Subchapter Q. General Property and Casualty Rules
Division 4. Appraisal Requirements
28 TAC §§5.9800 - 5.9806

INTRODUCTION. The commissioner of insurance adopts new 28 TAC §§5.9800 - 5.9806, concerning requirements for appraisals, in new Division 4. The new sections are adopted with changes to the proposed text published in the May 8, 2026 issue of the *Texas Register* (51 TexReg 3050). The commissioner adopts §§5.9801, 5.9803, and 5.9804 without changes to the proposed text. Sections 5.9800, 5.9802, 5.9805, and 5.9806 were revised in response to public comments.

REASONED JUSTIFICATION. New §§5.9800 - 5.9806 are necessary to implement Senate Bill 458, 89th Legislature, 2025, which added new Insurance Code Chapter 1813, concerning Appraisal of Disputed Losses. SB 458 requires certain insurers writing personal automobile or residential property insurance to include an appraisal provision that complies with Insurance Code Chapter 1813 in an insurance policy delivered, issued for delivery, or renewed in Texas. New Insurance Code §1813.002 directs the commissioner to adopt rules necessary to implement the chapter, including rules that mandate appraisal and establish the period in which appraisal must be completed. The statute also directs the commissioner to consider the qualifications and selection of appraisers and umpires in adopting rules.

Sections 5.9800 - 5.9806 are added to new Division 4, which addresses the appraisal process for both personal automobile and residential property insurance and the notice insurers must send to a policyholder informing them of their right to appraisal. The requirements and conditions in Division 4 do not prohibit appraisal provisions from

including other requirements or conditions that do not limit or violate Insurance Code Chapter 1813 and Division 4. Any other requirements and conditions remain subject to other applicable Texas laws, such as the standards for forms subject to filing and approval under Insurance Code Chapter 2301, Subchapter A.

TDI proposed to make September 1, 2026, the deadline to implement the new requirements. In response to comments, the adopted deadline to implement the new requirements is March 1, 2027. This adopted compliance date will give insurers time to amend the appraisal provisions in automobile and residential property insurance policies and to draft and incorporate the appraisal process notice into their claim handling procedures. In addition, it gives insurers time to file the amended policy forms with TDI for review and approval before the adopted March 1, 2027 deadline.

Descriptions of the new sections follow.

Section 5.9800. This section describes the purpose and scope of new Division 4, relating to Appraisal Requirements. Subsection (a) states that the purpose of Division 4 is to implement Insurance Code Chapter 1813. Subsections (b) and (c) provide the applicability of Division 4, consistent with Insurance Code §1813.001, and state that Division 4 applies to personal automobile and residential property insurance delivered, issued for delivery, or renewed on or after March 1, 2027. As previously stated, the deadline to implement Division 4 is changed in response to comments from September 1, 2026, to March 1, 2027, in subsection (c).

Section 5.9801. This section provides definitions for use in new Division 4 to ensure clear and consistent interpretation and application of the rules. This section includes definitions

of appraisal, appraisal provision, appraisal award, appraiser, party, personal automobile insurance, residential property insurance, and umpire.

The definition of "appraisal" refers to the process to resolve disputes about the amount of loss as described in Insurance Code Chapter 1813, and the definition of "appraisal provision" refers to the policy provision that provides for appraisal required under Insurance Code Chapter 1813.

The definition of "appraisal award" specifies that the determination of the amount of loss is signed by both appraisers or one appraiser and the umpire. Consistent with a typical appraisal provision, the umpire cannot unilaterally determine the amount of loss.

The definition of "party" means the insurer or the policyholder.

The definitions of "personal automobile insurance" and "residential property insurance" align with the description of those terms in Insurance Code §2301.051, helping to ensure clear and consistent application of these rules.

"Appraiser" and "umpire" are defined similarly to mean an individual who is qualified to act as an appraiser or umpire under Division 4 and who is hired or otherwise selected or appointed to participate in the appraisal process.

Section 5.9802. This section outlines the general requirements for appraisal provisions required in certain insurance policies under Insurance Code Chapter 1813. These requirements do not prohibit appraisal provisions from including other requirements or conditions that do not limit or violate Insurance Code Chapter 1813 and new Division 4. Any other requirements and conditions remain subject to other applicable Texas laws, such as the standards for forms subject to filing and approval under Insurance Code Chapter 2301, Subchapter A.

To establish the general requirements for appraisal provisions, this section specifies that every policy subject to Insurance Code Chapter 1813 must include an appraisal provision that meets the standards outlined in paragraphs (1) - (6) of the section.

Paragraph (1) requires applicable policies to contain an appraisal provision that states that either party has the right to unilaterally demand appraisal. Permitting either party to invoke appraisal is consistent with SB 458, which mandates that certain automobile and residential property insurance policies include an appraisal provision. Requiring both parties to consent to appraisal before it is executed would frustrate the purpose of SB 458.

Paragraph (2) states that the ability to demand appraisal must not be conditioned on the parties reaching an impasse. As described in Insurance Code §1813.003, the appraisal provision is intended to provide a dispute resolution process when the amount of loss is in dispute. A dispute indicates disagreement between the parties and does not require the parties to show that there is no chance of reaching an agreement.

Paragraph (3) states that appraisal is available for partial and total losses. Appraisal is not limited to total losses; it is also available for damaged property that only requires repair. In response to comments, TDI has modified paragraph (3) to clarify that appraisal subject to Division 4 does not apply to a total loss by fire that is subject to Insurance Code §862.053(a).

Paragraph (4) aligns with Insurance Code §1813.004 to clarify that an appraisal provision must require the appraisal award to be binding as to the amount of loss unless it was made without authority; was not made in substantial compliance with the appraisal provision; or there was fraud, accident, or material mistake relevant to the appraisal.

Paragraph (5) requires appraisal provisions to state the deadlines and process for appraisal. Deadlines must include the specific amounts of time listed in new §5.9805 and §5.9806 and be consistent with the other requirements in Division 4. The time limits and deadlines in new §5.9805 and §5.9806 provide a consistent and reliable basic timeframe for the appraisal process, while also giving the parties flexibility to agree to modify deadlines after a claim is made and the notice of acceptance or rejection under Insurance Code §542.056 has been provided. For example, after the notice is provided, the parties could agree to shorten or lengthen the amount of time for the appraisers to reach an agreement on the amount of loss, tailoring the amount of time to accommodate schedules or account for a simple or complex loss. Paragraph (5) does not prohibit an appraisal provision from having additional deadlines.

Paragraph (6) clarifies that appraisal provisions must not conflict with new Division 4 or other Texas law, such as the policy form standards in Insurance Code Chapter 2301, Subchapter A.

Section 5.9803. This section outlines the information that must be included in an appraisal process notice provided to policyholders. The requirement to send the appraisal process notice promotes consumer protection by alerting the policyholder and elevating key information, such as how to demand an appraisal, the policyholder's responsibilities, and the time limits. Findings in TDI's 2024 Appraisal Experience Data Call Report (Appraisal Experience Report available at www.tdi.texas.gov/reports/pc/documents/2024-appraisal-experience-data-call-report.pdf) indicate that appraisal is demanded in only a small percentage of claims. Policyholders are unlikely to be familiar with how appraisal works and might not be aware of the availability of appraisal to resolve a dispute about the

amount of loss. The appraisal process notice helps ensure policyholders are informed of appraisal and receive basic information about how it works when an insurer notifies the policyholder of the acceptance or rejection of a claim.

Subsection (a) requires an insurer to provide an appraisal process notice to the policyholder at the same time the insurer provides the notice of acceptance or rejection of the claim required under Insurance Code §542.056. The insurer may add the information required under subsection (b) to the notice sent under Insurance Code §542.056. Insurers may also choose to create a separate notice containing the information required under new §5.9803 and provide it to the policyholder at the same time as the notice required under Insurance Code §542.056.

Subsection (b) requires the appraisal process notice to be written in plain language and appear in at least 10-point type, and explain the following basic information:

- where the appraisal provision is located in the policy contract;

- how the policyholder may demand appraisal, including where to send the demand and what information the demand should include;

- the policyholder's responsibilities in the appraisal process;

- how the policyholder may request appointment of an umpire if the appraisers fail to jointly choose the umpire within the time provided, including how to request judicial appointment of an umpire;

- the applicable time limits in the appraisal process, including certain minimum information regarding deadlines; and

- the effect of the appraisal award.

Section 5.9804. This section outlines the minimum qualifications that an appraiser or umpire must possess for appraisals subject to Insurance Code Chapter 1813 and new Division 4. Under subsection (a), all appraisers and umpires must meet the minimum qualifications, including (1) competency to evaluate the type of loss in the dispute, (2) independence from the parties, and (3) disinterest in the outcome of the appraisal. A competency element is a long-standing, standard feature in personal automobile and residential property appraisal provisions, including in promulgated Texas personal automobile and homeowners policies. Independence from the parties is also a common element in many appraisal provisions, including in promulgated Texas homeowners policies. Finally, many appraisal provisions require appraiser and umpire disinterest in the outcome. Preventing appraisers from having a particular pecuniary interest in the outcome promotes fairness and trustworthiness in dispute resolution.

Under subsection (b), appraisers and umpires in a residential property appraisal that involves loss to a dwelling must also be an (1) adjuster or public adjuster with experience or training in estimating residential property losses; (2) engineer or architect with experience or training in residential construction or repair, investigating residential property damage, or estimating residential property losses; or (3) individual who otherwise has occupational experience or training in constructing or repairing the type of damaged property at issue or estimating the type of property loss at issue. Specifying particular experience or training for appraisal of loss to a dwelling helps ensure that only properly qualified individuals participate and increases consistency in the market.

Because the section outlines only the minimum qualifications of an appraiser or umpire, appraisal provisions may establish additional or more specific qualifications so long as those provisions do not conflict with Division 4. This added flexibility reflects that

loss disputes of this nature can vary significantly, such as the variation in the type and extent of property at issue; insurers can decide whether more nuanced qualifications may be appropriate.

Section 5.9805. This section specifies requirements for the appraisal process under residential property insurance policies. Subsection (a) is reorganized to accommodate the changes made to subsection (a)(1) and (2) in response to comment. As adopted, subsection (a) states that a demand for appraisal under a residential property insurance policy must be made in writing and delivered to the other party within the time limits listed in subsection (a)(1) - (3). As adopted, subsection (a)(1) - (3) specify deadlines for demanding appraisal.

As proposed, subsection (a)(1) specified that, except as provided in subsection (a)(2), an appraisal demand must be made in writing not later than one year after the insurer notifies the policyholder of acceptance or rejection of the claim as required under Insurance Code §542.056. In response to comment, subsection (a)(1) is modified to remove the one-year deadline to demand appraisal. As adopted, subsection (a)(1) states that, except as provided in subsection (a)(2) and (3), a demand for appraisal must be made not later than the expiration of the limitations period for filing suit under the policy. This change retains the "use-it-or-lose-it" nature of appraisal under Division 4 while aligning the appraisal demand deadline with the limitations period stated in the policy. TDI expects this change will lessen potential complexity or disagreement about these deadlines, reduce the potential for deadline gamesmanship, and provide ample opportunity for parties to invoke appraisal. Appraisal can be a more affordable and efficient dispute resolution process than litigation when an amount of loss is in dispute, so preserving a

party's ability to initiate appraisal as an alternative to initiating litigation is beneficial.

In the proposal, subsection (a)(2) required the respondent to a lawsuit to have 30 days to demand appraisal if a lawsuit was filed concerning the loss at issue. However, in response to comment, subsection (a)(2) and (3) create separate deadlines to demand appraisal in response to a pre-suit notice under Insurance Code §542A.003 and in response to a filed lawsuit. As adopted, subsection (a)(2) states that if a pre-suit notice is provided under Insurance Code §542A.003, an appraisal demand by an insurer must be made not later than 60 days after the notice is provided. This change addresses claims arising under Insurance Code Chapter 542A and connects the deadline to demand appraisal after receiving the Insurance Code §542A.003 notice to the notice period. Insurance Code §542A.003 requires the claimant to provide a pre-suit notice at least 61 days before filing a lawsuit and outlines the specific information that must be included in the notice. TDI expects that the information in the pre-suit notice will provide insurers with sufficient information to decide whether to demand appraisal. The 60-day deadline in subsection (a)(2) will help ensure that an insurer is aware of a dispute about the amount of loss before the opportunity to demand appraisal is gone while requiring the demand be made before litigation begins. New subsection (a)(3)(B) addresses the deadline for demanding appraisal in response to a lawsuit and is discussed in a subsequent paragraph.

In response to comment, new subsection (a)(3) explains what happens when a lawsuit is filed concerning the loss at issue for both the plaintiff and the respondent. Subsection (a)(3)(A) provides that the plaintiff may no longer demand appraisal if a lawsuit is filed concerning the loss at issue. However, if the insurance policy requires an appraisal before a lawsuit may proceed and the lawsuit was filed by a policyholder before the expiration of the limitations for filing suit under the policy, then the plaintiff may still

demand appraisal under subsection (a)(3)(A)(i) and (ii). Allowing a party to initiate litigation and then later demand appraisal raises concerns about potential gamesmanship and unnecessary delay and expense. However, in the situation described in clauses (i) and (ii) of subsection (a)(3)(A), the insurer's preference to pursue appraisal before proceeding with litigation is indicated by the policy itself.

Subsection (a)(3)(B) states that, except for an insurer who is provided a pre-suit notice under Insurance Code §542A.003, an appraisal demand by the respondent to a lawsuit must be made no later than the date the answer is filed or the date the answer is due, whichever is earlier. Subsection (a)(3)(B) addresses commenters concerns about receiving notice of the lawsuit after the window to demand appraisal has expired while still giving the claimant certainty on the next stage of dispute resolution--either the respondent will demand appraisal before the date the answer to the lawsuit is due or the lawsuit will continue with appraisal no longer a unilateral option to the parties. Appraisal can be a more affordable and efficient dispute resolution process than litigation when an amount of loss is in dispute, so preserving a limited opportunity to initiate appraisal is beneficial. As adopted, subsection (a)(3)(B) provides that appraisal is an option after a lawsuit is filed, while ensuring it cannot be used for strategic advantage late in litigation.

Subsection (b) outlines other procedures and deadlines for residential property appraisal, including the deadlines to hire an appraiser, choose an umpire, and attempt to agree on the amount of loss. An appraisal award ordinarily represents the completion of appraisal. Because an appraisal award requires both appraisers or the umpire and one of the appraisers to agree on an amount of loss, setting deadlines establishes the time in which appraisal must be completed.

Under subsection (b)(1), each party must hire an appraiser and provide the other party with the appraiser's name and contact information in writing within 20 days after written demand for appraisal is made. This prevents undue delay and is consistent with many appraisal provisions, including those in promulgated Texas homeowners policies.

Subsection (b)(2) requires appraisers to jointly choose an umpire and requires the appraisal provision to use one of the two deadline options in subparagraphs (A) and (B) for when umpire selection must occur. The first option requires the appraisers to choose an umpire not later than 15 days after the requirements in subsection (b)(1) are completed. This is a common deadline used in many appraisal provisions, including those in promulgated Texas homeowners policies. The second option requires the appraisers to choose an umpire not later than 15 days after the appraisers cannot agree on the amount of loss in dispute within the time under subsection (b)(4). The second option is an alternative for insurers that might prefer to have an appraisal provision that allows appraisers to wait to see whether they can agree on the amount of loss before choosing an umpire. The two options give insurers flexibility to establish when the umpire selection should occur during the appraisal process.

