

**SUBCHAPTER O. Statistical Plans [~~Texas Commercial Lines Statistical Plan~~]
28 TAC §5.9502**

INTRODUCTION. The Texas Department of Insurance proposes new 28 TAC §5.9502, relating to the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks (statistical plan). The proposed rule is necessary to effectively implement Insurance Code Chapter 38, Subchapter E for statistical data collection in response to a catastrophe; standardize and streamline the catastrophe data reporting requirements to enhance efficiency and predictability for insurers and TDI; allow for better experience comparisons by TDI and the industry in general; ensure TDI has consistent, reliable information to evaluate the insurance market's health after a catastrophe; assist TDI in swiftly compiling complex data; allow for more timely analysis by TDI; and provide information about the impact of catastrophe events to policymakers.

The proposed rule adopts by reference a new statistical plan that will apply to reporting periods beginning on or after January 1, 2020. TDI also proposes changing the title of Subchapter O of 28 TAC Chapter 5 from "Texas Commercial Lines Statistical Plan" to "Statistical Plans."

EXPLANATION. Replacing numerous, distinct data calls with a single statistical plan for catastrophe data collection will ensure consistent, predictable, efficient data collection in the wake of a catastrophe. Implementing a single statistical plan for catastrophe data collection allows insurers to predict what data will be necessary and make business decisions about the most efficient way to report that data to avoid having to scramble during a catastrophe.

The statistical plan describes the information responding insurers will provide to TDI following a catastrophe event. The proposed rule largely adopts the elements of the TDI Catastrophe Data Call Guidelines issued in April 2019.

New 28 TAC §5.9502 is essential to ensure that insurers use the new statistical plan beginning January 1, 2020. Previously, TDI would determine the data elements for each specific catastrophe event, which made requirements less predictable for insurers and meant that insurers had to program their systems to report the data after the event occurred. This also meant that TDI received varying qualities of data that required significant staff resources and time to clean up and organize. A statistical plan will simplify the reporting process, making reporting easier for insurers and analysis easier for TDI, which will produce more timely responses by TDI to assess the insurance market's health.

Insurance Code §38.204 and §38.207 give the Commissioner authority to adopt such a statistical plan. Additionally, under Insurance Code §38.001, TDI may address a reasonable inquiry to any insurance company or other holder of an authorization, such as a surplus lines or farm mutual insurer, about the business condition or matters TDI considers necessary for the public good or for the proper discharge of TDI's duties.

The rule proposal adopts the statistical plan by reference. The statistical plan will be applicable January 1, 2020 and will be published on TDI's website at www.tdi.texas.gov.

Purpose. This information is important to TDI's ability to evaluate the financial condition of insurers after a catastrophe and to ensure consumers are protected. Standardized, high-quality, consistent data will result in better decision making and more efficient solutions to determine the insurance market's health after a catastrophe. This proposed

rule will also decrease industry costs over time because it allows insurers to implement a predictable and streamlined catastrophe statistical plan and data reporting process.

Applicability and Notice to Insurers. This proposed rule will assist TDI in timely collecting vital data about the financial condition of insurers after a catastrophe. It will also simplify and standardized the catastrophe-data-reporting process for insurers.

Insurers, including surplus lines and farm mutual insurers, that write property or automobile insurance in Texas will report data under §38.001 under the statistical plan. Whether an insurer is required to report data for a catastrophe in a given year depends on the amount of Texas direct written premiums the insurer reported in the prior calendar year. This is different from previous data calls that required all insurers to report. TDI will use premiums the insurer reported on its Annual Statement to determine whether the insurer is required to report. For an alien surplus lines insurer, TDI will use premiums provided by the Surplus Lines Stamping Office of Texas to make the determination. Insurers that are not licensed to write business in Texas or not eligible to do business in Texas on a surplus lines basis must not report data, even if the insurer has claims in Texas resulting from the catastrophe.

