not address nonemergency situations where a network provider is not reasonably available. In these situations, a health plan uses an access plan to address gaps in its contracted networks. Current TDI rules establish payment standards for these situations to minimize balance billing to consumers and prohibit balance billing for HMO members.

TDI continued by asking: "What, if any changes should be made to TDI rules for access plans to ensure consumers are protected from balance billing resulting from gaps in a health plan's contracted networks?"

Presumably, in this question in the stakeholder notice, TDI was referencing Section 1271.055 of the Texas Insurance Code (which was not amended by SB 1264), as well as the rules

implementing that section of the law (i.e., portions of 28 TAC § 11.1611 and 28 TAC § 11.1607). TMA generally supports TDI's existing rules implementing § 1271.055 of the Texas Insurance Code. TMA contends that, consistent with current TDI interpretations and rules, an HMO should be required to hold its enrollee harmless in these scenarios. The statutory provision that TDI is implementing (§ 1271.055 of the Texas Insurance Code) is designed to ensure that HMO enrollees purchase a meaningful product and are able to receive medically necessary covered services when a network provider is not reasonably available (e.g., when there is inadequate network). Thus, it makes sense that the HMO should be responsible for shortcomings in its networks under these scenarios (rather than shifting that responsibility on to the enrollee or the physician or provider).

Under existing TDI rules implementing § 1271.055, our understanding is that the HMO would be required to pay the usual and customary rate as an initial payment, but it would ultimately be responsible for holding the enrollee harmless (i.e., paying an amount sufficient to ensure that a balance bill is not issued to the enrollee). This framework is favorable to the enrollee, as it protects the enrollee from a balance bill and it is favorable to the physician because the physician can resolve payment disputes without incurring the cost and expense of an arbitration. However, TMA notes that the general payment methodology language in this section of the rule contains only loose parameters for calculation of reimbursements. Further defining usual and customary rate for purposes of the initial payment in this context (which certainly should be defined as above in-network rates) may be helpful to ensure that health plans are complying with their initial usual and customary rate obligation under the rule.

In a related rule (i.e. 28 TAC § 11.1607(j)), TDI states that an HMO that is unable to meet certain network adequacy requirements must file an access plan for approval with the department and the access plan must specify certain elements. TMA generally supports the elements in the access plan; however, we would recommend that the rule be strengthened to place an increased emphasis on network adequacy by, for example, amending (j)(5), which currently states the following:

> (5) a list of the physicians or providers within the relevant service area that the HMO attempted to contract with, identified by name and specialty or facility type, with:
>
> (A) a description of how and when the HMO last contacted each physician, provider, or facility; and
>
> (B) a description of the reason each physician, provider, or facility gave for declining to contract with the HMO.

TMA would recommend that, in addition, to the above requirements, TDI require the HMO to include (along with the list of the physicians or providers with whom they attempted to contract) the contact information (phone number, email, and mailing address) for the physician or provider (as well as the name and contact info for any physician or provider representative with whom the plan engaged in contract discussions) so that TDI can more readily audit the HMO's representations regarding contracting attempts. The HMO should also be required to include information about what contract term, if any, was the basis of the failure to contract and provide

information on any attempts the HMO or physician/provider made to negotiate that term. (Similar additions should be included in the waiver requests in the PPO/EPO rules).

TMA notes that after the passage of SB 1264, network adequacy does not become any less critical of an issue than it was prior to SB 1264. When selling a managed care product (particularly a network-based product), much of the value of the product is determined by how robust the network is. Texas enrollees must have assurances that the products being sold in Texas are adequate in all areas previously addressed in TDI rules. As the Department knows, it was not the Legislature's intent to relieve health plans of network adequacy requirements by promulgating SB 1264 (as evidenced by the fact that all the network adequacy requirements previously in Texas law remain intact, along with some new additions recently passed by the Legislature). Rather, the Legislature was attempting to create a backstop to take the patients out of the middle of out-of-network disputes and the patient did not elect to have the care out-of-network (despite requirements to have adequate networks). Thus, TDI's role in promulgating rules on network adequacy and taking enforcement actions remains critical to the proper regulation of the insurance industry in Texas. We appreciate TDI's continued efforts, including many notable recent efforts, to this end.

2. TMA Opposition to Repeal of TDI's Usual and Customary Charge Payment Rule (i.e., 28 TAC §3.3708(b)(1)) and TDI's Requirement for HMO/EPOs to Hold Their Enrollees Harmless.