For circumstances in which the appraisers fail to choose an umpire within the adopted deadlines, subsection (b)(3) states the methods of umpire selection. Under subsection (b)(3)(A), an appraisal provision must allow either party to request judicial appointment of an umpire through a county or district court where the residential property is located. Judicial appointment is the method many residential property appraisal provisions use, including in promulgated Texas homeowners policies, if the appraisers cannot agree on an umpire. Appraisal is a binding dispute resolution process that can offer an alternative to litigation, so it is reasonable to require appraisal provisions

to have a judicial appointment option if there is a disagreement over who should be the umpire.

Subsection (b)(3)(B) authorizes insurers to include, in addition to judicial appointment required under subsection (b)(3)(A), other methods of umpire appointment in an appraisal provision. In response to comment, TDI changes (b)(3)(B) to clarify that judicial appointment must always be included in an appraisal provision under §5.9805, but that insurers may also include other appointment options as outlined in subsection (b)(2)(B)(i) and (ii). Some residential property appraisal provisions currently provide for the umpire to be chosen by an independent vendor if the appraisers cannot agree. As proposed, subsection (b)(3)(B)(i) allowed an insurer to provide an option for umpire appointment by an independent vendor that offers umpire selection services. The proposed options included providing at least two vendors and letting the policyholder select the vendor, or allowing only the policyholder to invoke the independent vendor option if only one vendor was provided. In response to comment and to promote fairness, subsection (b)(3)(B)(i) is modified. As adopted, it permits an insurer to include an option for umpire appointment by an independent vendor as long as the policy allows only the policyholder to invoke that option. This allows both parties to participate in selecting the vendor method: the insurer can decide whether to offer a vendor appointment option and what vendor to include in the policy, and the policyholder can decide whether to invoke the option if it is offered. This change addresses numerous commenters' concerns, which are discussed in the response to comment section of this adoption order. Because the independent vendor appointment option may be invoked only at the policyholders' option, the alternative "two vendor" option that was proposed is removed.

Subsection (b)(3)(B)(ii) allows for an umpire appointment through any alternative method that both parties mutually agree to in writing after appraisal has been demanded. By allowing the options of subparagraph (B), in addition to the required judicial appointment option, the adopted rule gives insurers the opportunity to offer potentially more flexibility and efficiency in the appointment process while preserving policyholder choice.

Subsection (b)(3)(C) requires a party requesting umpire appointment through judicial appointment or by independent vendor to give written notice to the other party at least 10 days before making the request. For judicial appointments, the written notice must include the location and identity of the court. Subsection (b)(3)(D) also requires the party requesting appointment to provide the other party with a copy of the request before or when the request is submitted. Subparagraphs (C) and (D) in subsection (b)(3) ensure that both parties are aware of an umpire appointment request.

Subsection (b)(4) and (5) outlines the deadlines for attempting to agree on the amount of loss in dispute during appraisal. Under subsection (b)(4), appraisers must attempt to agree within 120 days after the appraisal demand. The 120-day deadline strikes a balance between providing time for the appraisers to attempt to agree on the amount of loss while ensuring that appraisal is completed in a reasonable amount of time. Findings in the Appraisal Experience Report indicate that about 75% of residential property appraisal awards that did not involve an umpire were made within 120 days after appraisal was demanded.

Under subsection (b)(5), when appraisers are unable to agree and an umpire is involved, the appraisers must submit their differences to the umpire and each other. An appraisal award must be issued not later than 240 days after the appraisal demand was

made. Appraisal provisions, including those in promulgated Texas homeowners policies, commonly require appraisers to submit their differences to an umpire if the appraisers cannot agree on an amount of loss. According to the Appraisal Experience Report, 75% of residential property appraisal awards involving an umpire were made within 278 days after appraisal was demanded, and 50% were made within 193 days. The adopted 240-day deadline strikes a balance between completing appraisal in a timely manner and the need to give the umpire sufficient time to evaluate the loss, examine the differences, and attempt to agree on the amount of loss with at least one of the appraisers. Subject to subsection (c), if the appraisal award is not issued by the 240-day deadline, then the umpire's engagement is terminated on that date, and the appraisers must choose a new umpire within 15 days after the deadline passes.

Subsection (c) authorizes parties to modify any deadline in the appraisal process by written agreement after the appraisal process notice is provided under §5.9803. This gives the parties flexibility to adjust the timeframe after a loss occurs, allowing them to extend or shorten deadlines to tailor the appraisal process to the relative breadth and complexity of the loss at issue.

Section 5.9806. This section specifies requirements for the appraisal process under personal automobile insurance policies. Subsection (a) is reorganized to accommodate the changes made to subsection (a)(1) and (2) in response to comment. As adopted, subsection (a) states that a demand for appraisal under a personal automobile insurance policy must be made in writing and delivered to the other party within the time limits listed in subsection (a)(1) and (2). As adopted, subsection (a)(1) and (2) specify deadlines for demanding appraisal.

As proposed, subsection (a)(1) specified that, except as provided in subsection (a)(2), an appraisal demand must be made in writing not later than 120 days after the insurer notifies the policyholder of acceptance or rejection of a claim as required under Insurance Code §542.056. In response to comment, subsection (a)(1) is modified to remove the 120-day deadline to demand appraisal. As adopted, subsection (a)(1) states that, except as provided in subsection (a)(2), a demand for appraisal must be made not later than the expiration of the limitations period for filing suit under the policy. This change retains the "use-it-or-lose-it" nature of appraisal under Division 4 while aligning the appraisal demand deadline with the limitations period stated in the policy. TDI expects this change will lessen potential complexity or disagreement about these deadlines, reduce the potential for deadline gamesmanship, and provide ample opportunity for parties to invoke appraisal. As previously discussed, appraisal can be a more affordable and efficient dispute resolution process than litigation when an amount of loss is in dispute, so preserving a party's ability to initiate appraisal as an alternative to initiating litigation is beneficial.

In the proposal, subsection (a)(2) provided that if a lawsuit was filed concerning the loss at issue, the respondent to the lawsuit must have 30 days to demand appraisal. However, in response to comment, subsection (a)(2) as adopted provides that if a lawsuit is filed concerning the loss at issue, then subsection (a)(2)(A) and (B) apply. Under new subparagraph (A), if a lawsuit is filed concerning the loss at issue, the plaintiff to the lawsuit may no longer demand appraisal unless the insurance policy requires an appraisal before a lawsuit may proceed and the lawsuit was filed by a policyholder before the expiration of the limitations period for filing suit under the policy. Allowing a party to initiate litigation and then later demand appraisal raises concerns about potential

gamesmanship and unnecessary delay and expense. In subsection (a)(2), a party's ability to unilaterally demand appraisal after the party files a lawsuit is limited to the circumstances described in (a)(2)(A)(i) and (ii). In that situation, the insurer's preference to pursue appraisal before proceeding with litigation is indicated by the policy itself. Adopted subsection (a)(2)(B) states that an appraisal demand by the respondent to a lawsuit must be made no later than the date the answer is filed or the date the answer is due, whichever is earlier.

Subsection (a)(2), as adopted, addresses commenters concerns about receiving notice of the lawsuit after the window to demand appraisal has expired while still giving the claimant certainty on the next stage of dispute resolution--either the respondent will demand appraisal before the date the answer to the lawsuit is due, or the lawsuit will continue with appraisal no longer a unilateral option to the parties. As adopted, subsection (a)(2) provides appraisal as an option after a lawsuit is filed, while ensuring it cannot be used for strategic advantage late in litigation.

Subsection (b) outlines other procedures and deadlines for personal automobile appraisal, including the deadlines to hire an appraiser, choose an umpire, and attempt to agree on the amount of loss. An appraisal award ordinarily represents the completion of appraisal. Because an appraisal award requires both appraisers or the umpire and one of the appraisers to agree on an amount of loss, setting deadlines establishes the time in which appraisal must be completed.

Under subsection (b)(1), each party must hire an appraiser and provide the other party with the appraiser's name and contact information in writing within 20 days after written demand for appraisal is made. While many personal auto appraisal provisions do not specify a deadline to select an appraiser, setting a 20-day deadline helps to ensure

that appraisers are identified and able to begin efforts to agree on the amount of loss in a timely manner.

Subsection (b)(2) requires appraisers to jointly choose an umpire and requires the appraisal provision to use one of the two deadline options in subparagraphs (A) and (B) for when umpire selection must occur. The first option requires the appraisers to choose an umpire not later than 15 days after the requirements in subsection (b)(1) are completed. The second option requires the appraisers to choose an umpire not later than 15 days after the appraisers cannot agree on the amount of loss in dispute within the time under subsection (b)(4). While many personal auto appraisal provisions do not specify a deadline to choose an umpire, setting a 15-day deadline will help ensure that an umpire is identified and able to begin efforts to resolve the appraisal in a timely manner if the appraisers cannot agree on the amount of loss. The two options give insurers flexibility to establish when the umpire selection should occur during the appraisal process.

For circumstances in which the appraisers fail to choose an umpire within the adopted deadlines, subsection (b)(3) states the methods of umpire selection. Under subsection (b)(3)(A), an appraisal provision must allow either party to request judicial appointment of an umpire through a county or district court where the vehicle is principally garaged. Appraisal is a binding dispute resolution process that can offer an alternative to litigation, so it is reasonable to require appraisal provisions to include a judicial appointment option if there is a disagreement over who should be the umpire. In response to comment, proposed subsection (b)(3)(A) is modified to clarify that the vehicle is "principally garaged as identified in the personal automobile insurance policy." This clarification will help reduce potential confusion and provide more certainty about where to request judicial appointment of an umpire.

Subsection (b)(3)(B) authorizes insurers to include, in addition to judicial appointment required under subsection (b)(3)(A), other methods of umpire appointment in an appraisal provision. In response to comment, TDI modifies (b)(3)(B) to clarify that judicial appointment must always be included in an appraisal provision under §5.9805, but that insurers may also include other appointment options as outlined in subsection (b)(2)(B)(i) and (ii). As proposed, subsection (b)(3)(B)(i) allowed an insurer to provide for the umpire to be chosen by an independent vendor if the appraisers cannot agree. The proposed options included providing at least two vendors and letting the policyholder select the vendor or allowing only the policyholder to invoke the independent vendor option if only one vendor was provided. In response to comment and to help ensure fairness, subsection (b)(3)(B)(i) is modified. As adopted, it permits an insurer to include an option for umpire appointment by an independent vendor so long as the policy allows only the policyholder to invoke that option. This allows both parties to participate in selecting the vendor method: the insurer can decide whether to offer a vendor appointment option and what vendor to include in the policy, and the policyholder can decide whether to invoke the option if it is offered. This addresses numerous commenters' concerns, discussed in the comment section of this adoption order. Because the independent vendor appointment option may be invoked only at the policyholders' option, TDI removes the alternative "two vendor" option that was proposed.

Subsection (b)(3)(B)(ii) allows for an umpire appointment through any alternative method that both parties mutually agree to in writing after appraisal has been demanded. By allowing the options in subparagraph (B), in addition to the required judicial appointment option, the adopted rule gives insurers the opportunity to offer potentially

more flexibility and efficiency in the appointment process while preserving policyholder choice.

Subsection (b)(3)(C) requires a party requesting umpire appointment through judicial appointment or by independent vendor to give written notice to the other party at least 10 days before making the request. For judicial appointments, the written notice must include the location and identity of the court. Subsection (b)(3)(D) also requires the party requesting appointment to provide the other party with a copy of the request before or when the request is submitted. Subsection (b)(3)(C) and (D) ensure that both parties are aware of an umpire appointment request.

Subsection (b)(4) and (5) outlines the deadlines for attempting to agree on the amount of loss in dispute during appraisal. Under subsection (b)(4), appraisers must attempt to agree within 40 days after the appraisal demand. The 40-day deadline strikes a balance between providing time for the appraisers to attempt to agree on the amount of loss while ensuring that appraisal is completed in a reasonable amount of time. Findings in the Appraisal Experience Report indicate that over 75% of personal automobile appraisal awards that did not involve an umpire were made within 40 days after appraisal was demanded.

Under subsection (b)(5), when appraisers are unable to agree and an umpire is involved, the appraisers must submit their differences to the umpire and each other. An appraisal award must be issued not later than 180 days after the appraisal demand was made. Appraisal provisions, including those in the promulgated Texas personal automobile policy, commonly require appraisers to submit their differences to an umpire if the appraisers cannot agree on an amount of loss. According to the Appraisal Experience Report, 75% of personal automobile appraisal awards that involved an umpire

were made within 210 days after appraisal was demanded, and 50% were made within 114 days. Setting a 180-day deadline strikes a balance between completing appraisal in a timely manner and the need to give the umpire sufficient time to evaluate the loss, examine the differences, and attempt to agree on the amount of loss with at least one of the appraisers. Subject to subsection (c), if the appraisal award is not issued by the 180-day deadline, then the umpire's engagement is terminated on that date, and the appraisers must choose a new umpire within 15 days after the deadline passes.

Subsection (c) authorizes parties to modify any deadline in the appraisal process by written agreement after the appraisal process notice is provided under §5.9803. This gives the parties flexibility to adjust the timeframe after a loss occurs, allowing them to extend or shorten deadlines to tailor the appraisal process to the relative breadth and complexity of the loss at issue.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on June 15, 2026.

Commenters: TDI received comments from 204 commenters. Eighteen commenters spoke at a public hearing on the proposal held on June 2, 2025. Commenters in support of the proposal with changes were American Adjuster Association, American Property and Casualty Insurers of America, Auto Body Association of Texas, Auto Claim Specialists, Avondale Collision and Repair, Bravura Claims Negotiations LLC, Chad T. Wilson Law Firm, DC Group, Direct Appraisal, Frank Kent Cadillac, Germania Farm Mutual Insurance Association, Green Klein Wood and Jones, Griffin's Paint & Body Inc., High Gear Collision, Insurance Council of Texas, Koning Rubarts LLP, Markel Specialty, Law Office of Michael P. Bowman PLLC, Miracle Body & Paint, Mitchell Williams, National Association of Mutual

Insurance Companies, National Property Claim Solutions, Office of Public Insurance Counsel, PALCO Claims, Palker Law Firm, Petty Details LLC, Reno Paint & Body, Rise Document Inc., State Representative Matt Morgan, Texas Automobile Dealers Association, Texas Farm Bureau Insurance, Texas Watch, Universal Motorcars of Houston, United States Automobile Association, and Zelle LLP, as well as 168 individual commenters and a commenter on behalf of "AAA."

General Comments

Comment. One commenter notes that the scope of SB 458 is narrow and that its key purpose is to mandate that an appraisal provision be included in residential property and personal automobile policies. The commenter recommends the rules remain narrowly focused on mandating an appraisal provision, identifying time to completion of appraisal, and the qualifications and selection of appraisers and umpires. The commenter expresses concern that the proposed rule goes beyond the scope of SB 458 and the specificity in the proposed rule will require significant revision and refiling of existing appraisal provisions in policies. The commenter urges TDI to adopt rules that meet the core goal of ensuring the availability of appraisal but not to expand the rule into a myriad of other legal and procedural issues that may be better addressed outside of rulemaking.