TDI will activate the statistical plan data reporting after a catastrophe in Texas. Insurers are not required to report data under the statistical plan until TDI has activated data reporting. TDI will activate reporting under Insurance Code §38.001 through a bulletin on TDI's website at www.tdi.texas.gov. The bulletin and statistical plan will provide instructions for responding insurers. These reports will be used to determine the financial impact of a catastrophe on insurers. A response made under §38.001 that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court. Insurers should identify what documents are privileged or confidential in their responses.

Proposed Rule Provisions.

Subsection 5.9502(a) provides information about the rule's purpose and applicability. This subsection identifies which insurers must report under the statistical plan. This subsection also specifies that insurers are required to report their premium and loss experience after each catastrophe. This subsection is necessary to clarify the proposed rule's purpose and applicability.

Subsection 5.9502(b) provides information about notice to insurers if reporting under the statistical plan is activated for a specific catastrophe event. TDI will post notice under §38.001 through a bulletin on its website at www.tdi.texas.gov. This subsection is essential to notify insurers about the statistical plan activation process.

Subsection 5.9502(c) states that a response under §5.9502 must comply with the statistical plan. This subsection is essential to ensure that all responses comply with the statistical plan.

Subsection 5.9502(d) clarifies that if the submitted reports are otherwise confidential by law, they will remain confidential as provided by Insurance Code §38.001(d). The rule specifies that insurers should identify what documents are privileged or confidential. This subsection is important to clarify that a response made under §38.001 that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court.

Subsection 5.9502(e) adopts the statistical plan by reference. This subsection is essential to adopt the statistical plan for insurers.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Brian Ryder, senior actuary and team lead, Regulatory Policy Division, has determined that during each year of the first five years the proposed rule is in effect, there will be no measurable fiscal

impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed rule does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed rule. Mr. Ryder does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. Standardized, high-quality, and consistent data will result in better decision making, more efficient solutions, and accurate identification of the insurance market's health after a catastrophe. This proposed rule will also decrease industry costs over time due to the implementation of a streamlined, standardized reporting process after a catastrophe.

The statistical plan is limited in scope but serves an important purpose. The information collected under it is essential to ensure that vulnerable consumers are protected and to provide TDI with the necessary data to evaluate market health, activity, and access.

Associated costs represent mostly upfront costs to the insurer. Once the internal procedures are revised, an insurer will have a process in place making future catastrophe data responses cost effective and efficient. Compared to the current one-time data call system, TDI anticipates that costs associated with catastrophe data reporting will decrease for insurers and TDI over time and will likely result in an overall reduction in costs.

For each year of the first five years the proposed rule is in effect, Mr. Ryder expects that administering the proposed rule will have the public benefit of ensuring that TDI's rules conform to Insurance Code §38.001, §38.204, and §38.207. This proposed rule will

assist TDI in collecting vital data about the financial condition of insurers after a catastrophe to allow the proper discharge of TDI's duties under Insurance Code §31.002.

Mr. Ryder expects that the proposed rule will impose an economic cost on persons who must implement the statistical plan requirements and comply with the proposed rule.

Because TDI has issued catastrophe data calls in the past, insurers already have a foundation in place for responding, including staff, internal processes, and forms or applications. Thus, for insurers the potential additional costs arise from revising an insurer's internal processes to comply with the proposed new statistical plan. The extent to which those internal processes and documents will need to be revised will depend on each insurer's past and future business decisions, but the data to be collected under the statistical plan will be substantially the same whether TDI collects the data through one-time data calls or through this statistical plan. Any change in the process results mainly from implementing the new reporting procedure under the statistical plan. Importantly, however, adopting these reporting requirements as a statistical plan provides predictability to insurers with respect to which companies will be required to report and what information those companies must report. It also provides predictability to TDI in the form of standardized, organized data.

