

**SUBCHAPTER X. PRIOR APPROVAL OF RATES UNDER CERTAIN
CIRCUMSTANCES
28 TAC §§5.9980 – 5.9982**

1. INTRODUCTION. The Texas Department of Insurance proposes new 28 TAC §§5.9980 – 5.9982, concerning prior approval of rates under certain circumstances. These new sections are necessary to implement House Bill 1951, 82nd Legislature (2011), Regular Session, which amended Insurance Code Chapter 2251, Subchapter D, Prior Approval of Rates Under Certain Circumstances. The proposed sections define the financial conditions and rating practices that may subject an insurer to prior approval of an insurer's rates, supplementary rating information, and any supporting information. The proposed sections also establish when an insurer is excused from complying with prior approval under these sections. Further, the proposed sections establish factors that the commissioner may consider when declaring a statewide insurance emergency that affects the availability of insurance.

An informal draft text of the rule was published on the department's website on January 11, 2013, and the department accepted comments on that draft until February 11, 2013. The department received comments from one person. In response to the comments, the department amended the draft text to clarify when an insurer is excused from prior approval, to add factors that the commissioner may consider when declaring a statewide insurance emergency, and to provide for a public hearing on the statewide insurance emergency.

Section 5.9980 establishes the financial conditions that subject an insurer to prior approval of rates. An insurer may be required to file all rates for prior approval under

this section if the insurer is in a hazardous financial condition under Insurance Code Chapter 404, has been placed in supervision or conservatorship under Insurance Code Chapter 441, has been seized or placed in rehabilitation or receivership under Insurance Code Chapter 443, or has been required to make a special deposit with the comptroller under Insurance Code Chapter 406. An insurer subject to prior approval under this section must continue to file all rates, supplementary rating information, and any supporting information until the commissioner issues an order finding that the financial condition that subjected the insurer to this section no longer exists.

Section 5.9981 establishes the rating practices that may subject an insurer to prior approval of rates. An insurer may be required to file all rates for prior approval if the insurer has previously filed a rate that was disapproved by the department because the rate was found to be excessive, inadequate, or unfairly discriminatory for the risks to which the rate applies. An insurer may also be required to file rates for prior approval if the insurer has demonstrated a pattern of using a rate that differs from the rate the insurer filed under Insurance Code §2251.101. The department typically discovers that an insurer is using a different rate than the rate filed under Chapter 2251 when an insurer self-reports to the department. This rule is not intended to discourage insurers from self-reporting information to the department; rather, the purpose of §5.9981(a)(2) is to subject only those insurers that demonstrate a pattern of using a rates that differs from the rate filed under Chapter 2251 to the proposed rule. The commissioner may require an insurer to file rates for prior approval under this section for a period of up to two years as supported by the facts. The department determined that two years would be an appropriate time frame under this section since the frequency of rate filings can

vary greatly among different lines of insurance and different types of insurers. For example, homeowners' rates are typically filed less frequently than automobile rates, which may be filed quarterly or semi-annually. Further, unlike financial conditions outlined in §5.9980, it is difficult to determine when a rating practice ceases to exist. As a result, the department determined it is appropriate to identify the rating practice that may subject an insurer to this section and provide a time frame in which an insurer would be subject to this section. An insurer required to file rates for prior approval under this section would not be subject to this section beyond two years.

Section 5.9982 establishes a process for determining whether a statewide insurance emergency exists. The commissioner will consider the following factors: whether there is a substantial increase in policies in a line of insurance being written by surplus lines insurers; whether a line of insurance is not offered in a quantity or manner sufficient to adequately protect residents and policyholders as a result of a withdrawal plan or restriction plan filing; and whether the governor has declared a natural disaster, or the commissioner has declared a weather-related catastrophe. If the commissioner determines that a statewide insurance emergency exists, then the commissioner may order insurers to file their rates for prior approval for a period of time no longer than one year as supported by the facts of the emergency. Once a statewide insurance emergency has been declared, a public hearing concerning the emergency will be scheduled no later than 60 days after the issuance of the order. At the public hearing, the commissioner will consider the circumstances of the statewide insurance emergency and will accept comments as to whether a statewide insurance emergency continues to exist and what additional actions, if any, should be taken in response to the

emergency. Further, if the commissioner determines that a statewide insurance emergency continues to exist, then the commissioner may extend the order declaring an emergency.

2. FISCAL NOTE. J'ne Byckovski, Chief Actuary of the Property and Casualty Actuarial Office, has determined that for each year of the first five years the proposed sections 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 proposal. Costs related to these functions will be absorbed within the department's existing resources and will not require an additional appropriation for personnel or other operating resources. Thus, 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 proposal. As a result, there will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Ms. Byckovski has determined that for each year of the first five years the proposed sections will be in effect, the proposed sections will result in public benefits and promote public welfare by ensuring that rates filed by insurers subject to prior approval will be adequate, not excessive, and not unfairly discriminatory.

