Phase II Proposal #5 Data Reporting Requirements Proposal

October 25, 2006

At the September 19, 2006 meeting the Construction Claims Task Force moved to have staff outline suggestions for a special data call for construction contractor liability insurance coverage. The possible data elements, the benefit and concerns for each are described below.

The data elements to consider in order of priority are as follows:

1. **Written premium** by classification – The purpose of the written premium data is to determine the market impact of known actions by insurers such the introduction of a new program, specific coverage limitations or coverage exclusions. This data element is also used to calculate the average premium by class, which can aid in determining the extent to which the benefits of best practices are reflected in the contractor rates. A change in insurer written premium can also show which classes of contractors are experiencing changes in market availability and affordability.

Pro: Premium classification should be readily available from most insurers at classification level detail. Written premium information can be compared to information submitted in rate filings and prior data calls when available to verify consistency. Information from these sources is limited for some insurers.

Con: Historical written premium data may be difficult to obtain from insurers who have left the market or write in the non-admitted market. Year to year comparisons may be of limited use for this reason.

Some contractors have general liability policies with loss sensitive features, which have their premium adjusted on a retrospective basis. These features can distort or limit year-to-year comparisons when not accounted for appropriately.

2. **Policy count** by classification – this is a basic data element insurers should be able to report for their contractor classes. The purpose of policy count reporting is to determine which insurers are gaining or losing market share. This information can also show any classes that have limited options in the admitted markets and in what markets these contractors find liability insurance coverage. The review mechanism would compare the policy count to average premiums and other information the OID has about new programs or exiting existing programs to monitor the market effect of new initiatives.

Pro: This information should be readily available for insurers to report at some level of detail. Reporting policy count would probably not add significant costs unless a single classification system is required. Policy count information can be compared to CCB records to determine if the data submitted is consistent with licensing information.

Con: Without a single classification system or, a group of related classification systems specified for reporting, aggregate data may difficult to compile for the whole market. There may be significant additional costs if special reports are required in addition to the financial and statistical reporting already compiled by insurers.

Since known classification data does not incorporate eligibility considerations such as the type of worked performed (e.g. tract homes or multi-family condominiums), policy count classification data may provide limited information about underwriting or coverage restrictions placed on contractor general liability policies.

Contractors who are covered under their own general liability policy and also have coverage under wrap policies or other group general liability policies for specific projects may be counted multiple times.

Requiring a particular classification for reporting may create difficulty for insurers that do not currently use the required classification. This can also impose a practical requirement that mandates the use of one statistical reporting agent. Only workers compensation requires reporting with through a designated statistical agency. This requirement is stated in ORS 737.225(4).

3. **Paid Losses**. The paid losses could be requested on an accident year basis for the contractor classes of business. It is not clear whether collecting information on a classification basis is better than collecting loss information on an overall basis.

Staff recommends all claim information (paid losses, case reserves or reported claim count) be divided between construction defect and non-construction defect claims. Reporting losses by coverage type, i.e. premises operations and products/completed operations can be considered a reasonable proxy for the non-construction defect and construction defect claims.

By Class:

Pro: Collecting paid loss information by class code may provide information about which contractor classes have unusually good or poor experience. Changes in paid losses are one indication of the effectiveness of changes in building codes or other recommendations of the construction claims task force.

Con: Claim information on a classification basis may have limited credibility. The ISO ratemaking methodology does not use Oregon only data to determine classification relativities for this reason. The fact many contractors have operations in more than one classification and the fact many classification systems do not capture all the contractor underwriting characteristics can also limit the usefulness of paid loss information by classification. Since construction defect claims can take a long time to settle, historical paid claim information can be limited especially when insurers enter and exit the market or change coverage provided. Another limitation is individual contractors can enter and exit the market or change practice areas, further limiting the usefulness of historical paid claim data.

Overall basis:

Pro: Reporting paid claim information on an overall basis can allow for efficient summarization of data and may allow for easier verification of the data reported. General information about the effect of best practices on contractor claims can still be obtained if construction defect claim information is reported separately from non-construction defect claim information.

Con: However, information about the effect of best practices for target classifications may be difficult to determine if paid loss information is reported on an overall program basis. Paid loss data may not capture changes due to modified coverage terms or whether contractors are entering or exiting the construction market or changing the kind of work performed.

Although construction defect claims have become a major cost driver for contractor liability insurance expense, there is not any recognized industry standard definition for a construction defect claim, and some insurers have not identified construction defect type claims until after 2001. Aggregate data,

which may have different definitions for construction defect and non-construction defect claims may be of limited usefulness.

4. **Case reserves**.

For recently discovered construction defect claims the case reserve is often the only information available for the first few years. The case reserve amounts for claims can be established for several years before the final payment is made.

Pro: The case reserve information is available from the same reporting systems as paid losses. The case reserves should be reported at the same level of detail as the paid losses to insure any loss data used to evaluate the best practices or other initiatives adopted by the task force is consistent and sufficiently robust. Case reserves can add significant information about the expected magnitude of reported claims.

Con: The limitations previously mentioned for the paid claim data on a classification and overall basis still exist. Credibility limitations may decrease with the inclusion of case reserve data. Case reserve methodologies can vary considerably between insurers and may limit the usefulness of aggregate loss information.

The usefulness of historical case reserve information may also be hampered if an insurer or several insurers change their method for setting case reserves. This situation can also limit the analysis of building code revisions or the effect of construction best practices.

5. **Reported claim count**. Reported claim count information can provide insight about the number and type of claims occurring with contractors.

This data element would need to be clarified with regard to events affecting multiple contractors. Would each single event be reported or would each contractor named in claim be reported? Reporting each affected contractor as a claim is preferred. This has the benefit of providing a more thorough assessment of which contractors or contractor classes are affected by multiple party litigation. Since many different insurers may provide coverage for different contractors on a building or development, it may be difficult for insurers to eliminate duplicate claims if event only reporting were requested.

Pro: The segmentation of claims by coverage or claim type can add insight about the claim characteristics and costs drivers. The use of reported claim count and reported loss amounted can be used to infer if the size of contractor claims is increasing or decreasing. Reported claim information can provide an early indication if the frequency of construction defects is changing. Any changes practices regarding construction site safety would also be evident in this data.

Con: A claim that involves multiple years may be considered one claim or one claim for each year. This can be particularly difficult if the contractor changes insurers or if the general contractors and the subcontractor have different insurers. This can be a serious limitation for contractor claim count data. Insurers may also have different practices regarding the assignment of claims to a loss year for a defect claim that has manifested over several years.

Studying the effect of changes in building codes or CCB requirements on the contractor liability insurance market may be difficult if insurers enter and exit the market. Claim reporting for insurers who

leave the contractor market may be incomplete and give a false impression of increasing costs or savings due to missing data.

A large number of contractors exiting or entering the market or a large number of contractors changing the type of construction performed (e.g. a shift from residential construction to commercial construction) could also limit the reliability of the data reported as well. All claim data can also be influenced by changes in insurer underwriting standards and policy coverage.