

SUBCHAPTER M. FILING REQUIREMENTS**DIVISION 6. FILINGS MADE EASY--RATE AND RATE MANUAL FILING
REQUIREMENTS
28 TAC §5.9331****DIVISION 10. FILINGS MADE EASY--ADDITIONAL FILING REQUIREMENTS FOR
CERTAIN COUNTY MUTUAL INSURANCE COMPANIES
28 TAC §5.9360 and §5.9361****SUBCHAPTER V. TERRITORY RATING REQUIREMENTS
28 TAC §5.9960**

1. INTRODUCTION. The Commissioner of Insurance (Commissioner) adopts amendments to §5.9331 and §5.9960, and new §5.9360 and §5.9361, concerning rate filing requirements for certain county mutual insurance companies. The amendments and new sections are adopted without changes to the proposed text published in the January 21, 2011 issue of the *Texas Register* (36 TexReg 218).

2. REASONED JUSTIFICATION. The amendments and new sections are necessary to implement House Bill (HB) 2449, 81st Legislature, Regular Session, effective September 1, 2009, relating to rate and rate manual filing requirements and territory rating requirements for certain county mutual insurance companies. The amendment to §5.9960 also removes an expired filing requirement. HB 2449 amended Insurance Code §912.056 to authorize a county mutual insurance company that, as of September 1, 2001, and continuously thereafter, appointed managing general agents, created districts, or organized local chapters to manage a portion of the county mutual insurance company's business independent of all other business of the company to

continue to operate in that manner and to appoint and contract with one or more managing general agents in accordance with the Insurance Code only if the company cedes 85 percent or more of the company's direct and assumed risks to one or more reinsurers and has a private passenger automobile insurance business with a market share of not greater than five percent or that is predominantly nonstandard. HB 2449 further added §912.056(e), which requires a county mutual insurance company described in §912.056(d) to file for each managing general agent, district, or local chapter, the rating information required by the Commissioner by rule. Section 912.056(e) also provides that for a county mutual insurance company described in §912.056(d) each managing general agent, district, or organized local chapter that manages a portion of the county mutual insurance company's business independent of all other business of the company shall be treated as a separate insurer for the purposes of Chapters 544, 2251, 2253, and 2254 of the Insurance Code.

Prior to HB 2449, appointed managing general agents, districts, or organized local chapters have previously engaged in managing a portion of the county mutual insurance company's business independent of all other business of the county mutual insurance company. Under this pre-HB 2449 system the county mutual insurance company made rate and form filings for each independently operating managing general agent, district, or organized local chapter. This process, however, did not lend itself to transparency as the filings were not necessarily designated by the independent entity.

In HB 2449, the legislature provided that this practice may continue only if the county mutual insurance company cedes 85 percent or more of the company's direct and assumed risks to one or more reinsurers and has a private passenger automobile insurance business with a market share of not greater than five percent or that is predominantly nonstandard. The legislature also continued the requirement that it is the obligation of the county mutual insurance company to file for each managing general agent, district, or local chapter, the rating information required by the Commissioner by rule.

To implement HB 2449, it is necessary to amend §5.9331 and §5.9960, and add new Division 10, consisting of §5.9360 and §5.9361. Section 5.9331(b)(2) revises the definition of "insurer," for the purposes of rate and rate manual filing requirements under Division 6 of Subchapter M, of this chapter. The amendment to the definition conforms to the Insurance Code §912.056, in that the county mutual insurance company must meet the requirements specified in §912.056(d) and that the entity must be an appointed managing general agent, district or local chapter that manages a portion of a county mutual company's business independent of all other business of the county mutual insurance company. Including these entities in the definition of insurer designates the information that must be filed, which is essentially the same information that any insurer must file.

Section 5.9360 provides that the purpose of new Division 10 of Subchapter M is to specify additional filing requirements under Divisions 4 and 6 of Subchapter M for county mutual insurance companies operating as described by the Insurance Code

§912.056(d). The new division provides operational flexibility by allowing for both the default situation in which the county mutual insurance company will file the information on behalf of the appointed managing general agent, district or local chapter and an alternative situation in which the county mutual insurance company will provide the Department with written consent authorizing the appointed managing general agent, district or local chapter to submit the filings required under Divisions 4 and 6 of Subchapter M.

