

## MODEL REGULATION TO REQUIRE REPORTING OF STATISTICAL DATA BY PROPERTY AND CASUALTY INSURANCE COMPANIES

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### Section 1. Authority

This regulation is promulgated pursuant to sections [insert reference to sections authorizing the adoption of rules and regulations and the section in the statutes relating to statistical reporting] regarding the reporting of statistical data by insurance companies.

### Section 2. Purpose

The purpose of this regulation is to set forth the manner of reporting data by insurers to statistical agents, to prescribe reports to be submitted by statistical agents to the commissioner, and to prescribe certain conduct in connection therewith. This regulation does not apply to data reported directly by insurers to the commissioner.

### Section 3. Definitions

- A. “NAIC *Statistical Handbook* or *Handbook*” is a publication of the National Association of Insurance Commissioners (NAIC) that explains insurance statistical data and provides reporting requirements and report formats to be regularly furnished by statistical agents.
- B. “Statistical agent” is an entity that has been designated by the commissioner to collect statistics from insurers and provide reports developed from these statistics to the commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers.
- C. “Statistical plan” is a statistical agent’s system for collecting information from reporting insurers, including exposure, coverage, classification, territory, premium, loss and other information.

### Section 4. Lines of Insurance

This regulation applies to all lines of insurance except life insurance, variable annuities, sickness and accident insurance, title insurance, reinsurance, ocean marine insurance and aviation insurance.

**Drafting Note:** The intent is to capture all P & C lines of insurance except those which fall outside of rating and statistical laws. This section should be adjusted to conform to other exceptions (i.e., assessment companies or the like) that individual states may have or may choose to make. Many states will find that the intent of this section can be accomplished by referencing specific P & C lines of insurance as defined by state law, rather than by using an exception-type statement.

## **Section 5. Examination of Statistical Agents**

To be designated to collect statistics from insurers for purposes of fulfilling the statistical reporting requirements of this rule, an entity other than a licensed advisory organization shall be subject to the same examination provisions as licensed advisory organizations.

**Drafting Note:** The laws of many states do not recognize “statistical agents.” In these states, statistical collection is one of the authorized activities for advisory organizations. The laws in most such states provide that the commissioner may utilize an advisory organization “or other agencies” for the collection of statistics. These laws customarily stipulate that advisory organizations may be examined and may also stipulate that they must file statistical plans. Therefore, the purpose of this and the following section is to ensure that statistical agents that are not licensed advisory organizations will also be subject to examination and be required to file statistical plans.

## **Section 6. Filing of Statistical Plans by Statistical Agents**

Every statistical agent shall file with the commissioner every statistical plan and every modification that it proposes to use to collect statistics to meet the requirements of this regulation. Such statistical plan filings shall be deemed to meet the requirements of this rule unless disapproved by the commissioner within thirty (30) days after filing.

**Drafting Note:** Some state’s rating laws already contain provisions for the filing of statistical plans.

## **Section 7. Statistical Plans and Reporting by Insurers**

Every insurance company licensed in this state shall report its insurance statistical experience for lines of insurance covered by this regulation to a statistical agent designated by the commissioner. This data shall be submitted in accordance with statistical plans approved in accordance with Section 6 of this rule.

**Drafting Note:** States that choose to collect raw statistical data directly from insurers will need to amend this section. It is suggested that states choosing to have significant and lasting exceptions to the *Statistical Handbook* place these exceptions in the regulation at this point or in the next section. This section provides requirements for insurers; the next section provides requirements for statistical agents.

## **Section 8. Statistical Agents’ Compliance with the *Statistical Handbook***

For every line of insurance that it collects statistics in this state, every statistical agent shall, at a minimum, collect statistics and file reports and compilations in the form and detail provided in the NAIC *Statistical Handbook*, edition date [insert edition date], unless otherwise specified by the commissioner.

**Drafting Note:** Adoption of this regulation in a state will establish the *Statistical Handbook* as the standard for statistical reporting in that state.

