

SUBCHAPTER B. INSURANCE HOLDING COMPANY SYSTEMS
28 TAC §7.215

INTRODUCTION. The Texas Department of Insurance proposes new 28 TAC §7.215, concerning group capital calculation filing requirements for certain insurance holding company systems. This new section is proposed to require certain internationally active insurers to make filings to help the department assess risk in their holding company systems. The proposed section will align the department's rules with the anticipated accreditation requirements of the National Association of Insurance Commissioners (NAIC). It will also ensure that the department retains its authority to regulate filings associated with covered agreements for its domestic insurance companies.

EXPLANATION. Proposed new §7.215 is based on NAIC model regulations requiring the ultimate controlling person of an insurer in an insurance holding company system to file with the insurer's lead state regulator a group capital calculation concurrently with the insurer's registration. Section 7.215 is proposed to (1) help the department identify and quantify risks in certain holding company systems by increasing the transparency of those systems, (2) align the department's rules with anticipated updates to the NAIC's accreditation requirements, and (3) meet conditions established in the covered agreements between the United States and its counterparts in the European Union and United Kingdom.

Proposed new §7.215 is derived from the NAIC Insurance Holding Company System Model Regulation (#450), with elements of its Insurance Holding Company System Model Regulatory Act (#440). The group capital calculation quantifies an insurance holding company system's key financial information--including financial information about noninsurance entities in the system--at the worldwide-undertaking level. The NAIC

models establish the formula, format, and reporting criteria for the group capital calculation. That filing provides regulators with another tool for group-wide supervision.

Section 7.215 requires an insurer to file a group capital calculation only if the entity is either (1) subject to the covered agreements, or (2) required by the United States Federal Reserve Board to perform a group capital assessment that cannot be shared with the department. The proposed new section then gives the Commissioner, after considering certain criteria, discretion to require other insurers to file a group capital calculation. It also gives the Commissioner discretion to determine the form of the group capital calculation filing and to extend the filing deadline. The proposed new section also establishes exemptions from the filing requirement.

The proposed new section is described in the following paragraphs.

Section 7.215. Proposed new §7.215(a) requires the ultimate controlling person of an insurer identified in that subsection to file a group capital calculation. Subsection (b) allows the Commissioner to require a group capital calculation filing from an insurer that is not required to file under subsection (a) or exempted from filing under subsection (e). Paragraphs (1) - (8) of subsection (b) list the factors the Commissioner will consider in deciding whether to request a group capital calculation filing. Subsection (c) requires the group capital calculation to be filed concurrently with the registration statement, as determined by NAIC procedures. Subsection (c) also allows the Commissioner to extend the filings deadline and to permit a controlling person other than the ultimate controlling person to file the group capital calculation. Subsection (d) authorizes the Commissioner to accept a limited group capital filing if the factors listed in subsection (b)(4) - (8) are present. Subsection (e) exempts an ultimate controlling person from the requirement to file a group capital calculation if the relevant holding company system meets any of the criteria in paragraphs (1) - (4) of subsection (e).

Notwithstanding subsection (e), subsection (f) allows the Commissioner to require a group capital calculation from insurance holding company systems exempted by subsection (e) if the Commissioner finds the filing appropriate for prudential oversight and solvency monitoring purposes. Subsection (g) allows the Commissioner to consult a list of non-U.S. jurisdictions that recognize and accept the group capital calculation produced by the NAIC (NAIC List) to decide whether an exemption applies under subsection (e). Subsection (h) allows the Commissioner to recommend to the NAIC that a non-U.S. jurisdiction be added to the NAIC List if that jurisdiction provides confirmation that the group capital calculation is an acceptable international capital standard under subsection (e)(4). Subsection (i) requires the Commissioner to provide documented justification to the NAIC if the Commissioner's determination under subsection (e)(4) differs from the NAIC List. Subsection (j) allows the Commissioner to require a group capital calculation filing if the Commissioner finds that an insurance holding company system no longer meets the requirements for an exemption under this proposed section. Subsection (k) establishes that nothing in proposed §7.215 precludes an insurer from voluntarily providing the Commissioner with information related to Insurance Code 823, Subchapter B.

This proposal arises out of rules, regulations, directives, or standards adopted by the NAIC. Adoption of this rule is required to meet anticipated NAIC accreditation standards as contemplated in Insurance Code §36.004(c)(1).

