SUBCHAPTER O. TEXAS COMMERCIAL LINES STATISTICAL PLAN

28 TAC §5.9501

INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 TAC §5.9501, concerning the Texas Commercial Lines Statistical Plan (Plan). The proposed amendments adopt by reference a revised Plan, effective April 1, 2017. These amendments are necessary to effectively implement Insurance Code Chapter 38, Subchapter E, relating to statistical data collection; put the Plan's requirements for surety and fidelity risks in line with reporting requirements in other states; allow for better experience comparison by the department, the designated statistical agent, and the industry in general; and provide accurate contact information.

EXPLANATION. The revised Plan proposed to be adopted by reference in the amended section incorporates the same requirements and instructions for the reporting of direct commercial lines insurance premium and loss data to the designated statistical agent as the existing Plan, with the exception of a new class code and two new indicators for insurers who write surety bonds, and updated contact information for the department and the statistical agent.

The department proposes changes to the Plan to require surety insurers to report a small business indicator, an expedited underwriting indicator, and add a new class code identifying public-private partnerships. The proposed changes to surety risk reporting are for the purpose of standardizing the manner in which those insurers report premium and loss experience. When the Plan was last updated, effective January 1, 2010, the department revised the fields and codes used for reporting premium or loss experience for surety and fidelity risks to be consistent with the standard fields and codes required in the statistical plan used in all other states. In 2015, that statistical plan added a new class code and indicators. The proposed updates to the Plan are necessary to keep its reporting requirements in line with those in the statistical plan used in all other states, which will ease reporting for insurers who write in multiple states; potentially lower compliance costs; and allow for better experience comparison by the department, the designated statistical agent, and the industry in general. Under the proposed amendments to §5.9501, insurers would be required to begin reporting under the revised Plan by April 1, 2017. Insurers could voluntarily begin reporting under the revised Plan beginning July 1, 2016.

The department also proposes changes to the Plan to update contact information for the department and the designated statistical agent. The changes are necessary to avoid confusion and facilitate communication among insurers, the department, and the designated statistical agent by ensuring that insurers have accurate and current contact information. Insurers should begin using the updated contact information to communicate with the department and the designated statistical agent immediately, if they are not already doing so.

Proposed amendments to §5.9501(b) adopt by reference the revised Plan. Proposed amendments to §5.9501(a)(4) provide that insurers must use the revised version of the Plan beginning April 1, 2017. These amendments are necessary to implement the revised Plan and set the effective date by which insurers must report under the revised Plan.

Nonsubstantive changes to §5.9501 are also necessary to correct grammar errors and conform to the department's writing guidelines, and nonsubstantive changes to the Plan are necessary to make corrections to page cross-references.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. J'ne Byckovski, director and chief actuary, Property and Casualty Actuarial Office, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Byckovski has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of the proposed amendments will be an updated Plan that is consistent with surety and fidelity risk reporting standards in other states, which will ease reporting for insurers who write in multiple states; potentially lower compliance costs; and allow for better experience comparison by the department, the designated statistical agent, and the industry in general. The updated Plan will also avoid confusion and facilitate communication by ensuring that insurers have accurate contact information for the department and the statistical agent.

The department does not anticipate costs to insurers associated with the proposed update of contact information for the department and the designated statistical agent in the Plan; however, the department does anticipate some costs associated with complying with the new requirements for reporting of surety risks.

Under the proposed revisions to the Plan, surety and fidelity insurers will be required to report a small business indicator and expedited underwriting indicator, if the insurer already collects this information. The cost for insurers that write surety and fidelity bonds in states other than Texas will be negligible, or may result in savings, since the proposed revisions will align reporting requirements in Texas with the national reporting requirements of the Surety and Fidelity Association of America. Insurers that only write this business in Texas and that collect this information will need to reprogram their data reporting systems to include the extra indicators and possibly translate the company's unique indicators to the Plan codes. The department estimates that it will take a computer programmer approximately two to five hours to perform this task. For Texas-only insurers that do not collect information on small businesses or expedited underwriting, the addition of the indicators may involve a small initial cost in order to report the correct "not available" code in the small business indicator and expedited underwriting indicator positions. These insurers will have to reprogram their data reporting systems to include the extra indicators using the "not available" code. The department estimates that it will take a computer programmer approximately one to two hours to perform this task. While it is not feasible to determine the actual cost of any employees needed to comply with the small business indicator and expedited underwriting indicator requirements, the latest *State Occupational Employment and Wage Estimates for Texas* published by the United States Department of Labor, Bureau of Labor Statistics (May 2014) indicates that the mean hourly wage for a computer programmer in Texas is $38.85 (see: www.bls.gov/oes/current/oes_tx.htm).

Under the proposed revisions to the Plan, insurers who write surety bonds for public-private partnerships will have to begin reporting these surety bonds with a new class code. The department expects that insurers that write surety bonds for public-private partnerships are larger insurers that write surety in multiple states, and already report this new class code in other states. The cost for insurers that write these bonds in states other than Texas will be negligible, or may result in savings since the proposed revisions to the Plan align reporting requirements in Texas with the national reporting requirements of the Surety and Fidelity Association of America; however, any Texas-only insurers that write these bonds will need to amend their classification system in order to identify these risks and report this information to the designated statistical agent. To comply, affected insurers will have to determine if the principal's project is a public-private partnership through the underwriting process. Affected insurers will also have to update their classification tables and policy processing systems for the new class code, and will need to change their systems to accept an alphanumeric class code instead of a numeric class code. Affected insurers will also have to change their data reporting systems to accept the new class code. It is not feasible at this time for the department to accurately approximate the cost for affected insurers to make these changes. The exact cost to an affected insurer will depend on the number of surety bonds for public-private partnerships the affected insurer writes and how modern the affected insurer's policy processing, claims, and data reporting systems are.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), the department has determined that the proposal may have an adverse economic effect on approximately four insurers that are small or micro businesses required to comply with the proposed rules.