## **Section 9. Multiple Statistical Agents for the Same Line of Insurance**

For lines of insurance where more than one statistical agent has been designated and collects statistics in this state, the statistical agents shall, if so directed by the commissioner, arrange to file combined reports for all statistical agents collecting data for the affected lines of insurance. The statistical agents may make arrangements among themselves for the equitable sharing of the costs to produce combined reports.

**Drafting Note:** The state should first confirm which lines are combinable, and then decide if there are lines where the state would prefer to receive separate reports from multiple statistical agents. At this writing, the combinability of reports from different statistical agents has been verified for the personal lines only. Because combined reports are more meaningful to work with, it is expected that most states would want to operate in this fashion. It should be noted, however, that combined reports can only be provided as quickly as the slowest statistical agent provides its data to the statistical agent that is combining the data.

## **Section 10. Edit and Control Procedures for Statistical Agents**

Statistical agents shall adopt edit and control procedures to screen and check data for reasonableness, apparent accuracy and completeness. These procedures shall, at a minimum, conform to the specifications provided in the NAIC *Statistical Handbook*, edition date [insert edition date], unless otherwise specified by the commissioner.

**Drafting Note:** The *Handbook's* data quality provisions are subdivided into private passenger auto, homeowners, workers' compensation and all other lines (primary commercial lines). A state may select to apply these requirements to some of these lines, but not to others. If so, exceptions should be stated for Sections 10 and 11 in this regulation.

**Section 11. Insurer Edit and Audit Procedures**

Insurers shall adopt edit and audit procedures to screen and check data required by this rule to be reported to see that such data meets the standards for reasonableness and accuracy provided in the NAIC *Statistical Handbook*, edition date [insert edition date], unless otherwise specified by the commissioner.

**Section 12. Adoption of Changes to the *Statistical Handbook***

Revisions to the *Statistical Handbook* shall apply upon the commissioner's notification to insurers or statistical agents of the adoption of the revisions and their effective dates. Statistical agents shall notify insurers that report to them of any changes that affect data collection or the reporting activities of insurers.

**Drafting Note:** States that cannot adopt statistical reporting updates without recourse to a rulemaking process should omit this section. Such states, when they choose to adopt changes, would initiate a rulemaking proceeding to change the edition dates specified in various sections of this rule. States should also be aware of the lead time necessary for insurers and statistical agents to implement revised data reporting requirements.

**Section 13. Disclosure of Complying and Non-Complying Insurers**

Statistical reports shall each contain a listing of insurers whose data are included. In addition, if data from an insurer or insurers that had agreed to have data included are, in fact, not included, then a listing of these insurers shall also be made with the statistical report as specified in the NAIC *Statistical Handbook*. For any insurer that is listed as not included in a statistical report, the statistical agent shall, upon the request of the commissioner, provide reasons for the exclusion.

**Section 14. Access to Data**

The commissioner shall have access to all statistical data that have been collected by statistical agents for the purpose of fulfilling the requirements of this rule. Upon request by the commissioner, the statistical agent shall provide a copy of any report that it produces from data that the commissioner has required to be collected.

**Section 15. Disclosure of Data**

When data submitted to the insurance department by a statistical agent identify individual insurers, appear likely to identify individual claimants or insureds, or are asserted by the statistical agent or a reporting insurer to be subject to protection from disclosure, such data shall not be publicly disclosed unless, prior to such disclosure:

- A. The department notifies the statistical agent and any insurer which has asserted the data to be subject to protection from disclosure of the request for disclosure;
- B. The department then provides a thirty (30) day period for any insurer that reported data to the statistical agent to assert that its data are trade secret or are otherwise protected from disclosure. The thirty (30) day period shall run from the time that the statistical agent receives notification from the department.
- C. The department then provides insurers which have asserted their data to be trade secret or otherwise protected from disclosure with the opportunity to support their positions, which shall be governed by the [insert reference to the applicable administrative procedures and/or other statutes], and
- D. After the applicable adjudicative process is complete, there is a final decision that the data are not a trade secret and are not otherwise subject to protection from disclosure.