Next, TMA notes that in the July 15, 2019 comment letter of the Texas Association of Health Plans (TAHP) regarding Senate Bill 1264, argued for the repeal of 28 TAC §§ 3.3708(b)(1), 3.3725 (d)-(e) and 11.1611(d). In response to TAHP comments, we make the following comments:

a. Sections 3.3708(b)(1)

TAHP argues the following:

> Senate Bill 1264 expressly establishes that the standard for applicable out-of-network claims for preferred provider benefit ('PPO') plans is the 'usual and customary rate or at an agreed rate' at the in-network benefit level of coverage. This supplements the current HMO and EPO statutory standards, which are also 'the usual and customary rate or at an agreed rate.' The legislature confirmed that 'usual and customary rate does not equal 'usual and customary charge' in adopting SB 1264.

We disagree with TAHP's assertion and would strongly oppose the repeal of TDI's current rule in 28 TAC § 3.3708(b)(1).

First, we support retention of TDI's current usual and customary charge provision in 28 TAC § 3.3708(b)(1) from a public policy standpoint as it will: (1) motivate insurers to maintain adequate networks generally and (2) make insurers less likely to push care (especially basic emergency care which is a fundamental reason why many enrollees purchase insurance) out-of-

network. As stated previously, SB 1264 was not intended to be an insurer windfall bill; rather, it was supposed to offer a solution that took the patient out of the middle if a balance bill was generated **after** the requirements of 28 TAC § 3.3708(b)(1) were satisfied.

TAHP's recommended repeal of § 3.3708(b)(1) would result in an insurer windfall, effectively reducing insurer accountability in all the circumstances described in § 3.3708(a), including circumstances when an insurer has failed to meets its obligation to maintain an adequate network and when a nonpreferred provider's services were pre-approved or preauthorized based upon the unavailability of a preferred provider.

We believe this result is clearly contrary to the Texas Legislature's consumer-focused intent in passing SB 1264. If the Texas Legislature had wanted to undo the usual and customary charge payment minimum under §3.3708(b)(1), we would have expected the Legislature to ensure that any windfall from that removal would be required to inure directly to the benefit of consumers. The Legislature did not pass any such provision, which further evidences its intent to maintain the status quo in terms of the § 3.3708 initial usual and customary charge payment minimum while removing the patient from middle with regard to any dispute over any balance remaining after the patient's in-network cost-sharing and this initial health plan payment.

Next, we note that the statutory foundation for § 3.3708(b)(1)'s usual and customary charge language remains intact after the passage of SB 1264. Part of the foundation of TDI's rule was Insurance Code Section 1301.005(a) which requires an insurer to make out-of-network benefits reasonably available to all insureds. Any removal of the usual and customary charge rule in § 3.3708(b) would be contrary to the implementation of this statutory language and would potentially result in a significant weakening of networks as well as associated health plan payments.

Next, we oppose any repeal of TDI's existing rule on usual and customary charges (i.e., § 3.3708(b)(1)), because the Legislature's intent to leave this language undisturbed was made manifest as recorded in House Journal excerpt from May 20, 2019, below:

> J. TURNER: Now, the usual and customary rate that is defined in this bill, and I understand there are several sections of the Insurance Code—Section 1551, Section 1575, Section 1579—where that is added. Am I correct that that definition that's in your bill is not intended to affect definitions that may already exist elsewhere in regulation related to a usual and customary rate?
> OLIVERSON: That's correct. Those are specific to the sections.
> J. TURNER: So if there are other sections in law right now in the Texas Administrative Code or regulation that talk about a definition that TDI has found to apply, that is not changed by your bill, correct?
> OLIVERSON: Correct.[i]

Finally, we note that at the Senate Business & Commerce hearing on SB 1264, statements that seem to support retention of TDI's current payment rules, which would include § 3.3708(b)(1), were made by at least one representative from a consumer group. More

specifically, Blake Hutson with AARP stated the following regarding the SB 1264's usual and customary language (as reflected in the Senate committee substitute language):

> so, the filed bill removed usual and customary rates from state law. The committee substitute puts it back in. So, I just want you to understand, there is no give away for health plans and there is no give away for doctors in this bill. It is straight existing law in terms of usual and customary rate and this bill is solely a consumer protection bill...[1]

We contend that if TDI were to remove § 3.3708(b)(1) from its rules, there would be significant "give away for doctors" in terms of the initial payment that they receive from the health plans and an increased cost burden to pursue arbitration in order to be paid fairly. Conversely, there would be an undeserved windfall created for health insurers. In other words, this would be a significant shift via rulemaking that is wholly inconsistent with the goal of the Texas Legislature in the passage of SB 1264, as well as the language of the statute. Thus, we strongly urge TDI to reject TAHP's recommendation for repeal of 28 TAC § 3.3708(b)(1).

b. EPO and HMO hold harmless requirement in 28 TAC §3.3725(d) and 11.1611(d)

Finally we contend that for many of the same reasons stated above (i.e., to ensure robust networks, implement legislative intent, and avoid converting SB 1264 into an insurer/HMO windfall bill), EPOs and HMOs must continue to have an obligation to hold their enrollees harmless. We do not agree with TAHP's assertion that "… the regulatory mandate in sections 11.1611(d) and 3.3725(d) that HMO and EPO plans must ensure the insured/enrollee is 'held harmless' is contrary to the plain language and clear intent of SB 1264."