Section 5.9361 establishes additional filing requirements for a county mutual insurance company described by the Insurance Code §912.056(d) and their appointed managing general agents, districts, or local chapters. These additional requirements are necessary for the Department to efficiently track and evaluate the filing and to communicate with the filer. Section 5.9361(a) requires that, in addition to the information required by Division 4 of Subchapter M, the following information be included: (1) the name and license number of the managing general agent, district, or local chapter of a county mutual insurance company, and (2) contact information for the county mutual if the county mutual's contact information has not already been provided under §5.9310(c)(8). Section 5.9361(b) provides that all rate filings shall be made directly by the county mutual insurance company on the county mutual insurance company's letterhead unless the county mutual insurance company submits written notice with the filing authorizing the submission of rate filings by the managing general agent, district, or local chapter of a county mutual insurance company. Section 5.9361(b) also provides that each rate filing shall include (1) all information required

under §5.9332 of this subchapter, which shall be specific to the independent business operation of the managing general agent, district, or local chapter of a county mutual insurance company, and (2) a list of policy forms and endorsements, including their name, number, and the Department file number, utilized by the managing general agent, district, or local chapter of a county mutual insurance company in its independent business operation. The form information is necessary because the Department must know the terms of the insurance contract and coverage to determine if the rate meets rating standards. Section 5.9361(b) further provides that the submission of a list of policy forms and endorsements does not constitute a form filing under Chapter 2301.

Section 5.9960(c)(2) provides the definition of “insurer” for the purposes of territory rating requirements. This definition is the same definition as used in §5.9331(b) and also conforms to the Insurance Code §912.056.

The amendments and new sections in this adoption do not address the new solvency requirements for county mutual insurance companies resulting from HB 2449. The new solvency requirements for county mutual insurance companies resulting from HB 2449 are addressed in 28 Texas Administrative Code §7.403 (relating to Transition Period for Certain County Mutual Insurance Companies).

This adoption also updates obsolete statutory citations to the Insurance Code resulting from the nonsubstantive revision of the Insurance Code.

Finally, §5.9960(h) required a county mutual insurance company, a Lloyd's plan, or a reciprocal or interinsurance exchange that seeks to use a rate for a subdivision within a county that is greater than 15 percent higher than the rate used in any other

subdivision within that county to file its data in support of a greater rate difference no later than March 1, 2004. Since this subsection has expired, this adoption removes the subsection from the Administrative Code.

3. HOW THE SECTIONS WILL FUNCTION. Section 5.9360 provides that the purpose of new Division 10 of Subchapter M is to specify additional filing requirements under Divisions 4 and 6 of Subchapter M for county mutual insurance companies operating as described by the Insurance Code §912.056(d).

Section 5.9361 provides the additional filing requirements for a county mutual insurance company described by the Insurance Code §912.056(d) and their appointed managing general agents, districts, or local chapters. Section 5.9361(a) requires that, in addition to the information required by Division 4 of Subchapter M, the following information be included: (1) the name and license number of the managing general agent, district, or local chapter of a county mutual insurance company, and (2) contact information for the county mutual if the county mutual's contact information has not already been provided under §5.9310(c)(8). Section 5.9361(b) provides that all rate filings shall be made directly by the county mutual insurance company on the county mutual insurance company's letterhead unless the county mutual insurance company submits written notice with the filing authorizing the managing general agent, district, or local chapter of a county mutual insurance company to submit rate filings. Section 5.9361(b) also provides that each rate filing shall include (1) all information required under §5.9332 of this subchapter, which shall be specific to the independent business

operation of the managing general agent, district, or local chapter of a county mutual insurance company, and (2) a list of policy forms and endorsements, including their name, number, and the Department file number, utilized by the managing general agent, district, or local chapter of a county mutual insurance company in its independent business operation. Section 5.9361(b) further provides that the submission of a list of policy forms and endorsements does not constitute a form filing under Chapter 2301.

