

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 Texas Department of Insurance (Department) proposes 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 proposed 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 proposed 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 of Insurance (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 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.

The legislature has determined 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. The proposed amendment to 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 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 as any insurer and works in conjunction with proposed §5.9361(b).

Proposed §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.

Proposed §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 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) amends for the purposes of territory rating requirements the definition of “insurer.” The amendment is the same as the amendment in §5.9331(b) to the definition of the term “insurer” and the amendment is made for the same reasons.

The proposed amendments and new sections do not address the new solvency requirements for county mutual insurance companies resulting from HB 2449. These changes are addressed separately.

The proposed amendments also update obsolete statutory citations to the Insurance Code resulting from the nonsubstantive revision of the Insurance Code.

Finally, section 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 section has expired, it is necessary to remove it from the Administrative Code.

2. FISCAL NOTE. Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, has determined that, for each year of the first five years the proposed sections are in effect, there will be no fiscal impact on state or local government as a result of the enforcement or administration of the proposal. 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. Hamilton also has determined that for each year of the first five years the proposed sections are in effect, the public benefits anticipated as a result of the proposal are (1) greater transparency and accountability in the marketplace, and (2) the removal of obsolete, expired, and potentially confusing statutory citations and provisions from the Administrative Code, resulting in greater ease of use and readability of the rules.

Analysis of Potential Costs for Persons Required to Comply with the Proposal

The Department anticipates that additional cost to persons required to comply with the proposed amendments and new sections may result from the preparation and submission of written notice authorizing the managing general agent, district, or local chapter to submit rate filings as provided in §5.9361(b)(1); and from the proposed §5.9361(b)(2) requirement that each rate filing include a list of policy forms and endorsements utilized by the managing general agent, district, or local chapter.

HB 2449 amended the 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 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. This proposal implements this limited authorization and thus applies to (1) county mutual

insurance companies that are described under the Insurance Code §912.056(d); and (2) those appointed managing general agents, created districts, or organized local chapters that manage a portion of the company's business independent of all other business of the county mutual insurance company which are described in §912.056(d).

County mutual insurance companies are not required to write business in this manner. The choice to operate in the manner described by the Insurance Code §912.056(d) is a business decision of the county mutual insurance company and not a requirement of this proposal.

As an insurer, the county mutual insurance company is already required to submit rate and form filings with the Department for each program of insurance that was operated in the manner described by the Insurance Code §912.056(d). Thus, requiring the county mutual insurance company to designate such filings by a managing general agent, district, or local chapter as specified in the Insurance Code and this proposal will not result in additional expenses related to the preparation and submission of rate filings. Likewise, it is not an additional cost if the county mutual insurance company consents to the preparation and submission of the rate filing by the managing general agent, district, or local chapter as authorized in this proposal, because the information must still be gathered and prepared and delegating that activity is a business decision and not an additional cost imposed under this proposal.

However, the proposal does require certain additional information. Proposed §5.9361(a) requires the county mutual insurance company to include on any future filing transmittal form the additional information of (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). Proposed §5.9361(b)(1) provides that if the managing general agent, district, or local chapter is to submit the rate filing, the county mutual insurance company must submit written notice to the Department authorizing such submissions. Proposed §5.9361(b)(2) requires that each rate filing include a list of policy forms and endorsements utilized by the managing general agent, district, or local chapter.

This proposal imposes these filing requirements on the county mutual insurance company operating as described by the Insurance Code §912.056(d) unless the county mutual insurance company consents to the managing general agent, district, or local chapter performing the function as provided in this proposal. Such an agreement would be a business decision of the parties involved and thus not a cost of imposed by this proposal.

In each situation the information to be submitted is readily available to the county mutual insurance company. The additional cost related to the additional information on the transmittal form required by §5.9361(a) should be additional ink and is thus a de minimus cost. The proposed requirements of §5.9361(b)(1) and (2) would require the preparation of an additional document and submission of the document. However, those documents should not exceed one page each and should require less than 10 minutes to prepare. These submissions could be made separately or could be combined.

The Department considered the following cost components in estimating the costs for county mutual insurance companies to comply with proposed §5.9361(b)(1)

and §5.9361(b)(2). Compliance involves the cost of retrieving the information, drafting the document, printing or copying the document, and submitting the document to the Department. The proposal considers submission of documents by first class mail, because that method of compliance is available to all persons required to comply with this proposal. While there are other methods of generating and submitting required documents that could comply with proposed §5.9361(b)(1) and §5.9361(b)(2), the Department anticipates that each person will choose a method of compliance that is the most cost-efficient for them. Choosing a method of compliance is a business decision of each person.

The Department's cost estimates are based on the following factors. The printing cost is based on the Department's latest determination of an estimated cost of \$.08 for one printed page (\$.07 for paper and one cent for ink). The submission cost is based on postage rates for first class mail which is \$.44 cents for one ounce in a standard envelope. The Department estimates a cost of \$.05 cents for a standard envelope. The Department anticipates that the actions of retrieving the information and drafting the document will be performed by someone with product knowledge. Titles of such persons may vary, but could include an underwriter or product manager. In this analysis the Department will use the mean hourly wage of \$29.84 to calculate the estimated costs. This hourly wage is based on the classification "insurance underwriters" in the Department of Labor's May 2009 Texas State Occupational Employment and Wage Estimates. It is possible that other clerical staff could handle the information in some offices. However, in those instances, the wage costs would be less than those for the underwriter. Therefore, in considering all of these cost factors

the Department estimates that the cost of compliance is anticipated to be approximately \$6.00 per submission.