Agency Response. TDI disagrees that the rule goes beyond the scope of SB 458 or is too broad and declines to make a change. The rules provide a general framework focused on minimum qualifications and selection of appraisers and umpires, and deadlines that establish the period in which appraisal must be completed. The rules also focus on ensuring the availability of appraisal to each party, including requiring insurers to provide a well-timed notice of the appraisal process to policyholders. Within those focus areas,

the rules provide notable flexibility, such as providing an opportunity for parties to mutually agree to modify deadlines under §5.9805(c) and §5.9806(c) and allowing appraisal provisions to establish additional or more specific appraiser and umpire qualifications as long as they do not conflict with the rules.

Comment. Multiple commenters express interest in how the appraisal process will interact with Insurance Code Chapter 542, Subchapter B, which regulates the prompt payment of claims. Two commenters request clarification on whether an appraisal award that exceeds an insurer's original settlement offer could be a violation of Insurance Code Chapter 542, Subchapter B. One of the commenters argues that participation in the appraisal process should not expose insurers to prompt payment penalties and that a discrepancy between the initial payment and the appraisal award is not evidence of noncompliance with prompt payment standards.

Conversely, another commenter states that the rule should make clear that invoking appraisal does not excuse an insurer from paying any undisputed amounts throughout the settlement or appraisal process.

Another commenter recommends that any statutory interest that might be triggered from the prompt pay statutes should be tolled during the pendency of the appraisal process to avoid inequitable outcomes caused by procedural delays.

Agency Response. TDI declines to modify rule text in response to the comments as it is outside the scope of the rules. Insurance Code Chapter 542, Subchapter B, specifies requirements for prompt payment of claims, and TDI expects insurers to comply with those requirements and other Texas insurance law when settling claims.

Comment. Multiple commenters mention the Texas Supreme Court case *Rodriguez v. Safeco Ins. Co. of Ind.*, 684 S.W.3d 789 (Tex. 2024). One commenter notes that the decision limits the ability of policyholder attorneys to recover attorneys' fees in certain appraisal matters, consistent with the plain statutory language of Insurance Code §542A.007. The commenter recommends that concerns about the *Rodriguez* decision be directed to the legislature, as it is an issue far outside the scope of SB 458 and not within TDI's rulemaking authority. Another commenter expresses concern that the case is a catalyst for insurers to weaponize appraisal for their benefit and states that the rules do not fix this issue.

Agency Response. TDI declines to make a change, as the issue is outside the scope of this rulemaking.

Comment. Multiple commenters request clarification on enforcement of these rules and suggest different enforcement techniques to ensure parties, appraisers, and umpires comply with the requirements.

Commenters request clarification on how TDI will approach enforcement of the appraisal requirements. One commenter asks whether TDI intends to impose compliance penalties for failure to meet timelines and, if so, requests that TDI impose penalties on insurers only when the timing of processes is within their control. Another commenter notes that the rules provide detailed timing and qualification requirements but are silent on enforcement or the consequences of noncompliance. The commenter asks TDI to clarify which parties are subject to enforcement of the timelines and qualification requirements, the specific consequences of noncompliance by each party, and whether and how TDI intends to enforce the requirements against nonregulated parties.

Other commenters recommend that TDI add various noncompliance penalties to the rules, including administrative sanctions, cost-shifting, judicial remedies, loss of the right to invoke appraisal, or fines. One commenter specifically notes that Insurance Code Chapter 84 provides TDI with express authority to impose administrative penalties and urges TDI to adopt explicit penalties under that chapter to protect the appraisal process from corruption. Another commenter states that there are virtually no repercussions if an insurer abuses the appraisal process as written with the current state of Texas law.

Agency Response. TDI appreciates the commenters' suggestions on how to enforce the appraisal process requirements to ensure the process remains effective, efficient, and fair but declines to make a change.

The Insurance Code empowers TDI to take enforcement, disciplinary, and other administrative action against insurers and other persons licensed or regulated under Texas insurance laws, such as imposing administrative penalties under Insurance Code Chapter 84 as a commenter referenced. Where TDI identifies a violation of Insurance Code Chapter 1813 or these rules, TDI will take administrative action consistent with its authority. The proposed rules did not address specific enforcement mechanisms, such as shifting the cost of the appraisal to one party as a punishment, establishing judicial remedies, or revoking the right to appraisal. TDI declines to add appraisal-specific enforcement mechanisms, as those topics are beyond the scope of this rulemaking.

TDI notes that the rules primarily establish requirements for the appraisal provisions in personal automobile and residential property insurance policies. Policyholders and insurers retain the ability to enforce their policy contracts. With respect to timing, the parties also can modify deadlines by written mutual agreement after the claim arises and the insurer provides the appraisal process notice required under §5.9803.

As a practical matter, appraisers must also respect deadlines because the rules create a framework that allows appraisal to proceed if one appraiser fails to act in a timely manner. For example, if the appraisers cannot agree on the amount of loss in dispute within the time provided, an umpire becomes involved and the award can be determined by the umpire and one appraiser.

Comment. Multiple commenters recommend that TDI establish a formal licensing requirement or require that appraisers and umpires prove that they are in good standing with any other regulatory agency responsible for their oversight. Commenters in support of the licensing requirement note that the failure to license these entities may result in lack of enforcement authority and difficulty in identifying appraisers and umpires who are bad actors in the appraisal process. One commenter specifically states that a licensing regime would give "the entire framework the accountability it currently lacks." Another commenter recommends specific license types based on the individual's role in the appraisal and whether it is an automobile or residential property appraisal.

Response. TDI declines to establish a licensing requirement for appraisers or umpires under Insurance Code Chapter 1813 because it is outside the scope of this rulemaking. Likewise, TDI declines to add a requirement that appraisers and umpires prove good standing or licensing with another regulatory agency. The proposed rules did not address the potential inclusion of a requirement of good standing or licensing with another agency; the topic is outside the scope of this rulemaking. In addition, a good-standing or licensing requirement might inadvertently eliminate competent appraisers and umpires who have training and experience to evaluate the type of loss in dispute but do not maintain an occupational license, such as a retired adjuster or public adjuster.

Comments on §5.9800

Comment. One commenter notes that the September 1, 2026 implementation date is reasonable, and states that it is time for the SB 458 rules to be in effect. However, other commenters state that the proposed implementation date will present logistical challenges. Those commenters note that additional implementation time is needed to update appraisal provision language, file updated policy forms with TDI for approval, draft or update the appraisal process notice, and complete various programming and operational tasks to ensure new forms and notice documents are issued timely to policyholders. Commenters also note that the timing difficulties are further exacerbated for renewal policies, which are commonly issued 45 to 60 days before the renewal date. A few commenters recommend that the effective date be no earlier than three or six months, respectively, from the date the adopted rule is published, and another commenter suggests the rules take effect one year after the rule is finalized. Other commenters recommend the implementation date be no earlier than January 1, 2027.

Agency Response. TDI recognizes the challenge of implementing the appraisal process requirements by the proposed deadline and agrees to extend the implementation time to March 1, 2027. TDI expects that delaying the implementation date to March 1, 2027, will provide insurers with sufficient time to update their appraisal provisions, file applicable revised policy forms or endorsements for TDI approval, create or update the appraisal process notice as required under §5.9803, and update or modify related programming or processes as needed. The adopted implementation date of March 1, 2027, will ensure that appraisal provisions begin reflecting the new requirements without unnecessary delay.

To reflect this, TDI changes the date in §5.9800(b) from September 1, 2026, to March 1, 2027. New Division 4 will apply to personal automobile and residential property policies delivered, issued for delivery, or renewed on or after March 1, 2027.

Comment. One commenter asks for clarification on how the rules impact "legacy appraisals" and "declaration of appraisal."

Agency Response. TDI understands the commenter to mean appraisals that are demanded on policies delivered, issued for delivery, or renewed before the rule's implementation date. The adopted rules will apply to personal automobile and residential property insurance policies delivered; issued for delivery; or renewed on or after March 1, 2027, and all appraisal provisions in those policies are subject to the new rules. For policies delivered; issued for delivery; or renewed before March 1, 2027, the appraisal provision in the policy will control the appraisal process and is not subject to the new rules.

Comment. Two commenters request clarification on the scope of the appraisal rule, specifically whether the requirements apply to uninsured and underinsured motorist property damage losses. One of the commenters notes that uninsured motorist property damage claims may involve different legal damages because the damages are based on what the insured is legally entitled to recover from an uninsured motorist. The commenter suggests that the rules should focus on the valuation components necessary to determine the covered physical damage loss and avoid confusing the issues.

Agency Response. TDI agrees that uninsured and underinsured motorist coverage ordinarily involves a determination on what an insured would be legally entitled to recover from another motorist. TDI understands that appraisal provisions have typically not

extended to uninsured and underinsured motorist coverage of property damage losses. Accordingly, TDI declines to extend these rules to uninsured or underinsured motorist coverage. TDI also declines to extend these rules because the rules as proposed did not address the potential inclusion of uninsured or underinsured motorist coverage and the topic is likely outside the scope of this rulemaking.

Comment. Commenters recommend clarifying the applicability of Division 4 to a total loss of real property by fire under Insurance Code §862.053. One commenter notes that, once covered real property is determined to be a total loss by fire, the property insured is considered a liquidated demand against the company for the full amount of the fire insurance policy. The commenter states that appraisal under Insurance Code Chapter 1813 should not be used to decide the threshold fact question of total loss, reduce the liquidated amount owed, or delay payment of building limits. Another commenter notes that §5.9802(3) directly conflicts with Insurance Code §862.053 and recommends carving out statutory total loss scenarios to lessen "appellate exposure."

Agency Response. TDI agrees that clarification about the applicability of appraisal to total losses subject to Insurance Code §862.053(a) is appropriate. TDI revises §5.9802(3) to clarify that the required appraisal provision does not apply to a total loss of real property by fire that is subject to Insurance Code §862.053(a).

Comments on §5.9801

Comment. One commenter expresses support for the definitions set out in §5.9801.

Agency Response. TDI appreciates the commenter's support.

Comment. One commenter suggests changing the definition of "appraisal" in §5.9801(1) to clarify that the process is meant to resolve a dispute between the insurer and a policyholder "that is limited to" the amount of loss as described in Insurance Code Chapter 1813.

Agency Response. TDI declines to make the suggested change. Insurance Code §1813.003(b) states that the appraisal provision required by Insurance Code Chapter 1813 is "intended to provide a type of dispute resolution process solely to determine the amount of loss when that amount is in dispute between the policyholder and the insurer." This statutory language is restated in §5.9800(a), which outlines the scope and applicability of these rules. In addition, the definition of appraisal in §5.9801(1) specifically refers to the description in Insurance Code Chapter 1813. TDI disagrees that additional clarification is needed. Further, introducing additional language might be construed as establishing a different scope and applicability than what is described in Insurance Code Chapter 1813.

Comment. Commenters recommend adding a definition of "loss" to the rule. One commenter notes that the rule as proposed uses the term "amount of loss" without limiting it to a covered loss under the applicable policy. The commenter recommends using the term "covered loss" instead and states that the appraisal process was designed to resolve disputes about covered losses, not to create a separate mechanism for adjudicating coverage questions or determining amounts for losses that are not covered. The commenter warns that failure to clarify the word "loss" may expand appraisal to uncovered claims, which will create confusion for policyholders and carriers and expand the scope of SB 458.

Another commenter notes that SB 458 directs the commissioner to adopt rules mandating appraisal for total loss and damage of the property that is the subject of the appraisal. The commenter suggests defining "loss" under the applicable policy to include "valuation of a total loss, cost of repair or replacement, actual cash value, and related costs or expenses when requested by either party."

Similarly, a commenter expresses concern that §5.9801 does not include a definition for "amount of loss" and states that if TDI fails to define the term broadly enough, insurers may attempt to narrow appraisal through policy language or claim handling positions that treat appraisal as mere price list calculation. The commenter recommends defining "amount of loss" to mean "the monetary valuation of covered loss, damage, cost, expense, or benefit owed under the policy. . . " and include a list of specific factors or considerations that may apply based on the claim details. The commenter also cites to various court cases to support the suggested definition.

Another commenter recommends defining "complex loss" to aid in identifying losses that involve multisystem damage, competing causation theories, or engineering expertise. The commenter also suggests allowing structured deadline extensions to lessen the possibility of incomplete awards.

Agency Response. TDI declines to define "loss" or introduce the term "covered loss" in the rule. The rule uses the term "amount of loss," which is consistent with Insurance Code Chapter 1813. Section 5.9800 and the definition of "appraisal" in §5.9801(1) specifically refer to Insurance Code Chapter 1813 for scope and applicability. Insurance Code §1813.003(b) states that the appraisal provision is "intended to provide a type of dispute resolution process solely to determine the amount of loss when that amount is in dispute between the policyholder and the insurer." Insurance Code §1813.004(a) states that an

appraisal under the appraisal provision required by Insurance Code Chapter 1813 "does not affect any applicable policy terms." These statutory provisions sufficiently establish scope and applicability. No additional clarification is needed, and introducing new definitions might be construed as establishing a different scope and applicability than what is described in Insurance Code Chapter 1813.

TDI also declines to define "amount of loss" or to identify items within the scope of appraisal because the rule's purpose is to specify the requirements for an appraisal provision and outline the overarching appraisal process. Defining the extent of appraisal or the items or factors that may be considered during appraisal is outside the scope of this rulemaking.

TDI also declines to define "complex loss," as a complex loss will vary depending on the facts, the property at issue, and the policy. Parties may mutually agree to extend deadlines under §5.9805(c) or §5.9806(c), including when a complex loss is at issue.

Comment. One commenter recommends adding a definition of "independent vendor" to §5.9801 so a policyholder who is unfamiliar with the appraisal process is better able to understand the process for appraisals and umpire appointment.

Similarly, another commenter states that the terms "independent" and "disinterested" need clearer definitions. The commenter points out that independence and disinterest might depend on the circumstances. The commenter states that failure to define these terms could result in side disputes and suggests that the proper question is whether the appraiser or umpire has a direct financial interest in the outcome of that specific appraisal or another listed relationship that may result in a conflict of interest.

Agency Response. TDI declines to add a definition of "independent vendor." A definition would introduce specific constraints that have not been considered in this rulemaking and might be unnecessary. The parties to an appraisal are best suited to determine whether a vendor is independent based on the circumstances of that appraisal. In response to other comments, TDI clarified in §5.9805 and §5.9806 that the policyholder has the right to decide whether a vendor may appoint an umpire, so a policyholder with concerns about possible lack of independence can decide not to have a vendor appoint the umpire.

TDI also declines to specify the types of relationships that may create a conflict of interest or result in the appraiser or umpire not satisfying the minimum qualifications in §5.9804. Many existing appraisal provisions, including those in promulgated Texas homeowners policies, require appraisers and umpires to be "independent" without further specification. Similarly, many appraisal provisions require appraisers and umpires to be "disinterested," again without further description of that term. Adding definitions of "independent" and "disinterested" would likely introduce specific constraints that have not been considered in this rulemaking and might be unnecessary. As commenters acknowledge, questions of independence and disinterest might depend on the circumstances. Parties to the appraisal are best suited to determine whether an appraiser or umpire fails to meet the minimum qualifications. In addition, parties may discuss concerns and ultimately challenge the qualifications of an appraiser or umpire in a court of law. TDI expects insurers to comply with Texas law and the applicable insurance policy when participating in appraisal.