Insurers only need to implement the new statistical plan procedures once. And they will be able to use those revised procedures multiple times without change. This will result in lower costs over time for both TDI and the industry, higher quality data, and increased efficiency. In addition, TDI will receive consistent data over time allowing for accurate experience comparisons. This will lead to better decision making, improved responses to the market after a catastrophe, and improved internal procedures for TDI. This will also assist TDI in swiftly compiling complex data; allow for more timely analysis by TDI; and provide information about the impact of catastrophe events to policymakers.

It is not feasible for TDI to determine the actual cost of employees needed to comply with the proposed rule considering that each insurer occupies a different market share and will only provide data to the extent its business is affected by the identified catastrophe in the specified regions. Further, every insurer has unique internal processes, resources, and technical capabilities that are not feasible for TDI to evaluate. The method of compliance is a business decision, including the decision to employ staff or contract for some of these services.

Though costs to each insurer will depend heavily on the method of compliance the insurer chooses, TDI projects the following possible requirements. These estimates are conservative (high) so costs may be less than what is estimated here.

TDI estimates individual employee compensation for an administrative assistant at \$17.61 an hour, computer operator at \$22.04 an hour, and a computer and information systems manager at \$68.53 an hour for one to twenty hours of work to revise an insurer's internal procedures. TDI also estimates individual employee compensation for an administrative assistant at \$17.61 an hour and a computer operator at \$22.04 an hour for one to twenty hours of work to gather and submit the data. These wages are based on the national median hourly wage for each classification as reported in the May 2018 National Industry-Specific Occupational Employment and Wage Estimates at: www.bls.gov/oes/current/oes436014.htm; www.bls.gov/oes/current/oes113021.htm; and www.bls.gov/oes/current/oes439011.htm.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The primary objectives of this proposal are to gather essential data to determine the insurance market's health after a catastrophe and to implement a streamlined, standardized process to reduce costs over time and increase reporting efficiency.

To implement this rule, TDI has determined that the proposed rule may have an adverse economic effect or a disproportionate economic impact on one to 100 small or micro businesses. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses. The new statistical plan will only apply to insurers meeting a monetary threshold of at least \$5 million in Texas written premium. Therefore, TDI estimates that the proposed rule will only affect a minimal number of small or micro businesses, if any. TDI considered the following alternatives to minimize any adverse impact on small and micro businesses while accomplishing the proposal's objectives:

- (1) not proposing the proposed rule and instead collecting the needed data through one-time data calls;
- (2) proposing a different requirement for small and micro businesses; and
- (3) exempting small or micro businesses from the proposed requirement that could create the adverse impact.

TDI examined each of these alternatives and explains them below:

Not proposing the proposed rule. Not adopting the proposed rule would result in continuing the data-call approach. There would be no streamlined, anticipated process for collecting this important data for any insurer, regardless of size. This would mean no cost-savings result over time due to increased efficiency, and no statistical plan to ensure consistent data is collected that would allow an examination of experience comparisons over time. For these reasons, this option has been rejected.

Proposing a different requirement for small and micro businesses. Proposing a different requirement for small and micro businesses would not alleviate the adverse economic impact from compliance with this proposal because small and micro businesses would still be required to report data in response to a catastrophe data call issued by TDI. For these reasons, this option has been rejected.

Exempting small and micro businesses from the proposed requirement that could create the adverse impact. If small and micro businesses were exempted from the new proposed rule that would not alleviate the adverse economic impact from compliance with this proposal because small and micro businesses would still be required to report data in response to a catastrophe data request issued by TDI. In addition, there would be no streamlined, anticipated process for small and micro businesses for collecting this important data. This would mean no cost-savings result over time due to increased efficiency. For these reasons, this option has been rejected.

TDI has determined that the proposal will not have an adverse economic effect on rural communities because the statistical plan will only apply to insurers meeting a monetary threshold of at least \$5 million in Texas written premium. As a result, and in accordance with Government Code §2006.002(c), it is not necessary for TDI to address rural communities in its regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a cost on regulated persons. However, no additional rule amendments or repeals are required under Government Code §2001.0045 because the rule is being adopted in response to past natural disasters and anticipation of future natural disasters.