Rather, we believe that under the plain language of SB 1264, the Texas Legislature intended for EPO and HMO plans to continue to hold their enrollees harmless by requiring EPOs and HMOs to pay an agreed to rate or an initial usual and customary rate in a heightened amount (including an amount approaching full billed charges if a lesser amount is not agreed to by the physician and plan).

As stated above, the Legislature's goal under SB 1264 was only to get the patient out of the middle by removing the possibility of a balance bill being sent to an enrollee, not to relieve health plans of their existing payment obligations (which were to pay up to full billed charges if necessary to hold the enrollee harmless).

The Legislature's intent to retain the health plan hold harmless obligation is reflected in the plain language of SB 1264, which provides that an arbitration of a settlement of an out-of-network health benefit claim may be requested by the health plan or the physician. *See* Section 1467.084, Insurance Code. If HMOs and EPOs were no longer required to hold their enrollees harmless (which after SB 1264 framework TDI should interpret as requiring a heightened initial UCR

[1] See testimony at 1:44 here: https://tlcsenate.granicus.com/MediaPlayer.php?view_id=45&clip_id=14013

payment prior to arbitration), then there would be no reason for health plans to ever initiate arbitration. The only rational reason for health plans to initiate arbitration is if their initial UCR payment obligation exceeds an amount that they think is reasonable for the service.

Once again, TMA thanks you for the opportunity to provide these comments. If you should have any questions or need any additional information, please do not hesitate to contact me or following staff of the Texas Medical Association: Rocky Wilcox, JD, TMA General Counsel; Kelly Walla, JD, LLM, TMA Deputy General Counsel; Genevieve Davis, TMA Associate Vice President of Payment Advocacy; or Clayton Stewart, TMA Director, Legislative Affairs at TMA's main number 512-370-1300.

Sincerely,

David C. Fleeger, MD
President, Texas Medical Association

[i] Note that we expect the health plans to argue that the Senate floor questions regarding SB 1264 counter the House floor intent; however, we note that the Senate floor questions seem to reflect a bit of a misunderstanding of TDI's current usual and customary charge provision in § 3.3708(b)(1) and EPO/HMO hold harmless provisions.

More specifically, in the Senate floor discussions:

> Sen. Taylor asks: "Sen. Hancock, is it your intent that the requirement for HMOs and insurers to pay for out-of-network claims impacted by this bill at the usual and customary rate or an agreed rate, does that mean they have to pay the billed charges on the claim?"
>
> Sen. Hancock's responds: "Absolutely not."
>
> Sen. Taylor then asks: "Does it mean they have to pay those claims based on billed charges data?"
>
> Sen. Hancock's responds: "Absolutely not."

> Sen. Taylor asks: "Would you agree that this usual and customary rate or agreed rate requirement is intended to provide a new out-of-network payment standard for TDI rules for these types of claims?"
>
> Sen. Hancock responds: "Yes, thank you Senator Taylor, the bill does not require payment based on billed charges but allows the provider to request mediation or arbitration if they want to try to collect more from the health plans."
>
> Sen. Taylor asks: "And, this new requirement is different from the usual and customary charge and hold harmless requirements currently in TDI rules?"
>
> Sen. Hancock responds "Correct. Yes, sir"
>
> Sen. Taylor asks: "It is my understanding that the only actual hold harmless requirement in the Insurance Code is a provision that in-network HMO providers may not balance bill enrollees for covered claims. In other words, the hold harmless provision in Texas is a prohibition on balance billing patients, not a health plan payment requirement. Is that right?"
>
> Sen. Hancock responds: "Yes, Correct on both of those. In fact, Senator Taylor I've got a couple of examples here on what were billed charges. There were 8 stitches and three visits with charges of over $70,000 of billed charges; a pregnancy test with a charge of $800 for the pregnancy test; a simple strep throat test charge of $1,000; a flu test for a charge of $500. So, I mean, these are examples we have where billed charges really are irrelevant to the actual cost.