Concerns about a direct financial interest in the outcome of appraisal are already satisfactorily addressed by the "disinterested" requirement. As discussed in the rule

proposal's preamble, the "disinterested" requirement prevents appraisers from having a pecuniary interest in the outcome.

Comments on §5.9802

Comment. Multiple commenters advocate that TDI should adopt a mandatory, uniform appraisal provision for policies subject to Insurance Code Chapter 1813. One commenter states a uniform provision would ensure consistency among carriers and expedite the form filing process. Other commenters express concern that, without a uniform appraisal provision, insurers and carriers will have too much leeway to draft restrictive or otherwise unfairly favorable provisions.

Agency Response. TDI declines to promulgate a uniform appraisal provision. SB 458 directs the commissioner to adopt rules necessary to implement Insurance Code Chapter 1813, including rules that mandate appraisal and establish the period in which appraisal must be completed. The statute also directs the commissioner to consider the qualifications and selection of appraisers and umpires in adopting rules. Accordingly, new §§5.9800 - 5.9806 focus on those subjects. An appraisal provision might reasonably address additional subjects or contain additional requirements, as long as it does not conflict with new Division 4 or other Texas law.

These rules enumerate items that each appraisal provision must have, ensuring specific consumer protections are established while providing insurers flexibility to implement the requirements into their current appraisal provisions. Because SB 458 requires policies delivered; issued for delivery; or renewed on or after January 1, 2026, to include an appraisal provision, insurers have a baseline appraisal provision they can update to conform with §5.9802. Most policies subject to Insurance Code Chapter 1813

are written on policy forms or endorsements that must be filed with TDI for review and approval under Insurance Code Chapter 2301. Policy forms must comply with Texas law, including the Insurance Code and the rules implementing it.

Comment. Generally, commenters support allowing either party to unilaterally demand appraisal. One commenter suggests that, before either party has the right to unilaterally demand appraisal under proposed §5.9802(1), the rule could authorize appraisal provisions to include a short period of time before the initiation of appraisal to allow parties to work out differences and determine whether appraisal is necessary. The commenter also suggests adding language to §5.9802(1) that encourages parties to exchange information, allow inspection, and attempt to resolve disputes before or after invoking appraisal. The commenter notes that these suggestions would benefit both parties by resolving disputes before incurring the time and expense of appraisal. One commenter states that the right to demand appraisal must apply equally to both parties and must be governed by the same deadline for both parties.

Similarly, commenters recommend requiring the exchange of estimates and other claim settlement documents to promote transparent disclosure and streamline claims settlement. One commenter notes the importance of balancing an efficient appraisal process with ensuring all important claim settlement documents are examined so policyholders obtain payment for necessary repairs.

One commenter states that a "dispute" between parties presupposes that the parties have exchanged information and have been unable to resolve their differences. Commenters state that the rule would allow an appraisal demand before the policyholder has responded to the insurer's request for existing estimates or other loss documentation,

and before any meaningful exchange of positions has occurred. One commenter states that this issue is especially acute for personal automobile claims, where the differences between a repair shop's estimate and the insurer's estimate arise routinely and are often resolved through the supplement and reinspection process. The commenter states that §5.9802(1) as proposed is in tension with the plain language of Insurance Code §1813.003(b)(1) and suggests modifying it to allow either party to unilaterally invoke appraisal 15-days after exchanging statements and estimates.

Agency Response. TDI declines to modify the rule text to allow appraisal clauses to require an amount of time to pass before appraisal can be demanded. Policyholders and insurers are already incentivized to resolve disputes without the time and expense of appraisal. Findings in the Appraisal Experience Report show that appraisal was demanded in only a small percentage of claims and typically resulted in an award greater than the insurer's initial offer, suggesting that appraisal is not undertaken lightly or needlessly. The rules do not prevent parties from attempting dispute resolution before appraisal is invoked.

TDI also declines to change the rule text to require or "encourage" the exchange of estimates or similar information before an appraisal demand. Parties have natural incentives to exchange information to resolve disputes, and adding requirements to exchange estimates would introduce constraints that have not been considered in this rulemaking and might be unnecessary.

Comment. Similar to the discussion of specifying conditions that must be met before appraisal may be demanded, multiple commenters express concern with the proposed requirement in §5.9802(2) that prohibits an appraisal provision from requiring the parties

to reach an impasse before a party can demand appraisal. Commenters state that the proposed requirement will result in parties invoking appraisal prematurely, before the parties have had a meaningful opportunity to negotiate and resolve the dispute.

A few commenters refer to Texas case law, with one arguing that long-standing case law and standard policy language reinforce that appraisal is a "mechanism of last resort," appropriate only when the parties fail to agree on the amount of loss and exhaust reasonable efforts to resolve their differences. Another commenter states that case law treats an impasse as the point at which neither party will negotiate further. The commenter cites to *In re Acceptance Indemnity Insurance Co.*, stating "an impasse is not a disagreement about the amount or scope of loss. To constitute an 'impasse,' both parties must believe additional negotiations would be futile. An impasse is the apparent breakdown of good-faith negotiations; in other words, it is that point at which the parties have exhausted any prospect of reaching an agreement and further discussion would be fruitless." 562 S.W.3d 645, 650 (Tex. App.--San Antonio 2018, no pet.).

Multiple commenters warn that the prohibition on impasse may have adverse consequences and may negatively affect access to and affordability of insurance. One commenter notes that if an impasse is not required before appraisal can be invoked, then claimants and their representatives will have an incentive to bypass the ordinary claims process entirely, forcing carriers into a parallel and more costly resolution mechanism from the earliest stage of any claim and resulting in higher insurance costs.

One commenter includes specific policy language that states, "If we and you do not agree on the amount of loss, either may demand an appraisal" and notes concern about removing the impasse requirement from the policy language.

Lastly, one commenter objects to the rules as proposed unless a distinction is made between a statutory proof-of-loss concept under Insurance Code Chapter 542 and a contractual sworn proof of loss required by policy terms. Otherwise, insurers may argue that the rules treat any reference to proof of loss as a contractual sworn proof-of-loss prerequisite to appraisal, creating unnecessary disputes.

Agency Response. TDI declines to change §5.9802(2) to allow appraisal provisions to require an impasse before appraisal can be demanded.

As one commenter notes, *In re Acceptance Indem. Ins. Co.* states that "an impasse is not a disagreement" and that "both parties must believe additional negotiations would be futile." By that standard, an impasse requires more than a dispute. It positions one party to decide that although a dispute exists, additional negotiations could be fruitful. The effect would be to allow one party's view of negotiations to indefinitely deprive the other party of access to appraisal.

TDI maintains that conditioning a party's right to demand appraisal on the other party's singular view of whether additional negotiations are warranted is contrary to the plain language and the intent of SB 458. Insurance Code §1813.003(b) states that appraisal under the chapter is intended to provide a type of dispute resolution process when the amount of loss is in dispute. The Statement of Intent in the Bill Analysis for SB 458 as enrolled supports the understanding that an impasse is not required, stating "the appraisal process serves as a method of dispute resolution to determine the amount of loss when there is a *disagreement* between the policyholder and the insurer." Senate Bus. & Com., Bill Analysis, Tex. SB 458 (89R, 2025). Insurance Code Chapter 1813 does not require exhaustion of good-faith negotiations or a shared belief that additional

negotiations would be futile or fruitless; it merely requires a dispute between the insurer and policyholder as to the amount of loss.

The policy language cited by one commenter ("if we and you do not agree on the amount of loss, either may demand an appraisal") appears to align with SB 458 by stating that either party may demand appraisal where a dispute on the amount of loss exists.

TDI disagrees that prohibiting an impasse requirement will affect access and affordability to insurance. Instead, it aligns with Insurance Code Chapter 1813 by ensuring that parties have access to appraisal when a dispute about the amount of loss occurs. Parties already have an incentive to exchange information. Claimants want to restore damaged property as promptly as possible and will likely provide estimates and other settlement documentation to support their position. Insurers are required by law to promptly pay claims under Insurance Code Chapter 542, Subchapter B, after receipt of notice of the claim. Parties are also incentivized to settle the claim before invoking appraisal because appraisal extends the time and increases the expense to settle the claim. TDI expects that parties and their representatives will exchange documentation throughout the settlement process to ensure efficient and effective claims handling.

TDI also declines to modify rule text in response to the last comment because clarification is unnecessary.

Comment. One commenter expresses concern that "dispute" is not expressly defined in the rule. The commenter states that insurers may attempt to narrowly define "dispute" or effectively apply an impasse standard by requiring mandatory pre-appraisal waiting periods, item-by-item dispute letters, repeat reinspections, or other conditions before a "dispute" is found.

Agency Response. TDI declines to make a change because the rule and Insurance Code Chapter 1813 are sufficiently clear: appraisal applies when an amount of loss is in dispute between the policyholder and the insurer. An ordinary understanding of the word "dispute" indicates disagreement between the parties and does not require parties to demonstrate that there is no chance of reaching an agreement. Under §5.9802(2), an appraisal provision may not attempt to require an impasse.

Comment. A few commenters express concern about the scope of appraisal as proposed. One commenter notes that the rules limit dispute resolution under appraisal to only the amount of loss and states that, in practice, carriers routinely disguise coverage disputes as amount of loss disputes. The commenter states that the rules will continue that practice with implicit blessing from the department. Another commenter states general support for the requirements in §5.9802 but recommends that TDI consider clarifying that potential coverage disputes do not defeat a contractual right to appraisal. The commenter references Texas Supreme Court precedent when stating that most appraisals can be structured in a way that decides the amount of loss without deciding any liability questions.

Agency Response. TDI declines to make a change because Insurance Code Chapter 1813 sufficiently establishes scope and applicability for these rules, so no further clarification is needed. Insurance Code §1813.003(b) states that an appraisal provision required under the chapter is "intended to provide a type of dispute resolution process solely to determine the amount of loss when that amount is in dispute between the policyholder and the insurer." Insurance Code §1813.004(a) states that an appraisal under the appraisal provision required by Insurance Code Chapter 1813 "does not affect any applicable policy

terms." TDI declines to introduce changes that might be construed as establishing a different scope and applicability than what is described in Insurance Code Chapter 1813. TDI will monitor implementation and, if issues are identified, may recommend clarification or changes.

Comment. A commenter requests that TDI add another reason for an appraisal award to be nonbinding in §5.9802(4). In §5.9802(4) as proposed, every applicable appraisal provision must require that the appraisal award be binding as to the amount of loss unless it was made without authority; it was not made in substantial compliance with the appraisal provision; or there is fraud, accident, or material mistake relevant to the appraisal. The commenter recommends adding that "the appraiser or umpire has an interest, pecuniary or otherwise, in the outcome of the appraisal," to the list of reasons an appraisal award may be nonbinding. The commenter also suggests that TDI provide a process for parties to file a complaint if an appraiser or umpire does not satisfy the general requirements for appraisal provisions in §5.9802.

Agency Response. TDI declines to add another reason for an appraisal award to be nonbinding in §5.9802(4). The reasons outlined in §5.9802(4) specifically reflect the requirements outlined in Insurance Code §1813.004, and §5.9804(a)(3) already requires appraisers and umpires to be disinterested in the outcome of the appraisal.

TDI also declines to create a separate complaint processing system for appraisal under Insurance Code Chapter 1813. TDI has an established complaint process that parties may use to file a complaint. TDI will use complaints to help monitor compliance with SB 458 and new Division 4.

Comments on §5.9803

Comment. One commenter requests clarification on a bulletin issued by an insurer trade group about the rule as proposed, specifically a comment in the bulletin about insurers being required to provide policyholders with a separate document about the appraisal process.

Agency Response. TDI declines to comment or interpret a document issued by another entity. The commenter may review the requirements adopted in §5.9803 for details on what information must be included in the appraisal process notice.

Comment. Commenters ask TDI to adopt a promulgated, standardized appraisal process notice form for use by all carriers. One commenter notes that a promulgated appraisal process notice would ensure consistency among carriers and would expedite the form filing process.

Agency Response. TDI declines to promulgate an appraisal notice process form. The rules provide insurers with some flexibility on how to implement the appraisal provision, as authorized by the rules and consistent with Texas law, so the information in the appraisal process notice will depend on the specific appraisal provision the insurer uses.

Comment. Multiple commenters object to the content of the appraisal process notice as proposed in §5.9803. Commenters note that the right to appraisal is already outlined in the appraisal provision in the insurance policy, so creating a separate prescriptive appraisal process notice document imposes administrative burdens and is duplicative. The commenters recommend removing the notice requirement or, alternatively, providing a notice that simply restates the entire appraisal provision. One commenter also suggests

replacing notice with a simple, general statement of the right to appraisal based on the definition of appraisal in rule text, along with a statement that the insurance policy contains an appraisal provision and that the policyholder should consult the policy for additional details.

Another commenter recommends adding information from §5.9802(2) into the appraisal process notice. Specifically, that appraisal does not require the parties to reach an impasse before appraisal can be demanded.

Agency Response. TDI declines to make a change to the appraisal process notice in response to the comments. Appraisal is an important dispute resolution mechanism that can be cheaper, more efficient, and a timelier option than litigation. However, policyholders are unlikely to have experience with the appraisal process. The requirement to send the appraisal process notice promotes consumer protection by alerting the policyholder and elevating key information, such as how to demand an appraisal, the policyholder's responsibilities in the process, and the time limits in the process. The notice must be written in plain language and be provided at a time when the information may be especially relevant. Restating an entire appraisal provision or giving a simple, general statement about the right to appraisal does not achieve the same effect of elevating key information.

TDI declines to add information about the prohibition of an impasse requirement. The elements listed in §5.9803 are meant to elevate key information found in the appraisal provision. Adding information about the absence of an impasse requirement may result in consumer confusion.

Comment. One commenter requests that §5.9803 explicitly authorizes an insurer to electronically provide the required notice.

Agency Response. TDI declines to make a change to the rule text because Insurance Code Chapter 35 already authorizes regulated entities to conduct business electronically, subject to the requirements of that chapter. The rule as proposed does not prohibit electronic notice. Insurers may provide the appraisal process notice electronically, consistent with Insurance Code Chapter 35.

Comment. TDI received multiple comments on the timing of the appraisal notice. One commenter agrees with TDI that requiring the notice of the appraisal process at the same time as the notice of acceptance or rejection of a claim required under Insurance Code §542.056 provides a consistent and well-established marker in the claim settlement process.

Multiple other commenters express concern about when the appraisal process notice should be sent to a policyholder. The commenters generally note that requiring the appraisal notice at the same time as the notice of acceptance or rejection of a claim may result in consumer confusion--such as confusion about applicability or the existence of a dispute--and require changes to existing insurer processes that create unnecessary administrative burden. Instead of the proposed timing, one commenter recommends providing the appraisal process notice at the time of claim acknowledgment. Some commenters recommend providing it when a valuation or settlement determination is made, such as with the estimate cover letters or total loss settlement offer letters. The commenters note that changing the timing will ensure the notice is delivered at a time when the appraisal option is more meaningful or relevant to the policyholder.