After issuing individual, separate data calls for past natural disasters, TDI determined that a new process was required to collect data concerning the financial health of the insurance market after a natural disaster—it needed a more efficient, standardized way to assess the financial health of the market. Because time is critical when responding to a catastrophe, spending extra time and resources drafting and issuing unique, incident-specific data calls, and sorting through variously formatted and delivered responses, inhibits TDI's ability to collect and analyze catastrophe statistical data

efficiently. In addition, requiring insurers to respond to unique, incident-specific data calls diverts insurers' time and resources during a catastrophe. Therefore, this rule is being adopted in response to TDI's experience after past natural disasters and in response to future anticipated natural disasters.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed rule is in effect the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation to implement the new statistical plan;
- will not expand, limit, or repeal an existing regulation;
- will increase the number of individuals subject to the rule's applicability, as this is a new rule; and
- will positively affect the Texas economy as it will provide important, cost-effective information to TDI to assess the insurance market's health after a catastrophe.

TAKINGS IMPACT ASSESSMENT. TDI 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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, December 9, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on December 9, 2019. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes 28 TAC §5.9502 under Insurance Code §§38.001, 38.202, 38.204 – 38.207, and 36.001.

Insurance Code §38.001 authorizes TDI to address a reasonable inquiry to any insurance company or other holder of an authorization, such as a surplus lines or farm mutual insurer, relating to the business condition or any matter TDI considers necessary for the public good or for the proper discharge of TDI's duties. This section also specifies that a response made under this section that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court.

Insurance Code §38.202 allows the Commissioner to designate a statistical agent to gather data for relevant regulatory purposes or as otherwise provided by the Insurance Code.

Insurance Code §38.204 requires a designated statistical agent to collect data from reporting insurers and authorizes the Commissioner to adopt a statistical plan adopted by the Commissioner.

Insurance Code §38.205 provides that insurers must provide all premium and loss cost data to the Commissioner or designated statistical agent.

Insurance Code §38.206 authorizes the statistical agent to collect from reporting insurers any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurer.

Insurance Code §38.207 authorizes the Commissioner to adopt rules necessary to accomplish the purposes of Insurance Code Chapter 38, Subchapter E.

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.

CROSS-REFERENCE TO STATUTE. Section 5.9502 implements Insurance Code Chapter 38, Subchapter E, codified by SB 1467, 76th Legislature, Regular Session (1999).

TEXT.

Subchapter O. Statistical Plans [~~Texas Commercial Lines Statistical Plan~~]

§5.9502. Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks.

(a) Purpose and applicability.

(1) The purpose of this section is to establish requirements for the reporting of catastrophe-related data by insurers under Insurance Code Chapter 38, Subchapter E and Insurance Code §38.001.

(2) This section applies to all reports required to be filed under the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks for reporting periods beginning on or after January 1, 2020. Insurers must report their claim and loss experience after each specified catastrophe event. Insurers are not required to report data under the statistical plan until TDI has activated the statistical plan for a specific event and requested information under Insurance Code §38.001 through a bulletin on TDI's website at www.tdi.texas.gov.

(b) Data reporting notice. TDI will notify insurers, including surplus lines and farm mutual insurers, of data reporting under the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks by posting a data request under Insurance Code §38.001 through a bulletin on TDI's website at www.tdi.texas.gov.

(c) Response requirements. A response must comply with the reporting requirements and instructions specified in the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks adopted by reference in subsection (e) of this section.

(d) Confidential information. Under Insurance Code §38.001(d), a response made under this section that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court. Insurers should identify what documents are privileged or confidential in their responses.

(e) Adoption by reference. The Commissioner adopts by reference the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks. This document is published by TDI and is available on TDI'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 authority to adopt.

Issued in Austin, Texas, on October 25, 2019.

/s/ James Person
James Person, General Counsel
Texas Department of Insurance