

Texas Administrative Code

Title 28. Insurance

Part 1. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter E. Texas Windstorm Insurance Association

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Division 1. Plan of Operation

A. Association Governance and Operations

§5.4001. Plan of Operation Purpose

The Texas Windstorm Insurance Association was established by Chapter 2210 of the Texas Insurance Code ~~the Act~~ for the purpose of providing an adequate market for windstorm and hail insurance in the seacoast territory of this state. The association is intended to serve as a residual insurer of last resort for windstorm and hail insurance in the seacoast territory. The association shall:

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- (1) function in such a manner as to not be a direct competitor in the private market; and
- (2) provide windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market.

(a) §5.4002. Definitions.

- (1) ~~Words defined in Act. Unless the context clearly dictates the contrary, words defined in the Texas Catastrophe Property Insurance Pool Act (the Insurance Code, Article 21.49, as amended) and not specifically defined in this section shall have the same definition when used in this section as they have in such Act. The terms “this section” and “plan of operation” are used interchangeably herein.~~
- (2) ~~Definitions in the section.~~ The following words and terms, when used in this section ~~the plan of operation~~, shall have the following meanings, ~~unless the context clearly indicates otherwise.~~
 - (A1) ~~Act--The Texas Catastrophe Property Insurance Pool Act, Senate Bill 31, Acts of the 62nd Legislature, 1971, as amended; codified as the Insurance Code, Article 21.49, as amended~~ Chapter 2210, Texas Insurance Code.
 - (B2) ~~Application--An application for catastrophe insurance.~~
 - (C3) ~~Association--The Texas Catastrophe Property~~ Windstorm Insurance Association.
 - (D) ~~Board--The State Board of Insurance.~~
 - (E4) ~~Board of directors--The board of directors of the Texas Catastrophe Property~~ Windstorm Insurance Association.
 - (F5) ~~Catastrophe insurance--For the purpose of this plan of operation, means Texas windstorm and hail insurance.~~
 - (G6) ~~Catastrophe loss--A loss to property insured by a policy of Texas windstorm and hail insurance. “Catastrophe losses” means more than one catastrophe loss.~~
 - (H7) ~~Chair of the board--The chair of the board of directors of the Texas Catastrophe Property~~ Windstorm Insurance Association.
 - (I8) ~~Commissioner--Commissioner of Insurance of the State of Texas.~~
 - (J9) ~~Corporeal property--Tangible personal property.~~
 - (K10) ~~Department--Texas Department of Insurance.~~

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~~MOVE DURING REVISION PHASE 2. This is an underwriting rule, not a definition. Move to underwriting part of plan. (L) — Indirect losses — Personal Lines.~~

(11) Indirect losses-- Personal Lines.

- ~~(A)~~ Except as provided in clause ~~(C)~~ of this ~~subparagraph~~subsection, a policy of windstorm and hail insurance issued by the association for a dwelling as defined by the Department in the association's rates and rules manual, must include coverage for:
- ~~(i)~~ wind-driven rain damage, regardless of whether an opening is made by the wind;
 - ~~(ii)~~ loss of use, meaning additional living expenses; and
 - ~~(iii)~~ consequential losses.
- ~~(B)~~ Except as provided in clause ~~(C)~~ of this ~~subparagraph~~subsection, a policy of windstorm and hail insurance issued by the association for tenant contents of a dwelling or other residential building must include coverage for:
- ~~(i)~~ loss of use, meaning additional living expenses; and
 - ~~(ii)~~ consequential losses.
- ~~(C)~~ The association is not required to:
- ~~(i)~~ offer coverage for indirect losses as provided in clauses ~~(A)~~ and ~~(B)~~ of this ~~subparagraph~~subsection unless the coverage was excluded from a companion policy issued in the voluntary market; or
 - ~~(ii)~~ provide loss of rents or loss of rental value coverage as part of a loss of use coverage or additional living expense coverage to a secondary or non-primary residence.
- ~~(M12)~~ Member--An insurer required to be a member of the association by the Act, §4as amended, or where the context indicates, any duly authorized agent or representative of such insurer. "Members" shall mean more than one member.
- ~~(N132)~~ Net direct premiums ~~--~~ The sum of the following, derived from all
- ~~(i)~~ For association policies with inception dates on and after January 1, 1993, "net direct premiums" shall mean all statewide direct written premiums (excluding direct written premiums in catastrophe area as designated by the Commissioner) and shall be the sum of the following:
 - ~~(A)~~ 90% of the direct written premiums of the extended coverage line of business and 90% of the direct written premiums on the other allied lines of business as reported in accordance with the property statistical plan ("Statistical Plan") promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary; on:
 - (i) the extended coverage line of business;
 - (ii) other allied lines of business; and
 - (iii) the extended coverage and other allied lines portion of the direct written premiums on the multiple peril line of business
 - ~~(B)~~ 90% 50% (or such other percentage as may be determined by the board of directors of the association, without further action by the Commissioner, upon analysis of appropriate statistics for wind, hail, water damage, and all other perils) of the extended coverage and other allied lines portion of the direct written premiums, on the multiple peril line of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary; and Statistical Plan, on the following, provided that no adjustment of five

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percentage points or less shall be made, and further provided that no adjustment shall be made in less than three years from the last prior adjustment:

(i) homeowner's multiple peril line of business; and

(ii) farm and ranch owners' multiple peril line of business

~~(III) 50% of the direct written premium or such other percentage as may be determined by the board of directors of the association, without further action by the Commissioner, upon analysis of appropriate statistics for wind, hail, water damage, and all other perils, on the homeowner's multiple peril line of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary and farm and ranch owners' multiple peril line of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary, provided, no adjustment of five percentage points or less shall be made, and further provided, that no adjustment shall be made in less than three years from the last prior adjustment;~~

~~(IVC) 40% of the extended coverage and other allied lines portion of the following policies, which shall be calculated as follows:~~

~~(-a-i) 40% of the total premium as reported in accordance with the Statistical Plan for any commercial policy issued under a composite rate; or~~

~~(-b-ii) 40% of the total policy premium or the combined actual extended coverage and other allied lines premium charged, whichever is greater, as reported in accordance with the Statistical Plan, for any property insurance policy written by an insurance company that is not authorized to transact property insurance in Texas, and which is affiliated under common management or control of an insurance company licensed to transact property insurance in Texas.~~

~~(ii) For association policies with inception dates on and after January 1, 1988, through December 31, 1992, "net direct premiums" shall mean all statewide direct written premiums (excluding direct written premiums in the catastrophe area as designated by the State Board of Insurance) restored to manual level and further adjusted to the manual rate level applicable to the catastrophe area as designated by the State Board of Insurance and shall be the sum of the following:~~

~~(I) 90% of the direct written premiums of the extended coverage line of business and 90% of the direct written premiums on the other allied lines of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance which the association shall obtain from the Department and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary;~~

~~(II) 90% of the extended coverage and other allied lines portion of the direct written premiums on the multiple peril line of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary;~~

- ~~(III) 50% of the direct written premium or such other percentages as may be determined by the board of directors of the association, without further action by the Commissioner, upon analysis of appropriate statistics for wind, hail, water damage, and all other perils, on the homeowner's multiple peril line of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary and farm and ranch owners' multiple peril line of business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary, provided, no adjustment of five percentage points or less shall be made, and further provided, that no adjustment shall be made in less than three years from the last prior adjustment.~~
- ~~(IV) the extended coverage and other allied lines portion of the following policies, which shall not be restored to manual rate levels, and which shall be calculated as follows:
 - ~~(a) 40% of the total policy premium or the combined actual extended coverage and other allied lines premium charged, whichever is the greater, for any commercial policy issued pursuant to the Insurance Code, Article 5.13-2 or Article 5.26(e), or for policies issued pursuant to the Insurance Code, Article 5.31; or~~
 - ~~(b) 40% of the total policy premium or the combined actual extended coverage and other allied lines premium charged, whichever is greater, for any property insurance policy written by an insurance company that is not authorized to transact property insurance in Texas, and which is affiliated under common management or control of an insurance company licensed to transact property insurance in Texas.~~~~
- ~~(iii) For association policies with inception dates on and after January 1, 1983 through December 31, 1987, inclusive, net direct premiums means the sum of the following premiums:
 - ~~(I) 90% of the direct written premiums on the extended coverage line of business as reflected on line two, column (1), of the insurer's last Texas annual statement;~~
 - ~~(II) 90% of the extended coverage portion of the direct written premiums on the multiple peril line of business as reported on line eight, column (1), of the insurer's last Texas annual statement; and~~
 - ~~(III) 40% of the direct written premiums on the homeowners' multiple peril line of business as reported on line four, column (1), of the insurer's last Texas annual statement.~~~~
- ~~(iv) For association policies with inception dates on and after January 1, 1978, through December 31, 1982, inclusive, net direct premiums means the sum of the following premiums:
 - ~~(I) 90% of the direct written premiums on the extended coverage line of business as reflected on line two, column (1), of the insurer's last Texas annual statement;~~
 - ~~(II) 90% of the extended coverage portion of the direct written premiums on the multiple peril line of business as reported on line eight, column (1), of the insurer's last Texas annual statement; and~~~~

~~(H) 40% of the direct written premiums on the homeowners' multiple-peril line of business as reported on line four, column (1), of the insurer's last Texas annual statement.~~

~~(14) Public Securities—obligations issued for and on behalf of the association by the Texas Public Finance Authority pursuant to Subchapter B-1 and M, of the Act.~~

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~~(O152) Secretary-treasurer--The secretary-treasurer of the Texas Catastrophe Property Windstorm Insurance Association.~~

~~(P163) Texas windstorm and hail insurance--Deductible insurance against direct loss and indirect losses resulting from a direct loss to insurable property as a result of windstorm or hail as such terms shall be defined and limited in policies and forms approved by the Commissioner. The deductible amount which shall be applied to all risks written by the association shall be determined by the board of directors and approved by the Commissioner.~~

~~(Q174) Vice chair or vice chair of the board--The vice chair of the board of directors of the Texas Catastrophe Property Windstorm Insurance Association.~~

~~(b) Operational Procedures of the Texas Catastrophe Property Insurance Association.~~

~~(1) Members.~~

~~(A)~~ **§5.4003. Membership.**

~~(aA) The membership of the Texas Catastrophe Property Windstorm Insurance Association shall consist of all insurers required to be members of the association by the Act, §4; provided, however, that all insurers which were not members of the association prior to the effective date of Senate Bill 659, 64th Legislature, 1973, and which became members of the association by virtue of Senate Bill 659 shall participate in the association commencing on January 1, 1974, in the same manner as for all other members of the association, provided, further, that for the purposes of determining participation in the association two or more members having a common ownership or operating in this state under common management or control shall be treated as if they constituted a single member under the Act, §§2210.051 and 2210.052. Two or more members having common ownership or operating in this state under common management or control on January 1 shall be treated as if they constitute a single member for purposes of participation until December 31 of the same year.~~

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Member
meetings

~~(B) Notice of meetings. Written or printed notice stating the place, day, and hours of the meeting, and in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chair of the board of directors, the secretary treasurer, or other person calling the meeting, to each member entitled to vote as such meeting.~~

~~(C) Meetings. The annual meeting of the members shall be held at such time and place in March of each year as may be designated by the board of directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the election of directors shall not be held on the day designated for any annual meeting of the members, the board of directors shall cause the election to be held at a special meeting of the members as soon thereafter as conveniently may be. The board of directors shall designate the place for the annual meeting of the members, but if no place is so designated, then the meeting shall be held at the office of the association. The board of directors, the chair of the board of directors, or 25% of the members of the association may call a special meeting of the members and designate any place as the place of such meeting. If no such designation is made, the place of such meeting shall be the aforesaid office of the association.~~

~~(D) Quorum. Twenty five percent of the members represented by person or by proxy shall constitute a quorum at a meeting of the members. If less than 25% of the members are~~

~~represented at a meeting, a majority of the outstanding members so represented may adjourn the meeting from time to time without further notice. At the next meeting after adjournment at which a quorum shall be present or represented, any business may be transacted at the meeting as originally notified. The members represented at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough persons to leave less than a quorum.~~

~~(E) — Voting.~~

~~(i) — The secretary treasurer of the association shall make, at least 10 days before each meeting of the members of the association, a complete list of the members entitled to vote at such meeting, arranged in alphabetical order, with the address of each member and the number of votes allocated to each member which list, for a period of 10 days prior to such meeting, shall be kept on file at the principal office of the association and shall be subject to inspection by any member or its agent at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any member during the whole time of such meeting. Failure to comply with the requirements of this clause shall not affect the validity of any action taken at such meeting.~~

~~(ii) — There shall be 1,000 outstanding votes allocated to the members of the association by the secretary treasurer. The secretary treasurer shall determine the percentage of each member's participation in the writings, expenses, profits, and losses of the association computed on the date of the end of the last calendar year preceding such annual meeting at which information necessary to make such computation is available from the Department, and shall allocate to each member a like percentage of the total outstanding votes allocated to the members of the association. Each member shall be entitled to vote its allocated number of outstanding shares at the annual meeting and each special meeting until the next annual meeting of the association at which time the outstanding votes shall be again allocated to the members in the manner set forth previously.~~

~~(iii) — A member may vote by proxy executed in writing by the member. No proxy shall be valid after the next annual meeting after the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable.~~

~~(iv) — The votes allocated to a member may be voted by such officer, agent, or proxy as the bylaws of such member may authorize or, in the absence of such authorization, as such member may determine.~~

~~(v) — Voting on any question or in any election may be by voice vote or by show of hands unless the presiding officer shall order, or any member shall demand, that voting be by written ballot.~~

~~(F) — Rules. To the extent applicable, Robert's Rules of Order shall govern the conduct of and procedure at all meetings of the members.~~

~~(2)~~ **§5.4004. Board of Directors.**

~~(Aa)~~ Election. At the first annual meeting of members and at each annual meeting thereafter, the members shall elect the appropriate number of directors from the membership of the association in accordance with subparagraph (B) of this paragraph. Directors, other than from the membership, shall be appointed in accordance with subparagraph (C) of this paragraph. The total number of directors of the association shall be nine The association shall be governed by a board of directors constituted as provided in the Act.

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- (1A) The board of directors shall be reimbursed for actual expenses reasonably and necessarily incurred by them in the performance of their duties and shall otherwise receive no compensation.
- (2B) The board of directors shall direct the management of the business and affairs of the association and may exercise all of the powers herein enumerated and all other powers incidental or appropriate thereto, subject only to the restrictions imposed by law. Included among the powers of the board of directors, but not in limitation thereof, are the following:
- (A~~i~~) to make and change regulations consistent with this section for the management of the business affairs of the association;
 - (B~~ii~~) to purchase or otherwise acquire for the association any property, rights, or privileges which the association is authorized to acquire;
 - (C~~iii~~) to remove any officer for cause, summarily without cause, and in their discretion, from time to time, to dissolve the powers and duties of any officer and to confer such powers and duties upon any other person provisionally;
 - (D~~iv~~) to appoint and remove or suspend such subordinate officers, attorneys, or representatives as they may deem necessary and to determine their duties, and fix, and from time to time change their salaries or remuneration, and to require security as and when they think fit;
 - (E~~v~~) to confer upon any officer of the association the power to appoint, remove, and suspend subordinate officers, employees, and representatives;
 - (F~~vi~~) to determine who shall be authorized on the association's behalf to make and sign bills, notes, acceptances, endorsements, checks, releases, receipts, contracts, and other instruments;
 - (G~~vii~~) to delegate any of the powers of the board of directors in relation to the ordinary business of the association to any standing or special committee, or to any officer or agent (with power to subdelegate) upon such terms as they may deem appropriate;
 - (H~~viii~~) to contract with a servicing facility to perform such services for the association as it may deem appropriate;
 - (I~~ix~~) to approve expenses, levy assessments, including preliminary assessments;
 - (J~~x~~) to have all other powers and to perform all other duties reasonably necessary to accomplish the purposes of the Act.
- (3C) The board of directors may appoint committees as it deems necessary to carry out the purpose and operations of the Association.
- (4D) An executive committee shall consist of the chair, vice-chair, and secretary-treasurer. To the extent provided by resolution or resolutions of the board of directors, the executive committee shall have and may exercise the powers delegated by the board of directors in the day-to-day administrative management of the association. Such committee shall keep regular minutes of its proceedings and report the same to the board of directors. The delegation to a committee of authority consistent with this section shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon the board of directors or member by law.
- ~~(B) Directors elected from the membership.~~
- ~~(i) Five directors shall be five different insurers licensed in Texas and members of the association and elected by the members. No member shall fill more than one seat on the board of directors.~~
 - ~~(ii) No later than 60 days prior to the annual meeting in March 1992, the board of directors shall nominate the five member companies to serve on the board of directors. In making such nominations, the board of directors shall consider the following factors in nominating a member to serve.~~
 - ~~(I) A minimum of three members shall be companies with multistate operations.~~
 - ~~(II) A minimum of one member shall be a company domiciled in the State of Texas.~~

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- ~~(H) Consideration should be given to voluntary market shares of members; voluntary participation in the catastrophe area; specific expertise in the underwriting, claims handling, or reinsurance of insurance required to be provided by the association; companies that represent as far as possible the view of the member companies; and other factors deemed relevant by the board of directors.~~
- ~~(iii) No later than 60 days prior to the annual meetings, the chair shall appoint a nominating committee of not less than three, nor more than seven, member companies, each to act through its designated representative, said committee to represent as far as possible the view of the member companies. Said committee shall prepare and present to member companies a list of nominations for the board of directors.~~
- ~~(iv) Members also have the right to nominate any member by submitting such nominee's name to the nomination committee. In order to be eligible for election to the board of directors, a member must be nominated at least 30 days prior to the annual meeting at which directors are elected.~~
- ~~(C) Directors appointed by the Commissioner. The number of directors composed of licensed local recording agents and members of the public shall be four. Each of these directors must be from different counties in the designated catastrophe area.~~
- ~~(i) The Commissioner shall appoint two public representatives nominated by the Office of the Public Insurance Counsel to serve on the board of directors. The public representatives shall be persons who are policyholders of the association as of the date of appointment.~~
- ~~(ii) The Commissioner shall appoint two licensed local recording agent representatives to serve on the board of directors.~~
- ~~(Db2) Term of office. Each director~~Members of the board of directors shall hold office for the term of three years~~serve~~ from the date of the ~~election or~~ appointment ~~or~~ until a successor shall have been ~~elected or~~ appointed. The terms of the directors shall be staggered so that three directors shall be appointed ~~elected~~ by ~~the membership of the association and/or~~ appointed by the Commissioner annually. A person may hold a seat on the board of directors for not more than three consecutive full terms, not to exceed nine years.
- ~~(c3) A member of the board of directors may be removed by the commissioner with cause stated in writing and posted on the association's website. The commissioner shall appoint a replacement in the manner provided for in this section. For purposes of this section, "cause" shall mean: (i) admission or conviction of, or plea of nolo contendere to either a felony or a crime involving moral turpitude, fraud, embezzlement, theft or misrepresentation; (ii) any material violation of any statutory or common law duty of loyalty to the association; or (iii) failure to attend three consecutive board of directors meetings.~~
- ~~(E) Regular meetings. A regular meeting of the board of directors shall be held with notice to the directors at least ten days before each regular meeting as provided for in this subsection. Notice of any regular meeting of the directors shall also be given to the Department in care of the associate commissioner of property casualty, or such other person as may be designated by the Commissioner, as required by the Texas Insurance Code, Article 21.49, §5(k). Public notice of meetings shall be given as required by the Government Code, Chapter 551.~~
- ~~(Fd4) Notice of regular or emergency meeting~~Meetings.
- ~~(iA1) Notice of any regular meeting shall be given to the directors at least ten days prior thereto by notice delivered personally or mailed to each director at his/her business address~~ ~~or by telegram,~~ ~~or by~~ such other reasonable means of notice, including notice by electronic mail, to provide actual notice to each director. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed with postage thereon prepaid. ~~If the notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company.~~ If the notice is by other reasonable means, the association shall maintain a written record of the method of notification. Any director may

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waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice to the director of such meeting, except where a director attends a meeting for the express purpose of objection to the transaction of any business because the meeting is not lawfully called or convened.