We note that retention of § 3.3708(b)(1)'s requirement to make the initial payment, at a minimum, at the usual and customary charge does not conflict with this legislative intent question and response exchange. As TDI itself stated in its adoption order for §3.3708, "The rule does not require insurers pay providers 'billed charges.' Instead, the insurer may determine, subject to the requirements of the rule, what the usual and customary charge for the service is in the geographic area." TDI has been consistent in this messaging by also stating in its biennial report "Usual and customary charges are generally less than billed charges, but still higher than what insurers consider reasonable."

Similarly, retaining the hold harmless requirement in existing TDI rules is not inconsistent with the Senate floor exchange, because the HMO/EPO hold harmless requirement has been construed as mandating that HMOs and EPOs pay an amount sufficient to ensure that a balance bill will not be issued (which may be up to full billed charge in some instances but does not specifically mandate billed charge payment in every scenario). In other words, it requires a heightened health plan payment. Thus, TDI should continue, by rule, to require HMOs and EPOs to hold their enrollees harmless (while modifying the rule, as discussed in the body of this letter).

Regan Ellmer

From: James Person
Sent: Thursday, October 3, 2019 3:54 PM
To: Regan Ellmer
Subject: FW: TDI Request for Rules Modification Proposals

From: David Day <[redacted]>
Sent: Wednesday, September 18, 2019 1:33 PM
To: Comments <Comments@tdi.texas.gov>
Subject: TDI Request for Rules Modification Proposals

Re: Proposed Amendment to Rule 15.106(b)(3)

Regarding your request to identify rules which are unreasonably difficult for compliance, Texas All Risk General Agency strongly suggests that the Texas Department of Insurance (TDI) revise Rule 15.106(b)(3) to remove the requirement to identify policy limits in filing policies with the Texas Stamping Office.

The REASONS this rule should be modified are as follows:

- The new requirement for policy limit data per policy was an ill-conceived concept based on the erroneous assumption that such data would be easily accessible by all reporting parties. In fact, many stakeholders, having never been required to report this data, do not track it. They might not have a data field in which to collect it. They might depend on their carrier to keep such stats.
- Thus the addition of this policy limits collection can result in significant programming expense across a broad range of applications.
- In addition, reporting the data will require additional man-hours of input on several levels, not limited to that format required by SLTX.
- Policy Limits of themselves are a meaningless statistic without knowing the various individual exposures represented in a single policy.
- The surplus lines brokerage space is already an industry of very limited margins among wholesalers, brokers, MGAs etc.
- Adding an additional employee or two, plus new programming outlay could easily push smaller independents into the red unless they pass this cost on to the insured.
- Larger wholesale groups will certainly pass this cost on to the consumer.
- The consumer will suddenly pay more for a wholly unnecessary "service"
- Worse yet, once an individual policy is tied to a piece of property, simple public record access will reveal financial information about property owner.
- The many applications for this data to be misused, stolen, sold or marketed are easy to predict and represent a completely unnecessary risk to the public.
- The Stamping Office entire reason for existence is to collect stamping fees – not to build a database of policy holders!

Recommendation

Amend Rule 15.106(b)(3) as follows:
Proposed change:
b) For purposes of reporting to the stamping office, the term "true and correct copy of a surplus lines insurance policy" as used in this section, includes:
(1) a declarations page;
(2) a listing of all participating insurers on the policy;
(3) all coverage parts and schedules

David Day
Senior Vice President
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Select General Agency, LLC.
TARGA Premium Finance Company
9696 Skillman - Ste. 170
Dallas, Texas 75243
800-627-0303
www.allriskga.com

Regan Ellmer

From: Comments
Sent: Wednesday, October 2, 2019 10:34 AM
To: Libby Elliott; Regan Ellmer
Subject: FW: Rules Comments
Attachments: TX Application Question Rule.docx; TX CE Topics Rule.docx; TX Credit Hours Rule.docx; TX Print Certificates Rule.docx

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From: Dillon Dolejsi <[redacted]>
Sent: Tuesday, October 01, 2019 3:19 PM
To: Comments <Comments@tdi.texas.gov>
Subject: Rules Comments

Good Afternoon,

WebCE would like to submit the rule changes attached for review. If you have any questions please let me know. Have a great day!

Dillon Dolejsi, SILA-A | Compliance Regulatory Supervisor
WebCE® | 12222 Merit Drive | Suite 500 | Dallas, TX | 75251
877.488.9308 | 972-616-1108
[redacted] | www.webce.com
Texas Monthly's Best Companies to Work for in Texas, 2017-2019

Rule: ***28 Texas Administrative Code, Section Rule §19.1011(d)(1); Requirements for Successful Completion of Continuing Education Courses***

Rule §19.1011(d)(1) states that the final examination or interactive inquiries must reasonably evaluate the student's understanding of the course content. At least 70% of the examination questions or interactive inquiries must be based at the application level. The remainder of the questions may be based at the knowledge level.

