

SUBCHAPTER O. STATISTICAL PLANS
28 TAC §5.9502

INTRODUCTION. The Commissioner of Insurance adopts new 28 TAC §5.9502, relating to the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks (statistical plan). The new section is adopted with changes to the proposed text published in the June 19, 2020, issue of the *Texas Register* (45 TexReg 4157). TDI made nonsubstantive edits to the statistical plan in response to comments received. The statistical plan's edition name was changed to "First Edition, August 2020" to reflect that edits were made since the May 2020 version, and the proposed rule text was changed for consistency with this.

REASONED JUSTIFICATION. This adoption order changes the title of Subchapter O of 28 TAC Chapter 5 from "Texas Commercial Lines Statistical Plan" to "Statistical Plans" and adopts by reference a new statistical plan. The statistical plan will be published on TDI's website at www.tdi.texas.gov.

The 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.

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.

This information is important to TDI's ability to evaluate the financial condition of insurers after a catastrophe and to ensure that 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 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. Associated costs represent mostly up-front 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 with 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.

Insurers, including surplus lines and farm mutual insurers, that write property or automobile insurance in Texas will report data under Insurance Code §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 the premiums an insurer reported on its Annual Statement to

determine whether that 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 should not report data, even if the insurer has claims in Texas resulting from the catastrophe. Additionally, the statistical plan does not apply to captive insurers licensed under Insurance Code Chapter 964. Captive insurers were not required to report under previous data calls, and they settle claims for themselves, so their exemption is consistent with previous catastrophe data call practices.

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 Insurance Code §38.001 that is otherwise privileged or confidential by law, whether to a statistical agent or to TDI, 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.

New 28 TAC §5.9502 ensures that insurers use the new statistical plan. Previously, TDI would determine the data elements needed 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 each event. This also meant that TDI received data of varying quality, requiring 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.

Section 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.

Section 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.

Section 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.

Section 5.9502(d) clarifies that if a submitted report is otherwise confidential by law, it will remain confidential as provided by Insurance Code §38.001(d). The rule specifies that insurers should identify which 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.

Section 5.9502(e) adopts the statistical plan by reference. The text of this subsection was revised from the text as proposed to adopt by reference the Texas Catastrophe Event Statistical Plan for Personal and Commercial Risks, First Edition, August 2020. This change is made to reflect that the version of the plan proposed to be adopted by reference has been revised in response to comments on the proposal.

The version of the statistical plan as adopted by reference under §5.9502(e) has been changed from the proposed version by:

- modifying the reporting requirements on page 14 of the statistical plan to require insurers to report the catastrophe name as a reported field; but companies do not need to enter it if they use the TDI reporting format where the change was made on Column B of the Licensed Insurers and Surplus Lines Insurers Tabs of the Excel Reporting Form template;

- making unknown ZIP codes standardized as "99999" on page 9 and 15 of the statistical plan and Column A of the Licensed Insurers and Surplus Lines Insurers Tabs of the Excel Reporting Form template;

- amending section 11F, now 11G, to state "without payment for each applicable ZIP code" on page 16 of the statistical plan; and

- adding clarification on the use of "all ZIP codes" to explain whether this phrase refers to only all listed ZIP codes on page 17 of the statistical plan.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from two commenters.

Commenter in support of the proposed rule, with no suggested changes: Underwriters at Lloyd's, London.

Commenter in support of the proposed rule, with suggested changes: Insurance Services Office, Inc.

Comment on the Statistical Plan: In regard to the statistical plan, a commenter recommends:

- 1) having a catastrophe code indicator as part of the reported fields;
- 2) making unknown ZIP codes standardized (i.e., as "00000" or "99999");
- 3) amending section 11F to state "without payment for each applicable ZIP code";
- 4) adding clarification on the use of "all ZIP codes" to explain whether this refers to only all listed ZIP codes; and
- 5) collecting the data as a text file instead of an Excel document to reduce the likelihood of companies altering the layout.

Agency Response: TDI agrees in part and disagrees in part with the comment.

In regard to having a catastrophe code indicator as part of the reported fields, TDI agrees to make a change, though different from what was requested. In the version of the statistical plan adopted by reference, the reporting form does not have a catastrophe code indicator but instead has a catastrophe name. TDI modified the form so that the catastrophe name shows up as a reported field, but companies do not need to enter it if they use the TDI reporting format.

TDI agrees to make unknown ZIP codes standardized as ""99999," amend section 11F as 11G and to state "without payment for each applicable ZIP code," and to add

clarification on the use of "all ZIP codes" to explain whether this refers to only all listed ZIP codes. The version of the statistical plan adopted by reference includes these changes.

5) TDI does not agree that the data should be collected as a text file instead of an Excel document. A text file does not have built-in reasonability checks, which allow companies to see whether their submission will pass certain data checks. The Excel template is locked for editing and password protected. In addition, the statistical plan allows the statistical agent to establish alternate formats, including text files, while also allowing insurers to submit the Excel template. Therefore, TDI declines to make the requested change.

Comment on §5.9502: A commenter writes in support of the rule. The commenter commends TDI for publishing the statistical plan and stating the plan's expectations in advance of a catastrophe. The commenter expresses belief that this proposal will lead to standardized, high-quality, consistent data delivered in a more efficient process.

Agency Response: TDI appreciates the support and will continue to work to produce high-quality data in an efficient manner.

STATUTORY AUTHORITY. The Commissioner adopts new 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 under 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.

TEXT.**Subchapter O. Statistical Plans****§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 dates beginning on or after the effective date of the plan. 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, whether to a statistical agent or to TDI, 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, First Edition, August

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TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 5. Property and Casualty Insurance

Adopted Section
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2020. This document is published by TDI and is available on TDI's website at www.tdi.texas.gov.

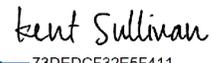
CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on 9/15/2020.

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James Person, General Counsel
Texas Department of Insurance

The Commissioner adopts new 28 TAC §5.9502.

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Kent C. Sullivan
Commissioner of Insurance

Commissioner's Order No. 2020-6467