- ~~(#2B)~~ In case of emergency or urgent public necessity, notice to directors and to the Department shall be given at least two hours before a meeting is convened. ~~Notice to the public shall be given as required for an emergency meeting pursuant to the Government Code, §551.045.~~
- ~~(3C)~~ Whenever any notice is required to be given to any director of the association under the provision of this section a waiver thereof in writing signed by the person or persons, including the Department, entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.
- ~~(iii)~~ ~~Any meeting of the board of directors of the association conducted by conference call is subject to the same requirements applicable to other meetings of the board of directors.~~
- ~~(G4D)~~ Regular or emergency meetings. Regular or emergency meetings of the board of directors may be called by the chair of the board or at the request of any two directors. The person or persons authorized to call a meeting of the board of directors may fix any place as the place for holding any meeting of the board of directors called by them. If no place is designated, then the office of the association shall serve as the place of such meeting.
- ~~(H)~~ ~~Statement of purpose of meeting required. The business to be transacted at, and the purpose of, any regular or emergency meeting of the board of directors shall be specified in the notice to directors and in notice required by statute as required by the Government Code, Chapter 551.~~
- ~~(I5E)~~ Quorum. A majority of the number of directors authorized to vote fixed by this section shall constitute a quorum for the transaction of business at any meeting of the board of directors. Action taken by a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors. If at any meeting of the board of directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained.
- ~~(J)~~ ~~Presumption of assent. A director of the association who is present at the meeting of the board of directors at which action on any matter is taken shall be presumed to have assented to the action taken unless the director's dissent shall be entered in the minutes of the meeting, or unless the director shall file a written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof, or shall forward such dissent by registered mail to the secretary of the association immediately after the adjournment of the meeting. Such right to dissent shall not be available to a director who voted in favor of such action.~~
- ~~(K)~~ ~~Compensation. By resolution of the board of directors, the directors may be reimbursed for their actual expenses. No other payment shall be made to directors other than provided herein, except however, that nothing herein shall be construed as preventing any director from serving the association in any other capacity and receiving reimbursement for actual expenses incurred.~~
- ~~(L)~~ General powers. The board of directors shall have the management of the business and affairs of the association and may exercise all of the powers herein enumerated and all other powers incidental or appropriate thereto, subject only to the restrictions imposed by law. Included among the powers of the board of directors, but not in limitation thereof, are the following:
 - ~~(i)~~ ~~to make and change regulations not inconsistent with this section for the management of the business affairs of the association;~~
 - ~~(ii)~~ ~~to purchase or otherwise acquire for the association any property, rights, or privileges which the association is authorized to acquire;~~
 - ~~(iii)~~ ~~to remove any officer for cause, summarily without cause, and in their discretion, from time to time, to dissolve the powers and duties of any officer and to confer such powers and duties upon any other person for the time being;~~

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- ~~(iv) to appoint and remove or suspend such subordinate officers, attorneys, or representatives as they may deem necessary and to determine their duties, and fix, and from time to time change their salaries or remuneration, and to require security as and when they think fit;~~
- ~~(v) to confer upon any officer of the association the power to appoint, remove, and suspend subordinate officers, employees, and representatives;~~
- ~~(vi) to determine who shall be authorized on the association's behalf to make and sign bills, notes, acceptances, endorsements, checks, releases, receipts, contracts, and other instruments;~~
- ~~(vii) to delegate any of the powers of the board of directors in relation to the ordinary business of the association to any standing or special committee, or to any officer or agent (with power to subdelegate) upon such terms as they may deem appropriate;~~
- ~~(viii) to contract with a servicing facility to perform such services for the association as it may deem appropriate;~~
- ~~(ix) to approve expenses, levy assessments, including preliminary assessments;~~
- ~~(x) to have all other powers and to perform all other duties reasonably necessary to accomplish the purposes of the Act.~~
- ~~(M) Executive committee. An executive committee shall consist of at least three, and not more than four, of the directors of the association and shall include the chair, vice chair, and secretary-treasurer. At least one director appointed by the Commissioner must be elected as an officer. The board of directors may elect an additional director to be a member of the executive committee for the sole purpose of ensuring the inclusion of at least one insurer, one agent, and one public member on the executive committee. To the extent provided by resolution or resolutions of the board of directors, the executive committee shall have and may exercise the powers delegated by the board of directors in the day to day administrative management of the association. Such committee shall keep regular minutes of its proceedings and report the same to the board of directors. The delegation to a committee of authority consistent with this section shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon the board of directors or member by law.~~
- ~~(N) Vacancies.~~
 - ~~(i) A particular directorship shall be considered to be vacant upon the resignation of the member holding such directorship.~~
 - ~~(ii) Any vacancy occurring in the directors elected from the membership may be filled at the next meeting of the board of directors following the occurrence of such vacancy. Subject to the provisions of subparagraph (B) of this paragraph, such vacancy shall be filled by the affirmative vote of a majority of the remaining directors elected from the membership though less than a quorum. A director elected to fill a vacancy shall be elected for the unexpired term of the predecessor in such directorship.~~
 - ~~(iii) Any vacancy occurring in the directors appointed by the Commissioner shall be filled by appointment of a new director in accordance with the provisions of subparagraph (C) of this paragraph.~~
- ~~(6F) Members of the board of directors may meet by telephone conference call, videoconference, or other similar telecommunication method as provided in the Act.~~

~~(3)~~ **§5.4005. Officers.**

- ~~(Aa1) Number.~~ The officers of the association shall be the chair of the board of directors, the vice chair of the board of directors, and the secretary-treasurer, all of whom shall be elected by the board of directors. No two offices may be held by the same person. ~~The chair, vice chair, and secretary-treasurer shall serve on the executive committee. At least one director appointed by the Commissioner must be elected as a member of the executive committee.~~
- ~~(Bb2) Election and term of office.~~ The officers of the association may be elected annually by the board of directors ~~at the first meeting of the board of directors held after each annual meeting of the~~

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~~members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be.~~ Each officer shall hold office until the officer's successor shall have been duly elected and shall have qualified or until the officer's death or until the officer shall resign or shall have been otherwise removed. The board of directors shall provide for a rotation of directors elected as officers at least every two years.

~~(Cc3) Removal of officers.~~ Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the association would be served thereby or otherwise in accordance with this section, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

~~(Dd4) Chair of the board of directors.~~ The chair of the board of directors shall preside at all meetings of the members and at all meetings of the directors, ~~appoint and discharge employees and persons representing the association subject to the approval of the directors, fix the compensation of employees and such representatives, make and sign contracts and agreements in the name of the association,~~ and appoint committees. ~~The chair shall see that the books, reports, statements, and certificates are properly kept, made, and filed if necessary,~~ and shall generally ~~do and~~ perform all acts incident to the office of chair of the board of directors or which may be authorized or required by law, by this section, or by the board of directors, not inconsistent herewith.

~~(Ee5) Vice chair of the board of directors.~~ The vice chair of the board of directors elected by the board of directors shall have such powers and shall perform such duties as shall be assigned by the board of directors not inconsistent herewith.

~~(Ff6) Secretary-treasurer.~~ The secretary-treasurer shall ~~have such powers and shall perform such duties as shall be assigned by the board of directors not inconsistent herewith.~~

~~(i) keep the minutes of the members and of the board of directors' meetings in one or more books provided for that purpose;~~

~~(ii) see that all notices are duly given as required by the provisions of this plan of operation. In case of the secretary-treasurer's absence or refusal or neglect to give the required notice, such notice may be given at the direction of the chair of the board of directors, of the directors, or of the members upon whose request the meeting is called;~~

~~(iii) be custodian of the association's records;~~

~~(iv) keep a register of the post office address of each member;~~

~~(v) annually determine each member's participation in the association in the manner required by the Act and shall keep a register of each member's percentage of participation;~~

~~(vi) have the custody of all funds, securities, evidences of indebtedness, and other valuable documents of the association, the secretary-treasurer shall receive and give or cause to be given receipts and acquittances for monies paid in on account of the association and shall pay out of the funds on hand all just debts of the association of whatever nature upon maturity of the same, the secretary-treasurer shall enter or cause to be entered in the books of the association to be kept for that purpose full and accurate accounts of all monies received and paid out on account of the association, and whenever required by the board of directors, the secretary-treasurer shall keep or cause to be kept such other books as would show a true record of the reserves, expenses, losses, gains, assets, and liabilities of the association; and~~

~~(vii) in general, perform all duties incident to the officer of secretary-treasurer and such other duties as from time to time may be delegated by the chair of the board of directors or by the board of directors.~~

~~(4) Legal Counsel.~~

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- ~~(A) Types of Representation. The association may engage one or more attorneys to provide the following:~~
- ~~(i) legal representation, in matters other than disputes involving policyholder claims, before the Commissioner, the Department and the Texas Legislature;~~
 - ~~(ii) legal representation in any dispute involving a policyholder claim against the association; and~~
 - ~~(iii) legal advice and assistance relating to any other matter within the authority and responsibility of the association.~~

§5.4006. Legal Counsel

~~(B)~~ **(B)** Legal ~~Representation, Counsel~~ in Matters Other ~~than~~ **Than** Disputes Involving Policyholder Claims, ~~Before the Commissioner, the Department and the Texas Legislature.~~

~~(1)~~ **(1)** ~~Selection.~~The association board of directors shall select, in accordance with this plan of operation, legal counsel ~~to provide legal representation on behalf of~~ **represent** the association, in matters other than disputes involving policyholder claims, before the Commissioner, the Department and the Texas Legislature.

~~(2)~~ **(2)** ~~Qualifications.~~

~~(A)~~ **(A)** To be engaged to provide such legal representation, an attorney must:

- ~~(a)~~ **(a)** be licensed to practice law in Texas for at least five years;
- ~~(b)~~ **(b)** maintain professional liability insurance with an eligible surplus lines insurer or an insurer authorized to do business in Texas in an amount of not less than \$1 million;
- ~~(c)~~ **(c)** be experienced in and practice in the areas of insurance and administrative law;
- ~~(d)~~ **(d)** have no impermissible conflict of interest before representation is undertaken, in accordance with the Texas Disciplinary Rules of Professional Conduct adopted by the Texas Supreme Court and the Comments prepared by the Model Rules Committee of the State Bar of Texas and amended by Supreme Court Order (Government Code, Title 2, Subtitle G, Appendix A, Article 10, §9) and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas; and
- ~~(e)~~ **(e)** have never been suspended or disbarred from the practice of law or convicted of a felony.

~~(3)~~ **(3)** The board of directors of the association may adopt additional qualifying criteria for legal counsel representing the association in matters specified in this subparagraph subsection by amending this plan of operation.

~~(iii) Conflict of Interest.~~

~~(4)~~ **(4)** In representing the association ~~pursuant to this subparagraph,~~ legal counsel shall be governed by the conflict-of-interest and the appearance-of-conflict-of-interest rules under the Texas Disciplinary Rules of Professional Conduct and the official Comments to these rules and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas.

~~(5)~~ **(5)** A decision relating to a conflict of interest or appearance of a conflict of interest on the part of legal counsel under this subparagraph subsection shall be based on the Texas Disciplinary Rules of Professional Conduct and the official Comments to these rules and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas. No other laws or rules shall apply in determining the existence of conflict of interest or the appearance of conflict of interest under this plan of operation.

~~(H) Procedures for Handling Conflict of Interest Issues Raised by Legal Counsel.~~

~~(a)~~ **(a)** If legal counsel has reason to believe that legal counsel's representation of the association pursuant to this paragraph may result in a conflict of interest or the appearance of a conflict of interest, legal counsel shall immediately report, either verbally orally or in writing, such fact and the surrounding circumstances, including full disclosure of the existence, nature,

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implications, and possible adverse consequences of the common representation and any advantages involved, to the chair of the board and the general manager and either:

~~(1A)~~ withdraw from such representation; or

~~(2B)~~ if the legal counsel believes that there will be no materially adverse effect upon the association by such representation, request the approval of the association board of directors for legal counsel to engage in such representation.

~~(b67)~~ After review of all disclosed facts relating to the potential conflict of interest or appearance of conflict of interest, if the board of directors approve legal counsel's request to continue representation in the matter reported and the legal counsel also believes that there will be no materially adverse effect upon the association by such representation, the legal counsel may continue such representation.

~~(e87)~~ The chair of the board and the general manager shall prepare the written decision of the board of directors as to continued representation or denial of continued representation in such matter together with the reasons for that decision and file the written decision with the association's official records and forward a copy of the decision to legal counsel.

~~(IV) Procedures for Handling Conflict of Interest Issues Raised by Persons Other than Legal Counsel.~~

~~(a98)~~ If a member of the association's board, the chair of the board, or the general manager believe that representation by legal counsel in any matter pursuant to this ~~subparagraph~~~~subsection~~ may result in a conflict of interest or the appearance of a conflict of interest, such person shall report the perceived conflict of interest or appearance of a conflict of interest to the chair of the board.

~~(b910)~~ The chair of the board shall contact legal counsel and request a meeting or a telephone conference with the board of directors and legal counsel to discuss such perceived conflict.

~~(e101)~~ During such meeting or teleconference the board of directors shall determine, in accordance with the Texas Disciplinary Rules of Professional Conduct and the official Comments to these rules and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas, whether a conflict of interest or the appearance of a conflict of interest exists and following such meeting or teleconference, the board of directors shall adopt and issue a written decision.

~~(1A)~~ If the board of directors determine that no conflict of interest or appearance of conflict of interest exists, the written decision shall state the reasons for such decision and that the legal counsel may continue to represent the association in the particular matter.

~~(2B)~~ If the board of directors determine that a conflict of interest exists, the written decision shall state the reasons for such decision and state either that the legal counsel may not represent the association in the matter or that the board of directors consent to the representation by legal counsel and that legal counsel may represent the association in the matter so long as the legal counsel also believes that there will be no materially adverse effect upon the association by such representation.

~~(dC)~~ A written decision prepared under this subdivision shall be included in the official records of the association and a copy of the decision shall be forwarded to the legal counsel.

~~(iv124) Review and Termination.~~ The association's executive committee, together with the general manager of the association, shall review annually with the legal counsel the performance of such legal counsel and report their findings to the board of directors in executive session. Representation of the association by legal counsel may be terminated at any time by the board of directors.

~~(Eb)~~ Legal ~~Representation~~~~Counsel~~ in Any ~~Dispute~~~~Matters~~ Involving a ~~Policyholder~~~~Claim Against the Association Claims~~.

~~(1)~~ ~~Selection.~~ The general manager of the association shall select, in accordance with this plan of operation, legal counsel to represent the association in handling disputes involving

policyholder claims against the association. Selection of legal counsel to represent the association in such disputes shall be made on a case-by-case basis.

~~(ii)~~ ~~Qualifications.~~

- (~~12~~) To be engaged to provide such legal representation, an attorney must:
- (~~a~~-~~A~~) be licensed to practice law in Texas for at least five years;
 - (~~b~~-~~B~~) maintain professional liability insurance with an eligible surplus lines insurer or an insurer authorized to do business in Texas in an amount of not less than \$1 million;
 - (~~c~~-~~C~~) be experienced in the defense of claims against insurers;
 - (~~d~~-~~D~~) have no impermissible conflict of interest before representation is undertaken, in accordance with the Texas Disciplinary Rules of Professional Conduct adopted by the Texas Supreme Court and the Comments prepared by the Model Rules Committee of the State Bar of Texas and amended by Supreme Court Order (Government Code, Title 2, Subtitle G, Appendix A, Article 10, §9) and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas; and
 - (~~e~~-~~E~~) have never been suspended or disbarred from the practice of law or convicted of a felony.
- (~~H3~~) The board of directors of the association may adopt additional qualifying criteria for legal counsel representing the association in matters involving policyholder claims against the association by amending this plan of operation.

~~(iii)~~ ~~Conflict of Interest.~~

- (~~I4~~) In representing the association pursuant to this subparagraph, legal counsel shall be governed by the conflict-of-interest and the-appearance-of-conflict-of-interest rules under the Texas Disciplinary Rules of Professional Conduct and the official Comments to these rules and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas.
- (~~H5~~) A decision relating to a conflict of interest or appearance of a conflict of interest on the part of legal counsel under this subparagraphsubsection shall be based on the Texas Disciplinary Rules of Professional Conduct and the official Comments to these rules and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas. No other laws or rules shall apply in determining the existence of conflict of interest or the appearance of conflict of interest under this plan of operation.
- (~~H6~~) In determining whether legal counsel has a conflict of interest, as defined in the Texas Disciplinary Rules of Professional Conduct and the official Comments to these rules and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas, the general manager shall require the legal counsel to submit to the general manager in writing evidence that a thorough conflicts check has been conducted to assure that no conflict of interest exists. Such evidence of a conflicts check shall be maintained by the general manager in the association's records as confidential and not available for public inspection.
- (~~IV7~~) The general manager may approve, in accordance with Rule 1.06(c) of the Texas Disciplinary Rules of Professional Conduct and the official Comments to this rule and any related ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas, an attorney to represent the association in a matter involving a policyholder claim against the association in which a potential conflict of interest may exist if:
- (~~A~~-~~a-i~~) the attorney reasonably believes the representation of the association will not be materially adversely affected; and
 - (~~b~~-~~B-ii~~) the general manager consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.
- (~~V8~~) If legal counsel accepts an engagement from the association to represent it in a dispute involving a policyholder claim against the association and fails to disclose a conflict of interest, as required in this clause, such legal counsel shall be barred for a period of five years, from the date on which the conflict of interest is disclosed to the association, from representing the

association as legal counsel in any dispute involving a policyholder claim against the association.

~~(iv)~~ ~~Review and Termination.~~

~~(A)~~ The general manager shall report to the executive committee at each of its regular meetings all information relating to the selection of and the service of legal counsel in handling policyholder claims against the association.

~~(B)~~ At the general manager's discretion or at the direction of the executive committee, the general manager shall discharge legal counsel from any matter involving a policyholder claim against the association on five days' written notice to the legal counsel.

~~(5)~~ §5.4007. Fiscal year Indemnification.

~~The fiscal year of the association shall be the calendar year.~~

~~(6) Waiver of notice. Whenever any notice is required to be given to any member or director of the association under the provision of this section a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.~~

~~(7a) Protection of directors, members, officers, and employees.~~ The association shall indemnify each former, present, and future director, member, officer, and employee of the association (Indemnitee) against, and each such ~~director, member, officer, and employee~~ Indemnitee shall be entitled without further act on his/her part ~~of to~~ indemnity from the association for, all costs and expenses (including the amount of judgments and the amount of reasonable settlements made with a view to the curtailment of costs of litigation, other than amounts paid to the association itself) reasonably incurred by him/her in connection with or arising out of any action, suit, or proceeding in which he/she may be involved by reason of his/her being or having been a director, member, officer, or employee of the association or of any other association or company which he/she serves as a director, member, officer, or employee at the request of the association, whether or not he/she continues to be such director, member, officer, or employee at the time of incurring such costs or expenses.

~~(b) provided~~ Provided, however, that such indemnity shall not include any costs or expenses incurred by any such ~~director, member, officer, or employee~~ Indemnitee in respect of matters as to which he/she shall be finally adjudged in any such action, suit, or proceeding to be liable for willful misconduct in the performance of his/her duty as such director, member, officer, or employee, or in respect of any matter in which any settlement is effected in any amount in excess of the amount of expenses which might reasonably have been incurred by such ~~director, member, officer, or employee~~ Indemnitee had such litigation been conducted to a final conclusion.

~~(c) provided~~ Provided, further, that in no event shall anything herein contained be so construed as to protect, or to authorize the association to indemnify such ~~director, member, officer, or employee~~ Indemnitee against any liability to the association or to its members to which he/she would otherwise be subject by reason of his/her willful misfeasance or malfeasance, bad faith, dishonesty, gross negligence, or reckless disregard of the duties or responsibilities involved in the conduct of his/her office or employment as such director, member, officer, or employee.

~~(d)~~ The foregoing right of indemnification shall inure to the benefit of the heirs, executors, or administrators of each such ~~director, member, officer, or employee~~ Indemnitee and shall be in addition to all other rights to which such ~~director, member, officer, or employee~~ Indemnitee may be entitled as a matter of law.

~~(e)~~ This indemnification shall in no way indemnify a member of the association from participating in the ~~writings insured losses and operating~~, expenses, ~~profits, and losses~~ of the association in the manner set out in this plan of operation or the Act.

~~(8) Annual report. The secretary treasurer shall file with the Department annually a statement which shall summarize the transactions, conditions, operation, and affairs of the association during the preceding calendar year at such times and covering such periods as may be designated by the Department. Such statement shall contain such matters and information as are prescribed by the Department and shall be in such form as required by the Department.~~

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~~(e) Financial Operation of the Association.~~

~~(+)§5.4008. Collection, investmentInvestment, and allocationAllocation of fundsFunds.~~

~~(Aa) Collection.~~ The ~~secretary treasurer~~association shall collect all of the premiums received by the association from the sale of catastrophe insurance, all assessments levied against the members, and all proceeds from the investment of funds.

~~(Bb) Investment.~~ All funds collected by the association which are not otherwise required to be expended ~~as provided in paragraph (3) of this subsection~~ may be retained in a checking account or accounts in any bank or banks doing business in the State of Texas and/or may be invested only in the following:

~~(1i) in~~ interest-bearing time deposits or certificates of deposit in any bank or banks doing business in the State of Texas; and/or

~~(2ii) in~~ treasury notes of the government of the United States of America; and/or

~~(3iii) in~~ money market funds which invest exclusively in the bonds or other evidence of indebtedness of the United States of America or any of its agencies when such obligations are guaranteed as to principal and interest by the United States of America; except, however:

~~(1A)~~ such money market funds may make loans to or purchases of the described bonds and other evidence of indebtedness from a solvent bank or securities broker, registered under the Securities Act of 1934, under an agreement (commonly called a “repurchase agreement”) which provides for the purchase by the money market fund of the type of securities described and which agreement matures in 90 days or less and provides for the repurchase by such entity of the same or similar securities purchased by the money market fund, provided that the total market value of such securities shall equal or exceed the amount of such loan or repurchase when it is made; and

~~(HB)~~ such loan collateral or securities purchased from any one bank or securities broker may not exceed the greater of 5.0% of the assets of the money market fund or 5.0% of the amount of capital, surplus, or individual profits of such bank or securities broker; and/or

~~(ivC)~~ in such other investments as may be proposed by the board of directors and approved by the Commissioner. The board of directors shall determine what portion of such funds shall be retained in a checking account or accounts and what portion of such reserve shall be invested in the investments listed in this subparagraph, as well as which specific investments, if any, shall be made.

~~(C) Allocation.~~

~~(ic) The use and investment of proceeds from the issuance of public securities shall be governed by applicable law and documents authorizing the issuance of the public securities. Each year the association will prepare a statement of earnings by calendar year. All premiums written, commissions paid, unearned and earned premiums, loss and loss expenses paid and pending will be charged to the calendar year. All general expense and interest income received will be charged or credited to the current calendar year.~~

~~(ii) Each company will apply their participation percentage applicable to each calendar year.~~

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~~(2)§5.4009. Assessment of Members.~~

- (Aa) ~~Assessment.~~ If the chair of the board of directors or any members of the board of directors determine that an assessment of the members ~~is~~ may be necessary, a special meeting of the board of directors shall be called to determine if the funds then available to the association are:
- (1i) of insufficient size to provide adequately for the operating expenses of the association for the remainder of the then existing fiscal year of the association (or if such special meeting is within 60 days of the end of the then fiscal year, the board of directors may also determine if the funds available to the association during the next fiscal year will be insufficient to adequately provide for the operating expenses of the association for the next succeeding fiscal year); and/or
 - (2ii) of insufficient size to adequately provide for an existing catastrophe loss or losses. If the board of directors shall determine funds available to the association are of insufficient size under the provisions of this clause and/or clause (i) of this ~~subparagraph~~ subsection, then it shall assess the members of the association in such amount as it shall deem reasonable and necessary to provide for such operating expense and/or such catastrophe loss ~~or~~ losses.
- (b) ~~Amount of assessment.~~ The board of directors shall determine which members of the association shall participate in any assessment for operating expenses, ~~and/or~~ catastrophe losses or payment of public securities payable from assessments. This determination shall be computed on a calendar year basis. The designated members of the association shall participate in any assessment levied in the proportion that the net direct premiums of such member written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association as furnished to the association by the Department after review of annual statements, other reports, and required statistics; provided, however, that if at the time of such assessment the Department has not furnished to the association information necessary to compute a member's participation during the preceding calendar year, then each member's participation shall be based upon information furnished to the association from the last calendar year in which such information is available and, upon obtaining the necessary information from the Department, the association shall reassess or refund to each member such amounts as are necessary to properly reflect such member's participation; provided, further, that a member shall be entitled to receive ~~the following~~ credit for insurance, similar to catastrophe insurance, written in such catastrophe areas.
- (1i) ~~Participation in the association for policies after January 1, 1988.~~ Procedure for determining the percent of participation ~~respecting association policies with inception dates on or after January 1, 1988,~~ for members of the association reflecting credit for voluntary premiums written in the designated areas. (All premiums are for the most recent preceding calendar year ending December 31, as furnished by the Department.) Column 1(a): Statewide net direct premiums for extended coverage and other allied lines. Column 1(b): Statewide net direct premiums for extended coverage and other allied lines portion of the multiple peril line. Column 1(c): Statewide net direct premiums for homeowners and farm and ranch owners. Column 2: The sum of the statewide net direct premiums at 90% of the extended coverage and other allied lines, and 50% of the homeowners and farm and ranch owner's, or such percentage as may be determined in accordance with subsection §5.4002(13)(B)(a)(2)(i)(III) of this section (90% of Column 1(a) plus 90% of Column 1(b) plus 50% of Column 1(c)). Column 3: Each company's percentage of the net direct premiums as described in Column 2, which is the basis for indicating normal required participation in the association prior to credits for voluntary writings in the designated areas. Column 4: Total windstorm and hail premiums in the designated areas (association premiums plus voluntary premiums). Column 5: Normal company quota of total windstorm and hail premiums (Column 3 x Column 4). Column 6: Each company's voluntary writings in the designated areas multiplied by the same percentages as shown in Column 2. Note: Maximum credit shall be limited to company's normal quota. Column 7: Each company's maximum possible allocation after applying credits for voluntary writings (Column 5 minus Column 6). Negative allocation to be shown as zero. Column 8: Percentage participation of each member company in the association, prior to application of

offset. Note: The offset figure measures the excess premiums developed by the maximum credit in Column 6. Column 9: Percentage participation of each member company in the association.