Reason for review:

Texas is the only state that has this requirement for the exams. This requires providers to create and maintain special exams just for Texas. Some education providers will choose not to offer the course in Texas because they don't want to create application-based questions and maintain two separate exam banks. Insurance CE providers who also work in other industries say this is not a common practice in other industries.

Issues related to the rule and priority for TDI:

Placing a higher emphasis on application-based questions is not educationally supported. Application-based questions are not intrinsically superior to recognition or recall questions in measure mastery of a subject.

The 70% rule does not take into consideration that some topics, when appropriately developed, do not lend themselves to application-based questions. A student's understanding and acclimation of these kinds of topics and learning points are quite often better assessed through "knowledge-based" questions (typical "recognition and recall" question). Due to the higher complexity of this type of question, they are often seen by agents as "trick questions".

Aside from the additional course development expense of this requirement, another issue is the determination of what qualifies as an application question. This is very subjective decision and there is no consistency among course reviewers. On several occasions, the course approval vendor rejected courses because they did not consider certain questions to be application - based. In these situations, the provider received a denial and appealed the decision that the questions did not qualify as application-based questions. In many cases, the appeal was not successful, and providers had to rewrite questions and send the course back through the editing process. This difference of opinion (of what is considered an application-based question) results in increased course development costs and delays in releasing a new or updated course.

The 70% application question requirement is even more onerous on classroom equivalent (CLEQ) courses where the "interactive inquiries" must also be 70% application questions, which significantly increases the number of questions that must be written for a classroom equivalent course. Each inquiry period must have 5 questions. Each inquiry period has a 50% new question requirement, so 10 questions must be written to display 5 questions per inquiry period. Each hour of classroom equivalency must have a minimum of 4 inquiry periods, therefore, every classroom equivalent (CLEQ) course hour requires 40 questions, 70% of which must be application based. For example, a 5-hour CLEQ course requires us to write 200 questions, of which 140 must be application questions.

Improvement on the rule:

It is our recommendation that **rule §19.1011(d)(1)** be stricken from the code. This would allow education providers the latitude to develop questions they feel are meaningful without the concern that the state approval vendor will not consider a question to be application-based. It also eliminates the additional expense to the state and education providers caused by subjective disagreements as to whether a question is an application question or not.

Rule: ***28 Texas Administrative Code, Section Rule §19.1006(a); Course Criteria***

Rule §19.1006(a) states the following:

To be certified as a continuing education course, the course content shall be designed to enhance the knowledge, understanding, and/or professional competence of the student as to one or more of the following topics: insurance principles and coverages; applicable laws, and rules; recent and prospective changes in coverages; technical policy provisions and underwriting guidelines and standards; law and the duties and responsibilities of the licensee; consumer protection; or insurance ethics. The course content may also include instruction on management of the licensee's insurance agency.

Reason for the review:

Currently, Texas takes a restrictive view on approved topics. This rule restricts the topic area to exclude areas which the modern insurance professional is expected to understand by their clients or the industry. They expect producers to understand how the products the producer is offering fit in the consumers overall financial goals. They do not want a producer that simply knows basic product features and provisions. Topics on estate planning, retirement planning, needs based planning, and other financial planning topics should be approved topics.

Issues related to the rule and priority for TDI

While the narrow topic list may be appropriate for a newly licensed producer, it does not reflect the "real life" of an experienced or seasoned producer whose business often overlaps with other financial products and topics, including estate planning, wealth accumulation and transfer, tax planning and qualified plans.

Rules and regulations must reflect the increased complexity of the insurance industry and melding of insurance and financial services' activities of an insurance producer. As previously mentioned, consumers demand and expect producers to have a broader base of knowledge than ever before. By having an overly restrictive list of approved topics, the rule is putting consumers at risk and defeating the purpose of insurance continuing education which is to "*… to enhance the knowledge, understanding, and/or professional competence of the student…*" Producers must know more than just policy provisions, laws, and ethics if they are going to provide competent professional guidance to Texas consumers.

For Example: A provider submitted an IRA course for CE approval. The course was denied as it was not related to insurance. The provider responded that IRAs can be funded with annuities (an insurance product) and therefore a producer MUST know the features of an IRA in order to ethically fund an IRA with an annuity. The course was rejected even after the response. Ironically, candidates for licensing in Texas are tested on retirement plans on the state exam. If they are required to know the information to become licensed, why is it not allowed as a topic for continuing education?

Improvement on the rule:

We recommend that Texas expand their approved topic/content list to include the recommended NAIC best practices on approved CE approved topics.