One commenter expresses concern that sending the appraisal process notice when the Insurance Code §542.056 notice is sent may confuse the statutory prompt pay requirements with the Division 4 appraisal requirements. The commenter states that the appraisal process notice should inform policyholders of their right to appraisal but should *not* become a mechanism for insurers to evade their statutory duties under Insurance Code Chapter 542, Subchapter B. The commenter states the notice must state the exact appraisal deadline, as well as explain that appraisal is binding only to the amount of loss; appraisal does not decide coverage or liability; and appraisal does not toll, reset, or eliminate Insurance Code Chapter 542, Subchapter B rights or deadlines. The commenter suggests modifying rule text or promulgating an appraisal notice form to address their concerns.

One commenter also states that §5.9803 does not identify a specific date the notice must be provided by and suggests that TDI clarify the timing to ensure more consistent compliance.

Agency Response. TDI declines to change when the appraisal process notice must be sent or to modify the rule text to clarify long-standing statutory requirements. The requirement to send the appraisal process notice is tied to the requirement to send the notice of acceptance or rejection of a claim under Insurance Code §542.056 because it is a consistent marker that insurers are already statutorily required to comply with. Providing the appraisal process notice at a different time during the settlement process may result in inconsistent practice between insurers or between personal automobile or residential property claims.

Once the insurer receives notice of a claim under Insurance Code §542.055, it is statutorily required to acknowledge receipt; commence any claim investigation; and

request all items, statements, and forms that the insurer reasonably believes--at the time--will be required from the claimant. Ordinarily, not later than 15 days after the insurer receives the documentation required to secure final proof of loss, the insurer must send the notice of acceptance or rejection to the policyholder under Insurance Code §542.056. If the insurer notifies the policyholder that the insurer will pay a claim or part of a claim, the insurer must usually pay the claim within five business days under Insurance Code §542.057. By tying the appraisal process notice to when the insurer sends notice of claim acceptance or rejection, the policyholder will receive important information about appraisal at a time when the policyholder is likely to be considering an insurer's decision about the amount of loss. TDI disagrees that the timing of the appraisal process notice will create confusion about the existence of a dispute. Also, TDI notes that the rules do not prevent an insurer from communicating that a policyholder is not required to demand appraisal if the policyholder is satisfied.

To lessen insurers' administrative costs, they may provide the appraisal process notice either as a separate document or they may incorporate the required elements of §5.9803 in the claim acceptance or rejection notice itself.

TDI disagrees that sending the appraisal process notice when the §542.056 notice is sent will become a mechanism to evade statutory duties under Insurance Code Chapter 542, Subchapter B. The appraisal process notice is a separate requirement to inform policyholders of the appraisal process and does not alter an insurer's statutory obligations under Insurance Code Chapter 542, Subchapter B. TDI also declines to promulgate an appraisal notice form for reasons given in response to other comments.

Comments on §5.9804

Comment. Two commenters express general support for the appraiser and umpire qualifications in §5.9804. One commenter suggests that TDI also prohibit insurers from imposing additional, policy-based qualifications. The commenter states that if insurers are allowed to impose heightened qualifications, they may exclude otherwise qualified public adjusters, contractors, estimators, engineers, architects, or repair professionals.

Agency Response. TDI appreciates the general support but declines to make a change to the rule text as proposed to prohibit an insurer from imposing additional qualifications. TDI proposed minimum qualifications for appraisers and umpires to provide flexibility in implementation and because certain losses may warrant an appraiser or umpire with specific expertise. The parties are best able to determine whether appraisers with specific expertise are appropriate and, if so, what expertise is needed. TDI declines to preemptively determine that any additional or more specific qualifications are necessarily inappropriate. Most policies are written on policy forms or endorsements that must be filed with TDI for review and approval under Insurance Code Chapter 2301 and remain subject to the standards of that chapter. TDI will monitor implementation of Insurance Code Chapter 1813 and these rules and take further action if needed.

Comment. Multiple commenters state that the appraiser and umpire qualifications are set too low. One commenter suggests that appraisers and umpires be required to have both structured training and substantial experience, since appraisal panels are called on to set amounts of loss on complex and catastrophic claims and are rarely subject to judicial review.

Multiple commenters recommend heightened qualifications specifically for appraisers and umpires in automobile appraisals. Commenters recommend that the heightened criteria for residential appraisers and umpires proposed in §5.9804(b) should similarly apply to automobile appraisals. One commenter states that automobile appraisal is not one generic skill--a person may be qualified to write a repair estimate or use estimating software but may be unqualified to determine market value or lack expertise in other necessary disciplines. The commenter suggests that §5.9804 should require competence in the specific automobile valuation issue being appraised. Another commenter suggests requiring appraisers and umpires in automobile appraisal to hold ASE certification and the I-CAR Platinum certification.

Agency Response. TDI declines to specify "structured" training or the substantial experience needed to act as an appraiser or umpire under Insurance Code Chapter 1813. TDI agrees that appraisal panels play an important role in claims handling and settlement disputes. Parties to the appraisal are best suited to determine whether an appraiser or umpire is qualified to evaluate the type of loss at issue. By mandating minimum qualifications under §5.9804, parties have flexibility to hire appraisers with expertise specific to the loss at issue. As described in the rule proposal's Explanation section, because §5.9804 outlines only the minimum qualifications of an appraiser or umpire, appraisal provisions may establish additional or more specific qualifications as long as those provisions do not conflict with Division 4. This added flexibility reflects that loss disputes of this nature can vary significantly, such as the variation in the type and extent of property at issue; insurers can decide whether more nuanced qualifications may be appropriate.

Similarly, TDI declines to require all appraisers and umpires to possess both training and experience as a minimum qualification. Individuals might have ample experience to satisfactorily evaluate a loss amount without also having formal training. Likewise, individuals might have sufficient training to evaluate a loss without having specific prior experience evaluating that type of loss.

TDI also declines to modify the rule to add more specific qualifications for appraisers and umpires in automobile appraisals. TDI agrees that automobile appraisal involves skills that may vary based on the loss at issue. As proposed, §5.9804(a)(1) addresses that concern by requiring appraisers and umpires to be competent to evaluate the type of loss in dispute. Although TDI proposed additional qualifications for appraisers and umpires in appraisals involving loss to a dwelling in §5.9804(b), §5.9804(b)(3) retained the flexibility to allow for an appraiser or umpire with other applicable occupational experience or training. The proposed rule did not address the potential inclusion of additional, specific qualifications for automobile appraisers and umpires, and TDI declines to establish additional or more specific qualifications at this time. Most policies are written on policy forms or endorsements that must be filed with TDI for review and approval under Insurance Code Chapter 2301 and remain subject to the standards of that chapter. TDI will monitor implementation of Insurance Code Chapter 1813 and these rules and take further action if needed.

Comment. Multiple commenters express concern about the potential for conflicts of interest between the parties, appraisers, and umpire during an appraisal. Under §5.9804(a)(2) and (3), appraisers and umpires must be independent from the parties and disinterested in the outcome of the appraisal. One commenter notes that "independent"

and "disinterested" are not meaningfully defined and may result in dispute unless clarification is provided. The commenter recommends defining acceptable relationships and setting disclosure standards to lessen the number of qualification challenges. Another commenter recommends modifying §5.9804(a)(3) to clarify that, not only must appraisers and umpires be disinterested in the outcome of the appraisal but they must also be disinterested in the outcome of "the claim."

A commenter expresses concern that allowing adjusters or public adjusters to serve as appraisers may create a conflict of interest and asks that TDI remove that category of qualification in §5.9804(b)(1).

Agency Response. TDI declines to attempt to identify or further define what relationships may result in appraisers and umpires failing to meet the "independent" and "disinterested" standards in §5.9804(a)(2) and (3). Many appraisal provisions, including those in promulgated Texas homeowners policies, require appraisers and umpires to be "independent" without further description. Similarly, many appraisal provisions require appraisers and umpires to be "disinterested," again without further description of that term. Adding definitions of "independent" and "disinterested" would likely introduce specific constraints that have not been considered in this rulemaking and might be unnecessary. In addition, the relationships or circumstances that may result in disqualification of a particular appraiser or umpire are varied, fact-specific, and outside the scope of this rulemaking. The parties may discuss concerns and ultimately challenge the qualifications of an appraiser or umpire in a court of law.

Because the rules outline only minimum qualifications, appraisal provisions may establish additional or more specific qualifications, as long as those provisions do not conflict with Division 4. TDI declines to preemptively determine that any additional or

more specific qualifications are necessarily inappropriate. Most policies are written on policy forms or endorsements that must be filed with TDI for review and approval under Insurance Code Chapter 2301 and remain subject to the standards of that chapter. TDI will monitor implementation of Insurance Code Chapter 1813 and these rules and take further action if needed.

TDI also declines to add the phrase "and the claim" to the language in §5.9804(a)(3), as it seems redundant and may result in confusion about the qualification. Appraisers and umpires are required to be "disinterested in the outcome of the appraisal," which would necessarily include disinterest in the outcome of the relevant claim.

Lastly, TDI declines to remove adjusters or public insurance adjusters from §5.9804(b)(1) based on an assumption that an adjuster or public insurance adjuster may have a conflict of interest. All individuals who may wish to act as an appraiser or umpire must be independent from the parties and disinterested in the outcome of the appraisal, including adjusters and public insurance adjusters. Further, adjusters and public insurance adjusters hold licenses with TDI and may be subject to disciplinary action for failure to comply with Texas law, including the requirement that they be independent and disinterested under §5.9804(a).

Comment. Multiple commenters recommend TDI adopt or mandate a code of ethics that appraisers and umpires must satisfy. Some commenters share experiences working with appraisers and umpires, stating that some kind of ethical standard should apply. One commenter suggests referencing the statutorily required code of ethics adopted for public insurance adjusters in 28 TAC §19.713 or the stricter engineering code of ethics

when developing and adopting an ethical standard. At a minimum, the commenter recommends adding the requirement that appraisers and umpires "act ethically."

One commenter expresses uncertainty about whether there is a mechanism to enforce the code of ethics, given the absence of appraiser or umpire licensing. However, the commenter states that mandating ethical standards may help clarify appraiser and umpire duties and assist courts with reviewing challenged conduct.

One commenter states that TDI should not adopt ethical standards or a code of ethics without providing industry with the opportunity to comment on the specific requirements and notes that the matter may be better suited for the legislature to adopt.

Agency Response. TDI appreciates the commenters' suggestions but declines to modify the qualifications in §5.9804 to adopt a code of ethics or ethical standard. TDI agrees that the topic is beyond the scope of this rulemaking, and it may be more appropriate for the legislature to provide guidance.

Comments on §5.9805 and §5.9806

Comment. Multiple commenters express interest in the scope of the appraisal rules, with some commenters recommending changes to improve the process. One commenter notes that the appraisal process must remain transparent and guided by fairness, and another commenter notes that appraisal can make a big difference in resolving cost disputes when used properly. One commenter states that the proposed changes in the appraisal process for automobiles under §5.9806 is a detriment to policyholders, though the commenter does not specify further.

Multiple commenters suggest changes to the appraisal process in §5.9805 and §5.9806 to promote dispute resolution. One commenter suggests requiring appraisers in

residential property appraisals under §5.9805 to inspect all components reasonably related to the claimed damage, consider all costs necessary to complete a proper repair, and identify categories of damage considered. The commenter also suggests that the rules provide a mechanism to adjust costs used in the award for inflation and other factors, as well as address situations where a significant component was not considered during appraisal.

Commenters also suggest modifying §5.9806 to clarify the information that is within the scope of automobile appraisal. One commenter requests that TDI expressly exclude information like the amount of coverage, the losses related to the claim, whether the vehicle is repairable as compared to a total loss, and transportation and rental expenses (among other variables) for appraisal addressing the dispute for an amount of loss on a repairable automobile claim. Other commenters request changes to §5.9806 to require appraisers and umpires to include all valuation components necessary to resolve the dispute about the amount of loss. In general, commenters suggest requiring valuation or consideration of elements like the actual cash value, salvage value, cost of repair, loss of use, loss of market value, value to protect, cost adjustments, and comparable vehicle analysis. Some commenters also (1) emphasize the information needed to appraise total loss claims, especially where the owner retains the total loss vehicle; and (2) list types of information that may be needed to properly evaluate the amount of loss, depending on the claim's facts and circumstances.

Agency Response. TDI appreciates the different perspectives and suggestions from the various commenters on the scope of the appraisal process proposed in §5.9805 and §5.9806. TDI declines to make a change to the proposed rule text. As stated previously in response to another comment, the parties and their representatives are best suited to

determine what information to consider when estimating or evaluating a loss and what documentation is appropriate to support a determination of the amount of loss. In addition, the proposed rules did not specify what information or documentation an appraiser or umpire should consider when making a determination. SB 458 directs the commissioner to adopt rules necessary to implement Insurance Code Chapter 1813, including rules that mandate appraisal and establish the period in which appraisal must be completed. The statute also directs the commissioner to consider the qualifications and selection of appraisers and umpires in adopting rules. Accordingly, new §§5.9800 - 5.9806 focus on those subjects and do not dictate what is or is not properly considered within an appraisal.

Comment. One commenter requests that TDI modify language in §5.9805(a)(1) and §5.9806(a)(1) as proposed, which outline how and when appraisal must be demanded for residential property and personal automobile appraisal, respectively. The commenter notes that the proposed rules require an appraisal demand to be made "in writing." The commenter suggests clarifying that the appraisal demand must also be "delivered to the other party."

Agency Response. TDI agrees and modifies §5.9805(a) and §5.9806(a) as proposed to specify that, to demand appraisal under the applicable insurance policy, the appraisal demand must be made in writing "and delivered to the other party."

Comment. One commenter recommends that "invoking appraisal remain a contractual condition precedent to filing a suit." The commenter notes that this would allow both the

policyholder and the insurer an opportunity to resolve disputes concerning the amount of loss before invoking the Texas court system and incurring unnecessary legal fees.

Agency Response. TDI disagrees and declines to make a change in response to comment, as it is beyond the scope of this rulemaking. The rules as proposed do not prohibit insurers from establishing appraisal as a condition that must be met before a lawsuit may proceed when there is a dispute about the amount of loss. Consistent with its authority in Insurance Code Chapter 2301, TDI will review policy forms filed for approval to ensure compliance with Texas law.

Comment. Many commenters express interest in what was informally described in comments and at the rule hearing as "use it or lose it." As proposed, after the insurer provides the notice of acceptance or rejection under Insurance Code §542.056, a demand must be made within one year for residential property appraisal under §5.9805(a)(1) and within 120 days for automobile appraisal under §5.9806(a)(1).

Commenters express support for the proposed use-it-or-lose-it deadlines, stating that the deadlines promote efficiency in the appraisal process, protect consumers by reducing expense and claim handling delays, and preventing litigation. One commenter suggests language for both §5.9805 and §5.9806 to ensure that policy language cannot shorten the one-year or 120-day use-it-or-lose-it windows. Another commenter states the legislative record for SB 458 shows legislative intent for appraisal to operate on a use-it-or-lose-it basis.

Alternatively, many commenters express opposition to the proposed use-it-or-lose-it deadlines. Commenters reason that the deadlines undermine legislative intent or reforms, add unnecessary complexity, incentivize gamesmanship or intentional delay, and

increase litigation expenses. One commenter notes that the goal of SB 458 is to preserve the right to appraisal as an essential method of dispute resolution and that the proposed use-it-or-lose-it deadlines undermine that purpose and are inconsistent with public policy and existing legal frameworks. A few commenters state that the proposed use-it-or-lose-it deadlines are outside TDI's rulemaking authority under Insurance Code Chapter 1813, and one commenter recommends that TDI focus on ensuring appraisal proceeds promptly after a dispute arises.