Figure: 28 TAC §5.400~~49~~(~~eb~~)(~~2i~~)(~~B~~)(~~i~~)

TEXAS WINDSTORM INSURANCE ASSOCIATION PROCEDURE FOR CALCULATING MEMBER ASSESSMENT PERCENTAGES INCLUDING CREDIT FOR VOLUNTARY WRITINGS			
[1] STATEWIDE DIRECT WRITTEN PREMIUMS	[2] NET DIRECT WRITTEN PREMIUMS	[3] COMPANY PERCENT OF STATEWIDE PREMIUMS WRITTEN	[4] TOTAL PREMIUMS IN CATASTROPHE AREAS
(a)(b)(c) E.C. CMP HO	Total of Col. [1](a) & (b) x 90% Col. [1](c) x 50%	[2] ÷ Total of [2]	(ASSOCIATION + VOLUNTARY)
[5] NORMAL REQUIRED QUOTA IN DESIGNATED AREAS	[6] CREDIT FOR COMPANY'S VOLUNTARY PREMIUMS	[7] DIFFERENCE BETWEEN NORMAL REQUIRED PARTICIPATION AND VOLUNTARY CREDIT PREMIUMS	[8] ASSOCIATION ASSESSMENT PERCENTAGE PRIOR TO OFFSET
([3] x [4])	(not to exceed column [5])	([5] - [6])	[7] ÷ Total of [7]
[9] NET ASSOCIATION ASSESSMENT PERCENTAGE			
(After application of offset)			

(2#) The Department shall furnish to the association the amount of net direct premiums of each member company written on property in this state and the aggregate net direct premiums written on property in this state by all member companies during the preceding calendar year as reported by member companies to the Department. Within a reasonable time after the receipt

of same from the Department, the association shall notify each member company, in writing, sent by certified mail, the amount of the net direct premiums written on property in this state during the preceding calendar year by the member company to whom notice is given, including the net direct premiums of similar insurance voluntarily written in the catastrophe areas, upon which such company's percentage of participation will be determined. Such notice shall state that such notification, and the content thereof, is an act, ruling, or decision of the association and that the member company to whom such notice is given shall be entitled to appeal therefrom within 30 days from the date of such act, ruling, or decision as shown on said notice in accordance with the [Insurance Code Act](#), §2210.551. Thereafter, the association shall determine the percentage of participation for each member company in the manner provided in the plan of operation and shall notify each member company thereof, in writing, sent by certified mail. Such notice shall state that such notification, and the content thereof, is an act, ruling, or decision of the association insofar as the mathematical determination of the percentage of participation is concerned and that the member company to whom such notice is given shall be entitled to appeal therefrom within 30 days from the date of such act, ruling, or decision as shown on said notice in accordance with the [Insurance Code Act](#) §2210.551.

(3iii) To assist the association in determining each member insurer's percentage of participation as soon as possible in the calendar year, each member insurer shall furnish to the association on or before March 1 of each year a copy of its Exhibit of Premiums and Losses (Statutory Page 14 Data) for the State of Texas that is filed annually with the Department as part of the insurer's Texas Fire and Casualty Annual Statement Form 2.

(Cc) ~~Notice of assessment~~—Notice of assessment shall be sent to each member, within 30 days of the meeting of the board of directors at which such assessment was levied, by certified mail, return receipt requested, addressed to the office of such member as it appears on the books of the Association. Such notice shall state the member's allocated amount of assessment and shall inform each member of the sanctions imposed ~~by subparagraph (D)~~ ~~under subsection (d)~~ of this ~~paragraph~~ ~~section~~ for the failure to pay such assessment within the time prescribed by this section. Such notice shall also state that such notification, and the content thereof, is an act, ruling, or decision of the association insofar as the amount of the assessment for such company is concerned and that a member company to whom such notice is given shall be entitled to appeal therefrom within 30 days from the date of such act, ruling, or decision as shown on said notice, in accordance with the [Insurance Code Act](#) §2210.551; provided, however, that the right of appeal provided for herein shall not include the subject matter of any act, ruling, or decision of the association determining the amount of net direct premiums of such member company or the percentage of participation for such member company when notice of the amount of such net direct premiums or such percentage of participation has previously been given by the association in accordance with subparagraph (Bb)(#2) of this paragraph. The time period for an appeal of an act, ruling, or decision of the association respecting net direct premiums or percentage of participation is computed from the date of the act, ruling, or decision of the association respecting same.

(Dd) ~~Failure to pay assessment~~—

(i) Each member shall remit to the association payment in full of its assessed amount of any assessment levied by the board of directors within 30 days of receipt of notice of assessment. If the association has not received payment in full of a member's allocated amount of assessment within 40 days of notice of the receipt by the member of the notice of assessment, then the association shall report to the Commissioner the fact that such assessment has not been paid, and the Commissioner shall immediately issue an order suspending such member's certificate of authority to transact the business of insurance in the State of Texas until such time as the association certifies to the Commissioner that such assessment has been paid in full. Removal of a member's certificate of authority to transact business in the State of Texas by the Commissioner shall in no way affect the right of the association

to proceed against such member in any court of law or equity in the United States for any remedy provided by law or contract to the association, including, but not limited to, the right to collect such member's assessment. In addition to any other remedy provided herein, the board of directors may offset assessments due from a member against any amounts in any account of such delinquent member.

(#e) A member by mailing payment of its allocated amount of assessment, as provided herein, shall not thereby waive any right it may have to contest the computation of its allocated amount of assessment. Such contest shall not, however, toll the time within which assessments shall be paid or the report to be made to the Commissioner or the action to be taken by the Commissioner upon receipt of such report, all as set out in ~~clause subsection (d)~~ of this ~~subparagraph section~~.

(E) ~~Inability to pay assessment by reason of insolvency.~~ In the event a member of the association is placed in temporary or permanent receivership under order of a court of competent jurisdiction based upon a finding of insolvency, and such member has been designated an impaired insurer by the Commissioner, and in the event it is necessary to obtain additional funds to provide for operating expenses and losses in the year the insurer is declared impaired, the aggregate net amount not recovered from such insolvent insurer shall be reallocated among the remaining members of the association in accordance with the method of determining participation as determined in the plan of operation.

~~(3) Use of funds.~~

~~(A) All monies collected or received by the association are required to be expended in the following ways and in the following sequence:~~

~~(i) first, to pay the expenses and claims of the association and to pay premiums for reinsurance under any reinsurance program approved by the Commissioner;~~

~~(ii) second, to make payment of the net equity of association members on an annual basis, including all premium and other revenue of the association in excess of incurred losses and operating expenses, directly to the comptroller for deposit in the catastrophe reserve trust fund to be held by the comptroller outside the state treasury on behalf of, and with legal title in, the Texas Department of Insurance.~~

~~(B) Funds are to be disbursed from the catastrophe reserve trust fund in accordance with 9903(c) of this title (relating to Operation of the Trust Fund). Funds disbursed from the catastrophe reserve trust fund may not be distributed to any member of the association for any purpose, and any funds disbursed to the association from the catastrophe reserve trust fund that remain unspent after payment of all losses and loss adjustment expenses arising out of an occurrence or series of occurrences shall be remitted to the comptroller for redeposit in the catastrophe reserve trust fund.~~

~~(d) Catastrophe Insurance.~~

~~(1) The policy.~~

~~(A) Approval. The association shall cause to be issued policies providing for catastrophe insurance and application forms therefor. The board of directors shall submit such policies and application forms to the Commissioner for approval. The Commissioner shall approve or reject such policies and application forms within 30 days of their submission. If the Commissioner takes no action regarding such forms and applications within such 30-day period, the forms and applications shall be deemed to have been approved by the Commissioner. The Commissioner shall not be required to approve or reject such forms and applications as a group the Commissioner may approve some policies and/or forms and reject other policies and/or forms provided, however, that if the Commissioner rejects a form, the Commissioner shall send to the association the reasons for such rejection. No application for or policy of catastrophe insurance shall be used by the association prior to its approval by the Commissioner.~~

~~(B) §5.4010. Insurable ~~property~~ Property.~~

The property eligible for catastrophe insurance shall be that property defined as “insurable property” in the Act, [Section 2210.004](#), provided, however, that the term “insurable property” shall not include:

~~(1a)~~ motor vehicles; and

~~(2b)~~ any structure consisting, in whole or in part, of a ~~mobile-manufactured~~ home except as a ~~mobile manufactured~~ home may be described as being insurable property in this subsection.

~~(C)~~ **§5.4011. Limits of liability.**

~~(a)~~ The maximum limits of liability shall be determined by statute ~~and set forth in the rules manual of the association adopted pursuant to §5.4501 of this title (relating to Rules and Regulations for Texas Catastrophe Property Insurance Association).~~

~~(b)~~ In the event that the value of any risk exceeds the maximum amounts set forth in the rules manual, the association may waive the coinsurance requirements and charge a rate on a negotiated basis in accordance with procedures subject to review by the Department.

~~(c)~~ Limits of liability for risks required to be insured by the association shall be adjusted for inflation as part of the annual hearing on property rates by the Commissioner to reflect any changes in the cost of construction or residential values in the catastrophe areas as determined by credible indexes. ~~Indexing of liability limits shall apply after January 1, 1992.~~

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~~(D)~~ **§5.4012. Rates, rating plans, and rate rules applicable.**

The rates, rating plans, and rate rules applicable shall be those established pursuant to the Act, §8.

~~(2) Applicant, acceptance, and rejection.~~

~~(A)~~ **§5.4013. Forms Application, Acceptance, Rejection, Inspection.**

~~(a)~~ Any person ~~meeting the requirements set forth in §5.4902 and~~ having an insurable interest in insurable property located in a catastrophe area shall be entitled to apply to the association for catastrophe insurance in the manner provided herein. All applications for catastrophe insurance shall be made on forms prescribed by the board of directors of the association and approved by the Commissioner as provided in ~~paragraph (1)(A) of this subsection~~ [§5.4911](#). Such application forms shall contain a statement as to whether or not there are any unpaid premiums due from the applicant for insurance on the property. All applications [for initial insurance coverage](#) shall be made on behalf of the applicant by a ~~local recording~~ [licensed property and casualty agent](#).

~~(b)~~ ~~Local recording agent.~~ Commissions to be paid to a licensed [property and casualty agent](#) shall be a percentage of the premium produced as may be determined by the board of directors. In event of cancellation of a policy, or if an endorsement is issued which requires premiums to be returned to the insured, the agent shall refund ratable commission on the unearned portion of canceled liability and on reductions in premiums at the same rate at which commissions were originally paid.

~~(c)~~ ~~Submission.~~ Application for catastrophe insurance ~~shall be on the prescribed form and~~ shall be accompanied by payment of the full amount of the premium [or the required initial installment](#) and the inspection fee, if any.

~~(d)~~ ~~Inspection of the risk.~~ The board of directors shall determine the manner [in](#) and scope [by](#) which risks are to be inspected prior to the issuance of a policy of catastrophe insurance. The board of directors may issue a policy of catastrophe insurance on certain types of risks without an inspection provided that the application is accompanied by such information as the board of directors may require. The board of directors shall prepare a set of regulations dealing with the inspection of risks. Such regulations shall be submitted to the Commissioner for approval. The Commissioner may reject all or any portion of such regulations within 10 days of the date of their submission. If the Commissioner

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shall fail to reject all or any part of such regulations within 30 days of the date of their submission, then such regulations shall be deemed to have been approved.

~~(E)~~ Receipt of the application.

~~(e)~~ After receipt of the application, the full amount of the premium or the required initial installment (and inspection fee, if any) and any required inspection report, the association shall:

~~(1i)~~ cause a policy of catastrophe insurance to be issued; or

~~(H2ii)~~ advise the agent or applicant that the risk is not acceptable, but will be acceptable if improvements are made by the applicant (in which case the association shall promptly advise the agent or applicant what improvements should be made to the property to make it acceptable; when the association has been satisfied that such improvements have been made and any additional inspection fee, if any, has been paid, then the association shall cause to be issued a policy of catastrophe insurance); or

~~(H3ii)~~ advise the agent or applicant that the risk is not acceptable, and state the reasons therefore. The reasons for which a risk shall not be acceptable for catastrophe insurance are:

~~(-a-A)~~ the risk is not insurable property as such term is defined in the Act and this section;

~~(-b-B)~~ the amount of insurance requested is in excess of the limits of liability as set forth in this plan of operation or by law;

~~(-c-C)~~ the risk fails to meet reasonable underwriting standards. Reasonable underwriting standards shall include, but shall not be limited to:

~~(-1-i)~~ the amount of insurance requested, together with other insurance, is within relationship to the reasonable value (actual cash value or replacement cost value) of the property insured;

~~(-2-iiH)~~ the physical condition of the property, such as its construction, maintenance, or general deterioration;

~~(-3-iiiH)~~ its present use or housekeeping;

~~(-4-ivIV)~~ in violation of law, public policy, morals and the character or integrity of the property owner or occupant;

~~(-d-vV)~~ such other reason as may be determined by the board of directors and approved by the Commissioner.

~~(Hf)~~ New or increased coverage will be effective on the date that the application along with the full amount of the premium or the required initial installment (and inspection fee, if any) and any required inspection report are received by the association or effective on the date the application is mailed if sent by registered or certified mail, or by United States Postal Service Express Mail, or if sent by regular mail that is hand canceled by the United States Postal Service, or if sent by such other similar mailing procedure as approved by the board of directors, prior to the time specified in this clause as an exception, unless the application for new or increased coverage stipulates a later date. Renewal policies will be effective to provide continuous coverage if the request for a renewal is received on or before the expiration of the existing policy. Exception: no new or increased coverage applications will be accepted on the day (beginning at 12:01 A.M.) or after a windstorm designated as a hurricane by the United States Weather Bureau is in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude, until the General Manager determines that the storm no longer threatens property within the designated catastrophe area of the Texas Windstorm Insurance Association. This exception does not apply to any new or increased coverage application that meets underwriting criteria that is submitted as follows: delivered in person to the Texas Windstorm Insurance Association's Austin office during its normal business hours prior to a windstorm designated as a hurricane by the United States Weather Bureau being in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude; or mailed prior to the first day that a windstorm designated as a hurricane by the United States Weather Bureau is in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude by registered or certified mail or United States Postal Service Express Mail or regular mail that is hand-canceled by the United States Postal Service or such other mailing procedure as approved by the

Board of Directors. Such applications will be accepted and become effective on the date delivered in person or mailed or a later date if stipulated on the applications. This exception also does not apply to any renewal policy affording windstorm coverage if the expiring policy was written by the Texas Windstorm Insurance Association and if the application for renewal was received by the Texas Windstorm Insurance Association on or before the expiration of the existing Texas Windstorm Insurance Association policy or if mailed by registered or certified mail or United States Postal Service Express Mail or by regular mail that is hand-canceled by the United States Postal Service, or if sent by such other similar mailing procedure as approved by the board of directors, prior to the expiration of the existing Texas Windstorm Insurance Association policy.

§5.4014. Cancellation.

~~(A) — By the association.~~

- (~~i~~a) The association shall not cancel a policy of catastrophe insurance issued under this section except for:
- (~~i~~1) nonpayment of premium; or
 - (~~i~~2) evidence of fraud or material misrepresentation; or
 - (~~i~~3) cause which would have been grounds for nonacceptance of the risk under this plan of operation had such cause been known to the association at the time the policy was issued; or
 - (~~i~~4) any cause arising subsequent to the issuance of the policy which would have been grounds for nonacceptance of the risk under this plan of operation had such cause existed at the time of acceptance.
- (~~i~~b) Upon cancellation of a policy of catastrophe insurance ~~issued under this paragraph~~, the association shall send to the insured notice of cancellation together with a statement of the reason therefor and a statement of the reason the insured has the right to appeal as hereinafter provided. Upon cancellation of a policy of catastrophe insurance by the association, the association shall refund to the insured the ~~excess of paid unearned premium according to the standard pro rata table~~ less any minimum retained premium in accordance with §5.4015.
- ~~(B) — By the insured.~~
- (~~i~~c) A policy of catastrophe insurance may be canceled at any time:
- (~~i~~1) by the insured upon demand and surrender of the policy; or
 - (~~i~~2) by an agent, or some other person, firm, or corporation if such agent, person, firm, or corporation shall finance the payment of all or a portion of the premium of such policy and there is a balance due for the financing of such premium and such balance, or any portion thereof is not paid within ten days after the due date, and such agent, person, firm, or corporation to whom such balance is due has:
 - (~~a~~-A) requested cancellation of the policy and returned the policy with proof that the insured was notified of such return; or
 - (~~b~~-B) requested the association to cancel such policy by notice mailed to the insured and any others shown in the policy as having an insurable interest in the policy, in which case the association shall refund the ~~excess of paid unearned premium according to the standard short rate table~~ in accordance with §5.4015.
- (~~i~~d) A policy of catastrophe insurance may be reduced at any time in which case the association shall, upon demand, refund the ~~excess of paid unearned premium according to the standard short rate table on a pro rata basis, or other basis approved by the Commissioner.~~

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§5.4015. Minimum Retained Premium.

- (a) Except as provided in this section, the minimum retained premium on an Association policy issued on an annual basis shall be the premium amount equal to the greater of 90 days of the annual policy term or \$100. The minimum retained premium shall be fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro rata, or as otherwise approved by the Commissioner.
- (b) An Association policy canceled due to the reasons specified in paragraphs (1)-(4) of this subsection is subject to the \$100 minimum retained premium. The minimum retained premium shall be fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata or as otherwise approved by the Commissioner.
 - (1i) aA change in majority ownership of the insured property, including sale of the insured property to an unrelated party, or foreclosure of the insured property;
 - (2ii) the replacement of the Association policy with other similar coverage in the voluntary market;
 - (3iii) the removal of the item(s) insured under an Association policy due to a total loss of the item(s), including demolition of the item(s); or
 - (4iv) the death of the policyholder.
- (c) The Association shall not issue a new or renewal policy to an applicant who owes premium on a prior Association policy.
- (d) The minimum retained premium shall not create or extend coverage beyond the policy's effective cancellation date.

§5.4016. Claim Settlement Guidelines, Wind, Wave, Tidal Surges; Rising Waters.

The Association shall use the claim settlement guidelines published by the Commissioner under Section 2210.578(f) of the Act in evaluating the extent to which a loss to insured property is incurred as a result of wind, waves, tidal surges, or rising waters caused by waves or surges.

- ~~(4) Payment of claims.~~
 - ~~(A) Report of loss. All losses shall be reported by agents to the association in the manner prescribed by the board of directors.~~
 - ~~(B) Adjustment of loss. All losses shall be adjusted in the manner designated by the board of directors. The assignment of losses shall be on an equitable basis to qualified insurance adjusters at such fee as shall be determined by the board of directors.~~
 - ~~(C) Payment of losses. After report of the loss in the manner specified by the board and the adjustment of the loss as provided for herein, the association shall remit to the insured any sums owing to the insured in the manner specified in the catastrophe insurance policy, or in the absence of such specification, in the manner specified by the board of directors.~~
 - ~~(D) Notice of appeal.~~
 - ~~(i) The association shall, immediately upon total or partial denial of a claim of any person insured pursuant to the Insurance Code, Article 21.49, give written notice by certified mail, return receipt requested, to such person of the right to appeal such total or partial denial under the Insurance Code, Article 21.49, and/or A. An offer of less than the amount claimed on the claimant's proof of loss is considered a partial or total denial of a claim. The notice must, at a minimum, contain the following information placed in a prominent position:
 - ~~(I) a clear, accurate, and complete description and statement of the partial or total denial of the claim;~~
 - ~~(II) a statement that the person has the right to appeal the association's determination either to the Commissioner under the Insurance Code, Article 21.49, ; or bring an action against the association in the county in which the covered property is located or in a district court of Travis County under the~~~~

- Insurance Code, Article 21.49, A. A person may not proceed under both the Insurance Code, and A, for the same determination by the association;
- (III) a statement that, under applicable law, an aggrieved person who chooses to appeal to the Commissioner must make a written request to the Commissioner within 30 days after such determination of the association;
 - (IV) a statement of the date of such determination;
 - (V) a statement that a person who files a written notice of appeal to the Commissioner is entitled to a hearing in either the county in which the covered property is located or in Travis County; and
 - (VI) language which describes the time limit for filing an appeal as specified in clause (ii) of this subparagraph.
- (ii) An act, ruling, or decision of the association is deemed to be timely filed with the Commissioner if an appeal is sent to the chief clerk of the Department by first-class or by certified or registered United States mail in an envelope or wrapper properly addressed and stamped and deposited in the mail one day or more before the last day for filing the appeal, if the appeal is received by the chief clerk's office not more than ten days subsequent to the due date for filing.

(e) §5.4017. Mobile Manufactured Homes.