Rule: ***28 Texas Administrative Code, Section Rule §19.1010(a)(2)(A); Hours of Credit***

Rule §19.1010(a)(2)(A) mandates that the calculation of hours in Texas is calculated in one of two ways: the average of at least five time testers, or the average of approved credit in at least three other states.

Reason for review:

Texas is the only state that requires an education provider to pilot test a course to get a course approved in their state.

Issues related to the rule and priority for TDI:

The five time tester requirement is an issue because it is difficult to find five qualified individuals that are Texas producer licensed to do the time test. There is a significant delay in getting a course submitted due to waiting on the time tests to be completed.

Since Texas is our home state, we must first get it approved in at least 3 other states before they can submit to Texas. This causes a delay to go nationwide because now 3 other states must perform a substantive review of the course in order to get the home state approval in Texas and use reciprocity with remaining states.

Improvement on the rule:

It is our recommendation to remove these 2 methods of calculation and instead, calculate the number of CE credit hours using the NAIC Recommended Guidelines for Online Courses. Most states use a formula of 9,000 words per CE credit hour for a basic course. A factor of 1.25 (7,200 words per hour) is applied to intermediate level CE courses and a factor of 1.5 (6,000 words per hour) is applied for advanced level CE courses. This would simplify the process and allow for a quicker approval and release date which makes the courses available to TX producers much sooner.

Rule: ***28 Texas Administrative Code, Section Rule §19.1011(e); Requirements for Successful Completion of Continuing Education Courses***

RULE §19.1011(e) states the following:

(e) Providers shall issue certificates of completion to students who successfully complete a certified course. The provider must issue the certificate in a manner which shall ensure that the student receiving the certificate is the student who took the course, issue the certificate within 30 days of completing the course, and complete the certificate to reflect the date the student took the course/examination. Providers shall not allow a student, or any person or organization other than the provider giving the course, to prepare, print, or complete a certificate of completion.

Reasons for the review:

Texas is the only state who does not allow electronic certificates to be provided to the licensee.

Issues related to the rule and priority for TDI:

Continuing Education (CE) Providers would like to provide electronic certificates of completion for Texas Insurance Continuing Education courses. This allows the student immediate access to the certificate. Currently, CE Providers may not allow a student, or any person or organization other than the provider giving the course, to prepare, *print*, or complete a certificate of completion.

Improvement on the rule:

We recommend that the word "print" be removed from **RULE §19.1011(e)**.

Regan Ellmer

From: Comments
Sent: Wednesday, October 2, 2019 10:33 AM
To: Libby Elliott; Regan Ellmer
Subject: FW: suggested rule changes
Attachments: 542.051 suggestion (2).docx; 542.051 suggestion.docx; 542.056 suggestion.docx; 4051 suggestion.docx; Title 13 suggestion.docx

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From: Michael Brison <[redacted]>
Sent: Tuesday, October 01, 2019 12:50 PM
To: Comments <Comments@tdi.texas.gov>
Subject: suggested rule changes

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown or unexpected emails.

Here are our suggestions for rule changes. Thank you for this opportunity.

Michael Brison
Compliance Officer, Regulatory Affairs
WESTERN GENERAL INSURANCE COMPANY (NAIC # 27502)
WESTERN GENERAL AUTOMOBILE INSURANCE COMPANY (dba in Texas)
ALL MOTORISTS INSURANCE AGENCY
WESTERN GENERAL INSURANCE SERVICES (dba in Texas)
P.O. Box 4493
Woodland Hills, CA 91365

p: 818.880.9070 x340
f: 818.871.6677
www.westerngeneral.com

Issue:
Subchapter B. Prompt Payment of Claims
Section 542.051 (2) Definition of “Claim”
The TDI currently dictates that the word (2) "Claim" means a first-party claim that:
(A) is made by an insured or policyholder under an insurance policy or contract or by a beneficiary named in the policy or contract; and
(B) must be paid by the insurer directly to the insured or beneficiary.

Why should this be reviewed?
The TDI has defined the word “Claim” to only mean something that can be presented by a first-party, thereby excluding the third-party. There is no mention of a third-party in this definition.

This definition leads the reader to believe that any mention of the word “Claim” that follows throughout the entire Chapter 542 code does not include the third-party claimant. For example, in Sec. 542.055 – 542.060, each mention of the word “claim” and time frames provided in this section would appear to apply to first parties only; however, other information would appear to indicate the TDI applies these same requirements and time frames to both first and third-party claims. Additionally, the code uses the traditional definition of “Claimant” as a person making a claim; however, the definition of “claim” that precedes it implies that a “claim” can only be made by a first-party with their own insurer.