In addition, under Insurance Code §36.007, a rule that implements an agreement that infringes on the authority of this state to regulate the business of insurance in this state has no effect unless the agreement is approved by the Texas Legislature. Legislative approval of this proposed new section is not necessary because the department has determined that this proposed new section does not implement an interstate, a national,

or an international agreement that infringes on the state's authority to regulate the business of insurance.

Thus, the department has determined that neither Insurance Code §36.004 nor §36.007 prohibit adoption of the proposed new section.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner, Financial Regulation Division, has determined that during each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the new section. Ms. Walker made this determination because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new section.

Ms. Walker does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new section is in effect, Ms. Walker expects that administering the proposed section will have the public benefits of (1) ensuring that the department's rules are consistent with the NAIC's models, and (2) allowing additional assessment of risks among entities in a complex insurance holding company system, furthering the department's efforts to protect insurance consumers and the public.

Ms. Walker expects that proposed new §7.215 might impose an initial economic cost on persons required to comply with the new section, but those costs should be offset by other savings associated with the proposal.

Section 7.215 is proposed to ensure that Texas regulations satisfy the covered agreements negotiated by the U.S. Trade Representative and the Federal Insurance Office,

an office within the U.S. Department of the Treasury. The Dodd-Frank Wall Street Reform and Consumer Protection Act (31 U.S.C. §313 and §314) authorized the federal government to negotiate covered agreements with foreign governments to provide for the preemption of state laws in certain circumstances, one being when a group capital calculation required by state insurance laws or regulations treats non-U.S. insurers less favorably than U.S. insurers. The NAIC model act and regulation, on which §7.215 is based, are consistent with the in-force covered agreements and do not favor U.S. insurers over non-U.S. insurers. The proposed new section responds to the federal government's interest in this issue and establishes a rule that correspondingly and equitably regulates non-U.S. and U.S. insurers in satisfaction of the in-force covered agreements. Of note is the section's provision that only insurers for which Texas is the lead state are required to file the group capital calculation in Texas. By filing the group capital calculation in Texas, those insurers relieve themselves of the burden to make additional financial solvency filings in non-U.S. jurisdictions.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed new section will not have an adverse economic effect on small or micro businesses, or on rural communities. This is because the proposed new section applies only to insurers that do not qualify as small or micro-businesses and not to rural communities. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this proposal does not impose a cost on regulated persons because any initial costs of compliance are expected to be offset by other savings. In addition,

even if the rule were to impose a cost, no additional rule amendments are required under Government Code §2001.0045 because the proposed new section reduces the overall burden or responsibilities imposed on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed new section is in effect, the proposed section:

- 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 new regulations;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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. 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. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on September 19, 2022. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2834 at 2:00 p.m., central time, on August 31, 2022, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

STATUTORY AUTHORITY. The department proposes new §7.215 under Insurance Code §§823.012(a), 823.052(c)(13), and 36.001.

Insurance Code §823.012(a) provides that the Commissioner may, after notice and opportunity for all interested persons to be heard, adopt rules and issue orders to implement Insurance Code Chapter 823, including the conducting of business and proceedings under Insurance Code Chapter 823.

Insurance Code §823.052(c)(13) authorizes the Commissioner to require by rule any other information to be included in the registration statement in addition to the items specifically listed in §823.052.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 7.215 implements Insurance Code §823.012(a) and §823.052(c)(13).

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TEXT.

§7.215. Group Capital Calculation.

(a) The ultimate controlling person of an insurer in an insurance holding company system for which Texas is the lead state and that is described by paragraphs (1) or (2) of this subsection must annually file a group capital calculation report:

(1) an insurance holding company system that is subject to a covered agreement, defined by Insurance Code Chapter 493, Subchapter C, concerning Credit for Reinsurance; or

(2) an insurance holding company system that is required by the United States Federal Reserve Board to perform a group capital assessment, unless the Federal Reserve Board shares that group capital assessment with the Texas Department of Insurance and under terms of an information sharing agreement.