Section 5.9960(c)(2) provides the definition of “insurer” for the purposes of territory rating requirements.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Department did not receive any comments on the published proposal.

5. STATUTORY AUTHORITY. The amendments and new sections are adopted pursuant to the Insurance Code §912.056 and §36.001. Section 912.056(e) provides for the commissioner to require, by rule, the filing of rating information by a company described by 912.056(d) for each managing general agent, district, or local chapter. 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.

SUBCHAPTER M. FILING REQUIREMENTS

**DIVISION 6. FILINGS MADE EASY--RATE AND RATE MANUAL FILING
REQUIREMENTS****§5.9331. Definitions.**

(a) Words and terms not defined in this section but which are defined in Insurance Code Article 5.13-2, Subchapter D of Chapter 5 or §5.9310 of this title (relating to Filings Made Easy--Filing Transmittal Form and Requirements for Property and Casualty Form, Rate, Rule, Underwriting Guideline, and Credit Scoring Model Filings) shall have the same meaning, as applicable, when used in this division unless the context indicates otherwise.

(b) The following words and terms when used in this division shall have the following meanings, unless the context indicates otherwise.

(1) Disallowed expenses--Applies only to filings made in accordance with Insurance Code Article 5.13-2. Payments anticipated to be made to advisory organizations, licensed to do business in Texas, for services authorized by Chapter 1805, Subchapter B of the Insurance Code for the development of statistical plans, data collection and reporting, the development and distribution of prospective loss costs, supplementary rating information, policy forms and endorsements, research, and the performance of inspections, and other activities reasonably related thereto, are not disallowed expenses.

(2) Insurer--An insurer authorized to write property and casualty insurance in this state, including an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, association, Lloyd's plan, or other entity writing insurance in this state. The

term includes an affiliate, as described by §823.003 of the Insurance Code, if that affiliate is authorized to write insurance in this state. The term includes an appointed managing general agent, district, or local chapter program of a county mutual insurance company described by the Insurance Code §912.056(d) that manages a portion of that county mutual company's business independent of all other business of that county mutual insurance company and that is to be treated as a separate insurer for the purposes of Chapters 544, 2251, 2253, and 2254 of the Insurance Code as provided in §912.056(e) of the Insurance Code. The term does not include a farm mutual insurance company, an eligible surplus lines insurer under the Insurance Code, the Texas Windstorm Insurance Association, the Texas FAIR Plan Association, or the Texas Automobile Insurance Plan Association.

DIVISION 10. FILINGS MADE EASY--ADDITIONAL FILING REQUIREMENTS FOR CERTAIN COUNTY MUTUAL INSURANCE COMPANIES

§5.9360. Purpose. The purpose of this section and §5.9361 of this division (relating to Additional Filing Requirements) is to specify additional filing requirements under Divisions 4 and 6 of this subchapter (relating to Filings Made Easy--Filing Transmittal Form and Requirements for Property and Casualty Form, Rate, Rule, Underwriting Guideline, and Credit Scoring Model Filings; and Filings Made Easy--Rate and Rate Manual Filing Requirements, respectively) for:

(1) a county mutual insurance company described by the Insurance Code §912.056(d); and

(2) an appointed managing general agent, district, or local chapter program of a county mutual insurance company described by the Insurance Code §912.056(d) that manages a portion of that county mutual company's business independent of all other business of that county mutual insurance company and that is to be treated as a separate insurer for the purposes of Chapters 544, 2251, 2253, and 2254 of the Insurance Code as provided in §912.056(e) of the Insurance Code.

§5.9361. Additional Filing Requirements.

(a) Filing Transmittal. In addition to the information required by Division 4 of this subchapter (relating to Filings Made Easy--Filing Transmittal Form and Requirements for Property and Casualty Form, Rate, Rule, Underwriting Guideline, and Credit Scoring Model Filings), the following information shall be included:

(1) the name and license number of the managing general agent, district, or local chapter of a county mutual insurance company; and

(2) contact information for the county mutual insurance company if the county mutual insurance company's contact information has not already been provided under §5.9310(c)(8) of this subchapter (relating to Property and Casualty Filing Transmittal Form).

(b) Rate Filings.