Suggestion:
Update the definition of “Claim” in Sec. 542.051. The definition should be reviewed to determine if any reference to a first or third-party is needed within the definition. In addition, if there are specific sections of Chapter 542 Processing and Settlement of Claims that are specific to first or third-party, then those specific sections of the code should clearly identify which sections apply to a first or third-party claimant. This would avoid any confusion by both the consumer and the insurer when identifying to whom those sections of the code apply.

Issue: Section 542.051 Definitions – There are definitions for standard insurance terms that are missing in the code, and these definitions should be added to reduce confusion for the consumer and insurer.

Why should this be reviewed? Lack of definitions create gray areas for both the consumer and insurer.

On the consumer side, there are various terms used in the insurance industry that the consumer will not necessarily understand if left undefined. For example, the terms “first-party”, “third-party”, and “proof-of-loss” are significant in the application of the code, but not defined for consumers in the code. The code should clarify these terms, so consumers can understand whether they are a first or third-party when presenting their claim.

On the insurer side, when a representative of the insurance company comes across undefined terms, they have no choice but to rely on another state’s code for a definition or on a standard dictionary’s definition of the term, which may lead the insurance company representative to use a definition that is different than the TDI’s intended use of the word.

Issue Ambiguous Text: Regarding time frame indicated in Section 542.056.

Sec. 542.056. NOTICE OF ACCEPTANCE OR REJECTION OF CLAIM. (a) Except as provided by Subsection (b) or (d), an insurer shall notify a claimant in writing of the acceptance or rejection of a claim not later than the 15th business day after the date the insurer receives all items, statements, and forms required by the insurer to secure final proof of loss.

(b) If an insurer has a reasonable basis to believe that a loss resulted from arson, the insurer shall notify the claimant in writing of the acceptance or rejection of the claim not later than the 30th day after the date the insurer receives all items, statements, and forms required by the insurer.

(c) If the insurer rejects the claim, the notice required by Subsection (a) or (b) must state the reasons for the rejection.

(d) If the insurer is unable to accept or reject the claim within the period specified by Subsection (a) or (b), the insurer, within that same period, shall notify the claimant of the reasons that the insurer needs additional time. The insurer shall accept or reject the claim not later than the 45th day after the date the insurer notifies a claimant under this subsection.

Why should this be reviewed?
This rule should be reviewed due to the ambiguous meaning of "additional time". The wording in 542.056 indicates that the insurer has 15 business days after securing the final proof of loss to accept or reject a claim. Section (d) goes on to discuss that if additional time is needed, the insurer must accept or reject the claims no later than the 45th day. Firstly, the language does not make it clear whether 45 days are being granted in addition to the initial 15 days. Secondly, the term "business day" is specifically mentioned as it pertains to the 15-day timeframe; however, business day is not referenced when discussing the 45-day timeframe. Since this section is specific to timeframes, the code should clarify whether the timeframes reference business days versus calendar days as the appropriate interpretation for the entire section of 542.056 (a-d).

Suggestion:
The text relating to timeframes in Section 542.056 could be written with more clarity. Firstly, because more than one timeframe is utilized in the same section of the code, the section should clarify if both time frames refer to business days. Secondly, consider simplifying the language and indicate that if the claim is not accepted or rejected in 15 days, then an additional 30 days is granted to the insurer, and the total days to accept or reject the claim should not exceed a total of 45 days. Alternatively, consider simply changing the Notice of Acceptance or Rejection of a Claim to a total of 45 days.

Issue:
TIC 4051: Company appointments

Why should this be reviewed?
A licensed entity can have a direct appointment with an insurer. Also, a general agent appointed with an insurer can sub-appoint a licensed retail agent, and that retail agent is not required to have a direct appointment with the insurer. Also, that retail agency can sub-appoint a licensed individual employee, and that employee is not required to have a direct appointment with the general agent or insurer.
Currently, the TDI website only shows when a licensed entity has a direct appointment with an insurer. In order to know who is sub-appointed to a general agent, the GA has to send a request to TDI Open Records and it costs $40. Note the TDI Open Records report does not list the license number of the appointed entity, which only makes our process even more difficult.

Suggestion:
The TDI website should provide a mechanism for someone to check all appointments for a licensed entity, even if it is not a direct appointment with an insurer.

Issue:
Title 13 Licensing

Suggestion:
Eliminate the rule that individual employees within an agency must be licensed and which holds insurers responsible for their licensing and appointment. It is nearly impossible for insurers to monitor and comply.

Make the agency owner responsible for licensing their staff, not insurers.

