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

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Section 1. Authority

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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 *Model Data Publication Bulletin* and NAIC *Model Data Publication Bulletin* 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

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