(b) Except as provided by subsection (e) of this section, the Commissioner may require the ultimate controlling person of an insurer in an insurance holding company system for which Texas is the lead state and that is not subject to subsection (a) of this section to annually file a group capital calculation. In exercising this discretion, the Commissioner will consider the following factors:

(1) whether any insurer in the insurance holding company system is in a risk-based capital action-level event described by §7.402 of this title (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs) or a similar standard for a non-U.S. insurer;

(2) whether any insurer in the insurance holding company system meets one or more of the standards of an insurer found to be in hazardous financial condition under §8.3 of this title (relating to Hazardous Conditions and Remedy of Hazardous Conditions);

(3) whether the Commissioner finds that any insurer in the insurance holding company system otherwise exhibits qualities of a troubled insurer on the basis of any unique circumstances, including the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests;

(4) whether the insurance holding company system's annual direct written and unaffiliated assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, exceeded \$1,000,000,000 in its last filed financial statement;

(5) whether the insurance holding company system has any insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(6) whether the insurance holding company system has any banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;

(7) whether the insurance holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group; and

(8) whether any of the non-insurers in the insurance holding company system pose a material financial risk to the insurer's ability to honor policyholder obligations.

(c) The group capital calculation filing must be made concurrently with the registration statement, unless given an extension by the Commissioner on the basis of reasonable grounds shown. The person submitting the group capital calculation must confirm that it was completed in accordance with the latest version of the Group Capital Calculation Instructions published by the National Association of Insurance Commissioners (NAIC) and available on the NAIC website. The Commissioner may allow

a controlling person who is not the ultimate controlling person to file the group capital calculation.

(d) The Commissioner may accept an annual limited group capital filing in lieu of the group capital calculation described in subsection (c) of this section if the factors listed in subsection (b)(4) - (8) of this section are present.

(e) The ultimate controlling person of an insurer in an insurance holding company system for which Texas is the insurer's lead state is exempt from filing a group capital calculation if the insurance holding company system meets any of the following criteria:

(1) an insurance holding company system that has in its holding company structure only one insurer that:

(A) writes business in Texas only; and

(B) assumes no business from any other insurer;

(2) an insurance holding company system whose non-U.S. group-wide supervisor is located in a reciprocal jurisdiction under Insurance Code Chapter 493, Subchapter C, that recognizes the U.S. state regulatory approach to group supervision and group capital;

(3) an insurance holding company system whose non-U.S. jurisdiction provides confirmation by a competent regulatory authority in that jurisdiction that information about the insurer and any parent, subsidiary, or affiliated entity, if applicable, will be provided in accordance with a memorandum of understanding or similar document; or

(4) an insurance holding company system:

(A) that provides information to its lead state commissioner and that meets the requirements for accreditation under the NAIC financial standards and accreditation program, directly or indirectly, through the group-wide supervisor, who has

determined the information is satisfactory to allow the lead state to comply with group supervision requirements; and

(B) whose non-U.S. group-wide supervisor that is not in a reciprocal jurisdiction under Insurance Code Chapter 493, Subchapter C, recognizes and accepts the group capital calculation as the worldwide group capital assessment for U.S. insurance groups that operate in that jurisdiction. A non-U.S. jurisdiction is considered to recognize and accept the group capital calculation if:

(i) the non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital by providing confirmation by a competent regulatory authority in that jurisdiction that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program:

(I) will be subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state; and

(II) will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

(ii) where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction notifies in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard.

(f) Notwithstanding subsection (e) of this section, the Commissioner, after consultation with other supervisors or officials, may require the group capital calculation filing for the U.S. operations of a non-U.S.-based insurance holding company system for

which Texas is the lead state if the Commissioner finds the filing appropriate for prudential oversight and solvency monitoring purposes.

(g) The Commissioner may consult a list of non-U.S. jurisdictions that recognize and accept the group capital calculation published through the NAIC Committee Process (NAIC List) to determine whether the ultimate controlling person of an insurer is exempt under subsection (e)(4) of this section.

(h) The Commissioner may recommend to the NAIC that a non-U.S. jurisdiction where no U.S. insurance groups operate be included on the NAIC List if that jurisdiction provides to the Commissioner confirmation under subsection (e)(4) of this section.

(i) If the Commissioner's determination under subsection (e)(4) of this section differs from the NAIC List, the Commissioner will provide thoroughly documented justification for the determination to the NAIC and other states.

(j) If the Commissioner determines that a non-U.S. jurisdiction no longer meets one or more of the requirements to recognize and accept the group capital calculation, the Commissioner may recommend to the NAIC that the non-U.S. jurisdiction be removed from the NAIC List.

(k) Nothing in this section precludes an insurer from voluntarily providing the Commissioner with information related to Insurance Code 823, Subchapter B, concerning Registration.

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 August 3, 2022.

DocuSigned by:

James Person

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James Person, General Counsel
Texas Department of Insurance