The Department does not anticipate any additional costs being created from the removal of the obsolete §5.9960 or the nonsubstantive updates to statutory references.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. The 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 that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(2) defines “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. The Government Code §2006.001(1) defines “micro 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 not more than 20 employees. The Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.002(b) - (d) for small businesses.

In accordance with the Government Code §2006.002(c), the Department has determined that the proposal may have an adverse economic impact on small and

micro businesses that are managing general agents of county mutual insurance companies described in §912.056(d). The Department has surveyed its records of the industry and estimates that the number of county mutual insurance companies meeting the requirements of §912.056(d) is seven. Six of these seven county mutual insurance companies are part of larger insurance groups and thus are not small or micro for the purposes of the Government Code 2006.002(c) because they are not independently owned and operated organizations. The remaining county mutual insurance company does qualify as a small business even though its net direct written premium exceeds \$460 million, because it has approximately 25 employees. Further, the districts and local chapters of a county mutual insurance company are not small or micro businesses because they are created by the county mutual insurance company and are not independently owned and operated organizations. Thus, even though the Insurance Code §912.056(e) provides that districts and local chapters of a county mutual insurance company operating as described in the Insurance Code §912.056(d) be treated like a separate insurers for a limited purpose as provided in the statute, these districts and local chapters are not small or micro businesses for the purposes of the Government Code 2006.002(c). The managing general agents of these county mutual insurance companies operating as described in the Insurance Code §912.056(d) may be small or micro businesses. As of December 31, 2010, 1102 individuals and 495 agencies were licensed as managing general agents by the Department. These licensee businesses vary in size, however, managing general agents would qualify as small or micro businesses for the purposes of Government Code 2006.002(c). The number of managing general agents acting for county mutual insurance companies as

described in the Insurance Code §912.056 will vary, but it will be significantly less than the total number of licensees. Because a county mutual insurance company may change its appointed managing general agents and some, if not most, managing general agents would qualify as small or micro businesses for the purposes of Government Code 2006.002(c), this analysis will presume that all are small or micro businesses.

The adverse economic impact on these small or micro businesses may result if the one county mutual insurance company or the managing general agents of the seven county mutual insurance companies operating as described in the Insurance Code §912.056(d) make rate filings, fill out filing transmittal forms, or provide lists of policy forms and endorsements they utilize on behalf of the county mutual insurance companies. These costs are stated in the Public Benefit/Cost Note part of this proposal. However, the burden of these costs being placed on the one qualifying county mutual or the managing general agents is the result of business decisions made by the county mutual insurance companies and the managing general agents and not as a requirement of this of the proposal.

The Department, in accordance with the Government Code §2006.002(c-1), has considered requiring that all rate filings and additional information be submitted directly by the county mutual insurance companies as an alternative method of achieving the purpose of the proposed rule. The Department has determined that this alternative is not practical or reasonable because the decision as to which entity will file the required documents is a business decision of the parties. Precluding county mutual insurance companies from entering into business arrangements allowed by statute that they

determine to be in their best interests could frustrate the legislative intent in the Insurance Code §912.056 and the marketplace.

A second alternative method of achieving compliance was to not require the rate filing and the additional policy information from the county mutual insurance company's managing general agent. The Department has determined that this alternative is not practical or reasonable because the additional information is necessary to achieve the purposes of the Insurance Code §912.056. Not requiring the rate filing would be inconsistent with the Insurance Code Chapter 2251, and thus is not an acceptable alternative. Further, as to filing the additional policy form information, the Department must have that information to determine if the filed rate meet rating standards.

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, therefore, 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 the proposal must be submitted no later than 5:00 p.m. on February 21, 2011, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to J'ne Byckovski, Chief Actuary, Property and Casualty Actuarial Division, Mail Code 105-5F, Texas Department of Insurance,

P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing must be submitted separately to the Office of Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The amendments and new sections are proposed 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.

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

| Rule | Statute |
|---------------------------|--|
| §5.9331, §5.9360, §5.9361 | Insurance Code §912.056 and Chapter 2251 |
| §5.9960 | Insurance Code §912.056 and §2253.001 |

9. TEXT.

SUBCHAPTER M. FILING REQUIREMENTS

DIVISION 6. FILINGS MADE EASY--RATE AND RATE MANUAL FILING REQUIREMENTS

§5.9331. Definitions.

(a) (No change.)

(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 [~~Article 5.73~~] 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 [Article 5.171].

(a) The purpose of this section is to provide an exception to §2253.001 of the Insurance Code [Article 5.171] for an insurer that writes residential property insurance or personal automobile insurance in the State of Texas.

(b) (No change.)

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

(1) (No change.)

(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 [~~Article 21.49~~];

(B) the FAIR Plan Association under Chapter 2211 of the Insurance Code [~~Article 21.49A~~]; or

(C) the Texas Automobile Insurance Plan Association under Chapter 2151 of the Insurance Code [~~Article 21.81~~].

(3) - (5) (No change.)

(d) - (g) (No change.)

~~[(h) 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% higher than the rate used in any other subdivision within that county must file its data in support of a greater rate difference, as required by subsection (e), no later than March 1, 2004.]~~