Multiple commenters state that the proposed use-it-or-lose-it deadlines will add complexity to an already functioning process and may increase the likelihood that parties delay or stall claim settlements in order to extinguish the right to appraisal. The commenters worry that the potential for gamesmanship may increase the litigation costs related to claim settlement and lessen the overarching public benefit of resolving disputes outside of litigation. The commenters recommend removing the framework entirely or aligning the deadlines with the contractual suit limitations or statute of limitations periods. The commenters state that modifying the use-it-or-lose-it deadlines as recommended will ensure fairness and address the concerns raised.

A few commenters recommend changing the amount of time provided for parties to use it or lose it. One commenter states that the one-year deadline for residential property appraisal demand in §5.9805(a)(1) is too long and will result in protracted appraisals. The commenter recommends shortening the deadline from one year to 240 days. Another commenter opposes the proposed 120-day deadline for personal automobile appraisal demand in §5.9806(a)(1) because it does not protect consumers who may not understand the valuation documents, do not know that the appraisal demand clock has begun to run, or are not aware that the right to appraisal exists. The commenter

recommends either extending the proposed 120-day deadline to one year or tying the deadline to a different settlement document to ensure the policyholder has time to reasonably understand that appraisal is necessary.

One commenter suggests that if the use-it-or-lose-it deadline is retained, TDI should adopt a tolling or abatement rule that preserves all contractual, statutory, extra-contractual, and common-law causes of action while appraisal proceeds.

Agency Response. TDI appreciates the commenters' feedback on the proposed use-it-or-lose-it deadlines. Insurance Code §1813.002 directs TDI to adopt rules necessary to implement the chapter, including rules that establish the period in which an appraisal subject to the chapter must be completed. This directive reasonably includes establishing a deadline to initiate appraisal. Although the use-it-or-lose-it deadlines that TDI proposed were based on data gathered in the Appraisal Experience Report, TDI agrees to modify the deadlines as proposed to align with the suit-limitations deadline. This change should lessen potential complexity or disagreement about these deadlines, reduce the potential for deadline gamesmanship, and provide ample opportunity for parties to invoke appraisal. Appraisal can be a more affordable and efficient dispute resolution process than litigation when an amount of loss is in dispute, so preserving a party's ability to initiate appraisal as an alternative to initiating litigation is beneficial.

Data in the Appraisal Experience Report suggests that establishing a one-year or 120-day deadline is not necessary to prompt most parties to make appraisal demands without undue delay. According to the report, approximately 90% of residential property appraisals were demanded within 11 months after the claim was filed, and over 90% of personal automobile appraisals were demanded within 120 days of filing.

TDI has modified §5.9805(a)(1) and §5.9806(a)(1) to state that, except as provided in §5.9805(a)(2) and (3) and §5.9806(a)(2), a party's appraisal demand must be made not later than the expiration of the limitations period for filing suit under the policy.

TDI declines to modify the rules to adopt a tolling or abatement rule that preserves causes of action while appraisal proceeds. The proposed rules did not address the potential inclusion of a tolling or abatement requirement, and such a topic is outside the scope of this rulemaking.

Comment. Multiple commenters express concern about the proposed "trigger" that would start a countdown to the "use-it-or-lose-it" deadline. As previously stated, the rules as proposed required a demand for appraisal under §5.9805(a)(1) or §5.9806(a)(1) to be made within a specific amount of time after the insurer provides the notice of acceptance or rejection under Insurance Code §542.056. Multiple commenters oppose using the §542.056 notice of acceptance or rejection as the trigger because it gives insurers substantial control over when the appraisal demand deadline countdown starts and may result in the insurer rushing, delaying, or underpaying a claim to adversely affect a policyholder's right to appraisal. The commenters also note that the proposed trigger may create ambiguity and lead to confusion about when the appraisal demand deadline countdown has started and, as a result, confusion about when the appraisal demand deadline expires, causing parties to lose the right to demand appraisal under §5.9805(a) and §5.9806(a). One commenter notes that some litigation stems from disputes about deadlines and, as proposed, the trigger might increase that litigation. The commenters suggest various solutions, such as tying the right to demand appraisal to a more neutral, objective event; providing some protective measures to ensure the right to demand

appraisal is retained in certain circumstances; or entirely removing the requirement that parties invoke appraisal within a certain amount of time after the §542.056 notice is provided to the policyholder.

Agency Response. TDI declines to make a change to implement the various solutions that commenters suggested because it is unnecessary. As previously discussed, TDI has replaced the proposed use-it-or-lose-it deadlines triggered by the notice of acceptance or rejection of the claim. As adopted, §5.9805(a)(1) and §5.9806(a)(1) state that, except as provided in §5.9805(a)(2) and (3) and §5.9806(a)(2), a party's appraisal demand must be made not later than the expiration of the limitations period for filing suit under the policy. TDI expects that this change will reduce potential confusion because it is an established deadline that is likely to be more familiar to parties or their representatives than a separate deadline created in rule. Because the appraisal demand deadlines in §5.9805(a)(1) and §5.9806(a)(1) no longer rely on the Insurance Code §542.056 notice of acceptance or rejection as a trigger, no further clarification is needed in response to the comments about the trigger.

Comment. Many commenters express support in the underlying premise that appraisal should not be invoked long after litigation is filed. One commenter states that it is critical for the rules to require the "timely invocation of appraisal" if it is intended to provide a faster, less expensive alternative to litigation. Another commenter notes that lawmakers heard testimony about insurance appraisal being used to create delay and strategic advantage during litigation and mentions a court case where appraisal was demanded only two weeks out from the scheduled trial after years of litigation. Commenters recognize that the rule sought to eliminate this practice in proposed §5.9805(a)(2) and

§5.9806(a)(2), which provided that "if a lawsuit is filed concerning the loss at issue, the respondent must have 30 days from when the lawsuit is filed to make an appraisal demand."

Multiple commenters express concern about the proposed 30-day deadline to demand appraisal in response to litigation, as well as establishing the date the lawsuit is filed as the date the 30-day countdown begins. The commenters state that the 30-day period assumes that the responding party will immediately learn of the lawsuit being filed, which is often not the case. The commenters note that an insurance company may not know that a policyholder disputes a claim decision until the lawsuit is filed or until the company is served notice of the suit; thus, the right to demand appraisal might be lost without ever knowing there is a dispute. Another commenter notes that, as an advocate, they would be obligated to delay service of process on the insurance company to offset the extra 30 days provided for in §5.9805(a)(2) and §5.9806(a)(2).

Multiple commenters recommend modifying the timing framework in §5.9805(a)(2) and §5.9806(a)(2) slightly to preserve the respondent's 30-day time limit. One commenter suggests that the 30-day period begin from the date of service on the respondent. Another commenter recommends that the period run from the earlier of the date the lawsuit is served or answered, so that a delay in service does not deprive the responding party of its appraisal rights. Other commenters suggest a deadline of 30 or 45 days after the date the respondent's answer to the lawsuit is due. These commenters state that their suggested changes will ensure a respondent is reasonably aware of the lawsuit before the deadline to demand appraisal has ended.

Other commenters suggest treating claims subject to Insurance Code Chapter 542A differently from "non-542A claims," giving respondents to an action on an Insurance

Code Chapter 542A claim a limited amount of time to demand appraisal after the §542A.003 pre-suit notice is provided. Based on the definition of "claim" in Insurance Code §542A.001(2), Insurance Code Chapter 542A applies to a first-party claim that is (A) made by an insured under an insurance policy providing coverage for real property, (B) paid by the insurer directly to the insured, and (C) arises from damage to or loss of covered property, wholly or partly, by forces of nature as specified in the section. Under Insurance Code §542A.003, the claimant must first give a pre-suit notice not later than the 61st day before the date a claimant files an action. Insurance Code §542A.003 requires the pre-suit notice to provide information about the claim, including the specific amount alleged to be owed by the insurer on the claim for damage to or loss of covered property. One commenter states that, given the pre-suit notice requirements, TDI should not provide additional time for an appraisal demand beyond 61 days.

One commenter also recommends revising the rules to prevent a policyholder from demanding appraisal after the policyholder files a lawsuit. One commenter similarly suggests that filing suit should not revive, extend, toll, or create a new unilateral appraisal right, and that after suit is filed, appraisal should be available only by mutual agreement.

Agency Response. TDI agrees appraisal should not be demanded long after litigation has begun because it causes unnecessary delay and expense that might be avoided by more timely initiation of appraisal. But because appraisal can be a more affordable and efficient dispute resolution process than litigation, preserving a limited opportunity to initiate appraisal is beneficial.

As a result, except for insurers who are provided a pre-suit notice under Insurance Code Chapter 542A, TDI adds §5.9805(a)(3)(B) and §5.9806(a)(2)(B) to give respondents a short window to demand appraisal after a lawsuit is filed. More specifically, a respondent

who wants to demand appraisal must do so not later than the date the answer to the lawsuit is filed or the date the answer is due, whichever is earlier. This window of time will help ensure that a respondent is aware of an apparent dispute about the amount of loss before the opportunity to demand appraisal is gone while also preventing a respondent from initiating appraisal long after litigation has begun.

If a pre-suit notice is provided under Insurance Code Chapter 542A, TDI revises §5.9805(a)(2) to give insurers a short window to demand appraisal after the notice. As adopted, an insurer that wants to demand appraisal must do so not later than 60 days after the notice is provided. The deadline will help ensure that the insurer is aware of an apparent dispute about the amount of loss before the opportunity to demand appraisal is gone. It will also help ensure that if the insurer wants to demand appraisal, the demand is made before litigation begins.

TDI notes that if both parties want to pursue appraisal after the demand deadline has expired, the deadline can be modified by written agreement as provided in §5.9805(c) or §5.9806(c).

With one exception, TDI agrees with the recommendation that the rules should constrain a party from demanding appraisal after litigation has begun. TDI recognizes that litigation might cause delay and extra expense that can be avoided by appraisal, but allowing a party to initiate litigation and later demand appraisal raises at least equal concerns about potential gamesmanship and more delay and expense. If a party files a lawsuit concerning the loss at issue, then appraisal should generally not be available without the other party's agreement. An exception is appropriate for a policyholder who timely files a lawsuit and seeks to initiate appraisal because the policy requires appraisal before the policyholder can proceed with the lawsuit. In that situation, the insurer's

preference to pursue appraisal before proceeding with litigation is indicated by the policy itself. As a result, §5.9805(a)(3)(A) and §5.9806(a)(2)(A) specify that those paragraphs do not apply to a policyholder who timely filed a lawsuit and is demanding appraisal because the policy requires it before the policyholder can proceed with the lawsuit.

Comment. Commenters generally support TDI's decision to create uniform timelines after appraisal is demanded. Multiple commenters suggest changes to the deadlines outlined in the appraisal and umpire procedures in §5.9805(b) and §5.9806(b).

One commenter notes that the proposed deadlines are too long and may result in appraisal taking years to complete, especially in response to catastrophic storms like Hurricane Beryl. The commenter recommends shortening the deadlines at each step of the process to ensure efficient dispute resolution. Another commenter notes that the proposed deadlines are longer than those included in many policies. That commenter suggests establishing the proposed deadlines as maximums so insurers can include quicker timelines in their policies; the commenter reasons that this approach reflects the legislature's concern that the appraisal process takes too long to complete.

Other commenters state that the proposed deadlines are too short and will result in rushed, potentially incomplete appraisals. Commenters recommend adjusting the deadlines or the requirements within the deadlines to address their concerns. One commenter recommends that the deadlines for appraisers and umpires in residential property appraisal under §5.9805(b)(4) and (5) should not begin to run until the appraisal panel is fully formed. In addition, rather than the proposed requirement that the appraisers "attempt" to agree on the amount of loss in dispute within 120 days, the commenter recommends requiring that appraisers must either agree or submit the

dispute to the umpire within 120 days under §5.9805(b)(4). Another commenter suggests extending the time for appraisers to attempt to agree during a personal automobile appraisal in §5.9806(b)(4) from 40 days to 90 days.

A commenter notes that, while the deadlines as proposed in §5.9805(b) and §5.9806(b) appear reasonable for average circumstances, they may be challenging when a more catastrophic event occurs because many parties will be competing for the same appraisers and umpires. A few commenters recommend that deadlines should be automatically extended under §5.9805(b) and §5.9806(b) upon a showing of good cause, such as when catastrophic events occur.

One commenter suggests the adopted rule should use one clear timeline sequence. Another commenter suggests replacing the specific timelines proposed in §5.9805(b) or §5.9806(b) with a "prompt standard" and uses as an example of "promptly, but not later than *x* number of days."

One commenter suggests the rules should define when the appraisal panel is formed and that deadlines should run from panel formation or umpire's appointment, rather than the date appraisal was demanded. The commenter states that delays in selecting an umpire should toll completion deadlines.

Agency Response. TDI recognizes the commenters' concerns about establishing appropriate, flexible deadlines. TDI declines to change the deadlines as proposed because they strike an appropriate balance between completing appraisal in a timely manner and giving appraisers and umpires sufficient time to agree on an appraisal award. The deadlines provide a consistent framework while giving parties the flexibility to tailor it to the relative breadth and complexity of the loss at issue or to other considerations, such as challenges following a catastrophic event.

Commenters' concerns mainly focus on the length of the deadlines in §5.9805(b)(4) and (5) and §5.9806(b)(4) and (5). The 120-day deadline in §5.9805(b)(4) strikes a balance between providing time for the appraisers to attempt to agree on the amount of loss while ensuring that appraisal is completed in a reasonable amount of time. Findings in the Appraisal Experience Report indicate that about 75% of residential property appraisal awards that did not involve an umpire were made within 120 days after appraisal was demanded. Similarly, the proposed 240-day deadline in §5.9805(b)(5) strikes a balance between completing appraisal in a timely manner and the need to give the umpire sufficient time to evaluate the loss, examine the differences, and attempt to agree on the amount of loss with at least one of the appraiser. According to the Appraisal Experience Report, 75% of residential property appraisal awards involving an umpire were made within 278 days after appraisal was demanded, and 50% were made within 193 days.

Likewise, the 40-day deadline in §5.9806(b)(4) strikes a balance between providing time for the appraisers to attempt to agree on the amount of loss while ensuring that appraisal is completed in a reasonable amount of time. Findings in the Appraisal Experience Report indicate that over 75% of personal automobile appraisal awards that did not involve an umpire were made within 40 days after appraisal was demanded. Similarly, the proposed 180-day deadline in §5.9806(b)(5) strikes a balance between completing appraisal in a timely manner and the need to give the umpire sufficient time to evaluate the loss, examine the differences, and attempt to agree on the amount of loss with at least one of the appraisers. According to the Appraisal Experience Report, 75% of personal automobile appraisal awards that involved an umpire were made within 210 days after appraisal was demanded, and 50% were made within 114 days.