- (1a) ~~General provisions.~~ The terms, conditions, and underwriting requirements set forth in this ~~subsection~~ section apply to the Texas special mobile manufactured home windstorm and hail insurance policy covering all mobile manufactured homes which may be insurable property as described in this ~~subsection~~ section, located in the designated catastrophe areas and written by the Texas ~~Catastrophe Property Windstorm~~ Insurance Association. In the event of a conflict in the provisions of this ~~subsection~~ section and ~~subsections (a)-(e)~~ any other section of this ~~section~~ division, the terms and conditions and underwriting requirements set forth herein in this ~~subsection~~ section as relating to mobile manufactured homes shall be, in all respects, controlling; ~~otherwise the provisions of subsections (a)-(e) of this section remain in full force and effect.~~
- (2b) ~~Insurable property.~~ The property eligible for catastrophe insurance under this ~~subsection~~ section shall be that property defined as “insurable property” in the Act, provided, however, that the term “insurable property” shall not include motor vehicles or any structure consisting, in whole or in part, of a mobile manufactured home unless the same is a structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein, and which is physically attached to the land, immovable, and is constructed, blocked, supported, anchored, secured, and installed in accordance with the underwriting requirements set forth in ~~subsections paragraph (3)(C) sections (—) and (E—) of this subsection.~~ (d) and (f) of this section.
- (3c) ~~Underwriting requirements.~~ In order for a mobile manufactured home to be insured by the association, it must meet the following underwriting requirements:
 - (A) ~~The property eligible for catastrophe insurance shall be that property defined as “insurable property” in the Act, provided, however, that the term “insurable property” shall not include motor vehicles or any structure consisting, in whole or in part, of a mobile home unless the same is a structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, and which is physically attached to the land, immovable, and is constructed, blocked, supported, anchored, secured, and~~

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~~installed in accordance with the underwriting requirements set forth in subparagraphs (C) and (E) of this paragraph.~~

~~(B) —~~ Each mobile home shall meet the following reasonable underwriting standards which shall include, but shall not be limited to:

- ~~(i1)~~ the amount of insurance requested, together with other insurance is within reasonable relationship to the actual cash value of the property involved;
 - ~~(ii2)~~ consideration of the physical condition of the property, such as its construction, maintenance, or general deterioration;
 - ~~(iii3)~~ consideration of its present use or housekeeping;
 - ~~(iv4)~~ whether its use is in violation of law, public policy and morals;
 - ~~(v5)~~ and the consideration of the character or integrity of the property owner or occupant.
- ~~(Cd)~~ Each mobilemanufactured home manufactured after December 31, 1975, shall be designed for location in or as though destined for the catastrophe area where wind records are hereby found to indicate wind forces of 125 miles per hour, or greater, and shall be constructed in accordance with such design as set forth in either the Texas MobileManufactured Housing Homes Standards Code adopted by the Texas Department of ~~Labor and Standards~~Housing and Community Affairs pursuant to the ~~provisions of Texas Civil Statutes, Article 5221f~~Texas Occupations Code, Chapter 1201; or the MobileManufactured Home Construction and Safety Standards established by the U.S. Department of Housing and Urban Development under the Housing and Community Development Act of 1974, Title VI, titled The National Mobile Home Construction and Safety Standards Act of 1974 (42 United States Code §5401, et seq.) as may be appropriate under ~~the Texas Civil Statutes, Article 5221f, §5~~the Texas Occupations Code, Chapter 1201.
- ~~(De)~~ Each mobilemanufactured home described in subparagraph ~~(Cd)~~ of this paragraph or sold by a ~~dealer/broker~~, as that term is defined in Texas Civil Statutes, Article 5221fOccupations Code, Chapter 1201, after August 31, 1975, shall bear a seal of approval issued by the Texas Department of ~~Labor and Standards~~Housing and Community Affairs.
- ~~(Ef)~~ Each mobilemanufactured home shall be blocked, anchored, and secured, and an appropriate support, and anchoring systems shall be installed as will resist overturning and lateral movement (sliding) of the mobilemanufactured home in the manner and in accordance with the Texas Mobile HomeManufactured Housing Standards Code adopted by the Texas Department of ~~Labor and Standards~~Housing and Community Affairs pursuant to the provisions of ~~the Texas Civil Statutes, Article 5221f~~Occupations Code, Chapter 1201, or the MobileManufactured Home Construction Safety Standards established ~~underby~~ the U.S. Department of Housing and CommunityUrban Development Act of 1974, Title VI, titled The National Mobile Home Construction and Safety Standards Act of 1974 (42 United States Code §5401, et seq.) for mobilemanufactured homes located in the catastrophe area, as may be appropriate under ~~the Texas Civil Statutes, Article 5221f, §5~~Occupations Code, Chapter 1201.
- ~~(Eg)~~ Coverage shall not be provided for loss or damage to:
- ~~(i1)~~ awnings, carports, and patio covers, whether permanently attached or not;
 - ~~(ii2)~~ outdoor radio or television antennas including their lead-in wiring, masts, or towers;
 - ~~(iii3)~~ fences;
 - ~~(iv4)~~ seawalls, property line, and similar walls;
 - ~~(v5)~~ greenhouses, hot houses, slat houses, trellises, pergolas, or cabanas;
 - ~~(vi6)~~ wharfs, docks, piers, boathouses, bulkheads, or other structures located over or partially over water and the property therein or thereon;
 - ~~(vii7)~~ lawns, trees, shrubs, or plants;
 - ~~(viii8)~~ patio covers, screening, and supports enclosing or partially enclosing pools, patios, or other areas, whether a separate structure or attached to a building (however, with reference to this exclusion, nothing therein shall be construed to exclude loss to screening and supports of porches which are a part of a building); nor

- (~~ix~~9) paint or waterproofing material applied to the exterior of the buildings or structures covered hereunder.
- (Gh) This association shall not be liable for loss or damage caused by:
- (~~i~~1) blizzard or change in temperature;
 - (~~ii~~2) sand or dust;
 - (~~iii~~3) snowstorm;
 - (4) flood;
 - (5) surface water;
 - (6) waves;
 - (7) storm surge;
 - (8) tides;
 - (9) tidal water;
 - (~~iv~~10) tidal wave;
 - (11) tsunami;
 - (12) seiche;
 - (13) overflow of streams or other bodies of water, or spray from any of these, all whether driven by wind or not;
 - (14) explosion;
 - (~~v~~15) high water, or overflow, whether driven by wind or not; nor
 - (~~vi~~16) for any loss or damage caused by rain, whether driven by wind or not, unless the wind or hail shall first make an opening in the walls or roof of the described building, and shall then be liable only for loss to the interior of the building, or the insured property therein, caused immediately by rain entering the building through such openings. This association shall not be liable under this coverage for damage caused by ensuing fire.
- (Hi) The liability of the association for loss or damage to a mobile manufactured home shall:
- (~~i~~1) not exceed the lowest of:
 - (~~IA~~)—the difference between the actual cash value of the insured property immediately before the loss and its actual cash value immediately after the loss; or
 - (~~IB~~)—the cost of repairing the damage; or
 - (~~IC~~)—the actual cash value of the insured property immediately preceding the loss; or
 - (~~IV~~D)—the cost of replacing the insured property; or
 - (~~VE~~)—the limit of liability stated in the declarations; and the liability thus determined shall, in addition, be subject to any deductible amount stipulated in the policy;
 - (~~ii~~F2) in any loss involving part of a pair, set, or series of objects, pieces, or panels (whether interior or exterior), be determined by reference to:
 - (~~A~~F) a fair and reasonable proportion of the part of the total value of the pair, set, or series; or
 - (~~B~~H) the reasonable cost of repairing or replacing the damaged part so as to match the remainder as closely as reasonably possible under the circumstances; or
 - (~~CH~~) the reasonable cost of providing a reasonably acceptable alternative decorative effect or utilization, as the circumstances may warrant. The association does not guarantee the availability of parts or replacements and shall not, in the event of such damage to or loss of a part, be obligated for the value of, or to repair or replace, the entire pair, set, or series.
- (Ij) The association shall not be liable on any one loss with respect to personal effects for more than \$250 on money, coin collections, or other numismatic property and paraphernalia; gold bullion; silver bullion; passports; airline, railroad, and other tickets; securities; manuscripts, stamps or other philatelic property and paraphernalia; any one article of jewelry including, but without being limited to, watches, necklaces, bracelets, gems, precious and semiprecious stones, and articles of gold and platinum; art, including, but without being limited to, paintings, sculptures, drawings, etchings, ceramics, and china; heirlooms; furs, including any article containing fur which represents its principal value; or guns.

- (~~k~~) No forms may be used to provide catastrophe insurance for a ~~mobile~~ manufactured home risk unless such form has been specifically approved by the Commissioner for use in insuring mobile manufactured homes risks by the association.
- (~~k~~) Catastrophe insurance shall not provide insurance coverage for any one insurable risk in excess of \$84,000 on the mobile manufactured home and on household goods contained therein, which shall include all personal property usual to a residence of the insured and the insured's family.
- ~~(L) The limit of liability for mobile homes shall be adjusted annually for inflation at a rate that reflects any change in the BOECK Index or other index that may accurately reflect changes in the cost of construction or residential values in the catastrophe area. Such adjustment shall be made by the Commissioner as part of the annual rate hearings held pursuant to Article 5.101 of the Insurance Code.~~
- ~~(4) Application.~~
- (Am) The legislature of the State of Texas has declared that an adequate market for windstorm, and hail, and fire insurance for insurable property, which is immovable property at fixed locations, is necessary to the economic welfare of the State of Texas and has further declared that mobile manufactured homes have become a primary housing resource of many of the citizens of the state.
- (Bn) An applicant for catastrophe insurance shall apply to the association for a policy of insurance, and such application shall contain a declaration to the effect that the mobile manufactured home is physically attached to the land, immovable, and such application shall be accompanied by the following:
- (~~i~~1) a certificate of inspection applicable to mobile manufactured homes manufactured after December 31, 1975, to the effect that such mobile manufactured home has been constructed in accordance with the underwriting requirements set forth in ~~paragraph (3)(C) subparagraph (d)~~ of this ~~subsection~~ paragraph. Such certificate of inspection may be made by the manufacturer of such mobile manufactured homes, by the terms of which the construction of such mobile manufactured home is warranted to be in accordance with the underwriting requirements set out in ~~paragraph (3)(C) subparagraph (d)~~ of this ~~subsection~~ paragraph. The association may rely upon such warranty in the issuance of a policy of catastrophe insurance. This warranty is made by the manufacturer, and not the policyholder. The certificate of inspection with reference to such mobile manufactured home may be made by the Texas Department of ~~Labor and Standards~~ Housing and Community Affairs or by such inspector as may be appointed or approved by it, or by an inspector designated by the association. Appropriate evidence satisfactory to the association of the issuance of a seal of approval by the Texas Department of ~~Labor and Standards~~ Housing and Community Affairs ~~issued pursuant to the provisions of Texas Civil Statutes, Article 5221f,~~ may, at the option of the association, satisfy the requirements of this paragraph; and
- (~~ii~~2) a certificate or other appropriate evidence required by the association evidencing the issuance of a seal of approval by the Texas Department of ~~Labor and Standards~~ Housing and Community Affairs ~~issued pursuant to Texas Civil Statutes, Article 5221f, §8(b), as to mobile homes manufactured prior to January 1, 1976, and sold by a dealer/broker, as that term is defined in Texas Civil Statutes, Article 5221f, subsequent to August 31, 1975;~~
- (~~iii~~3) a certificate of inspection to the effect that such mobile manufactured home has been properly blocked, supported, anchored, secured, and installed as required by ~~paragraph (3)(E) subparagraph (f)~~ of this ~~subsection~~ paragraph. Such certificate of inspection may be made by an installer as that term is defined in ~~the~~ Texas ~~Civil Statutes, Article 5221f~~ Occupations Code, Chapter 1201, by a certificate addressed to the association, by the terms of which the blocking, supporting, anchoring, securing and installing of such mobile manufactured home is warranted to be in accordance with such underwriting standard. The association may rely upon such warranty in the issuance of a policy of catastrophe insurance, or the certificate of inspection may be made by an inspector designated by the association. The warranty referred to herein is made by the installer and not the policyholder;

- (iv4) in the event an inspector is designated by the association for any of the purposes set forth herein, the person applying for catastrophe insurance shall pay a reasonable fee to the association for each such inspection. The reasonableness of the fee shall be subject to review by the commissioner.

§5.4018 Per Risk Reinsured Excess Coverage.

- (a) Pursuant to Section 2210.505E of the Act, the Texas Windstorm Insurance Association may issue a policy of windstorm and hail insurance that includes coverage for an amount in excess of the maximum limit of liability approved by the Commissioner.
- (b) Definitions. The following words and terms shall have the following meanings unless the context clearly indicates otherwise.
- (1) Available reinsurance capacity--Amount of reinsurance purchased by the Texas Windstorm Insurance Association pursuant to the excess per risk reinsurance contract to provide reinsured excess coverage to Association policyholders as provided in the Act, Section 2210.505.
 - (2) Excess per risk reinsurance contract--An agreement entered into by the Texas Windstorm Insurance Association with an approved reinsurer to provide coverage to Association policyholders for an amount in excess of the liability limits approved by the Commissioner.
 - (3) Reinsured excess coverage--Coverage provided under a windstorm and hail insurance policy issued by the Texas Windstorm Insurance Association through a reinsurance agreement with an approved reinsurer for amounts of insurance that are in excess of the maximum limits of liability available to the individual risk from the Texas Windstorm Insurance Association.
 - (4) Reinsured excess coverage program--The program operated by the Texas Windstorm Insurance Association to provide reinsured excess coverage, the excess per risk reinsurance contract or contracts entered into between the Association and the Commissioner-approved reinsurer or reinsurers, this section, and any orders issued, including the collection of premium, issuance of coverage under the windstorm and hail insurance policy, and the processing and payment of claims for the reinsured excess coverage.
- (c) Administration.
- (1) The Association shall administer the reinsured excess coverage program on behalf of each policyholder of a windstorm and hail insurance policy to which reinsurance is provided by an approved reinsurer.
 - (2) The Association shall distribute the available reinsurance capacity for the reinsured excess coverage in a fair and reasonable manner to risks qualifying under the Association's reinsured excess coverage program.
 - (3) The Association shall annually review the reinsured excess coverage program, including the rates, reinsurers, excess per risk reinsurance contracts, use of available reinsurance capacity, the Association's costs to administer the reinsured excess coverage program, and the rules in this section, and shall provide an annual summary of such review to the Commissioner.
- (d) Approval of Reinsurer. Before the Association may provide reinsurance coverage on an individual risk that is in excess of the maximum limits of liability approved by the Commissioner, the Association must first obtain from a reinsurer approved by the Commissioner reinsurance for the full amount of policy exposure above the limits approved by the Commissioner for any given type of risk. The approval of the reinsurer shall be in accordance with subparagraphs (A1)-(D4) of this paragraph.
- (1) The Association shall submit a petition to the Commissioner requesting approval of the reinsurer before any excess per risk reinsurance contract or renewal of such contract becomes effective. The petition shall include:
 - (A) the name of the proposed reinsurer or reinsurers;
 - (B) the reinsurance proposal;

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- (C) the draft excess per risk reinsurance contract;
 - (D) information on the financial health of the proposed reinsurer or reinsurers and any other information related to the reasons for the Association's selection of reinsurer or reinsurers;
 - (E) estimated costs for the reinsurance;
 - (F) the proposed cost to the Association to administer the reinsured excess coverage program;
 - (G) estimated total premium for the reinsurance;
 - (H) the method of making the reinsurance capacity available to policyholders; and
 - (I) any other information the Association or the Commissioner deems necessary to enable the Commissioner to determine whether to approve or disapprove the proposed reinsurer or reinsurers.
- (2) The Commissioner, after notice and hearing, shall issue an order approving or disapproving the proposed reinsurer. The order shall be issued no later than December 31 of each year preceding the calendar year in which the reinsured excess coverage program is operated except for the first year the program is operated when the order shall be issued following the adoption of this section.
- (3) An excess per risk reinsurance contract may not become effective until the Commissioner has issued an order approving the reinsurer. The excess per risk reinsurance contract does not require approval by the Commissioner.
- (4) The Association shall submit written notice of any amendments to any existing excess per risk reinsurance contract to the Commissioner at least 30 days prior to the effective date of the proposed amendments. The notice shall include an explanation of the reason for the amendments and a copy of the draft amendments. The reinsurer under the amended contract shall be deemed approved by the Commissioner unless within 30 days following the submission of the written notice the Commissioner enters an order disapproving the reinsurer. Amendments to the contract do not require approval by the Commissioner.
- (e) Coverage. The Association may issue a policy of windstorm and hail insurance that includes coverage that is in excess of a liability limit approved by the Commissioner. Any such policy shall be issued in accordance with subparagraphs (1)-(3) of this paragraph.
 - (1) Excess liability limits. The amount of reinsurance excess coverage available to an individual risk shall be determined in accordance with the reinsured excess coverage program.
 - (2) Policy provisions.
 - (A) The total limit of liability shall be the limit of liability insured by the Association and the amount of reinsured excess coverage provided on the individual risk under the reinsured excess coverage program.
 - (B) All terms and conditions of the windstorm and hail insurance policy issued by the Association shall apply to the reinsured excess coverage provided under the windstorm and hail insurance policy.
 - (C) The amount of reinsured excess coverage must be shown separately on the declarations page of the policy.
 - (3) Types of risks.
 - (A) The Association may provide reinsured excess coverage for dwelling structures only, commercial structures only, or for both dwelling structures and commercial structures.
 - (B) Reinsured excess coverage may be provided on either buildings or contents, or on building and contents. If reinsured excess coverage is provided on building and contents, building structures must be insured for 100% replacement cost, up to the total maximum limit of liability available for the risk and the available reinsured excess coverage amount provided under the reinsured excess coverage program before reinsured excess coverage may be applied to contents.
- (f) Premium.

- (1) Premium computation. The total premium charged by the Association for the reinsured excess coverage provided on a windstorm and hail insurance policy issued by the Association shall be the total of:
 - (A) the amount of the excess per risk reinsurance premium charged to the Association by the reinsurer for the reinsured excess coverage provided on any given risk; and
 - (B) the payment to the Association that is approved by the Commissioner pursuant to the Act and as provided in subsection (g) of this section.
- (2) Display of premium. The total premium charged by the Association for the reinsured excess coverage provided in a windstorm and hail insurance policy issued by the Association must be shown separately on the declarations page of the policy.
- (g) Payment to the Association.
The premium charged by the Association for the excess coverage shall be equal to the amount of the reinsurance premium charged to the Association by the reinsurer plus any payment to the Association that is approved by the Commissioner as provided in subparagraphs (1) and (2) of this paragraph.
 - (1) The payment to the Association that may be proposed by the Association for approval by the Commissioner may include the amount of the direct and indirect costs identified by the Association to administer the reinsured excess coverage program and may include costs for claims, underwriting, accounting, technical and administrative support, computer equipment, agent commissions, taxes, and any other administrative costs approved by the Commissioner.
 - (2) The Commissioner, after notice and hearing, shall issue an order approving or disapproving the proposed payment to the Association. The Commissioner may take such action in the order issued pursuant to subsection (d)(2) of this section.

B. Building Code

§5.402007. Applicable Building Code Standards in Designated Catastrophe Areas for To be considered insurable property eligible for windstorm and hail insurance coverage from the Association, Structures Constructed, Repaired or to Which Additions Are Made Prior to September 1, 1998 must comply with the building code standards set forth in Division 1—, section B— of this Subchapter

- (a) Areas Seaward of the Intracoastal Canal.
 - (1) Applicability. This code contains requirements for the construction of buildings to minimize damage to such buildings by severe windstorms which occur along the Gulf Coast. Where specific requirements for particular devices or methods of construction are specified, alternate methods or practices which are considered equal may be used. Such consideration is to be based on sound engineering practice and experience. The degree of protection against damage from windstorm provided by these requirements cannot be assured for tornadoes, but such compliance should be helpful to some degree in reducing tornado damage. The requirements herein are applicable only to properties located seaward of the Intracoastal Canal on the Texas coastline (or seaward of the boundary authorized to be established by the Commissioner by ~~the Insurance Code, Article 21.49~~the Act, as amended). The requirements herein shall apply, on or after October 10, 1988, to May 31, 1998, to new construction of, and additions or repairs to, structures located seaward of the Intracoastal Canal in areas previously exempt from the requirements of this subsection. The property previously exempt was that property protected by a sea wall constructed by the Corps of Engineers.
 - (2) Building code standards.
 - (A) Wind pressure.

- (i) When considered. All buildings and structures shall be designed to resist a horizontal wind pressure on all surfaces exposed to the wind, allowing for wind in any direction, in accordance with the following table. No allowance shall be made for the shielding effect of other buildings or structures. The height is to be measured above the average level of the ground adjacent to the building or structure.

T28S5.4007(a)(2)(A)(i)

<u>Height Zone (Feet)</u>	<u>Wind Pressure (Lb. Per Sq. Ft.)</u>
Less than 30	35
50-99	45
100-499	55
500-1,199	70
1,200 and above	90

- (ii) Exterior walls. Exterior walls shall be designed to withstand the pressures specified in clause (i) of this subparagraph, acting either inward or outward.
- (iii) Roofs.
 - (I) The roofs of buildings and structures shall be designed and constructed to withstand pressures, acting outward normal to the roof surface, equal to 1 1/4 times the pressures specified in clause (i) of this subparagraph. The height is to be taken as the vertical distance from the average elevation of the ground adjoining the building to the average elevation of the roof.
 - (II) Roofs or sections of roofs with slopes greater than 30 degrees shall be designed and constructed to withstand pressures, acting inward normal to the surface, equal to those specified in clause (i) of this subparagraph and applied to the windward slope only.
 - (III) Overhanging eaves and cornices shall be designed and constructed to withstand outward pressures equal to twice those specified in clause (i) of this subparagraph.
- (iv) Chimneys, tanks and towers. Chimneys, tanks, solid towers, and similar structures shall be designed and constructed to withstand the pressures specified in clause (i) of this subparagraph multiplied by the following factors:

Shape in horizontal cross section	Factor
Square or rectangular	1.00
Hexagonal or octagonal	0.80
Round or elliptical	0.60
- (v) Other structures. The design wind pressures for structures not covered in this paragraph shall be in accordance with generally accepted engineering practice and shall be subject to the approval of the building official.

- (vi) Stability. The overturning moment due to wind pressure shall not exceed 50% of the moment of stability due to the dead load only, unless the building or structure is securely anchored to the foundation to resist this force.
 - (vii) Roofing materials. Roofing materials must pass the U.L. Standard 997 or a comparable test certified by the Commissioner and be installed as required by the Department, to promote wind resistance of the materials.
- (B) Anchorage.
- (i) Heavy timber construction (as defined in the Texas Commercial Property Rating Manual in effect prior to September 1, 1994). Every roof girder and every roof beam shall be anchored to an exterior or interior wall or to a properly designed interior column. Wall beams and plates shall be anchored to the wall with approved type anchors not more than four feet apart. Roof planking where supported by a wall shall be anchored to such wall at intervals not exceeding four feet. Roof trusses shall be securely anchored to masonry walls at point of bearing. Monitor and saw tooth construction shall be anchored to the main roof construction. Anchors shall consist of steel or iron bolts or straps of sufficient strength and ample anchorage to resist vertical uplift of the roof as required in subparagraph (A)(iii) of this paragraph.
 - (ii) Ordinary construction (masonry).
 - (I) All trimmers and at least one beam or joist in every four feet resting on masonry walls shall be secured to such walls by approved metal anchors attached at or near the bottom in a manner to be self-releasing. Each end of a trimmer, beam, or joist that is supported by a girder shall be secured or tied in an approved manner to such girder or to a trimmer, beam, or joist correspondingly supported from the opposite side of such girder. Anchors and ties shall be so arranged as to form continuous ties between opposite masonry walls.
 - (II) Where floor or roof joists or beams run parallel to masonry walls, such walls shall be secured to four or more joists of the floor or roof construction by approved metal anchors at maximum intervals of eight feet for dwellings, and six feet in other buildings.
 - (III) Wall plates and roof construction shall be anchored to the walls at least every six feet, except that wall plates and roof construction shall be anchored at intervals of four feet to hollow concrete masonry walls which do not have cast-in-place reinforced concrete tie beams.
 - (IV) Wooden girders shall be anchored to the walls and fastened to each other with suitable steel straps placed near the bottom of the girder.
 - (V) At least every third rafter shall be anchored to the ceiling joists or partitions directly beneath by not less than the equivalent of one-by-six-inch boards securely nailed. Such braces shall be attached to the rafters at their midpoints or at the third points if two are used per rafter. In peaked roofs opposite rafters shall be laterally braced to each other at the ridge in a manner satisfactory to the building official.
 - (VI) Roof trusses shall be securely anchored to masonry walls at points of bearing.
 - (VII) Anchors shall consist of steel or iron bolts or straps of sufficient strength and ample anchorage to resist vertical uplift of the roof as required in subparagraph (A)(iii) of this paragraph.
 - (iii) Wood frame construction.

