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**SUBCHAPTER O. Texas Commercial Lines Statistical Plan
28 TAC §5.9501**

1. INTRODUCTION. The Commissioner of Insurance adopts new Subchapter O, §5.9501, concerning the Texas Commercial Lines Statistical Plan (Plan). The new section adopts by reference the Plan, effective January 1, 2010. The new section is adopted without changes to the proposed text published in the October 2, 2009 issue of the *Texas Register* (34 TexReg 6825).

2. REASONED JUSTIFICATION. The new section is necessary to update and adopt by reference the Texas Commercial Lines Statistical Plan (Plan), effective January 1, 2010. Because the prior Plan was adopted in 1995, the new Plan is necessary to (i) update obsolete reporting instructions; (ii) update the Insurance Services Office copyright notice to reflect the change from the adoption of the Plan pursuant to Articles 5.96 and 5.97 of the Insurance Code to Chapter 38, Subchapter E of the Insurance Code; (iii) update effective dates; and (iv) remove provisional instructions pertaining to the 1995 transition to the Plan. It is necessary, however, for the new Plan to retain the 1995 reporting instructions in the Run-Off Reporting Rule for each line in the event that a policy with a retrospective adjustment prior to 1995 needs to be reported. The transmittal form and affidavit, as well as the related instructions, have been deleted from the new Plan. They are no longer needed because insurers report this information on the designated statistical agent's forms.

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The Plan adopted by reference in the new section incorporates the same requirements and reporting instructions for the reporting of commercial lines insurance premium and loss data to the Department as the Plan, effective January 1, 1995, with the exception of the reporting of fidelity and surety experience data. The changes to the fidelity and surety premium and loss experience reporting in the new Plan standardize the manner in which fidelity and surety insurers report premium and loss experience. These changes consist of the updating of certain coverage and class fields and codes. Pursuant to the Plan, all insurers writing direct fidelity and surety business in the State of Texas are required to submit a quarterly report of premium and loss experience. Some of the fields and codes contained in the prior Quarterly Fidelity and Surety Experience Report of the Plan were not consistent with the standard fields and codes utilized by fidelity and surety insurers to submit premium or loss experience data in other states. As a result, insurers were required to maintain two separate systems for tracking premium and loss experience data – one for Texas and one for the rest of the country.

The revisions to the Quarterly Fidelity and Surety Experience Report of the Plan reflect the fields and codes used for reporting premium or loss experience in other states. Adopting standard fields and codes eliminates the need for fidelity and surety insurers to maintain two separate databases and should, as a result, lower compliance costs, as well as allow for better experience comparison by the Department, the designated statistical agent, and the industry in general.

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Additionally, the new Plan updates reporting media because technological advances have rendered diskettes obsolete in favor of CDs and DVDs as media storage mediums. The new Plan also incorporates minor changes to correct misspelled words and erroneous punctuation and to replace the references from “manual” to “Plan” for internal consistency. These changes will assist in understandability and ease of use.

The prior Plan was adopted under the procedures outlined in Articles 5.96 and 5.97 of the Insurance Code effective January 1, 1995, for mandatory use by all insurers writing commercial lines insurance in Texas. As a result of subsequent amendments to Article 5.97, which provide that Article 5.97 no longer applies to certain lines of insurance, the Plan is adopted pursuant to the Administrative Procedure Act, Government Code Chapter 2001.

The Insurance Code §38.202 provides that the Commissioner of Insurance (Commissioner) may, for a line or sub-line 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. The Insurance Code §38.204(a) provides that a designated statistical agent shall collect data from reporting insurers under a statistical plan adopted by the Commissioner. The Insurance Code §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. The Insurance Code §38.207 authorizes the Commissioner to adopt rules necessary to accomplish the purposes of the subchapter regarding statistical data collection.

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3. HOW THE SECTION WILL FUNCTION. Section 5.9501(a) sets forth the purpose and applicability of the new section. Section 5.9501(a)(1) specifies the purpose of the new section, which is to establish requirements for the reporting of premium and loss data by direct commercial lines insurers pursuant to the Insurance Code Chapter 38, Subchapter E. Section 5.9501(a)(2) specifies that, pursuant to the Insurance Code §38.202, the Commissioner has designated a statistical agent for commercial lines of insurance. Section 5.9501(a)(3) requires that, pursuant to the Insurance Code §38.205, all insurers writing direct commercial lines business in the State of Texas must provide a report of their premium and loss cost experience to the Commissioner or the statistical agent designated under the Insurance Code §38.202. Section 5.9501(a)(3) further requires that the report comply with the reporting requirements and instructions specified in the Plan, which is adopted by reference pursuant to the new §5.9501(b).

Section 5.9501(a)(4) mandates that the new section apply to all reports that are required by §5.9501 to be filed with the Department for reporting periods beginning on or after January 1, 2010.

Under the new §5.9501(b), the Plan is adopted by the Commissioner by reference, effective January 1, 2010. Section 5.9501(b) also provides that the Plan is published by the Department and is available from the Data Services Division, Mail Code 105-5D, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or the department website at www.tdi.state.tx.us.

Under the Plan adopted by reference, insurers will follow the same requirements and reporting instructions for the reporting of commercial lines insurance premium and

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loss data to the Department as the 1995 Plan, with the exception of the reporting of fidelity and surety experience data. Under the changes to the Quarterly Fidelity and Surety Experience Report of the Plan, insurers will report premium and loss data using updated coverage and class fields and codes that are also used in other states.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comments: All commenters express support for the proposed changes to the fidelity and surety portion of the Plan. In summary, the commenters agree that the use in Texas of the data fields and codes used for reporting premium and loss experience in other states will eliminate the need for insurers to maintain separate databases and processes and, in turn, lower compliance costs. Also, the changes will allow for better experience comparison by the Department, the designated statistical agent, and the industry in general and will, thereby, benefit the Department as well as the entire surety and fidelity industry.

Agency Response: The Department appreciates the supportive comments.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For without changes: CNA Surety, Great American Insurance Group, Liberty Mutual Surety, Merchants Bonding Company, and Old Republic Surety Company on behalf of the Fidelity and Surety Association of America.

Against: None.

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6. STATUTORY AUTHORITY. The new section is adopted pursuant to the Insurance Code §§38.202, 38.204(a), 38.205, 38.207, and 36.001. Section 38.202 provides that the Commissioner may, for a line or sub-line 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 shall 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 the subchapter regarding statistical data collection. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

6. TEXT.

§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 pursuant to the Insurance Code Chapter 38, Subchapter E.

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

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(3) 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 pursuant to subsection (b) of this section.

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

(b) Adoption by reference. The commissioner adopts by reference the Texas Commercial Lines Statistical Plan effective January 1, 2010. This document is published by the Texas Department of Insurance and is available from the Data Services Division, Mail Code 105-5D, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or the department website at www.tdi.state.tx.us.

7. CERTIFICATION. This agency hereby certifies that the adopted section has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that new Subchapter O, §5.9501 specified herein, concerning the Texas Commercial Lines Statistical Plan, is adopted.