TDI also declines to change the §5.9805(b)(4) requirement that appraisers "attempt" to agree on the amount of loss within 120 days to specifically requiring the appraisers agree or submit the dispute to the umpire within that period. As proposed, §5.9805(b)(4) and §5.9805(b)(5) already work in tandem to ensure that the appraisers must involve an umpire if they cannot agree on the amount of loss within 120 days after the appraisal demand is made.

TDI also declines to tie deadlines in §5.9805(b)(4) and (b)(5) to when the appraisers and the umpire are appointed, rather than when appraisal is demanded. The adopted deadlines promote appraisal in one continuous process, while deadlines contingent on when appraisers are selected or when an umpire is appointed would risk undue delays.

Comment. Multiple commenters express concern about §5.9805(c) and §5.9806(c), which state that parties may modify any deadline in the appraisal process by written agreement after the insurer provides the appraisal process notice required under §5.9803. Commenters state that, while §5.9805(c) and §5.9806(c) attempt to provide flexibility for parties to adjust timelines to suit the particular dispute at issue, it assumes cooperation and might incentivize bad acts, such as leveraging an agreement to one side's benefit or introducing extracontractual conditions into the appraisal process. One commenter suggests requiring any request to modify a deadline to include clear notice that the agreement requires mutual consent. A few commenters suggest clearly prohibiting insurers from conditioning any part of appraisal on a policyholder's agreement to modify the appraisal procedures or deadlines.

One commenter requests clarification that, under §5.9805(c) or §5.9806(c), the parties may always mutually agree to use appraisal, regardless of the expiration of any rule timeframes for demanding appraisal.

Agency Response. TDI declines to change §5.9805(c) and §5.9806(c) as proposed. The timeframes in §5.9805 and §5.9806 are fair and reasonable and generally supported by findings in the Appraisal Experience Report. Because the timeframes are fair and reasonable, it is also fair and reasonable to allow changes to those timeframes based on mutual, written agreement by the parties consistent with §5.9805(c) and §5.9806(c), enabling them to tailor the deadlines to the particular loss at issue.

TDI disagrees that additional notice is necessary. TDI also disagrees that additional rule text is needed to clarify that insurers may not condition part of appraisal on a policyholder's agreement to modify appraisal procedures or deadlines. Section 5.9802 requires appraisal provisions to state the deadlines and process for appraisal, including the specific amounts of time listed in §5.9805 or §5.9806, as applicable. Section 5.9803 requires insurers to provide policyholders an appraisal process notice that explains important information about the appraisal process in plain language, including applicable time limits and deadlines. TDI will monitor implementation of Insurance Code Chapter 1813 and these rules and take further action if needed.

TDI agrees that--subject to the requirements of §5.9805(c) and §5.9806(c)--parties can mutually agree to use appraisal even after the timeframes for demanding appraisal under §5.9805(a) and §5.9806(a) have expired.

Comment. Many commenters express concern with proposed provisions in §5.9805(b)(3) and §5.9806(b)(3) regarding umpire appointment when appraisers fail to jointly select an

umpire. One commenter notes that the proposed provisions will require revisions to many long-standing TDI-approved policy forms that use alternative umpire appointment procedures. The commenter states that it would be better to exclude specific requirements for umpire selection from the rule or, at a minimum, that the adopted requirements not be made more prescriptive than proposed.

Another commenter states that the umpire appointment and deadline provisions will increase cost. The commenter notes that requiring a judicial appointment option is too formal and expensive for automobile appraisals. The commenter also notes that a consumer should not have to navigate a county or district court just to get an umpire appointed in a modest automobile property damage dispute.

One commenter suggests the umpire selection should occur immediately after both appraisers are appointed, and that the rules should clarify when the umpire is "involved."

Agency Response. TDI appreciates the commenters' concerns about umpire appointment when appraisers fail to agree but declines to remove it from the adopted rules. Judicial appointment of umpires is a long-standing practice included in many policy forms used in Texas, including in appraisal provisions in promulgated Texas homeowners policies. TDI agrees that some insurers may need to update their policy forms to conform to the judicial appointment requirement. However, it is likely that insurers will need to make other changes to their policy forms to conform to these rules implementing SB 458. Insurers may still include a vendor option, subject to the adopted requirement that a vendor option may only be invoked by the policyholder. If a policyholder prefers not to request judicial appointment of an umpire, the policyholder may use other options included in the policy, such as invoking a vendor option consistent with §5.9805(b)(3)(B)(i)

or §5.9806(b)(3)(B)(i); or mutually agreeing with the other party on an alternative option consistent with §5.9805(b)(3)(B)(ii) or §5.9806(b)(3)(B)(ii).

In the unlikely event the appraisers cannot agree on an umpire, judicial appointment is a fair method of appointing an umpire, considering that automobile appraisal results in a binding determination of the amount of loss. Findings in the Appraisal Experience Report indicate that an umpire was used in about 7% of personal automobile appraisals, and likely only a fraction of those involved selection by means other than appraiser agreement.

TDI declines to require umpire selection immediately after the appraisers are appointed. Sections 5.9805(b)(2) and 5.9806(b)(2) require insurers to use one of the two deadline options for when umpire selection must occur. The first option requires the appraisers to choose an umpire within a short time after the appraisers are selected. This is a common approach used in many appraisal provisions, including in promulgated Texas homeowners policies. The second option does not require an umpire unless the appraisers cannot agree on the amount of loss in dispute within the time under §5.9805(b)(4) or §5.9806(b)(4). Both options help ensure that an umpire is identified and able to begin efforts to resolve the appraisal in a timely manner if the appraisers cannot agree on the amount of the loss. The second option creates an opportunity for appraisers to avoid spending time and effort on choosing an umpire unless and until one is needed.

TDI also declines to define when an umpire is considered "involved" because it is sufficiently clear from the context in §5.9805(b)(5) and §5.9806(b)(5).

Comment. Commenters request a clarifying change to §5.9806(b)(3)(A) as proposed, which states that the personal automobile appraisal provision must allow either party to

request judicial appointment of an umpire through a county or district court where the vehicle is principally garaged. The commenters request adding "as stated in the policy" at the end of the sentence, to ensure that the county or district would not change after the dispute arises and to prevent venue-shopping.

Agency Response. TDI agrees with the suggested clarification and has modified §5.9806(b)(3)(A) to state, "The appraisal provision must allow either party to request judicial appointment of an umpire. The judicial appointment must be through a county or district court where the vehicle is principally garaged as identified in the personal automobile insurance policy."

Comment. Many commenters express concern about the vendor-appointed umpire option proposed in §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i) and state that the rule should ensure that the policyholder has the sole right to choose which umpire appointment method is used at the time of the dispute. As proposed, an appraisal provision could include "an option for umpire appointment by an independent vendor that offers umpire selection services. An option for umpire appointment by an independent vendor must include two vendors and allow the policyholder to select which vendor is used, or it must allow only the policyholder to invoke the option for umpire appointment by a vendor."

The commenters say that the vendor-appointed umpire option shifts power to the insurer, which creates an unfair balance of control in umpire appointment. One commenter notes that, even where the policyholder may select from more than one vendor, those vendors may still be selected, approved, or influenced by the insurer before the dispute arises. Another commenter states that insurers should not be allowed total control over the appraisal process to essentially control pricing for the industry based on

the insurer's associated vendors, and another commenter argues that this practice would erode confidence in the system and compromise the neutral role the umpire is intended to serve.

Many commenters note the importance of fairness in the appraisal process, especially given the binding nature of the appraisal award. By allowing an insurer to "embed" a vendor-appointment mechanism into the policy or steer policyholders toward preferred vendors, commenters express concern that vendors may be partial to the insurer, creating the possibility of manipulation or gamesmanship in the appraisal process that would effectively deny or limit policyholders' ability to fully exercise their right to appraisal. One commenter suggests that allowing the insurance company the sole ability to choose the umpire amounts to corruption.

One commenter disagrees with the use of "any alternative method" agreed on by both parties, as that kind of broad language invites insurer-drafted procedures that function as steering. Instead, the final rules should identify specific umpire-selection methods, limited to joint selection by the appraisers and judicial appointment. If the independent vendor appointment option is retained, it should include standardized disclosures, and insurers should be prohibited from steering the policyholder to a particular vendor.

Conversely, one commenter opposes requiring only judicial appointment of an umpire and recommends that §5.9805(b)(3)(A) and §5.9806(b)(3)(A) permit an insurer to choose whether to appoint an umpire by judicial appointment or to require appointment by an option of at least two independent vendors, without mandating one method of umpire appointment over the other. The commenter states that a policyholder is unlikely

to have access or familiarity with an umpire selection service vendor and that independent vendors used by the insurers are skilled in dispute resolution.

Agency Response. TDI recognizes the concerns and has modified §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i) to state that while an appraisal provision may include an option for umpire appointment by an independent vendor that offers umpire selection services, the option may be invoked only by the policyholder. Under §5.9805(b)(3)(A) and §5.9806(b)(3)(A), every appraisal provision subject to Insurance Code Chapter 1813 must still include access to judicial appointment. Insurers that elect to also include the vendor-appointment option must provide that the option can be invoked only by the policyholder.

TDI agrees that the method of umpire appointment must be fair. If the appraisers cannot agree on an umpire, requiring the option of judicial appointment helps ensure fairness. Judicial appointment is a fair and appropriate method considering that appraisal is a binding dispute resolution process that can offer an alternative to litigation. TDI has modified §5.9805(b)(3)(B) and §5.9806(b)(3)(B) to further clarify that judicial appointment must always be included in an appraisal provision under §5.9805 and §5.9806.

Giving insurers the ability to offer an additional vendor-appointment option that can be invoked only by the policyholder provides the opportunity for added flexibility while preserving fairness. Both parties participate in selecting that method: an insurer can decide whether to offer a vendor-appointment option, and a policyholder can decide whether to invoke that option if it is offered.

Because TDI has modified the umpire-appointment option so it can be invoked only by the policyholder, TDI removed the proposed option for an insurer to include multiple vendors that the policyholder could select from. Under §5.9805(b)(3)(B)(ii) and

§5.9806(b)(3)(B)(ii), insurers may still include an option for umpire appointment through any alternative method that both parties mutually agree to in writing after appraisal has been demanded.

For the reasons described, TDI declines to make the change suggested by the last commenter, which would permit an insurer to choose between requiring judicial appointment or vendor appointment. The suggested change is also inconsistent with the bulk of the comments received regarding the vendor-appointed option. Those comments were largely in support of retaining policyholder autonomy to choose the method of umpire appointment.

Comment. Many commenters state that it is unclear whether the judicial appointment option prevails over the vendor-appointed option when both are included in a policy. One commenter notes that policyholders must retain the right to ask a court to appoint an umpire, as judicial appointment is the only safeguard that ensures independence, neutrality, and public accountability. Another commenter states that policyholders may be unable to challenge insurer-chosen umpire appointment methods because they lack sufficient understanding of the appraisal process, regardless of whether judicial appointment prevails over alternative appointment options. The commenters suggest clarifying that judicial appointment prevails when either party requests it. Another commenter recommends specific language to preserve the right to judicial appointment.

In addition to the clarification, one commenter suggests requiring the appraisal process notice under §5.9803 and the insurance policy to include language that the judicial appointment method prevails over other umpire appointment methods.

Agency Response. In response to other comments on the vendor-appointed option, TDI has modified §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i) so that only the policyholder may invoke the option for a vendor-appointed umpire. Judicial appointment will be the standard umpire appointment method when appraisers fail to jointly agree, so no further clarification is needed. If alternative appointment methods are included in a policy, judicial appointment of an umpire will control unless a policyholder invokes the vendor-appointed method or both parties mutually agree in writing to an alternative appointment method after appraisal is demanded.

TDI declines to change the appraisal process notice as suggested because the notice requirements under proposed §5.9803 already require an explanation of how the policyholder may request appointment of an umpire if the appraisers fail to jointly choose the umpire, including how to request judicial appointment of an umpire.

Comment. Similar to the other concerns raised by commenters about the proposed vendor-appointed option under §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i), many commenters recommend requiring an insurer that includes the vendor-appointed option in a policy to also disclose whether the vendor is compensated by or is "financially related" to the insurer. Commenters recommend the disclosure appear in the policy document to promote transparency, lessen an insurer's influence over the process, and ensure policyholders have the necessary information to make a meaningful choice.

Finally, a commenter recommends requiring vendors to be independent from the parties, just as the proposed rules require umpires to be independent. The commenter states that any vendor receiving compensation from an insurer or its affiliate for umpire

appointment services in connection with that insurer's policy should be disqualified from serving on the insurer's vendor list.

Agency Response. TDI declines to add a vendor-related disclosure because the requested change is outside the scope of this rulemaking. The request would presumably require TDI to specify the types of relationships, transactions, or interests that necessitate disclosure and determine what information must be disclosed. These topics were not considered in the proposed rules. TDI also declines to introduce other vendor-specific requirements because those specifications were not considered in this rulemaking and might be unnecessary.

TDI modifies §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i) in response to other comments so that only a policyholder may invoke the option for umpire appointment by a vendor. A policyholder who is concerned about a particular vendor's independence or a lack of information about a particular vendor can simply decline to invoke the vendor option and instead request judicial appointment under §5.9805(b)(3)(A) and §5.9806(b)(3)(A). If the policyholder identifies a more preferrable vendor, the policyholder may also propose that vendor to the insurer as an alternative method of umpire appointment under §5.9805(b)(3)(B)(ii) and §5.9806(b)(3)(B)(ii). To use the alternative appointment method, the parties would need to mutually agree in writing to the alternative appointment method after appraisal has been demanded.

TDI declines to make the change as requested by the last commenter. Under §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i), a vendor is already required to be independent. In addition, TDI declines to introduce additional specifications related to vendor independence because additional specifications were not considered in this rulemaking and might be unnecessary. As noted, TDI modifies §5.9805(b)(3)(B)(i) and

§5.9806(b)(3)(B)(i) in response to other comments so that only a policyholder may invoke the option for umpire appointment by a vendor. This change will produce a comparable effect because a policyholder who is concerned about a particular vendor's independence can simply decline to invoke the vendor option and instead request judicial appointment of the umpire.

Comment. In addition to the other concerns raised by commenters on the proposed vendor-appointed option under §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i), many commenters express concern about potential costs when a vendor appoints an umpire. Commenters state that each party usually pays for its own appraiser, and if an umpire is needed, the cost of the umpire's services is split between the parties. One commenter notes that this standard payment practice is fair when both parties have an equal role in selecting the umpire; it becomes unfair, however, when the insurer effectively controls the vendor-appointing mechanism by vetting, negotiating a contract, and embedding the chosen vendor in the policy. Commenters note that using a vendor-appointment service will unfairly financially burden the policyholder, who has no way of knowing the cost of using a vendor for umpire appointment, and that costs may vary significantly between the vendors insurers list in the policy. Many commenters recommend that TDI require insurers to bear the full cost of any vendor-appointed umpire. One commenter suggests that TDI place a cap on umpire costs.

Agency Response. TDI declines to make a change in response to the comments. As commenters stated, the parties to an appraisal usually split the cost of umpire services evenly. When a vendor is used to appoint or select an umpire, TDI understands that there likely is an additional fee or cost for the vendor's service of appointing the umpire in

addition to the umpire's compensation for participating on the appraisal panel. As previously discussed, TDI has modified §5.9805(b)(3)(B)(i) and §5.9806(b)(3)(B)(i) so that only a policyholder may invoke the option for umpire appointment by a vendor. This change addresses those underlying concerns of policyholder costs and fairness.