- (I) Sills shall be anchored to the foundation walls to develop a strength equivalent to 1/2-inch bolts with proper washers embedded six inches in concrete foundation walls and spaced six feet apart.
 - (II) Rafters shall be anchored to the wall plate by approved metal anchors attached to at least every other rafter or shall be otherwise anchored in an approved manner.
 - (III) In all buildings 20 feet or more in width where joists run at right angles to the rafters, the rafters shall be tied to the ceiling joists with wood or metal ties nailed to the foot of alternate rafters and extending across four joists well nailed to each joist.
 - (IV) Girders resting on masonry foundation walls or piers shall be anchored thereto with not less than 1/2-inch bolts embedded at least six inches in masonry.
 - (V) Wooden columns and posts shall be securely anchored to their foundations and to the members which they support.
 - (VI) At least every third rafter shall be anchored to the ceiling joists or partitions directly beneath by not less than the equivalent of one-by-six-inch board securely nailed. Such braces shall be attached to the rafters at their midpoints or at the third points if two are used per rafter.
 - (VII) Each rafter shall be laterally braced to the opposite rafter at a point underneath the ridge, in order to form a brace known as the "A" type of "collar beam," except that roof construction of the "exposed cathedral type" or "exposed shed type" may have such bracing omitted when the rafters are securely anchored and braced in an approved manner. Roof framing and trussing of all other types of roof construction shall be anchored by an approved method.
- (C) Roof covering installation.
- (i) General requirements for all roof coverings. Roof coverings shall be securely attached to the roof in accordance with the manufacturer's installation instructions and specifications and with the methods approved by the building official. Nails, clips, and similar attaching devices shall be galvanized or otherwise suitably corrosion resistant.
 - (ii) Prepared shingle roof coverings.
 - (I) Wood roof decks to which prepared shingles are applied shall be solidly sheathed. Sheathing shall be well seasoned and dry. Sheathing boards shall be at least one inch nominal dimension boards not over six inches wide. Plywood sheathing shall be at least 5/8 of an inch thick.
 - (II) Attic spaces shall be vented with vent openings so placed as to circulate air in all parts of the attic.
 - (III) Nails shall be of sufficient length to extend through the roof deck (sheathing).
 - (IV) Thick-butt asphalt shingles shall be nailed in the thick portion of the shingle.
 - (V) All butts or tabs of asphalt shingles shall be securely spotted or tabbed with a plastic, fibrous, asphalt cement or anchored by clips or locks, and all edges at eaves and gable shall be set in such cement three inches back from the edge.
 - (VI) Metal drip edges shall be nailed to the roof deck with nails not less than ten inches on centers.
 - (iii) Built-up roof coverings.
 - (I) For built-up roof coverings cant strips shall be provided at the angle of roof and vertical surfaces.

- (II) Built-up roof coverings shall be carried at least six inches above the cant strip to a reglet in the parapet and covered with metal flashing caulked into the reglet. Reglet may be omitted at parapet walls provided two layers of felt or the equivalent are carried across the top of the parapet under coping and down the parapet to the lower edge of the cant strip. The said layers are to run vertically, properly lapped and cemented to the parapet.
- (III) All resinous places in the wood roof deck shall be covered with sheathing paper or unsaturated felt.
- (IV) The first layer or anchor sheet shall be not less than 30-pound felt nailed six inches on center along with a two-inch lap and nailed 12 inches on center both ways in the area between laps with tin caps and one-inch nails; or shall be not less than two layers of 15-pound felt lapped 18 inches and nailed through both sheets on six-inch centers along the lap and on 12-inch centers in the area between laps with tin caps and one-inch nails; or where the underside of the roof sheathing is to be exposed and its appearance considered, the first layer shall be not less than a 30-pound felt or two layers of 15-pound felt nailed six inches on centers along the rafters with tin caps and 1-1/4 inch nails, and nailed 12 inches on centers both ways, between rafters, with tin caps and 3/4 inch nails.
- (V) Each additional sheet above the anchor sheet shall be thoroughly mopped between layers with a bituminous compound so that no layers touch an unmopped layer. Bituminous compound for mopping plies together shall be air refined asphalt or coal tar pitch but shall not be any type of emulsion, cold or cut back liquid cement, oil, or grease.
- (VI) Gravel stop and drip strips, and eave and gable drips shall be not less than Number 26 gauge galvanized metal, 16 ounce copper or 0.024 inch aluminum, with not less than three-inch flange on roof and nailed with not less than 3/4 inch nails spaced not more than six inches apart.
- (iv) Roll roofing.
 - (I) Roll roofing shall be applied only over a smooth surface. Roll roofing shall not be applied over shingle roofs.
 - (II) Roll roofing applied in a shingle layer shall be spot mopped and applied by concealed nail method with a minimum three inch head lap and a minimum six inch end lap properly cemented. Nail spacing shall be not less than four inches on centers.
 - (III) Nails that secure roll roofing to the roof deck shall be driven at least 3/4 of an inch from the edge of the sheet.
- (v) Tile roofing.
 - (I) Tile roofing shall be laid over not less than one layer of 30-pound asphalt felt securely fastened by nailing with tin caps.
 - (II) All tile shall be thoroughly watered with a hose before application.
 - (III) Every tile shall be laid full length in portland cement mortar and in addition the first three horizontal courses shall be nailed. Under certain conditions additional nailing may be required to prevent the tile from slipping. Mortar shall be not less than one part cement and three parts sand and not more than 25% lime by volume.
 - (IV) All nails for flashing and tiles shall be copper.
- (vi) Corrugated metal roofing, protected metal roofing, corrugated and flat sheet asbestos cement roofing.
 - (I) When roofings of the previously mentioned types are applied to wood roof decks, they shall be secured with drive screws of sufficient length to extend

through the roof deck. When applied directly to purlins and other roof members they shall be secured with bolted strap fasteners. Properly designed clip fasteners that are approved may be used in accordance with the conditions of such approval. Drive screws at least four inches in length may be used to secure these roofings directly to wood purlins.

- (II) Aluminum roofing when fastened to steel roof structures shall be insulated against electrogalvanic action.
 - (vii) Insulated steel deck roofing. Insulated steel deck shall be secured by spot welding of clips or spot welding the sheets to the steel purlins, or by equivalent means.
- (D) Construction walls. During erection masonry walls shall not be built higher than ten times their thickness unless adequately braced or until provision is made for the prompt installation of permanent bracing at the floor or roof level immediately above the story under construction.
- (b) Areas Inland of the Intracoastal Canal. To be eligible for catastrophe insurance, properties located inland of the Intracoastal Canal on the Texas coastline (or inland of the boundary authorized to be established by the Commissioner by the ~~Insurance Code, Article 21.49~~Act as amended) shall be subject to the building specifications and standards in the Standard Building Code, as amended May 8, 1973, and the Windstorm Resistant Construction Guide. The Department adopts by reference the Windstorm Resistant Construction Guide, and any applicable amendments adopted by reference to be effective April 1, 2001, which has been developed by the Department to interpret and simplify the specifications and standards in the Standard Building Code, as amended May 8, 1973.
- (c) Limitations on applicability of building codes. Notwithstanding any other provisions in this plan of operation, the building code set forth in this section shall be applicable only in:
 - (1) the counties of Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, and Willacy;
 - (2) the area located east of the boundary line of State Highway 146 and inside the city limits of the City of Seabrook (Harris County) and the area located east of the boundary line of State Highway 146 and inside the city limits of the City of La Porte (Harris County);
 - (3) the City of Morgan's Point (Harris County); and
 - (4) the area located east of the boundary line of State Highway 146 and inside the city limits of the City of Shoreacres (Harris County), and the area located east of the boundary line of State Highway 146 and inside the city limits of the City of Pasadena (Harris County).
- (d) Insurable property for windstorm and hail insurance.
 - (1) For structures before January 1, 1988, in all designated catastrophe areas. A structure constructed, repaired, or to which additions were made before January 1, 1988, that is located in an area covered at the time by a building code recognized by the association shall be considered an insurable property for windstorm and hail insurance from the association without compliance with the inspection or approval requirements of ~~Insurance Code, Article 21.49, §6A(a)~~the Act or the plan of operation. A structure constructed, repaired, or to which additions were made before January 1, 1988, that is located in an area not covered by a building code recognized by the association shall be considered an insurable property for windstorm and hail insurance from the association without compliance with the inspection or approval requirements of ~~Insurance Code, Article 21.49, §6A(a)~~ the Act or the plan of operation if that structure has been previously insured by a licensed insurance company authorized to do business in this state and the risk is in essentially the same condition as when previously insured, except for normal wear and tear, and without any structural change other than a change made according to code. Evidence of previous insurance includes a copy of a previous policy, copies of canceled checks or agent's records that show payments for previous policies, and a copy of the title to the structure or mortgage company records that show previous policies.
 - (2) For structures in designated catastrophe areas of Seabrook and La Porte from January 1, 1988, to March 1, 1996. A structure constructed, repaired, or to which additions were made on and

- after January 1, 1988, and before March 1, 1996, that is located in an area east of the boundary line of State Highway 146 and inside the city limits of the City of Seabrook (Harris County) or in an area east of the boundary line of State Highway 146 and inside the city limits of the City of La Porte (Harris County) shall be considered approved by the Commissioner of Insurance as being in compliance with the association's inland building code requirements contained in subsection (b) of this section and shall be considered an insurable property for windstorm and hail insurance from the association if the owner of the structure to be insured by the association presents to the association at the time of application for insurance the following statement signed by a city building official: "To the best belief and knowledge of the undersigned, the structure located at (street address) in (name of city), Texas, was constructed, repaired, or an addition was made on and after January 1, 1988, and before March 1, 1996, in accordance with the building specifications and standards which comply with the Standard Building Code (1973 Edition) or an equivalent recognized code; and the City of (name of city), Texas has inspected the structure and enforced compliance to said code."
- (3) For structures in the designated catastrophe areas of Seabrook and La Porte on and after March 1, 1996, to May 31, 1998. A structure constructed, repaired, or to which additions were made on and after March 1, 1996, to May 31, 1998, that is located in an area east of the boundary line of State Highway 146 and inside the city limits of the City of Seabrook (Harris County) or in an area east of the boundary line of State Highway 146 and inside the city limits of the City of La Porte (Harris County) shall be considered an insurable property for windstorm and hail insurance from the association only if the structure is inspected or approved by the Commissioner of Insurance for compliance with building specifications in this plan of operation, including any specifications for roofing materials as provided in ~~Article 21.49, §6A(a) of the Insurance Code~~ the Act.
 - (4) For structures in the City of Morgan's Point from January 1, 1988, to June 1, 1996. A structure constructed, repaired, or to which additions were made on and after January 1, 1988, and before June 1, 1996, that is located in the City of Morgan's Point (Harris County) shall be considered approved by the Commissioner of Insurance as being in compliance with the association's inland building code requirements contained in subsection (b) of this section and shall be considered an insurable property for windstorm and hail insurance from the association if the owner of the structure to be insured by the association presents to the association at the time of application for insurance the following statement signed by a city building official: "To the best belief and knowledge of the undersigned, the structure located at (street address) in Morgan's Point, Texas, was constructed, repaired, or an addition was made on and after January 1, 1988, and before June 1, 1996, in accordance with the building specifications and standards which comply with the Standard Building Code (1973 Edition) or an equivalent recognized code; and the City of Morgan's Point, Texas, has inspected the structure and enforced compliance to said code."
 - (5) For structures in the City of Morgan's Point on and after June 1, 1996, to May 31, 1998. A structure constructed, repaired, or to which additions were made on and after June 1, 1996, to May 31, 1998, that is located in the City of Morgan's Point (Harris County); shall be considered an insurable property for windstorm and hail insurance from the association only if the structure is inspected or approved by the Commissioner of Insurance for compliance with building specifications in this plan of operation, including any specifications for roofing materials as provided in ~~Article 21.49, §6A(a) of the Insurance Code~~ the Act.
 - (6) For structures located in an area east of a boundary line of State Highway 146 and inside the city limits of the City of Shoreacres (Harris County), and in an area east of a boundary line of State Highway 146 and inside the city limits of the City of Pasadena (Harris County), from January 1, 1988, to March 1, 1997. A structure constructed, repaired, or to which additions were made on and after January 1, 1988, and before March 1, 1997, that is located in an area east of State Highway 146 and inside the city limits of the City of Shoreacres (Harris County),

or in an area east of State Highway 146 and inside the city limits of the City of Pasadena (Harris County), shall be considered approved by the Commissioner of Insurance as being in compliance with the association's inland building code requirements contained in subsection (b) of this section, and shall be considered an insurable property for windstorm and hail insurance from the association, if the owner of the structure to be insured by the association presents to the association at the time of application for insurance the following statement signed by a city building official: "To the best belief and knowledge of the undersigned, the structure located at (street address) in the City of _____ (insert name of city), Texas, was constructed, repaired, or an addition was made on and after January 1, 1988, and before March 1, 1997, in accordance with the building specifications and standards which comply with the Standard Building Code (1973 Edition) or an equivalent recognized code; and the City of _____ (insert name of city), Texas, has inspected the structure and enforced compliance to said code."

- (7) For structures in an area east of a boundary line of State Highway 146 and inside the city limits of the City of Shoreacres (Harris County) and in an area east of a boundary line of State Highway 146 and inside the city limits of the City of Pasadena (Harris County) on and after March 1, 1997, to May 31, 1998. A structure constructed, repaired, or to which additions were made on and after March 1, 1997, to May 31, 1998, that is located in an area east of a boundary line of State Highway 146 and inside the city limits of the City of Shoreacres (Harris County), or in an area east of a boundary line of State Highway 146 and inside the city limits of the City of Pasadena (Harris County), shall be considered an insurable property for windstorm and hail insurance from the association only if the structure is inspected or approved by the Commissioner of Insurance for compliance with building specifications in this plan of operation, including any specifications for roofing materials, as provided in ~~Article 21.49, §6A(a) of the Insurance Code~~ the Act.

§5.402108. Applicable Building Code Standards in Designated Catastrophe Areas for To be considered insurable property eligible for windstorm and hail insurance coverage from the Association, Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003 must comply with the building code standards set forth in Division 1 section B— of this Subchapter.

- (a) Areas Seaward of the Intracoastal Canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are seaward of the Intracoastal Canal and constructed, repaired, or to which additions are made on and after September 1, 1998, and before February 1, 2003, shall comply with the Building Code for Windstorm Resistant Construction. The Texas Department of Insurance adopts by reference the Building Code for Windstorm Resistant Construction, effective September 1, 1998. Amendments to the Building Code for Windstorm Resistant Construction are adopted by reference to be effective June 1, 2002. Any Application for Windstorm Building Inspection, Form WPI-1, submitted pursuant to this subsection will be accepted through May 31, 2003.
- (b) Areas Inland of the Intracoastal Canal and Within Approximately 25 Miles of the Texas Coastline and east of the Specified Boundary Line and Certain Areas in Harris County.
- (1) To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in paragraphs (2)(A) and (2)(B) of this subsection and constructed, repaired, or to which additions are made on and after September 1, 1998, and before February 1, 2003, shall comply with the Building Code for Windstorm Resistant Construction which is adopted by reference in subsection (a) of this section and any applicable amendments adopted by reference to be effective June 1, 2002. Any Application for Windstorm Building Inspection, Form WPI-1, submitted pursuant to this subsection will be accepted through May 31, 2003.

- (2) Structures, as specified in paragraph (1) of this subsection, in the following areas are subject to the Building Code for Windstorm Resistant Construction.
- (A) Areas located east of the following boundary line, except for areas inside the city limits of a city or town divided by the boundary line:
- (i) Cameron, Willacy, Kenedy, and Kleberg Counties. Moving south to north in Cameron County beginning at the intersection of the international border of Mexico and the United States following the western city limits of the City of Brownsville, Texas, north to the intersection of the western city limits of the City of Brownsville, Texas, with U.S. Highway 77; continuing along U.S. Highway 77 through the counties of Cameron, Willacy, Kenedy, and Kleberg;
 - (ii) Nueces County. Beginning at the Kleberg/Nueces County line intersection with U.S. Highway 77 and continuing northeasterly along U.S. Highway 77 to the intersection of U.S. Highway 77 and the southwestern city limits of the City of Corpus Christi, Texas, following the western city limits of the City of Corpus Christi, Texas, north to the Nueces/San Patricio County line;
 - (iii) San Patricio and Refugio Counties. Beginning at the Nueces/San Patricio County line intersection with U.S. Highway 77 and continuing northeast along U.S. Highway 77 to the intersection of U.S. Highway 77 and U.S. Highway B77 north through Sinton, Texas, to the intersection of U.S. Highway B77 and U.S. Highway 77 north of Sinton, Texas, and continuing north along U.S. Highway 77 through the counties of San Patricio and Refugio;
 - (iv) Aransas County. (All of Aransas County is east of the boundary line);
 - (v) Calhoun County. Beginning at the Refugio/Victoria County line intersection with U.S. Highway 77 and continuing east along the Refugio County line to the intersection with the Calhoun County line and following north and east along the Calhoun County line to the intersection of the Calhoun/Matagorda County line;
 - (vi) Matagorda and Brazoria Counties. Beginning at the Jackson/Matagorda County line intersection with F.M. Road 616 and continuing northeasterly to the intersection of F.M. Road 616 with State Highway 35; continuing northeasterly along State Highway 35 through Matagorda and Brazoria County to the intersection of State Highway 35 with F.M. Road 521; continuing north along F.M. Road 521 to the intersection of F.M. Road 521 with F.M. Road 523; continuing northeasterly along F.M. Road 523 to the intersection with the northwest city limits of the City of Angleton, Texas, and following the western city limits of the City of Angleton to the intersection of the city limits of the City of Angleton with F.M. Road 523; continuing along F.M. 523 to the intersection of F.M. Road 523 with State Highway 35; continuing along State Highway 35 to the intersection of State Highway 35 with State Highway 6, continuing east on State Highway 6 to the Brazoria/Galveston County line;
 - (vii) Galveston County. Beginning at the Brazoria/Galveston County line intersection with State Highway 6 and continuing northward along the Galveston County line to the southern city limits of the City of Friendswood, Texas; continuing to follow the eastern city limits of the City of Friendswood, Texas, north to the Galveston/Harris County line; continuing to follow the Galveston County line east to the intersection of the Galveston/Chambers/Harris County lines;
 - (viii) Chambers County. Continuing from the intersection of the Galveston/Chambers/Harris County lines north along the Harris/Chambers County line to the intersection of the Harris/Chambers/Liberty County line; continuing east along the Chambers/Liberty County line to the intersection of the Jefferson County line and continuing east and south along the Chambers/Jefferson County line to the intersection of Interstate Highway 10;

(ix) Jefferson County. Beginning at the Chambers/Jefferson County line intersection with Interstate Highway 10 and continuing northeasterly along Interstate Highway 10 to the intersection of Interstate Highway 10 with F.M. Road 365; continuing east along F.M. Road 365 to the intersection of F.M. Road 365 with Hillebrandt Road; continuing north along Hillebrandt Road to the intersection of Hillebrandt Road with West Port Arthur Road; continuing south along West Port Arthur Road to the city limits of the City of Beaumont, Texas; continuing to follow the southeastern city limits of the City of Beaumont, Texas, as it crosses through F.M. Road 3514, U.S. Highways 69, 96, and 287 and State Highway 347 and continuing to the intersection with the Jefferson/Orange County line. The areas located east of the specified boundary line include, but are not limited to, the areas inside the city limits of the cities of Brownsville, Corpus Christi, Portland, Rockport, Aransas Pass, Port Lavaca, Matagorda, Brazoria, Lake Jackson, Angleton, Galveston, Anahuac, Nederland, and Port Arthur.

(B) Areas located east of State Highway 146 and inside the city limits of the cities of Seabrook, La Porte, Shoreacres, Pasadena, and Morgan's Point (all in Harris County).

- (c) Areas Inland and West of the Specified Boundary Line. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are west of the boundary line specified in subsection (b)(2)(A) of this section and constructed, repaired, or to which additions are made on and after September 1, 1998, and before February 1, 2003; and structures located inside the city limits of cities and towns divided by the boundary line specified in subsection (b)(2)(A) of this section, and constructed, repaired, or to which additions are made on and after September 1, 1998, and before February 1, 2003, shall comply with the Standard Building Code, as amended May 8, 1973, and with the Windstorm Resistant Construction Guide, which is adopted by reference in §5.4007(b)20 of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to which Additions are Made Prior to September 1, 1998). These areas include, but are not limited to, the areas inside the city limits of the cities of Harlingen, Raymondville, Kingsville, Robstown, Sinton, Refugio, Bay City, Friendswood, Alvin, and Beaumont. Any Application for Windstorm Building Inspection, Form WPI-1, submitted pursuant to this subsection will be accepted through May 31, 2003.
- (d) Periodic Review of Building Code Standards. The Building Code Advisory Committee, in accordance with ~~Article 21.49 of the Insurance Code the Act~~, shall review periodically, and at least on a bi-annual basis, the building code standards specified in this plan of operation and shall recommend to the Commissioner any changes to these standards that the committee deems appropriate.

§5.402209. Applicable Building Code Standards in Designated Catastrophe Areas for To be considered insurable property eligible for windstorm and hail insurance coverage from the Association, Structures Constructed, Repaired or to Which Additions Are Made On and After February 1, 2003 and before January 1, 2005 must comply with the building code standards set forth in Division 1—, section B— of this Subchapter.