**Drafting Note:** These provisions were drafted based on a review of state and federal trade secret and open records/freedom of information laws and prior NAIC policy determinations on trade secret protection. Essentially, the provisions give insurers the opportunity under applicable law to attempt to prevent disclosure to competitors of data asserted to be trade secrets, and to protect data from disclosure that is otherwise subject to restrictions on disclosure because of privacy laws or other protections.

The NAIC *Statistical Handbook* and NAIC *Market Conduct Examiners Handbook* both alert regulators to the need to permit insurers the opportunity to attempt to protect their trade secret data from being disclosed to competitors. Providing the submitter of data to a governmental agency the opportunity to argue against disclosure is consistent with the federal Freedom of Information Act, corresponding Executive Order 12,600 and federal and state laws protecting trade secrets.

This section should be modified to reflect the appropriate rules of administrative, civil and appellate procedures of the state. The intent is that any disclosure of submitted data will not occur until the insurer has had the available opportunities under state law to seek judicial and/or administrative review.

#### **Section 16. Exemption**

Upon application by a statistical agent or an individual insurer, the commissioner may allow the submission of a report or statistical data at a specified later date if the submission of the report or data on the date required by this regulation would create a substantial hardship on the statistical agent or insurer.

In considering whether to grant such an exemption, the commissioner shall consider whether the delay is necessitated by an unusual or a one-time situation, or whether the delay is necessitated by a situation that is likely to reoccur. When the delay is necessitated by a situation that is likely to reoccur, the commissioner may condition the granting of an exemption on whether the insurer or statistical agent has a plan of action to address the situation in the future.

#### **Section 17. Lines of Insurance without a Statistical Agent**

Any licensed insurer writing any line of insurance not exempted in Section 4 of this regulation that finds or believes to have found that it is writing a line or type of insurance for which no statistical agent will accept data shall notify the commissioner of this fact as soon as practicable.

#### **Section 18. Penalty**

Failure to file the information required under this regulation in accordance with a statistical plan adopted by the commissioner shall result in a penalty of \$[insert amount].

**Drafting Note:** In many states, the penalty provisions of the laws authorizing this rule may also provide penalties. In these cases, this section may be unnecessary.

#### **Section 19. Separability**

If any provision of this regulation, or the application of the provision to any person or circumstance shall be held invalid, the remainder of the regulation, and the application of the provision to persons or circumstances, other than those to which it is held invalid, shall not be affected.

#### **Section 20. Effective Date**

This regulation shall become effective on [insert date].

**Drafting Note:** Many of the reporting requirements and data quality checks contained in this regulation and in the *Statistical Handbook* will already be in place owing to prior regulations or requirements of the Insurance Department that have been stated less formally. As such, a relatively short lead-time (i.e., 3 months) will customarily be reasonable for most parts of this regulation. However, when a state has not required the same data quality checking or statistical elements as the *Handbook*, and chooses to newly adopt these additional elements by adoption of this regulation, then a lead-time of at least 12 months until the beginning of a calendar year is suggested. Greater lead times (i.e., 18 months or more) are suggested when the state is among the very first to adopt a new data element that is not being collected in other states by all statistical agents.

*Chronological Summary of Actions (all references to the Proceedings of the NAIC).*

1997 Proc. 2<sup>nd</sup> Quarter 1049, 1074-1077 (model adopted by task force).

1997 Proc. 4<sup>th</sup> Quarter 25-26, 27-28, 971-972 (adopted).

2004 Proc. 1<sup>st</sup> Quarter Vol. I 670, 745, 748-754 (amended and reprinted, adopted by parent committee).

2004 Proc. 2<sup>nd</sup> Quarter Vol. I 50 (adopted by Plenary).

*This model replaces an earlier document on the same subject.*

1988 Proc. II 5, 13-14, 693, 718-719, 724-729 (adopted).

1990 Proc. I 6, 29-30, 698, 799, 806-807 (amended).

1991 Proc. I 9, 18, 823, 846, 857-862 (amended and reprinted).