(1) All rate filings shall be made directly by the county mutual insurance company on the county mutual insurance company's letterhead unless the county

mutual insurance company submits written notice with the filing authorizing the submission of rate filings by the managing general agent, district, or local chapter.

(2) Each rate filing shall include:

(A) all information required under §5.9332 of this subchapter (relating to Filing Requirements) which shall be specific to the managing general agent, district, or local chapter; and

(B) a list of policy forms and endorsements, including their name, number, and the department file number, utilized by the managing general agent, district, or local chapter. The submission of a list of policy forms and endorsements under this subsection does not constitute a form filing under Chapter 2301 of the Insurance Code.

SUBCHAPTER V. TERRITORY RATING REQUIREMENTS

§5.9960. Exception to Rating Territory Requirements under §2253.001 of the Insurance Code.

(a) The purpose of this section is to provide an exception to §2253.001 of the Insurance Code for an insurer that writes residential property insurance or personal automobile insurance in the State of Texas.

(b) This section applies to an insurer that writes residential property insurance or personal automobile insurance in the State of Texas. This section applies to a county mutual insurance company, a Lloyd's plan, or a reciprocal or interinsurance exchange effective January 1, 2004.

(c) The following words and terms, when used in this section have the following meanings, unless the context clearly indicates otherwise.

(1) County--A county in the State of Texas.

(2) Insurer--An insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance or personal automobile insurance in the State of Texas. The term includes an appointed managing general agent, district, or local chapter program of a county mutual insurance company described by the Insurance Code §912.056(d) that manages a portion of that county mutual company's business independent of all other business of that county mutual insurance company and that is to be treated as a separate insurer for the purposes of Chapters 544, 2251, 2253, and 2254 of the Insurance Code as provided in §912.056(e) of the Insurance Code. The term does not include:

(A) the Texas Windstorm Insurance Association under Chapter 2210 of the Insurance Code;

(B) the FAIR Plan Association under Chapter 2211 of the Insurance Code; or

(C) the Texas Automobile Insurance Plan Association under Chapter 2151 of the Insurance Code.

(3) Personal automobile insurance--Motor vehicle insurance coverage for the ownership, maintenance or use of a private passenger, utility or miscellaneous type

motor vehicle, including a motor home, mobile home, trailer or recreational vehicle, that is:

(A) owned or leased by an individual or individuals; and

(B) not primarily used for the delivery of goods, materials, or services, other than for use in farm or ranch operations.

(4) Rate--The cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost, with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, and before any application of individual risk variations based on loss or expense considerations.

(5) Residential property insurance--Insurance against loss to real property at a fixed location or tangible personal property provided in a homeowners policy, a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.

(d) Except as provided by subsection (e) of this section, an insurer may not use rating territories that subdivide a county unless the county is subdivided and the rate for any subdivisions within that county is not greater than 15% higher than the rate used in any other subdivisions in the county by that insurer for identical coverage for insureds having, aside from rating territory, identical risk characteristics.

(e) For residential property insurance or personal automobile insurance, an insurer may not use a rate for a subdivision within a county that is greater than 15% higher than the rate used in any other subdivision within that county unless the rate is

based on sound actuarial principles, is supported by data filed with the department, and is in compliance with all statutory and regulatory requirements.

(f) Notwithstanding statutory or regulatory filing exception requirements that would otherwise apply, an insurer must file with the department a rate for a subdivision within a county that is greater than 15% higher than the rate used in any other subdivision within that county in accordance with the statutory filing requirements applicable to residential property insurance or personal automobile insurance.

(g) Filings under this section must be submitted to the Texas Department of Insurance, Property & Casualty Intake Unit, Mail Code 104-3B, 333 Guadalupe, Austin, Texas 78701 or to the Texas Department of Insurance, Property & Casualty Intake Unit, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104.

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

Issued at Austin, Texas, on June 13, 2011.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that amendments to §5.9331 and §5.9960, and new §5.9360 and §5.9361, concerning rate filing requirements for certain county mutual insurance companies, are adopted.

11-0491

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

Adopted Sections
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AND IT IS SO ORDERED.

MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:

Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. **11-0491**