Adverse economic impact may result from costs associated with reporting a new class code and indicators for surety and fidelity risks. The cost of compliance will not vary between large businesses and small or micro businesses, and the department's cost analysis in the public benefit or cost note portion of this proposal is equally applicable to small or micro businesses. The total cost of compliance is not dependent on the size of the business, but rather is dependent on whether the insurer writes surety bonds in other states, whether the insurer collects the additional information to be reported, and the insurer's existing systems and staff.

In accordance with Government Code §2006.002(c-1), the department has considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses. The primary objective of the proposal is to align surety and fidelity reporting requirements with those in other states and to provide current and accurate contact information for the department and the designated statistical agent. The other regulatory methods considered by the department include: (i) not adopting the proposed rule, (ii) adopting different reporting requirements, and (iii) exempting small or micro businesses from the revised reporting requirements.

Not adopting the proposed rule. Without adopting the proposed rule, surety insurers would face different requirements for reporting in Texas than for the rest of the nation, resulting in potentially higher compliance costs over time and certain Texas data being unavailable for comparison or other informational purposes. This option has been rejected.

Adopting different reporting requirements. Adopting different reporting requirements for small and micro businesses would not alleviate adverse economic impact from compliance with this proposal because it would still require adjustments to insurers' computer systems in order to accommodate the new requirements. In fact, the adverse economic impact could be increased because alternate requirements would not be in line with those in other states in which the insurer also writes business. In addition, multiple sets of reporting requirements are not feasible. Having different requirements for insurers of different sizes would be burdensome for the department, the designated statistical agent, and the insurers. The department does not expect any small or micro businesses to write surety bonds for private-public partnerships, and the adjustment to reporting for the small business indicator and the expedited underwriting indicator will be small because insurers that do not collect that information can report the correct "not available" code. The proposal does not require any insurer, regardless of size, to collect information that it is not already collecting. Further, multiple sets of reporting requirements would diminish the utility of experience comparisons. This option has been rejected.

Exempting small or micro businesses from the revised reporting requirements. As previously noted, multiple sets of reporting requirements would be burdensome and would diminish the utility of experience comparisons. The negative effects of exempting small or micro businesses from the revised reporting requirements would outweigh the relatively small anticipated costs for small and micro businesses to comply. This option has been rejected.

After considering the relative benefits and costs of the alternatives and the purpose of the proposed revisions to the Plan, the department does not believe it is feasible to waive or modify the requirements of the proposal for small and micro businesses.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal or request a hearing, you must do so in writing no later than 5 p.m., Central time, on April 25, 2016. Send your written comments or hearing request by email to chiefclerk@tdi.texas.gov, or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the written comments or hearing request by email to jne.byckovski@tdi.texas.gov, or by mail to J'ne Byckovski, Director and Chief Actuary, Property and Casualty Actuarial Office, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a hearing must be submitted separately from written comments on the proposal. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes the amendments under Insurance Code §§38.202, 38.204(a), 38.205, 38.207, and 36.001.

Section 38.202 allows the commissioner to, for a line or subline of insurance, designate or contract with a qualified organization to serve as the statistical agent for the commissioner to gather data relevant for regulatory purposes.

Section 38.204(a) provides that a designated statistical agent must collect data from reporting insurers under a statistical plan adopted by the commissioner.

Section 38.205 requires insurers to provide all premium and loss cost data to the commissioner or the designated statistical agent as the commissioner or agent requires.

Section 38.207 authorizes the commissioner to adopt rules necessary to accomplish the purposes of Chapter 38, Subchapter E, relating to statistical data collection.

Section 36.001 provides the commissioner's general rulemaking authority to adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of the state.

CROSS REFERENCE TO STATUTE. Section 5.9501 implements Insurance Code Chapter 38, Subchapter E, codified by SB 1467, 76th Legislature, Regular Session (1999).

TEXT.

SUBCHAPTER O. TEXAS COMMERCIAL LINES STATISTICAL PLAN

§5.9501. Texas Commercial Lines Statistical Plan.

(a) Purpose and Applicability.

(1) The purpose of this section is to establish requirements for the reporting of premium and loss data by direct commercial lines insurers under [~~pursuant to the~~] Insurance Code Chapter 38, Subchapter E.

(2) Under [~~Pursuant to the~~] Insurance Code §38.202, the commissioner has designated a statistical agent for commercial lines of insurance.

(3) As provided by [~~Pursuant to the~~] Insurance Code §38.205, all insurers writing direct commercial lines business in [~~the State of~~] Texas are required to provide a report of their premium and loss cost experience to the commissioner or the statistical agent designated under [~~the~~] Insurance Code §38.202. The report must comply with the reporting requirements and instructions specified in the Texas Commercial Lines Statistical Plan adopted by reference in [~~pursuant to~~] subsection (b) of this section.

(4) This section applies to all reports required to be filed with the department under this section [~~filed with the department~~] for reporting periods beginning on or after April 1, 2017 [~~January 1, 2010~~].

(b) Adoption by Reference. The commissioner adopts by reference the Texas Commercial Lines Statistical Plan, effective April 1, 2017 [~~January 1, 2010~~]. This document is published by the department [~~Texas Department of Insurance~~] and is available on [~~from the Data Services Division, Mail Code 105-5D, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or~~] the department's website at www.tdi.texas.gov.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued at Austin, Texas, on March 7, 2016.

Norma Garcia
General Counsel
Texas Department of Insurance