TDI also declines to adopt a fee cap for umpire services, as it is outside the scope of this rulemaking.

Comment. One commenter states that neither party should be able to designate a vendor to appoint umpires and instead recommends an approved vendor list established by TDI or another state agency.

Another commenter states that they envision a Texas-based independent vendor organization led by policyholder advocates and reputable insurance industry professionals and commits to working with those individuals to create such an organization.

Agency Response. TDI appreciates the commenters' ideas but declines to make a change as both are outside the scope of this rulemaking.

Comment. One commenter notes that the proposal appears to terminate an umpire's engagement if no appraisal award is issued within the timelines in §5.9805(b)(5) and §5.9806(b)(5). The commenter states that a deadline should promote progress, not nullify work that has already been performed. The commenter recommends that the rule should instead allow for replacement of an umpire for good cause, unreasonable delay, misconduct, or prejudice. Another commenter states that if an umpire is removed for

nonperformance within the prescribed timelines, then any fees collected should be returned to the parties.

Another commenter recommends that TDI consider providing additional clarity on the timeframe for a new umpire after the previous umpire is terminated in accordance with §5.9805(b)(5) or §5.9806(b)(5). Similarly, a commenter expresses concern that automatic termination of an umpire invites gamesmanship, and another states that umpire removal places a disproportionate burden on policyholders.

Agency Response. TDI declines to modify the rule to remove the specific time limits under §5.9805(b)(5) and §5.9806(b)(5) and replace them with specified conditions under which an umpire may be replaced. The time limits set a clear and certain time within which an umpire can act to help determine an appraisal award. The time limits help establish the period in which appraisal must be completed, which is part of the rulemaking charge in SB 458. Also, the proposed rules did not consider creating a specific set of conditions under which an umpire would be replaced other than the deadlines in §5.9805(b)(5) and §5.9806(b)(5). Establishing and defining the scope of conditions such as "good cause," "unreasonable delay," "misconduct," and "prejudice" would require additional rulemaking. It would also potentially increase the likelihood of potential disputes during the appraisal process by establishing standards that are more difficult to apply than a deadline. Also, the parties have the ability under §5.9805(c) and §5.9806(c) to agree to shorten or extend time limits in the appraisal process, including the deadlines in §5.9805(b)(5) and §5.9806(b)(5).

TDI also declines to modify the rule to require umpire fee refund in certain circumstances or to specify additional timelines where a new umpire is selected or appointed after the previous umpire is terminated. The deadlines in §5.9805(b)(5) and

§5.9806(b)(5) and the parties' ability to modify deadlines in §5.9805(c) and §5.9806(c) strike a balance between efficient processing and flexibility. Parties can extend the amount of time to issue an appraisal award to ensure the work that has already been performed is not lost. Similarly, the parties can establish deadlines for the new umpire to act. TDI declines to add more procedures for situations where an umpire is terminated, and a new umpire is selected or appointed. Findings in the Appraisal Experience Report indicate that most appraisals involving an umpire are likely to be completed within the timeframes reflected in §5.9805(b)(5) and §5.9806(b)(5).

Comment. One commenter expresses concern about insurance companies steering all jobs to conglomerate autobody shops, which will destroy independent autobody shops.
Agency Response. TDI notes that the appraisal process rules do not address the topic of autobody shop steering.

Subchapter Q. General Property and Casualty Rules
Division 4. Appraisal Requirements
28 TAC §§5.9800 - 5.9806

STATUTORY AUTHORITY. The commissioner adopts new §§5.9800 - 5.9806 under Insurance Code §1813.002 and §36.001.

Insurance Code §1813.002 requires the commissioner to adopt rules necessary to implement Insurance Code Chapter 1813, including rules establishing the period in which an appraisal under Insurance Code Chapter 1813 must be completed and rules mandating an appraisal for total loss and damage of the property that is the subject of the appraisal.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

TEXT.

§5.9800. Purpose and Scope.

(a) This division implements Insurance Code Chapter 1813, concerning Appraisal of Disputed Losses, which requires personal automobile and residential property insurance policies to include an appraisal provision that is intended to provide a type of dispute resolution process solely to determine the amount of loss when that amount is in dispute between the policyholder and the insurer.

(b) This division applies to personal automobile and residential property insurance policies delivered, issued for delivery, or renewed on or after March 1, 2027, in Texas by insurers described in Insurance Code §1813.001(a), concerning Applicability of Chapter.

(c) This division does not apply to:

(1) Texas Windstorm Insurance Association policies; or

(2) commercial insurance policies.

§5.9801. Definitions.

The following words and terms have the following meanings when used in this division, unless the context clearly indicates otherwise.

(1) Appraisal--The process to resolve a dispute between the insurer and a policyholder about the amount of loss as described in Insurance Code Chapter 1813, concerning Appraisal of Disputed Losses.

(2) Appraisal provision--The policy provision that provides for appraisal, as required under Insurance Code Chapter 1813.

(3) Appraisal award--The written determination of the amount of loss which is signed during the appraisal process by:

(A) both appraisers; or

(B) by either of the appraisers and the umpire.

(4) Appraiser--An individual who is qualified to be an appraiser under this division and is hired by either party to participate in the appraisal process.

(5) Party--The insurer or policyholder.

(6) Personal automobile insurance--Automobile insurance coverage for the ownership, maintenance, or use of a private passenger, utility, or miscellaneous-type motor vehicle, including a motor home, trailer, or recreational vehicle, that is owned or leased by one or more individuals and not primarily used for the delivery of goods, materials, or services, other than for use in farm or ranch operations.

(7) Residential property insurance--Insurance coverage against loss to tangible personal property or to residential real property at a fixed location that is provided through a homeowners insurance policy, including a tenants insurance policy, a condominium owners insurance policy, or a residential fire and allied lines insurance policy.

(8) Umpire--An individual who is qualified to be an appraisal umpire under this division and is selected by the appraisers or otherwise appointed to participate in the appraisal process.

§5.9802. General Requirements for Appraisal Provisions.

Every insurance policy subject to this division must have an appraisal provision that:

(1) states either party has the right to unilaterally demand appraisal;

(2) does not require the parties to reach an impasse before a party can demand appraisal;

(3) applies to disputes between the parties about the amount of loss, including partial or total loss, other than a total loss by fire that is subject to Insurance Code §862.053(a), concerning Fire Insurance: Total Loss of Real Property;

(4) requires the appraisal award to be binding as to the amount of loss, unless:

(A) it was made without authority;

(B) it was not made in substantial compliance with the appraisal provision; or

(C) there was fraud, accident, or material mistake relevant to the appraisal;

(5) states the deadlines and process for appraisal, which must include the specific amounts of time listed in §5.9805 of this title (relating to Residential Property Appraisal Process) or §5.9806 of this title (relating to Personal Automobile Appraisal Process) as applicable and be consistent with the other requirements in this division; and

(6) does not conflict with this division or other Texas law.

§5.9803. Appraisal Process Notice to Policyholders.

(a) At the same time the insurer provides notice of acceptance or rejection of the claim as required under Insurance Code §542.056, concerning Notice of Acceptance or

Rejection of Claim, the insurer must also provide notice of the appraisal process to the policyholder that is consistent with this section. Notice of the appraisal process may be a separate document or may be included in the notice under Insurance Code §542.056.

(b) The appraisal process notice must be written in plain language and at least 10-point type, and explain:

(1) where the appraisal provision is in the policy contract;

(2) how the policyholder may demand appraisal, including where to send the demand and what information the demand should include;

(3) the policyholder's responsibilities in the appraisal process, including the duty to hire an appraiser and any responsibility for appraisal expenses;

(4) how the policyholder may request appointment of an umpire if the appraisers fail to jointly choose the umpire within the time provided under §5.9805(b)(2) of this title (relating to Residential Property Appraisal Process) or §5.9806(b)(2) of this title (relating to Personal Automobile Appraisal Process), including how to request judicial appointment of an umpire;

(5) the applicable time limits in the appraisal process including, at a minimum, the deadlines for:

(A) demanding appraisal;

(B) appointing appraisers;

(C) selection of an umpire; and

(D) issuing the appraisal award; and

(6) the effect of the appraisal award.

§5.9804. Minimum Qualifications for Appraisers and Umpires.

(a) Appraisers and umpires must be:

(1) competent by training or experience to evaluate the type of loss in dispute;

(2) independent from the parties; and

(3) disinterested in the outcome of the appraisal.

(b) In addition to subsection (a) of this section, appraisers and umpires in a residential property appraisal that involves loss to a dwelling must also be one of the following:

(1) an adjuster or public adjuster with experience or training in estimating residential property losses;

(2) an engineer or architect with experience or training in residential building construction or repair, investigating residential property damage, or estimating residential property losses; or

(3) an individual who otherwise has occupational experience or training in constructing or repairing the type of damaged property at issue or estimating the type of property loss at issue.

§5.9805. Residential Property Appraisal Process.

(a) Appraisal demand. An appraisal demand must be made in writing and delivered to the other party within the following time limits.

(1) Except as provided in paragraphs (2) and (3) of this subsection, an appraisal demand must be made not later than the expiration of the limitations period for filing suit under the policy.

(2) If a pre-suit notice is provided under Insurance Code §542A.003, concerning Notice Required, an appraisal demand by an insurer must be made not later than 60 days after the notice is provided.

(3) If a lawsuit is filed concerning the loss at issue, the following apply.

(A) The plaintiff to the lawsuit may no longer demand appraisal unless:

(i) the insurance policy requires an appraisal before a lawsuit may proceed; and

(ii) the lawsuit was filed by a policyholder before the expiration of the limitations period for filing suit under the policy.

(B) Except for an insurer who is provided a pre-suit notice under Insurance Code §542A.003, an appraisal demand by the respondent to the lawsuit must be made not later than the date the answer is filed or the date the answer is due, whichever is earlier.

(b) Appraisal and umpire procedures. Subject to subsection (c) of this section, the following deadlines apply after a written demand for appraisal is made under subsection (a) of this section.

(1) Within 20 days, each party must hire its own appraiser and provide the appraiser's name and contact information to the other party in writing.

(2) The appraisers must jointly choose an umpire. The appraisal provision must require the appraisers to jointly choose an umpire not later than 15 days after either:

(A) the requirements in paragraph (1) of this subsection are completed; or

(B) the appraisers cannot agree on the amount of loss in dispute within the time provided in paragraph (4) of this subsection.

(3) If the appraisers fail to jointly choose an umpire within the time provided under paragraph (2) of this subsection, an umpire must be appointed subject to the following provisions.

(A) The appraisal provision must allow either party to request judicial appointment of an umpire. The judicial appointment must be through a county or district court where the residential property is located.

(B) In addition to judicial appointment required under subparagraph (3)(A) of this subsection, an appraisal provision may also include the following options.

(i) An option for umpire appointment by an independent vendor that offers umpire selection services. If this option is included, the policy must allow only the policyholder to invoke the option for umpire appointment by a vendor.

(ii) An option for umpire appointment through any alternative method that the parties mutually agree to in writing after appraisal has been demanded.

(C) A party requesting umpire appointment through judicial appointment or by an independent vendor must give written notice to the other party at least 10 days before making the request. For a judicial appointment, the written notice must include the location and identity of the court.

(D) On or before submitting a request for umpire appointment under this subsection, the party requesting the appointment must give the other party a copy of the request.

(4) Within 120 days after the appraisal demand was made, the two appraisers must attempt to agree on the amount of loss in dispute.

(5) If the appraisers cannot agree on the amount of loss in dispute, they must submit their differences to each other and the umpire. When an umpire is involved, the appraisal award must be issued not later than 240 days after the appraisal demand was made. If an appraisal award is not issued by the deadline, the umpire's engagement is terminated on that date, and the appraisers must choose a new umpire within 15 days after the deadline passes.

(c) Modifying deadlines. The parties may modify any deadline in the appraisal process by written agreement after the insurer provides the appraisal process notice required under §5.9803 of this title (relating to Appraisal Process Notice to Policyholders).

§5.9806. Personal Automobile Appraisal Process.

(a) Appraisal demand. A demand for appraisal under a personal automobile insurance policy must be made in writing and delivered to the other party within the following time limits.

(1) Except as provided in paragraph (2) of this subsection, an appraisal demand must be made not later than the expiration of the limitations period for filing suit under the policy.

(2) If a lawsuit is filed concerning the loss at issue, the following apply.

(A) The plaintiff to the lawsuit may no longer demand appraisal unless:

(i) the insurance policy requires an appraisal before a lawsuit may proceed; and

(ii) the lawsuit was filed by a policyholder before the expiration of the limitations period for filing suit under the policy.

(B) An appraisal demand by the respondent to the lawsuit must be made not later than the date the answer is filed or the date the answer is due, whichever is earlier.

(b) Appraisal and umpire procedures. Subject to subsection (c) of this section, the following deadlines apply after a written demand for appraisal is made under subsection (a) of this section.

(1) Within 20 days, each party must hire its own appraiser and provide the appraiser's name and contact information to the other party in writing.

(2) The appraisers must jointly choose an umpire. The appraisal provision must require the appraisers to jointly choose an umpire not later than 15 days after either:

(A) the requirements in paragraph (1) of this subsection are completed; or

(B) the appraisers cannot agree on the amount of loss in dispute within the time provided in paragraph (4) of this subsection.

(3) If the appraisers fail to jointly choose an umpire within the time provided under paragraph (2) of this subsection, an umpire must be appointed subject to the following provisions.

(A) The appraisal provision must allow either party to request judicial appointment of an umpire. The judicial appointment must be through a county or district court where the vehicle is principally garaged as identified in the personal automobile insurance policy.

(B) In addition to judicial appointment required under subparagraph (3)(A) of this subsection, an appraisal provision may also include the following options.

(i) An option for umpire appointment by an independent vendor that offers umpire selection services. If this option is included, the policy must allow only the policyholder to invoke the option for umpire appointment by a vendor.

(ii) An option for umpire appointment through any alternative method that the parties mutually agree to in writing after appraisal has been demanded.

(C) A party requesting umpire appointment through judicial appointment or by an independent vendor must give written notice to the other party at least 10 days before making the request. For judicial appointment, the written notice must include the location and identity of the court.

(D) On or before submitting a request for umpire appointment under this subsection, the party requesting the appointment must give the other party a copy of the request.

(4) Within 40 days after the appraisal demand was made, the two appraisers must attempt to agree on the amount of loss in dispute.

(5) If the appraisers cannot agree on the amount of loss in dispute, they must submit their differences to each other and the umpire. When an umpire is involved, the appraisal award must be issued not later than 180 days after the appraisal demand was made. If an appraisal award is not issued by the deadline, the umpire's engagement is terminated on that date, and the appraisers must choose a new umpire within 15 days after the deadline passes.

(c) Modifying deadlines. The parties may modify any deadline in the appraisal process by written agreement after the insurer provides the appraisal process notice required under §5.9803 of this title (relating to Appraisal Process Notice to Policyholders).

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

Issued at Austin, Texas, on November 6, 2026.

Signed by:
Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance

New 28 TAC §§5.9800 - 5.9806 are adopted.

Signed by:
Amanda Crawford
FE10434BC41A470...
Amanda Crawford
Commissioner of Insurance

Commissioner's Order No. 2026-10210