From: Fred wilson
Sent: Friday, August 30, 2019 11:58 AM
To: Comments <Comments@tdi.texas.gov>
Subject: Treating Doctors

I believe that there needs to be a rule change to help injured workers find a speciality treating doctor. Currently the injured worker, like myself, is tasked with trying to find a doctor to take over refilling my implanted drug infusion system. I have been trying for the past five years or more to find a doctor who would accept Workers Comp patients for my 1999 back injury. I have received doctors names from the Insurance company, my other medical doctors, nurses, workers comp case manager in Austin, attorneys and friends, to no avail.
Most doctors refuse to take on any or new Workers Comp patients, with most complaining of low reimbursement rates and or lack of getting approval to treat their patients. Specialists are even harder, if not impossible to find in Texas, that accept Workers Comp. The Ombudsman at the Denton Field Office told me that it had been over six months for her trying to find a Doctor to treat a worker with a head injury.

There should be a policy that would require the Workers Comp Insurance Carrier to provide a list of doctor to treat injured workers. This may cause reimbursement, to those doctors, at a rate those they will accept to treat injured workers and also approve treatment plans by same.

Employers , injured workers and doctors are currently at this mercy of the insurance carriers in Texas.

Fred A Wilson
903 583-8404

WOODLANDS INSURANCE SERVICES, LLC
P.O. Box 8369
The Woodlands, Texas 77387-8369
Phone 281/367-5010 Fax 281/367-5013
[redacted]

September 30, 2019

Chief Clerk
Hobby 1, Room 1210A
MC 112-2A, PO Box 149104
Austin, TX 78714-9104

RE: Proposed Amendment to Rule 15.106(b)(3)

Pursuant to your request to identify rules which are unreasonably difficult for compliance, Woodlands Insurance Services, LLC strongly suggests that the Texas Department of Insurance (TDI) revise Rule 15.106 (b)(3)to remove the requirement to identify policy limits in filing policies with the Texas Stamping Office.

Woodlands is a small business and cannot afford the added cost to hire someone to manually enter the required policy limits.

Our current accounting system is not able to update the system to include this provision when entering policy transactions. Vertafore has advised that they have been reviewing our request, but they cannot estimate when this will be implemented. Furthermore, we believe the data will be of limited use as the complexity of surplus lines policies make it difficult to precisely allocate the risk to lines of insurance.

We recommend that this rule be amended as follows:

For the purpose of reporting to the stamping office, allow our same procedure to remain the same (no policy limit included).

Thank you,

Annie Duvall
Woodlands Insurance Services, LLC

WSIA WHOLESALE & SPECIALTY INSURANCE ASSOCIATION

Chief Clerk
Hobby 1, Room 1210A
MC 112-2A, P.O. Box 149104
Austin, TX 78714-9104

Sent Via Email to: comments@tdi.texas.gov

Re: Suggestion for review and consideration of amendment to Rule 15.106(b)(3)

Dear Commissioner Sullivan,

On behalf of the Wholesale & Specialty Insurance Association (WSIA), we appreciate the opportunity to suggest rules that TDI should consider for review and potential revision. As the national trade association representing the surplus lines industry, we fully support efforts that lead to regulatory modernization and encourage efficiency and uniformity for the industry and its regulators. It is in this spirt that we recommend your immediate review and consideration to revise Rule 15.106(b)(3).

Rule 15.106(b)(3) requires surplus lines licensees to include policy limits with their fillings made to the Surplus Lines Stamping Office of Texas (Stamping Office). As the second largest surplus lines premium state in the nation, with over $6 billion in surplus lines premium from over one million items was filed in Texas in 2018, the impact of this rule is far-reaching throughout the industry. Our members have expressed concerns with this new requirement for two main reasons. First, while policy limits are a critical element of an insured's policy, policy limit data on an individual or cumulative basis do not illuminate particular market elements such as the financial strength, capacity or resiliency of the surplus lines market.

Second, the process for identifying and filing policy limits is not easily automated and has resulted in dedicating staff to individually review policies and manually import the data. Many policies do not have one straight forward limit; therefore, an individual must analyze the policy and make a determination for how the limits should be reported. This is a complicated process that requires a significant amount of manual analysis and judgement regarding the appropriate limits, appropriate components of coverage and appropriate aggregation thereof, given the oftentimes complex nature of a surplus lines product. Some of our members, especially smaller agencies, are dedicating additional staff and incurring significant administrative costs to comply with the Rule. Even larger agencies with more staff and technology resources report similar concerns.

We encourage you to carefully consider the utility and value of the policy limit data in relation to the resource impacts and administrative costs to the industry. We further encourage you to considering eliminating this requirement by **removing** the phrase "including limits" in 15.106(b)(3) and eliminate reporting policy limits for every filing submitted for the state.

Thank you for this opportunity and should you have any questions please contact us at your convenience.

Sincerely,

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