- (a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in §5.400821(b)(2) of this chapter (~~relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003~~) and which are constructed, repaired, or to which additions are made on and after February 1, 2003, and before January 1, 2005, shall comply with the 2000 International Residential Code or the 2000 International Building Code, as revised by the Texas Revisions to the International Residential Code and the Texas Revisions to the International Building Code, and all of which are adopted by reference to be effective February 1, 2003. The codes are published by and available from the International Code Council, Publications,

4051 West Flossmoor Road, Country Club Hills, Illinois, 60478-5795, (Telephone: 800-214-4321), and the Texas Revisions to the International Residential Code and the Texas Revisions to the International Building Code are available from the Windstorm Inspections Section of the Inspections Division, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, MC 103-3A, Austin, Texas, 78714-9104 and the Texas Department of Insurance website at www.tdi.state.tx.us www.tdi.texas.gov. The following wind speed requirements shall apply:

- (1) Areas Seaward of the Intracoastal Canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are seaward of the Intracoastal Canal and constructed, repaired, or to which additions are made on or after February 1, 2003, shall be designed and constructed to resist a 3-second gust of 130 miles per hour.
 - (2) Areas Inland of the Intracoastal Canal and Within Approximately 25 Miles of the Texas Coastline and east of the Specified Boundary Line and Certain Areas in Harris County. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in subsections (b)(2)(A) and (b)(2)(B) of §5.4008-4021 of this chapter and constructed, repaired, or to which additions are made on or after February 1, 2003, shall be designed and constructed to resist a 3-second gust of 120 miles per hour.
 - (3) Areas Inland and West of the Specified Boundary Line. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in subsection (c) of §5.4008-4021 of this chapter and constructed, repaired, or to which additions are made on or after February 1, 2003, shall be designed and constructed to resist a 3-second gust of 110 miles per hour.
- (b) Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. In order for a historic structure to be exempted, at least one of the following conditions shall apply to the structure:
- (1) The structure is listed or is eligible for listing on the National Register of Historic places.
 - (2) The structure is a Recorded Texas Historic Landmark (RTHL).
 - (3) The structure has been specifically designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure, in order to maintain its historical designation.

§5.402310. Applicable Building Code Standards in Designated Catastrophe Areas for To be considered insurable property eligible for windstorm and hail insurance coverage from the Association, Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2005, and before January 1, 2008 must comply with the building code standards set forth in Division 1—, section B— of this Subchapter.

- (a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in §5.4008-4021(b)(2) of this chapter (~~relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003~~) and which are constructed, repaired, or to which additions are made on and after January 1, 2005, and before January 1, 2008, shall comply with the 2003 Editions of the International Residential Code and the International Building Code, as each is revised by the 2003 Texas Revisions, and all of which are adopted by reference to be effective January 1, 2005. The codes are published by and available from the International Code Council, Publications, 4051 West Flossmoor Road, Country Club Hills, Illinois, 60478-5795, (Telephone: 888-422-7233), and the 2003 Texas Revisions to the 2003 Edition of the International Residential Code and the 2003 Texas Revisions to the 2003 Edition of the International Building Code are available from the Windstorm Inspections Section of the Inspections Division, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, MC 103-3A, Austin, Texas, 78714-9104 and the Texas

Department of Insurance website at www.tdi.state.tx.uswww.tdi.texas.gov. The following wind speed requirements shall apply:

- (1) Areas Seaward of the Intracoastal Canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are seaward of the Intracoastal Canal and constructed, repaired, or to which additions are made on or after January 1, 2005, and before January 1, 2008, shall be designed and constructed to resist a 3-second gust of 130 miles per hour.
 - (2) Areas Inland of the Intracoastal Canal and Within Approximately 25 Miles of the Texas Coastline and east of the Specified Boundary Line and Certain Areas in Harris County. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in subsection (b)(2)(A) and (B) of §5.4008~~21~~ of this chapter and constructed, repaired, or to which additions are made on or after January 1, 2005, and before January 1, 2008, shall be designed and constructed to resist a 3-second gust of 120 miles per hour.
 - (3) Areas Inland and West of the Specified Boundary Line. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in subsection (c) of §5.4008 of this chapter and constructed, repaired, or to which additions are made on or after January 1, 2005, and before January 1, 2008, shall be designed and constructed to resist a 3-second gust of 110 miles per hour.
- (b) Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. In order for a historic structure to be exempted, at least one of the following conditions shall apply to the structure:
- (1) The structure is listed or is eligible for listing on the National Register of Historic places.
 - (2) The structure is a Recorded Texas Historic Landmark (RTHL).
 - (3) The structure has been specifically designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure, in order to maintain its historical designation.

§5.401124. Applicable Building Code Standards in Designated Catastrophe Areas for To be considered insurable property eligible for windstorm and hail insurance coverage from the Association, Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008 must comply with the building code standards set forth in Division 1—, section B— of this Subchapter.

- (a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in §5.4008~~21(b)(2)~~ of this chapter (~~relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003~~) and which are constructed, repaired, or to which additions are made on and after January 1, 2008, shall comply with the 2006 Editions of the International Residential Code and the International Building Code, as each is revised by the 2006 Texas Revisions, and all of which are adopted by reference to be effective January 1, 2008. The codes are published by and available from the International Code Council, Publications, 4051 West Flossmoor Road, Country Club Hills, Illinois, 60478-5795, (Telephone: 888-422-7233), and the 2006 Texas Revisions to the 2006 Edition of the International Residential Code and the 2006 Texas Revisions to the 2006 Edition of the International Building Code are available from the Windstorm Inspections Section of the Inspections Division, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, MC 103-3A, Austin, Texas, 78714-9104 and on the Texas Department of Insurance website at www.tdi.state.tx.uswww.tdi.texas.gov. The following wind speed requirements shall apply:

- (1) Areas Seaward of the Intracoastal Canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are seaward of the Intracoastal Canal and constructed, repaired, or to which additions are made on or after January 1, 2008, shall be designed and constructed to resist a 3-second gust of 130 miles per hour.
 - (2) Areas Inland of the Intracoastal Canal and Within Approximately 25 Miles of the Texas Coastline and East of the Specified Boundary Line and Certain Areas in Harris County. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in subsection (b)(2)(A) and (B) of §5.400821 of this chapter and constructed, repaired, or to which additions are made on or after January 1, 2008, shall be designed and constructed to resist a 3-second gust of 120 miles per hour.
 - (3) Areas Inland and West of the Specified Boundary Line. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in subsection (c) of §5.400821 of this chapter and constructed, repaired, or to which additions are made on or after January 1, 2008, shall be designed and constructed to resist a 3-second gust of 110 miles per hour.
- (b) Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. In order for a historic structure to be exempted, at least one of the following conditions shall apply to the structure:
- (1) The structure is listed or is eligible for listing on the National Register of Historic places.
 - (2) The structure is a Recorded Texas Historic Landmark (RTHL).
 - (3) The structure has been specifically designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure, in order to maintain its historical designation.

Texas Administrative Code
Title 28. Insurance
Part 1. Texas Department of Insurance
Chapter 5. Property and Casualty Insurance
Subchapter E. Texas Windstorm Insurance Association
Division 2. Reinsurance
Texas Administrative Code
Title 28. Insurance
Part 1. Texas Department of Insurance
Chapter 5. Property and Casualty Insurance
Subchapter E. Texas Windstorm Insurance Association
Division 3. Loss Funding, Including Catastrophe Reserve Trust Fund, Financing Arrangements, and Public Securities

Moved into
Division 1

Moved into
Division 1

C. Loss Funding, Including Catastrophe Reserve Trust Fund, Financing Arrangements, and Public Securities.

§5.4101. Applicability.

- (a) This section and §§5.4102, 5.4111 – 5.4114, 5.4121, 5.4123 — 5.4127, 5.4133 — 5.4136, and 5.4141 – 5.4145 (relating to Definitions, Operation of the Catastrophe Reserve Trust Fund, Termination of the Catastrophe Reserve Trust Fund, Investments of Catastrophe Reserve Trust Fund, Duties and Responsibilities, Financing Arrangements, Public Securities Request, Approval, and Issuance, Issuance of

Class 1 Public Securities before a Catastrophic Event, Issuance of Public Securities after a Catastrophic Event, Determination of the Association Surcharge Percentage, Contingent Sources of Payment for Class 2 and Class 3 Public Securities, Public Security Proceeds, Excess Public Security Proceeds, Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis, Association Rate Filings, Class 1 Public Securities Trust Fund, Class 2 and Class 3 Public Securities Trust Funds, Premium Surcharge Trust Fund, Excess Premium Surcharge Revenue, and Excess Net Premium and Other Revenue) of this division are a part of the Texas Windstorm Insurance Association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation). If a court of competent jurisdiction holds that any provision of this division is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of the sections in this division will remain in effect.

- (b) Notwithstanding any provision in this subchapter, the department retains regulatory oversight of the association as required by Insurance Code Chapter 2210, including periodic examinations of the accounts, books, and records of the association, and no provision in this subchapter should be interpreted as negating or limiting the department's regulatory oversight of the association.

§5.4102. Definitions.

The following words and terms when used in this division will have the following meanings unless the context clearly indicates otherwise:

- (1) Association--Texas Windstorm Insurance Association.
- (2) Association program--The funding of any or all of the purposes authorized to be funded with the public securities under Insurance Code Chapter 2210, Subchapter M.
- (3) Association surcharge--premium surcharges on policyholders of association policies under Insurance Code §§2210.612, 2210.613, or 2210.6131.
- (4) Association surcharge percentage--The percentage amount determined by the commissioner under §5.4127(c) or (d) of this division (relating to Determination of the Association Surcharge Percentage).
- (5) Authorized representative of the department--Any officer or employee of the department, empowered to execute instructions and take other necessary actions on behalf of the department as designated in writing by the commissioner.
- (6) Authorized representative of the trust company--Any officer or employee of the comptroller or the trust company who is designated in writing by the comptroller as an authorized representative.
- (7) Budgeted operating expenses--All operating expenses as budgeted for and approved by the association's board of directors, excluding expenses related to catastrophic losses.
- (8) Catastrophe area--A municipality, a part of a municipality, a county, or a part of a county designated by the commissioner under Insurance Code §2210.005.
- (9) CRTF--Catastrophe Reserve Trust Fund. A statutorily created trust fund established with the trust company under Insurance Code Chapter 2210, Subchapter J.
- (10) Catastrophic event--An occurrence or a series of occurrences in a catastrophe area resulting in insured losses and operating expenses of the association in excess of premium and other revenue of the association.
- (11) Catastrophic losses--Losses resulting from a catastrophic event.
- (12) Class 1 payment obligation--The contractual amount of net premium and other revenue and association surcharges that the association must deposit in the class 1 public security trust fund at specified periods for the payment of class 1 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 1 public security agreements.
- (13) Class 2 payment obligation--The contractual amount of net premium and other revenue and either association surcharges or contingent surcharges that the association must deposit in the class 2 public security trust fund, or in the case of contingent surcharges, the premium surcharge trust fund, at specified periods for the payment of class 2 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 2 public security agreements.
- (14) Class 3 payment obligation--The contractual amount of net premium and other revenue and either association surcharges or contingent surcharges that the association must deposit in the class 3 public

- security trust fund, or in the case of contingent surcharges, the premium surcharge trust fund, at specified periods for the payment of class 3 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 3 public security agreements.
- (15) Class 1 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.072 and Insurance Code Chapter 2210, Subchapter M.
 - (16) Class 2 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.073 and Insurance Code Chapter 2210, Subchapter M.
 - (17) Class 3 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.0741 and Insurance Code Chapter 2210, Subchapter M.
 - (18) Commercial paper notes--A debt instrument that the association may issue as a financing arrangement or that TPFA may issue as any class of public security.
 - (19) Commissioner--The Commissioner of Insurance.
 - (20) Comptroller--The Comptroller of the State of Texas.
 - (21) Contingent surcharge--Premium surcharges on policyholders of policies that cover insured property that is located in a catastrophe area and which may be necessary as provided under Insurance Code §2210.6132.
 - (22) Contractual coverage amount--Minimum amount over scheduled debt service that the association is required to deposit in the applicable public security trust fund or premium surcharge trust fund, as security for the payment of debt service on the public securities, administrative expenses on public securities, or other payments the association must pay in connection with public securities.
 - (23) Credit agreement--An agreement described by Government Code Chapter 1371 that TPFA may enter into as authorized under Insurance Code Chapter 2210, Subchapter M.
 - (24) Department--The Texas Department of Insurance.
 - (25) Earned premium--That portion of gross premium that the association has earned because of the portion of time during which the insurance policy has been in effect.
 - (26) Financing arrangement--An agreement between the association and any market source under which the market source makes interest-bearing loans or provides other financial instruments to the association to enable the association to pay losses or obtain public securities under Insurance Code §2210.072.
 - (27) Gross premium--The amount of premium the association receives, less premium returned to policyholders for canceled or reduced policies.
 - (28) Insured property--Real property, or tangible or intangible personal property including automobiles, covered under an insurance policy issued by an insurer. Insured property includes motorcycles, recreational vehicles, and all other vehicles eligible for coverage under a private passenger automobile or commercial automobile policy.
 - (29) Investment income--Income from the investment of funds.
 - (30) Letter of instruction--The commissioner's or authorized department representative's signed written authorization and direction to an authorized representative of the trust company.
 - (31) Losses--Amounts paid or expected to be paid on association insurance policy claims, including adjustment expenses, litigation expenses, other claims expenses, and other amounts that are incurred in resolving a claim for indemnification under an association insurance policy.
 - (32) Net gain from operations--Net income reported during a calendar year equal to the amount of all earned premium, other revenue of the association, and distributions of excess net premium and other revenue from the class 1, class 2, and class 3 public security trust funds that are in excess of: incurred losses; operating expenses; reinsurance premium; current year financial arrangement obligations; current year net premium payment obligations; and current year public security administrative expenses.
 - (33) Net investment income--Investment income less associated fees and expenses charged by the trust company, or others, for managing or investing the assets.
 - (34) Net premium--Gross premium less unearned premium. Following the issuance of public securities, net premium may be pledged for the payment of class 1, class 2, and class 3 payment obligations.
 - (35) Net premium payment obligations--Public security obligations that are paid in whole or in part from net premium and other revenue for public securities repayable under Insurance Code §§2210.612, 2210.613, and 2210.6131. The term does not include public security obligations, or the portion of public security obligations that are paid from association surcharges.

- (36) Net revenues--Net premium plus other revenue, less scheduled policy claims, less budgeted operating expenses, less net premium payment obligations for that calendar year, less amounts necessary to fund or replenish any reserve fund required by a public security agreement.
- (37) Operating reserve fund--Association or trust company held fund for the payment of budgeted scheduled policy claims and budgeted operating expenses.
- (38) Other revenue--Revenue of the association from any source other than premium. Other revenue includes net investment income on association assets. Other revenue does not include premium surcharges collected under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, or 2210.6132 or member assessments collected under Insurance Code §§2210.0725, 2210.074, or 2210.0742, and interest income on those amounts.
- (39) Plan of operation--The association's plan of operation as adopted by the commissioner under Insurance Code §2210.151 and §2210.152.
- (40) Premium--Amounts received in consideration for the issuance of association insurance coverage. The term does not include premium surcharges collected by the association under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, and 2210.6132.
- (41) Premium surcharge trust fund(s)--The dedicated trust fund or funds established by TPFA and held by the trust company in which the association or insurers must deposit contingent surcharges. TPFA may establish separate trust funds or separate accounts for class 2 and class 3 contingent surcharges.
- (42) Public securities--Collective reference to class 1 public securities, class 2 public securities, and class 3 public securities.
- (43) Public security administrative expenses--Expenses incurred by the association, TPFA, or TPFA consultants to administer public securities issued under Insurance Code Chapter 2210, including fees for credit enhancement, paying agents, trustees, attorneys, and other professional services.
- (44) Public security obligations--The principal of a public security and any premium and interest on a public security issued under Insurance Code Chapter 2210, Subchapter M, together with any amount owed under a related credit agreement.
- (45) Scheduled policy claims--That portion of the association's earned premium and other revenue expected to be paid in connection with the disposition of losses that do not result from a catastrophic event.
- (46) Trust company--The Texas Treasury Safekeeping Trust Company managed by the comptroller under Government Code §404.101, et seq.
- (47) Trust company representative--Any individual employed by the trust company who is designated by the trust company as its authorized representative for purposes of any agreement related to the CRTF or the public securities.
- (48) TPFA--The Texas Public Finance Authority.
- (49) Unearned premium--That portion of gross premium that has been collected in advance for insurance that the association has not yet earned because of the unexpired portion of the time for which the insurance policy has been in effect.

§5.4111. Operation of the Catastrophe Reserve Trust Fund

(a) In General-

- (1) The comptroller shall administer the catastrophe reserve trust fund in accordance with the Act, and this subchapter.
- (2) The comptroller shall ensure that all money received from the Association pursuant to subsection (b) of this section is deposited with the trust company in the catastrophe reserve trust fund.
- (3) The trust company shall receive, disburse, invest, hold, and manage all money deposited in the catastrophe reserve trust fund.
- (4) All money, including investment income, deposited in the catastrophe reserve trust fund is state funds to be held by the comptroller outside the state treasury on behalf of, and with legal title in, the department until disbursed as provided by the Insurance Code Chapter 2210 and this subchapter.

(b) Payment of Funds to the Catastrophe Reserve Trust Fund

- (1) Except as provided by statute, on an annual basis, the Association shall pay the net gain from operations of the Association directly to the comptroller for deposit with the trust company in the catastrophe reserve trust fund.
- (2) In a time period acceptable to the trust company and the comptroller, but not more frequently than monthly, the Association shall pay all premium surcharges collected under the Act §2210.259 during the preceding period and accumulated investment income on those premium surcharges directly to the comptroller for deposit with the trust company in the catastrophe reserve trust fund. Premium surcharges collected by the Association pursuant to the Act §2210.259 and investment income on those funds are not gross premium or other revenue of the Association and must be accounted for separately from the Association's gross premium and other revenue.
- (3) As necessary, the Association shall pay directly to the comptroller for deposit with the trust company in the catastrophe reserve trust fund all:
 - (A) excess public security proceeds resulting from the Insurance Code §2210.608;
 - (B) excess premium surcharges resulting from the Insurance Code §2210.611 and §5.4144 of this subchapter (relating to Excess Class 2 Premium Surcharge Revenue); and
 - (C) excess member assessments resulting from §5.4145 and §5.4147 of this subchapter (relating to Excess Class 2 Member Assessment Revenue; and Excess Class 3 Member Assessment Revenue).
- (4) All deposits received by the trust company under this subsection shall be deposited in the catastrophe reserve trust fund immediately upon receipt.

(c) Disbursements from the Catastrophe Reserve Trust Fund

- (1) Prior to a disbursement of funds from the catastrophe reserve trust fund other than a disbursement under paragraph (3) of this subsection, the department must determine that:
 - (A) a catastrophic event has occurred; and
 - (B) the catastrophic event has resulted in losses in excess of available reinsurance proceeds.
- (2) To disburse funds from the catastrophe reserve trust fund in response to a catastrophic event, the commissioner or an authorized representative of the department shall issue a letter of instruction to the trust company, specifying the amount of money to be disbursed in immediately available funds and specifying any third party payee.
- (3) To disburse funds from the catastrophe reserve trust fund to pay for costs associated with maintaining or managing the catastrophe reserve trust fund, the commissioner or an authorized representative of the department shall issue a letter of instruction to the trust company specifying the amount of money to be paid and specifying any third party payee.

(d) Maintenance of the Catastrophe Reserve Trust Fund

- (1) In maintaining and managing the catastrophe reserve trust fund, the trust company shall be charged with the duty of care, which applies to the comptroller as trustee of funds in the treasury.
- (2) The department shall pay the trust company an amount sufficient to reimburse the trust company for the actual monthly costs of administering and maintaining the catastrophe reserve trust fund. The trust company shall deduct the appropriate amount directly from the earnings of the catastrophe reserve trust fund and advise the department monthly in writing of the amount of these costs.
- (3) The trust company shall submit to the department a report of all transactions relating to the catastrophe reserve trust fund promptly after the end of each month. The trust company shall furnish other information relating to the catastrophe reserve trust fund as the department may reasonably request from time to time.
- (4) The trust company is required to keep a book of records in which the complete and correct entries are made of all transactions relating to the receipts, disbursements, deposits, withdrawals and transfers in the catastrophe reserve trust fund in accordance with generally accepted accounting principles. The records shall be available for inspection by an authorized representative of the department at all reasonable hours of the business day and under reasonable conditions.

§5.4112. Termination of Catastrophe Reserve Trust Fund.

- (a1) The catastrophe reserve trust fund may be terminated only by law.
- (b2) On termination of the trust fund, all assets of the catastrophe reserve trust fund revert to the state and shall be used by the department to provide funding for the annual loss mitigation and preparedness plan established under the Act §2210.454.

§5.4113. Investments of Catastrophe Reserve Trust Fund.

- (a) The Association does not have authority to direct investments or money in the catastrophe reserve trust fund.
- (be) All earnings and losses from the investment of funds in the catastrophe reserve trust fund shall be credited to or charged against the catastrophe reserve trust fund. Investment income on money in the trust fund shall be maintained as part of the funds in the trust fund.
- (ce) The funds of the catastrophe reserve trust fund may be intermingled with other funds held by the trust company for the purposes of common investment and operational efficiency.

§5.4114. Duties and Responsibilities.

- (a1) In the event that the Association reasonably estimates that a catastrophic event has occurred, the general manager of the Association shall promptly notify the commissioner and the comptroller in writing of the total amount of the estimated catastrophic losses and potential reinsurance recoveries related to those losses. The general manager of the Association shall further promptly notify the commissioner and the comptroller in writing of any subsequent changes in such estimates.
- (b2) Upon receipt of a definitive written statement from the Association's general manager that a catastrophic event has occurred and that the catastrophic losses exceed available reinsurance proceeds, the commissioner or an authorized representative of the department shall provide a letter of instruction to pay the Association an amount from the catastrophe reserve trust fund that is equal to the lesser of the portion of the catastrophic loss that exceeds the premium and other revenue of the Association and available reinsurance proceeds or the balance of the catastrophe reserve trust fund. The Association shall report to the department any subsequent changes in the amount of catastrophic losses and the amount due either party shall be remitted promptly. Any funds received by the Association from the catastrophe reserve trust fund but not expended for the payment of loss and loss adjustment expenses shall be remitted by the Association to the catastrophe reserve trust fund.
- (c3) In authorizing the release of catastrophe reserve trust funds, the commissioner may rely on any statements or notifications of definitive or estimated losses, Association revenue, reinsurance proceeds, or any other related or supporting information, from any source, including the general manager of the Association.

§5.4121. Financing Arrangements.

- (a) The association may enter into financing arrangements. The financing arrangement must:
 - (1) enable the association to:
 - (A) pay losses under Insurance Code §2210.072, or
 - (B) obtain public securities under Insurance Code §2210.072; and
 - (2) be approved by the association's board of directors before the association enters into the financing arrangement.
- (b) The association may pay a financing arrangement with any or all:
 - (1) net premium and other revenue of the association that is not required for payment of class 1, class 2, or class 3 payment obligations;
 - (2) reinsurance proceeds;
 - (3) the proceeds of any financing arrangement;
 - (4) the proceeds of any class of public security issued under Insurance Code Chapter 2210; or
 - (5) any other association asset
- (c) As collateral security for these financial arrangements, including interest-bearing loans or other financial instruments, the association may grant in favor of the applicable market source a collateral assignment and

security interest in and to all or any portion of the association's assets, including without limitation, all or any portion of the association's right, title, and interest in and to all proceeds of any class of public security issued under Insurance Code Chapter 2210.