Ms. Byckovski has determined that there will be no additional cost to persons required to comply with this proposal. This proposal will not result in additional expenses related to the preparation and submission of rate filings since insurers are

already required to file rates under Insurance Code §2251.101. However, when an insurer becomes subject to prior approval under these proposed rules, it may not use a filed rate until the rate has been approved by the commissioner. Prior approval of rates only affects when a rate is effective. Rates submitted under these proposed rules will not go into effect until the commissioner approves the rate under Insurance Code §2251.153. Prior approval imposes no additional requirements upon insurers that file its rates with the department. For these reasons, the proposed rules will not result in additional cost to persons required to comply with them.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) provides that, if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis. Government Code §2006.001(2) defines a “small business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. Government Code §2006.001(1) defines a “micro business” similarly to “small business” but specifies that such a business may not have more than 20 employees.

The department has determined that the proposal will not have an adverse economic effect on small or micro businesses that must comply with the proposed rules. The costs for compliance with this proposal will not vary between the smallest and largest businesses because insurers that may become subject to this proposal are

already required to file rates with the department under Insurance Code §2251.101.

The proposed rules do not impose any additional filing requirements on insurers. The proposed rules only affect when an insurer may use a rate. Insurers not subject to prior approval may use a filed rate after the date the rate is filed under Insurance Code §2251.101(a). Insurers subject to prior approval under these proposed rules may not use the filed rate until the commissioner approves the rate. Since these proposed rules only affect when an insurer may use a filed rate, the cost of compliance does not have an adverse impact on a small or micro business.

5. 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 does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on this rule proposal must be submitted no later than 5 p.m. on July 8, 2013, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to J'ne Byckovski, Chief Actuary, Property and Casualty Actuarial Office, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Written comments may be submitted electronically to Ms. Byckovski at J'ne.Byckovski@tdi.texas.gov.

The commissioner will consider the adoption of the proposed sections in a public hearing under Docket No. 2752 scheduled for June 26, 2013, at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe St., Austin, Texas.

Written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The new sections are proposed under Insurance Code §2251.151 and §36.001. Section 2251.151 authorizes the commissioner to require insurers to file rates for prior approval under certain circumstances, to define by rule the financial conditions and rating practices that may subject an insurer to prior approval, and to establish by rule a process for determining whether a statewide insurance emergency exists. Section 36.001 provides that the commissioner 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.

8. CROSS REFERENCE TO STATUTE. The proposal implements the following statute:

<u>Rule</u>	<u>Statute</u>
§§5.9980 – 5.9982	Insurance Code §2251.151

9. TEXT.

§5.9980. Financial Conditions. (a) The following financial conditions may require an insurer to file with the department for the commissioner's approval all rates, supplementary rating information, and any supporting information:

(1) a finding by the commissioner that an insurer is in a hazardous financial condition under Insurance Code Chapter 404 and 28 TAC §8.3;

(2) an insurer has been placed in supervision or conservatorship under Insurance Code Chapter 441;

(3) an insurer has been seized or placed in rehabilitation or receivership under Insurance Code Chapter 443; or

(4) an insurer has been required to make a special deposit with the comptroller under Insurance Code Chapter 406.

(b) An insurer subject to this section must continue to file all rates, supplementary rating information, and any supporting information until the commissioner issues an order finding that the financial condition which subjected the insurer to this section no longer exists.

§5.9981. Rating Practices. (a) The following rating practices may require an insurer to file with the department for commissioner's approval all rates, supplementary rating information, and any supporting information:

(1) an insurer filed a rate that has been disapproved because the rate was found to be excessive, inadequate, or unfairly discriminatory for the risks to which the rates applied in violation of Insurance Code §2251.052; or

(2) the commissioner has found that an insurer has a pattern of using a rate that differs from the rate filed under Insurance Code §2251.101.

(b) The commissioner may order an insurer to file all rates, supplementary rating information, and any supporting information under this section for a period of time not longer than two years, as supported by the facts.

§5.9982. Statewide Insurance Emergency. (a) The commissioner may order insurers to file with the department for the commissioner's approval all rates, supplementary rating information, and any supporting information if the commissioner determines that a statewide emergency exists affecting the availability of insurance.

(b) The commissioner will consider the following factors in determining whether a statewide insurance emergency exists that impacts the availability of insurance:

(1) there is a substantial increase in policies in a particular line of insurance being written by surplus lines insurers;

(2) the commissioner has determined that a line of insurance is not offered in a quantity or manner to adequately protect the residents and policyholders in this state as a result of a withdrawal plan or restriction plan filed under Insurance Code Chapter 827; or

(3) the governor declares a natural disaster or the commissioner declares a weather-related catastrophe.

(c) If the commissioner determines a statewide insurance emergency exists, the commissioner may order insurers to file all rates, supplementary rating information, and any supporting information for approval for a period of time not longer than one year.

(d) After the commissioner issues an order under this section, the commissioner will hold a public hearing within 60 days after the issuance of the order declaring a statewide insurance emergency.

(1) At the public hearing, the commissioner will accept comments as to whether a statewide insurance emergency still exists.

(2) If the commissioner finds that a statewide insurance emergency still exists, then the commissioner may extend the date of the order.

(3) If the commissioner finds that a statewide insurance emergency does not exist, then the commissioner will issue an order excusing insurers from filing rates under this section.

10. 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 May 24, 2013.



Sara Waitt
General Counsel
Texas Department of Insurance