§5.4123. Public Securities Request, Approval, and Issuance.

- (a) The association's board of directors must request the issuance of public securities as prescribed in §5.4124 and §5.4125 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event and Issuance of Public Securities after a Catastrophic Event).
 - (1) The request must be submitted to the commissioner for approval with all required supporting documentation prescribed in §5.4124 and §5.4125 of this division.
 - (2) The association's board of directors may request public securities as often as necessary.
 - (3) If multiple classes of public securities are combined into a single request, the request must separately identify and provide supporting documentation for the issuance of each class of public securities.
 - (4) The association's board of directors may at any time submit a request for issuance of public securities to be issued after a catastrophic event. If the request for the issuance of public securities after a catastrophic event is submitted before a catastrophic event, the association's request must specify that the requested public securities may only be issued after a catastrophic event.
- (b) The commissioner must approve the request before TPFA may issue the requested public securities.
 - (1) If the supporting documentation is incomplete, the commissioner or the department may request additional documentation without rejecting the request.
 - (2) In considering the association's request, the commissioner may rely on any statements or notifications of definitive or estimated losses, association revenue, and any other related or supporting information from any source, including from the general manager of the association and from TPFA and its consultants and legal counsel.
 - (3) If the commissioner disapproves the request, the association's board of directors may reconsider the matter and submit another request under subsection (a) of this section.
 - (4) The department must provide the commissioner's written approval of the request to the association and TPFA.
- (c) Following the commissioner's written approval of the request, TPFA may issue public securities and credit agreements on behalf of the association, as authorized in the Act~~Insurance Code Chapter 2210~~ and §5.4124 and §5.4125 of this division, for the issuance, reissuance, refinancing, and payment of public security obligations and public security administrative expenses.
- (d) The association must provide to the department and the commissioner any requested information concerning public securities or the pending issuance of public securities, including information TPFA, a TPFA consultant, or TPFA legal counsel provides to the association.
- (e) A request for issuance of public securities under subsection (a) of this section includes a request for the reissuance and refinancing of public security obligations.

§5.4124. Issuance of Class 1 Public Securities before a Catastrophic Event.

- (a) The association's board of directors may request that TPFA issue class 1 public securities before a catastrophic event, if the association's board of directors determines that class 1 public security proceeds may become necessary and the commissioner approves the request.
- (b) The association must submit its board of directors' written request under subsection (a) of this section to the commissioner. The request must include the following information:
 - (1) the reason why the requested class 1 public securities may become necessary;
 - (2) the amount of premium and other revenue that the association expects will be available to pay loss claims in the current calendar year;
 - (3) reinsurance coverage that the association expects will be available to pay claims in the current calendar year;
 - (4) the amount in the CRTF that the association expects will be available to pay loss claims in the current calendar year;

- (5) the principal amount of class 1 public securities that are authorized and available to be issued before a catastrophic event, and that are requested;
 - (6) the estimated amount of debt service for the public securities, including any contractual coverage amount and public security administrative expenses;
 - (7) the structure and terms of the public securities, including any terms that may change as a result of a catastrophic event or the use of any proceeds of class 1 public securities issued before a catastrophic event;
 - (8) market conditions and requirements necessary to sell marketable public securities;
 - (9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis);
 - (10) a three-year pro forma financial statement consisting of a balance sheet, income statement, and a statement of cash flow, reflecting the financial impact of issuing class 1 public securities before a catastrophic event that assumes the proceeds will be used in the event of a catastrophe; and
 - (11) any other relevant information requested by the commissioner.
- (c) The association may make one or more requests under this section.
 - (d) The association may request class 1 public securities up to an aggregate principal amount not to exceed \$500 million outstanding at any one time, regardless of the calendar year or years in which the securities are issued, except that class 1 public securities that are issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, and that have been depleted to pay for the association program will not continue to count against the combined \$500 million aggregate limit described in this subsection. This section does not authorize the association to request class 1 public securities in an amount in excess of the catastrophe year limit prescribed in §5.4125(c) of this division (relating to Issuance of Public Securities after a Catastrophic Event).
 - (e) For the purposes of determining the authorized amount of class 1 public securities, public security proceeds used to pay for public security issuance costs, establish a public security reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year as, and in proportion to, the public security proceeds used to pay for losses or operating expenses, or used to pay principal on the public securities.

§5.4125. Issuance of Public Securities after a Catastrophic Event.

- (a) As provided in §5.4123 of this division (relating to Public Securities Request, Approval, and Issuance) and subject to the commissioner's approval, the association's board of directors may request that TPFA issue public securities after a catastrophic event has occurred. The association's board of directors may make the request:
 - (1) after the catastrophic event if the association's board of directors determines that actual catastrophic losses are estimated to exceed currently available net premium, other revenue, and money in the CRTF;
 - or
 - (2) before the catastrophic event if the association's board of directors determines that public security proceeds may become necessary to fund potential catastrophic losses. This paragraph does not affect the requirements for issuing public securities that are issued after a catastrophic event or the use of proceeds from public securities issued after a catastrophic event.
- (b) The association must submit its board of directors' written request under subsection (a) of this section to the commissioner. The request must include the following information:
 - (1) an estimate of the actual or potential losses and expenses from the catastrophic event;
 - (2) the association's current premium and other revenue;
 - (3) the association's current net revenues;
 - (4) the sources and amount of loss funding other than public securities, including:
 - (A) the amount of the loss paid from premium and other revenue;
 - (B) the amount requested from the CRTF; and
 - (C) amounts available from other financing arrangements and the association's obligations for other financing arrangements, including whether the amounts must be repaid from public security proceeds or from other means;

- (5) the principal amount of each requested class of public securities that is authorized and available to be issued and that is requested;
- (6) the estimated costs associated with each requested amount and class of public securities under this section, including any contractual coverage requirement and public security administrative expenses;
- (7) the structure and terms of the public securities;
- (8) market conditions and requirements necessary to sell marketable public securities;
- (9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis); and
- (10) any other relevant information requested by the commissioner.
- (c) For each class of public securities requested under this section, the association must determine and submit as part of its request the authorized amount of public securities. This amount must be the lesser of:
 - (1) the statutorily authorized principal amount for that class, less any principal amount of that class of public security that was issued in the catastrophe year, less, in the case of class 1 public securities, the proceeds of class 1 public securities issued under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event), including the proceeds of any outstanding Class 1 public securities issued on or before June 1, 2015, that were not depleted to pay for the association program as of the beginning of the catastrophe year for which the class 1 public securities are requested under this section; or
 - (2) the amount of the estimated loss payable from proceeds of that particular class, and estimated costs including the costs associated with the issuance of that class of public security.
- (d) For the purposes of determining the amount of proceeds of class 1 public securities that were not depleted as described in subsection (c)(1) of this section, public security proceeds used to pay for public security issuance costs, establish a public security reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year as, and in proportion to, the public security proceeds used to pay for losses or operating expenses, or used to pay principal on the public securities.
- (e) The association must, in aggregate for each catastrophe year:
 - (1) impose an assessment of the statutorily authorized amount of class 1 assessments under Insurance Code §2210.0725 and §5.4161 of this division (relating to Member Assessments) before class 2 public securities may be issued; and
 - (2) impose an assessment of the statutorily authorized amount of class 2 assessments under Insurance Code §2210.074 and §5.4161 of this division before class 3 public securities may be issued.
- (f) The association:
 - (1) may make one or more requests under this section;
 - (2) may, following a catastrophic event, request the issuance of class 1 public securities under this section, before the exhaustion of any remaining proceeds from class 1 public securities issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015;
 - (3) must deplete the proceeds of any outstanding class 1 public securities issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, before using the proceeds of class 1 public securities requested under this section; and
 - (4) may request the issuance of class 2 and class 3 public securities under this section, before the exhaustion of all class 1 or class 2 assessments, respectively.
- (g) For the issuance of class 2 or class 3 public securities payable under Insurance Code §2210.6132, the association must make a separate request under §5.4127 (relating to Contingent Sources of Payment for Class 2 and Class 3 Public Securities) of this division.

§5.4126. Determination of the Association Surcharge Percentage.

- (a) If, at any time the association, after consultation with TPFA, determines that net premium and other revenue are not sufficient to pay class 1, class 2, or class 3 public securities payable under Insurance Code §§2210.612, 2210.613, and 2210.6131, respectively, the association must promptly submit a request to the commissioner to approve an association surcharge. While the public securities are outstanding, at least quarterly, the

association must determine if its net premium and other revenue is sufficient to pay for securities payable under Insurance Code §§2210.612, 2210.613, and 2210.6131.

- (b) A request described by subsection (a) of this section must include the following information for each class of public securities for which an association surcharge is required:
- (1) the proposed association surcharge percentage;
 - (2) the amount the association has determined, after consultation with TPFA, is the debt service and all related expenses on the public securities for the applicable period;
 - (3) the amount that the association has determined is the debt service not already covered by available funds and all related expenses on the public securities for the applicable period;
 - (4) for policies that comply with the requirements of §5.4912 of Division 7 of this subchapter (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131), the association's best estimate of its anticipated gross premium for policies in effect on the date described by paragraph (8) of this subsection;
 - (5) for policies that do not yet comply with the requirements of §5.4912 of Division 7 of this subchapter, the association's best estimate of its anticipated gross premium for the period described by paragraphs (9) and (10) of this subsection;
 - (6) all relevant data the association relied upon when determining the amounts in paragraphs (2) - (5) of this subsection;
 - (7) an explanation of the methodology, including all material assumptions, the association used to determine the amounts in paragraphs (2) - (5) of this subsection;
 - (8) the date, which must be no more than 90 days after the date the request is received by the commissioner, on which the association surcharge applies to policies that are in force and compliant with §5.4912 of Division 7 of this subchapter;
 - (9) the date on which the association surcharge begins to apply to policies not compliant with §5.4912 of Division 7 of this subchapter, which must be the same date as the date in paragraph (8) of this subsection; and
 - (10) the date on which the association surcharge ceases to apply to policies not compliant with §5.4912 of Division 7 of this subchapter, which must be the day after the date the last noncompliant policy expires.
- (c) The commissioner will, within 10 business days of receipt of the request in subsection (b), notify the association and TPFA of the commissioner's determination on the sufficiency of the association surcharge percentage requested. The association must implement the surcharge percentage the commissioner determines is sufficient.
- (d) If the commissioner independently determines that net premium and other revenue are not sufficient to pay for securities payable under Insurance Code §§2210.612, 2210.613, and 2210.6131, the commissioner may order the association to assess an association surcharge. The order must specify the date on which the surcharge applies. The surcharge may not apply earlier than the 20th day following the date of the order.

§5.4127. Contingent Sources of Payment for Class 2 and Class 3 Public Securities.

- (a) To obtain approval for the issuance of class 2 or class 3 public securities paid from contingent surcharges, the association must first submit a written request to the commissioner.
- (b) In its request to the commissioner under subsection (a) of this section, the association must include:
- (1) a determination from TPFA that TPFA is unable to issue class 2 or class 3 public securities paid as provided by Insurance Code §2210.613 or §2210.6131, as applicable; or
 - (2) the following information:
 - (A) the association's estimated net premium and other revenues;
 - (B) the association's best estimate of the terms and conditions necessary to issue marketable class 2 or class 3 public securities payable under Insurance Code §2210.613 or §2210.6131, as applicable, including:
 - (i) the estimated annual payments for principal and interest;
 - (ii) the estimated contractual coverage amount;
 - (iii) estimated reserve requirements;
 - (iv) the estimated amount of any other required payments for debt service;
 - (v) the estimated public security administrative expenses; and

- (vi) any other conditions likely necessary to issue marketable public securities payable under Insurance Code §2210.613 or §2210.6131, as applicable, that the association determines will impact its operations; and
- (C) the association's best estimate of the association surcharges needed to pay the debt service required to issue marketable public securities payable under Insurance Code §2210.613 or §2210.6131.
- (c) when providing information required under subsection (b)(2) of this section, the association may rely on information and advice provided by TPFPA, TPFPA consultants, TPFPA legal counsel, and third parties retained by the association for this purpose.
- (d) the commissioner, after consultation with TPFPA, may order that class 2 or class 3 public securities be paid as provided by Insurance Code §2210.6132 if either:
 - (1) TPFPA is unable to issue public securities payable under Insurance Code §2210.613 or §2210.6131, as applicable; or
 - (2) the issuance of public securities payable under Insurance Code §2210.613 or §2210.6131, as applicable, is financially unreasonable for the association.

§5.4034. Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers

- ~~(1) When providing a repayment to insurers for amounts paid for class 2 premium surcharges and member assessments, the association must specify the surcharge and assessment period being repaid. 4127 of this division (relating to Payment of Class 2 Public Securities Issued Under 4126 and Repayment of Premium Surcharges and Member Assessments), the insurer may recoup the amount it paid for the period refunded from the association repayment as if the insurer were the policyholder to whom the repayment was owed.~~

§5.4133. Public Security Proceeds.

- (a) As necessary, the association must make written requests to TPFA for the disbursement of public security proceeds for the association program, including:
 - (1A) for the payment of incurred claims and operating expenses of the association; or
 - (2B) other amounts as authorized in the Act §2210.608.
- (b) The association's written request must specify:
 - (1A) the amount of the request; and
 - (2B) the purpose of the request.
- (c) To facilitate timely payment of losses, the association may request funds to be disbursed to the association before the settlement of incurred claims.
- (d) The association must account for the receipt and use of public security proceeds separately from all other sources of funds. The association may hold public security proceeds in the manner authorized by the association's plan of operation or as required by agreement with TPFA.

§5.4134. Excess Public Security Proceeds.

- (a) The association may use any excess public security proceeds remaining after the purposes for which the public securities were issued are satisfied in accordance with Insurance Code §2210.608.
- (b) As specified in Insurance Code §§2210.072(a), 2210.073(a), and 2210.0741(a), public securities may be repaid before their full term if the association's board of directors elects to do so and the commissioner approves.

§5.4135. Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis.

- (a) Marketable public securities under this division are public securities that the association in consultation with TPFA determines:
 - (1) are consistent with state debt issuance policy requirements; and

- (2) achieve the goals of the association.
- (b) In determining the amount of class 1 public securities that can or cannot be issued, the association must consider:
 - (1) the association's current premium and net revenue;
 - (2) the effect of depopulation under Insurance Code Chapter 2210, Subchapter O, on anticipated net premium and other revenue and anticipated revenue from association surcharges;
 - (3) the estimated amount of debt service for the public securities, including any contractual coverage amount;
 - (4) the association's obligations for outstanding public securities, including contractual coverage requirements and public security administrative expenses;
 - (5) the association's obligations for other financing arrangements;
 - (6) any conditions precedent to issuing class 1 public security obligations contained in any applicable public security financing documents;
 - (7) TPFA administrative rules;
 - (8) applicable State of Texas debt issuance policies;
 - (9) administrative rules of the Office of the Attorney General of Texas that require evidence of debt service and other obligation coverage; and
 - (10) market conditions and requirements necessary to sell marketable public securities, including issuing classes in installments.
- (c) The association may rely on the advice and analysis of TPFA, TPFA consultants, TPFA legal counsel, and third parties the association has retained for this purpose in determining market conditions and requirements under subsection (b) of this section. The association's determination may include consideration of the following factors:
 - (1) interest rate spreads;
 - (2) municipal bond ratings of the public securities;
 - (3) prior issuances of catastrophe-related public securities in Texas or any other state;
 - (4) similar financings in the market within the preceding 12 months;
 - (5) news or other publications relating to the association or the issuance of catastrophe-related public securities;
 - (6) a nationally recognized investment banking firm's confidence memorandum;
 - (7) legal and regulatory conditions; and
 - (8) any other market conditions and requirements that the association deems necessary and appropriate.
- (d) As part of each request for public securities, the association must submit to the commissioner a cost-benefit analysis of the various financing methods and funding structures that are available to the association. The cost-benefit analysis must include:
 - (1) for public securities requested under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event):
 - (A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;
 - (B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities, liquidity position, and other benefits associated with issuing public securities before a catastrophic event; and
 - (C) estimates of the monetary costs, associated benefits, and the availability of funding alternatives, such as providing financing arrangements or additional financing arrangements, that provide similar funding and at a similar layer;
 - (2) for public securities requested under this division following a catastrophic event:
 - (A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;
 - (B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities and other benefits associated with issuing public securities; and
 - (C) the availability of alternative funding arrangements, if any, including the monetary costs and benefits associated with any available alternative funding arrangements.

§5.4136. Association Rate Filings.

While there are outstanding public securities payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, or outstanding class 1 public securities issued before June 1, 2015, the association:

- (1) must consider its obligations for the payment of public securities payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, and class 1 public securities issued before June 1, 2015, including the additional amount of any debt service coverage that the association determines is required for the issuance of marketable public securities in developing its rates;
- (2) must include in a rate filing submitted to the department an analysis that demonstrates that the filed rates produce premium sufficient to provide for at least:
 - (A) the expected operating costs of the association, including expected nonhurricane wind and hail losses and loss adjustment expenses; and
 - (B) the expected payment of public security obligations payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, and class 1 public securities issued before June 1, 2015, including any contractual coverage amount the association determines is required for the issuance of marketable public securities, during the period in which the rates will be in effect; and
- (3) must include a cost component in the rates sufficient to at least provide for the expected payment of public security obligations for public securities payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, and class 1 public securities issued before June 1, 2015, during the period in which the rates will be in effect.

§5.4141. Class 1 Public Security Trust Fund.

- (a) While class 1 public securities are outstanding, the association must deposit net premium and other revenue in the class 1 public security trust fund at periods and in amounts as required by the class 1 public security agreements to fund the class 1 payment obligation. As required by Insurance Code §2210.609(c), the association must deposit association surcharges collected under Insurance Code §2210.612 in the class 1 public security trust fund.
- (b) Without limiting other options, the class 1 public security agreements may include an operating reserve fund. If the class 1 public security trust fund does not contain sufficient money to pay debt service on the class 1 public securities, administrative expenses on the class 1 public securities, or other class 1 public security obligations, the association must transfer sufficient money from any operating reserve fund or other association-held funds to the class 1 public security trust fund to make the payment.
- (c) The association may not directly or indirectly use, borrow, or in any manner pledge or encumber association surcharges collected or to be collected, except for the payment of class 1 public security obligations and as otherwise authorized in this title.
- (d) The trust company must deposit any net investment income earned on net premium and other revenue and on the association surcharges into the class 1 public security trust fund while these amounts are on deposit.

§5.4142. Class 2 and Class 3 Public Security Trust Funds.

- (a) While class 2 or class 3 public securities payable under Insurance Code §2210.613 and §2210.6131, respectively, are outstanding, the association must deposit net premium and other revenue in the class 2 public security trust fund and the class 3 public security trust fund, respectively, at periods and in amounts as required by the class 2 and class 3 public security agreements to fund the class 2 and class 3 payment obligations. As required by Insurance Code §2210.609(c), the association must deposit association surcharges collected under Insurance Code §2210.613 and §2210.6131 in the class 2 public security trust fund and the class 3 public security trust fund, respectively.
- (b) Without limiting other options, for public securities payable under Insurance Code §2210.613 and §2210.6131, the class 2 and class 3 public security agreements may include an operating reserve fund. If the class 2 or class 3 public security trust funds do not contain sufficient money to pay debt service on the class 2 or class 3 public securities, administrative expenses on the class 2 or class 3 public securities, or other class 2 or class 3 public security obligations, the association must transfer sufficient money from any operating reserve fund or other association-held funds to the class 2 or class 3 public security trust fund, as applicable, to make the payment.

- (c) The association may not directly or indirectly use, borrow, or in any manner pledge or encumber association surcharges collected or to be collected, except for the payment of the applicable public security obligations and as otherwise authorized in this title.
- (d) The trust company must deposit any net investment income earned on net premium and other revenue and on the association surcharges into the appropriate trust fund accounts while these amounts are on deposit.

§5.4143. Premium Surcharge Trust Fund.

- (a) As required by any agreements between the association, TPFA, and the trust company, if public securities payable under Insurance Code §2210.6132 are outstanding, insurers may be required to deposit contingent surcharges directly into the premium surcharge trust fund or funds.
- (b) If insurers are required to direct deposit under subsection (a) of this section, then the association must provide notice to the commissioner and insurers no later than 60 days before the insurers must implement the contingent surcharge.
- (c) The notice under subsection (b) of this section must include all applicable deposit instructions, including any required routing information and account numbers.
- (d) Insurers must deposit the funds into the appropriate accounts on the date the funds must otherwise be remitted to the association under §5.4186 of this division (relating to Remittance of Contingent Surcharges).
- (e) If insurers are not required to direct deposit under subsection (a) of this section, then the association must deposit the collected contingent surcharges on receipt into the premium surcharge trust fund or funds.
- (f) The association may not directly or indirectly use, borrow, or in any manner pledge or encumber contingent surcharges collected or to be collected by the association except for the payment of the applicable public security obligations and as otherwise authorized in this title.
- (g) The trust company must deposit any net investment income earned on the contingent surcharges into the appropriate trust fund accounts while these amounts are on deposit.

§5.4144. Excess Premium Surcharge Revenue.

Revenue collected in any calendar year from premium surcharges under Insurance Code §§2210.612, 2210.613, 2210.6131, and 2210.6132 that exceeds the amount of class 1, class 2, or class 3 public security obligations and class 1, class 2, or class 3 public security administrative expenses payable in that calendar year from premium surcharges and interest earned on the premium surcharge trust fund deposits may, at the discretion of the association, be:

- (1) used to pay class 1, class 2, or class 3 public security obligations payable in the following calendar year, respectively, offsetting the amount of the premium surcharge that would otherwise be required to be levied for the year under Insurance Code Chapter 2210, Subchapter M;
- (2) used to redeem or purchase outstanding class 1, class 2, or class 3 public securities, respectively; or
- (3) deposited in the CRTF.

§5.4145. ———Excess Net Premium and Other Surcharge Revenue.

Excess net premium and other revenue collected in the class 1, class 2, and class 3 public security trust funds that is disbursed to the association is an asset of the association and may be used for any purpose authorized in Insurance Code §2210.056, or deposited in the CRTF.

§5.4161. Member Assessments.

- (a) The association, with the approval of the commissioner, must assess members as provided by Insurance Code Chapter 2210.
- (b) The association must provide, in the aggregate for the catastrophe year, the following information when requesting the commissioner to approve a class 1, class 2, or class 3 assessment under Insurance Code §§2210.0725, 2210.074, and 2210.0742, as applicable:
 - (1) the association's best estimate of the amount of losses expected to be paid as a result of the event, or series of events, that caused the need for the assessment requested;

- (2) the amount of losses paid, or expected to be paid, from premium and other revenue of the association;
 - (3) the amount of losses paid, or expected to be paid, from available reserves of the association and available amounts in the CRTF;
 - (4) the amount of losses paid, or expected to be paid, from the proceeds of class 1 public securities issued, or expected to be issued;
 - (5) the amount of class 1 assessments previously approved and the amount of class 1 assessments now requested;
 - (6) in the case of a request to approve a class 2 or class 3 assessment, the amount of losses paid, or expected to be paid, from the proceeds of class 2 public securities issued, or expected to be issued;
 - (7) in the case of a request to approve a class 2 or class 3 assessment, the amount of class 2 assessments previously approved and the amount of class 2 assessments now requested;
 - (8) in the case of a request to approve a class 3 assessment, the amount of losses paid, or expected to be paid, from the proceeds of class 3 public securities issued, or expected to be issued;
 - (9) in the case of a request to approve a class 3 assessment, the amount of class 3 assessments previously approved and the amount of class 3 assessments now requested.
- (c) If all or any portion of the authorized principal amount of class 1 public securities requested under §5.4124 or §5.4125 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event or Issuance of Public Securities after a Catastrophic Event, respectively) cannot be issued based on the factors described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis), the association may request and the commissioner may approve the imposition of class 1 assessments as provided in this section.
- (d) In its request to the commissioner to approve the imposition of assessments under subsection (c) of this section, the association must submit the following information:
- (1) the information required by subsection (b) of this section;
 - (2) information based on the analyses described in §5.4135 of this division;
 - (3) the amount of class 1 public securities that can be issued;
 - (4) the amount of class 1 public securities that cannot be issued; and
 - (5) the specific reasons, market conditions, and requirements that prevent TPFA from issuing all or any portion of the authorized principal amount of class 1 public securities. The association may rely on information and advice provided by TPFA, TPFA consultants, TPFA legal counsel, and third parties retained by the association for this purpose.
- (e) The association must request the issuance of the statutorily authorized principal amount of class 1 public securities before the association may request the commissioner approve a class 1 assessment under Insurance Code §2210.0725.
- (f) The association must request the issuance of the statutorily authorized principal amount of class 2 public securities before the association may request the commissioner approve a class 2 assessment under Insurance Code §2210.074.
- (g) The association must request the issuance of the statutorily authorized principal amount of class 3 public securities before the association may request the commissioner approve a class 3 assessment under Insurance Code §2210.0742.
- (h) If the commissioner approves the imposition of assessments under subsection (c) of this section, any class 2 and class 3 public securities must be issued as provided by the Act ~~Insurance Code Chapter 2210~~ and these rules.
- (j) This section and §§5.4162 — 5.4167 of this division (relating to Amount of Assessment; Notice of Assessment; Payment of Assessment; Failure to Pay Assessment; Contest After Payment of Assessment; and Inability to Pay Assessment by Reason of Insolvency, respectively) are a part of the association's plan of operation and will control over any conflicting provision in ~~§5.4001 of this subchapter (relating to Plan of Operation)~~ Subchapter E, Division 1.

§5.4162. Amount of Assessment

- (a1) The Association shall determine which members of the Association shall participate in any assessment to provide for the Association's required obligations as determined under §5.4161 of this division (relating to Member Assessments).
- (1A) The Association may not include in the assessment an insurer that became a member of the Association after September 1, 2009, and had not previously been a member of the Association, until after the second anniversary of the date on which the insurer first becomes a member of the Association. The anniversary date shall be the date the insurer is authorized by the department to engage in the business of property insurance in this state.
- (2B) The Association shall include in the assessment an insurer described under paragraph (1) of this subsection after the second anniversary of the date on which the insurer first becomes a member of the Association without regard as to whether the catastrophic event that gave rise to the class of public securities occurred prior to the second anniversary of the date on which the insurer first became a member of the Association.
- (3C) The Association may not include in the assessment formula, the net direct premium of an affiliate insurer engaged in the business of surplus lines insurance as described in the Act §2210.052(c), that a federal agency or court of competent jurisdiction determines to be exempt from the assessment formula under the Act.
- (b2) This determination shall be computed on a calendar year basis for the year in which the assessment is made. This determination shall not be based on the year in which the catastrophic event occurred, except for an assessment made during that year. Net direct premiums shall be determined as provided under §5.4001(13) of this subchapter (relating to Plan of Operation).
- (c3) The designated members of the Association shall participate in any assessment levied in the proportion that the net direct premiums of such member written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the Association as furnished to the Association by the department after review of annual statements, other reports, and required statistics; provided, however, that if at the time of such assessment the department has not furnished to the Association information necessary to compute a member's participation during the preceding calendar year, then each member's participation shall be based upon information furnished to the Association from the last calendar year in which such information is available and, upon obtaining the necessary information from the department, the Association shall reassess or refund to each member such amounts as are necessary to properly reflect such member's participation; provided, further, that a member shall be entitled to receive the following credit for insurance, similar to catastrophe insurance, written in such catastrophe areas.
- (d4) The Figure: 28 TAC §5.4162(d) graphically depicts the Texas Windstorm Insurance Association Procedure For Calculating Member Assessment Percentages Including Credit For Voluntary Writings. All premiums are for the most recent preceding calendar year ending December 31, as furnished by the department. Column 1(a): Statewide net direct premiums for extended coverage and other allied lines. Column 1(b): Statewide net direct premiums for extended coverage and other allied lines portion of the multiple peril line. Column 1(c): Statewide net direct premiums for homeowners and farm and ranch owners. Column 2: The sum of the statewide net direct premiums at 90% of the extended coverage and other allied lines, and 50% of the homeowners and farm and ranch owner's, or such percentage as may be determined in accordance with §5.4002-(123)(B)5.4001(a)(2)(N)(i)(III) of this chapter (90% of Column 1(a) plus 90% of Column 1(b) plus 50% of Column 1(c)). Column 3: Each company's percentage of the net direct premiums as described in Column 2, which is the basis for indicating normal required participation in the Association prior to credits for voluntary writings in the designated areas. Column 4: Total windstorm and hail premiums in the designated areas (Association premiums plus voluntary premiums). Column 5: Normal company quota of total windstorm and hail premiums (Column 3 x Column 4). Column 6: Each company's voluntary writings in the designated areas multiplied by the same percentages as shown in Column 2. Note: Maximum credit shall be limited to company's normal quota. Column 7: Each company's maximum possible allocation after applying credits for voluntary writings (Column 5 minus Column 6). Negative allocation to be shown as zero. Column 8: Percentage participation of each member company in the Association, prior to application of offset. Note: The offset figure measures the excess premiums developed by the maximum credit in Column 6. Column 9: Percentage participation of each member company in the Association.

Figure: 28 TAC §5.4162(d)

**TEXAS WINDSTORM INSURANCE ASSOCIATION PROCEDURE
FOR CALCULATING MEMBER ASSESSMENT PERCENTAGES
INCLUDING CREDIT FOR VOLUNTARY WRITINGS**

[1] STATEWIDE DIRECT WRITTEN PREMIUMS	[2] NET DIRECT WRITTEN PREMIUMS	[3] COMPANY PERCENT OF STATEWIDE PREMIUMS WRITTEN	[4] TOTAL PREMIUMS IN CATASTROPHE AREAS
(a)(b)(c) E.C. CMP HO	Total of Col. [1](a) & (b) x 90% Col. [1](c) x 50%	[2] ÷ Total of [2]	(ASSOCIATION + VOLUNTARY)
[5] NORMAL REQUIRED QUOTA IN DESIGNATED AREAS	[6] CREDIT FOR COMPANY'S VOLUNTARY PREMIUMS	[7] DIFFERENCE BETWEEN NORMAL REQUIRED PARTICIPATION AND VOLUNTARY CREDIT PREMIUMS	[8] ASSOCIATION ASSESSMENT PERCENTAGE PRIOR TO OFFSET
([3] x [4])	(not to exceed column [5])	([5] - [6])	[7] ÷ Total of [7]
[9] NET ASSOCIATION ASSESSMENT PERCENTAGE			
(After application of offset)			

- (e5) The department shall furnish to the Association the amount of net direct premiums of each member company written on property in this state and the aggregate net direct premiums written on property in this state by all member companies during the preceding calendar year as reported by member companies to the department. Within a reasonable time after the receipt of same from the department, the Association shall notify each member company, in writing, sent by certified mail, the amount of the net direct premiums written on property in this state during the preceding calendar year by the member company to whom notice is given, including the net direct premiums of similar insurance voluntarily written in the catastrophe areas, upon which such company's percentage of participation will be determined. Such notice shall state that such notification, and the content thereof, is an act, ruling, or decision of the Association and that the member company to whom such notice is given shall be entitled to appeal such act, ruling, or decision within 30 days from the date shown on the notice in accordance with the Act §2210.551. Thereafter, the Association shall determine the percentage of participation for each member company in the manner provided in this section and shall notify each member company thereof, in writing, sent by certified mail. Such notice shall state that such notification, and the content thereof, is an act, ruling, or decision of the Association insofar as the mathematical determination of the percentage of participation is concerned and that the member company to whom such notice is given shall be entitled to appeal therefrom within 30 days from the date of such act, ruling, or decision as shown on said notice in accordance with the Act §2210.551.
- (f6) To assist the Association in determining each member insurer's percentage of participation as soon as possible in the calendar year, each member insurer shall furnish to the Association on or before March 1 of each year a copy of its Exhibit of Premiums and Losses (Statutory Page 14) for the State of Texas

that is filed annually with the department as part of the insurer's Texas Property and Casualty Annual Statement.

§5.4163. Notice of Assessment

- (1) Notice of assessment shall be sent to each member, within 30 days after the Association levies the assessment, by certified mail, return receipt requested, addressed to the office of such member as it appears on the books of the Association. Such notice shall state the member's allocated amount of assessment and shall inform each member of the sanctions imposed by §5.4165 of this division (relating to Failure to Pay Assessment) for the failure to pay such assessment within the time prescribed by this section.
- (2) Such notice shall also state that such notification, and the content thereof, is an act, ruling, or decision of the Association insofar as the amount of the assessment for such company is concerned and that a member company to whom such notice is given shall be entitled to appeal therefrom within 30 days from the date of such act, ruling, or decision as shown on said notice, in accordance with the Insurance Code §2210.551; provided, however, that the right of appeal provided for herein shall not include the subject matter of any act, ruling, or decision of the Association determining the amount of net direct premiums of such member company or the percentage of participation for such member company when notice of the amount of such net direct premiums or such percentage of participation has previously been given by the Association in accordance with §5.4162 of this division (relating to Amount of Assessment).
- (3) The time period for an appeal of an act, ruling, or decision of the Association respecting net direct premiums or percentage of participation is computed from the date of the act, ruling, or decision of the Association respecting same.

§5.4164. Payment of Assessment

Except as provided by §5.4143 of this division (relating to Trust Funds for the Payment of Class 2 Public Securities) and §5.4146 of this division (relating to Member Assessment Trust Fund for the Payment of Class 3 Public Securities), each member must remit to the association payment in full of its assessed amount of any assessment levied by the association within 30 days of receipt of notice of assessment.

§5.4165. Failure to Pay Assessment

- (a1) If the Association has not received payment in full of a member's allocated amount of assessment within 40 days of notice of the receipt by the member of the notice of assessment, then the Association shall report to the commissioner the fact that such assessment has not been paid, and the commissioner shall immediately issue an order suspending such member's certificate of authority to transact the business of insurance in the State of Texas until such time as the Association certifies to the commissioner that such assessment has been paid in full.
- (b2) Removal of a member's certificate of authority to transact business in the State of Texas by the commissioner shall in no way affect the right of the Association to proceed against such member in any court of law or equity in the United States for any remedy provided by law or contract to the Association, including, but not limited to, the right to collect such member's assessment.
- (c3) In addition to any other remedy provided herein, the Association may offset assessments due from a member against any amounts in any account of such delinquent member.

§5.4166. Contest After Payment of Assessment

- (a1) A member does not waive any right it may have to contest the computation of its allocated assessment amount by mailing or otherwise delivering payment of its allocated assessment amount to the Association, as provided herein.
- (b2) Such contest shall not, however, toll the time within which assessments must be paid or the report to be made to the commissioner or the action to be taken by the commissioner upon receipt of such report, all as set out in §5.4165 of this division (relating to Failure to Pay Assessment).

§5.4167. Inability to Pay Assessment by Reason of Insolvency

In the event a member of the Association is placed in temporary or permanent receivership under order of a court of competent jurisdiction based upon a finding of insolvency, and such member has been designated an impaired insurer by the commissioner, and in the event it is necessary to obtain additional funds to provide for operating expenses and losses in the year the insurer is declared impaired, the aggregate net amount not recovered from such insolvent insurer shall be reallocated among the remaining members of the Association in accordance with the method of determining participation as determined in the plan of operation.

§5.4171. Premium Surcharge Requirements.

- (a) The association may be required to assess a premium surcharge under Insurance Code §§2210.612, 2210.613, or 2210.6131 on all policyholders of policies that cover association-insured property.
- (b) Following a catastrophic event, insurers may be required to assess a premium surcharge under Insurance Code §2210.6132 on all policyholders of policies that cover insured property that is located in a catastrophe area, including automobiles principally garaged in the catastrophe area. This requirement applies to property and casualty insurers, the association, the Texas FAIR Plan Association, Texas Automobile Insurance Plan Association (TAIPA) policies, affiliated surplus lines insurers, and includes property and casualty policies independently procured from affiliated insurers.
- (c) For premium surcharges described in subsection (a) of this section, this section and §§5.4172, 5.4173, 5.4181, 5.4182, 5.4184 — 5.4192 of this division (relating to Premium Surcharge Definitions, Determination of the Contingent Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent Surcharges, Offsets, Association Surcharges Not Subject to Commissions or Premium Taxes; Contingent Surcharges not Subject to Commissions, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) apply to all policies written by the association.
- (d) Contingent surcharges described in subsection (b) of this section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 — 5.4192 of this division only apply to policies written for the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)), other private passenger automobile liability, private passenger automobile physical damage; commercial automobile no fault (PIP), other commercial automobile liability, and commercial automobile physical damage.
- (e) This section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 — 5.4192 of this division do not apply to:
 - (1) a farm mutual insurance company operating under Insurance Code Chapter 911;
 - (2) a nonaffiliated county mutual fire insurance company described by Insurance Code §912.310 that is writing exclusively industrial fire insurance policies as described by Insurance Code §912.310(a)(2);
 - (3) a mutual insurance company or a statewide mutual assessment company engaged in business under Chapter 12 or 13, Title 78, Revised Statutes, respectively, before those chapters' repeal by §18, Chapter 40, Acts of the 41st Legislature, First Called Session (1929), as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, Second Called Session (1929), that retains the rights and privileges under the repealed law to the extent provided by those sections; and
 - (4) premium and policies issued by an affiliated surplus lines insurer that a federal agency or court of competent jurisdiction determines to be exempt from a premium surcharge under Insurance Code Chapter 2210.

§5.4172. Premium Surcharge Definitions.

The following words and terms when used in §§5.4171, 5.4173, 5.4181, 5.4182, and 5.4184 — 5.4192 of this division (relating to Premium Surcharge Requirements, Determination of the Contingent Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent Surcharges, Offsets, Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges not Subject to Commissions, Notification

Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) will have the following meanings unless the context clearly indicates otherwise:

- (1) Affiliated insurer--An insurer that is an affiliate, as described by Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas. Affiliated insurer includes an insurer not authorized to engage in the business of property or casualty insurance in the State of Texas.
- (2) Affiliated surplus lines insurer--An eligible surplus lines insurer that is an affiliate, as described by Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas.
- (3) Association-insured property--Immovable property at a fixed location in a catastrophe area or corporeal movable property located in that immovable property covered under an insurance policy issued by the association.
- (4) Contingent surcharge percentage--The percentage amount set by the commissioner under §5.4173(c) of this division.
- (5) Exposure--The basic unit of risk that is used by an insurer to determine the insured's premium.
- (6) Insurer--Each property and casualty insurer authorized to engage in the business of property or casualty insurance in the State of Texas and an affiliate of the insurer, as described by Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property or casualty insurance in the State of Texas, the association, and the Texas FAIR Plan Association. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.
- (7) Residential property insurance--Insurance against loss to real or tangible personal property at a fixed location, including through a homeowners insurance policy, a tenants insurance policy, a condominium owners insurance policy, or a residential fire and allied lines insurance policy.

§5.4173. Determination of the Contingent Surcharge Percentage.

- (a) If the commissioner orders public securities to be paid under Insurance Code §2210.6132, the association must submit a written request to the commissioner to approve a contingent surcharge on policyholders with insured property in the catastrophe area as authorized under Insurance Code §2210.6132. The association's request must specify, for each applicable class of public securities:
 - (1) the total amount of the class 2 and class 3 public security obligations and estimated amount of the class 2 and class 3 public security administrative expenses, including any required contractual coverage amount, provided in the TPFA notice; and
 - (2) the date on which the contingent surcharge is to commence and the date the contingent surcharge for the noticed amount is to end.
- (b) While public securities repayable under Insurance Code §2210.6132 are outstanding, the association must submit a written request described under subsection (a) of this section on an annual basis. The commissioner must receive a request described by this subsection no later than 195 days before the date the association requests the contingent surcharge to commence.
- (c) On approval by the commissioner, each insurer must assess a contingent surcharge in a percentage amount set by the commissioner to the insurer's policyholders. The contingent surcharge percentage must be applied to the premium attributable to insured property located in the catastrophe area on policies that become effective, or on multiyear policies that become effective or have an anniversary date, during the premium surcharge period when the contingent surcharge percentage will be in effect, as specified in §§5.4181, 5.4182, and 5.4184 — 5.4188 of this division (relating to Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent Surcharges, Offsets, and Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges not Subject to Commissions, respectively). The premium surcharge date specified by the commissioner must be at least 180 days after the date the commissioner issues the order under Insurance Code §2210.6132(b).
- (d) This section is part of the association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).

§5.4181. Premiums to be Surcharged.

- (a) The association surcharge percentage and the contingent surcharge percentage must be applied to:
 - (1) amounts reported as premium for the purposes of reporting under the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas;
 - (2) if not reported as described in paragraph (1) of this subsection, those additional amounts collected by insurers that are subject to premium taxation by the comptroller, including policy fees not reported as premium; and
 - (3) premium subject to surplus lines premium tax, and premium subject to independently procured premium tax.
- (b) Premium surcharges do not apply to fees that are neither reported as premium in the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas, nor subject to premium taxation by the comptroller.

§5.4182. Method for Determining the Premium Surcharges.

- (a) The methods addressed in this section relating to contingent surcharges will apply to all:
 - (1) policies written and reported under the following annual statement lines of business: fire; allied lines; farm and ranch owners; homeowners; commercial multiple peril (nonliability portion); private passenger auto no fault (personal injury protection (PIP)), other private passenger auto liability, and private passenger auto physical damage; and commercial auto no fault (PIP), other commercial auto liability, and commercial auto physical damage; and
 - (2) personal and commercial risks assigned by TAIPA under Insurance Code Chapter 2151.
- (b) The methods addressed in this section relating to association surcharges will apply to all association policies.
- (c) The association surcharge will be determined by applying the association surcharge percentage to the policy premium determined in §5.4181 of this division (relating to Premiums to be Surcharged), attributable to association-insured property located in the catastrophe area.
- (d) The contingent surcharge will be determined by applying the contingent surcharge percentage to the policy premium determined in §5.4181 of this division, attributable to insured property located in the catastrophe area, including automobiles principally garaged in the catastrophe area.
- (e) In cases where the policy is composite rated and the premium attributable to insured property located in the catastrophe area cannot be reasonably determined, the insurer must determine the contingent surcharge based on the insured address. If the insured address is within a designated catastrophe area, then the insurer must determine the contingent surcharge by applying the contingent surcharge percentage to the full policy premium determined in §5.4181 of this division. If the insured address is not within a designated catastrophe area, then no premium surcharge applies to the policy.

§5.4184. Application of Premium Surcharges.

- (a) When assessed under Insurance Code §2210.6132, the contingent surcharges must apply to all policies with insured property in the catastrophe area that are issued or renewed with effective dates in the surcharge period specified in the commissioner's order.
- (b) For association policies that meet the requirements of §5.4912 of Division 7 of this subchapter (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131), association surcharges must apply to all association policies that are in effect on the surcharge date. For association policies that do not yet meet the requirements of §5.4912 of Division 7 of this subchapter, association surcharges must apply to all association policies that are issued or renewed with effective dates in the surcharge period determined under §5.4126 of this division (relating to Determination of the Association Surcharge Percentage).
- (c) There are two exceptions to the requirements of subsections (a) and (b) of this section:
 - (1) insurers must not surcharge policies, and are not responsible for collecting premium surcharges on policies that did not go into effect or were canceled as of the inception date of the policy; and
 - (2) for multiyear policies, the premium surcharge in effect on the effective date of the policy, or the anniversary date of the policy, must be applied to the 12-month premium for the applicable policy period.
- (d) Premium surcharges collected under Insurance Code §2210.6132 are refundable.

- (1) If the policy is canceled, an amount of the contingent surcharge that is proportionate to the returned premium must be refunded to the policyholder; however,
 - (2) instead of a refund of the contingent surcharge, the insurer may credit the return contingent surcharge against amounts due the insurer but unpaid by the policyholder; and
 - (3) an additional contingent surcharge will not apply to a policy that was canceled after the effective date of the policy, and is later reinstated, if the contingent surcharge was paid in full. If the policyholder did not pay the contingent surcharge in full, the policyholder must pay the contingent surcharge that is due but unpaid before the insurer may reinstate the policy. For purposes of this section a policy is reinstated if it covers the same period as the original policy without a lapse in coverage, except as provided in Insurance Code §551.106.
- (e) If a midterm policy change increases the premium on the policy, the policyholder must pay an additional contingent surcharge for the increased premium attributable to insured property located in the catastrophe area, which will be determined by applying the applicable contingent surcharge percentage to that portion of the additional premium attributable to insured property located in the catastrophe area.
 - (f) If a midterm policy change decreases the premium, the policyholder is due a refund of the contingent surcharge for the decreased premium attributable to insured property located in the catastrophe area, which must be determined by applying the applicable contingent surcharge percentage to that portion of the return premium attributable to insured property located in the catastrophe area. The insurer must credit or refund the excess contingent surcharge to the policyholder within 20 days of the date of the transaction, except as provided by subsection (g) of this section. The insurer, or surplus lines agent allowed by an affiliated surplus lines insurer to credit or refund excess surcharges, may credit any refund paid or credited to the policyholder to the association through the offset process described in §5.4187 of this division (relating to Offsets).
 - (g) Surcharges or refunds must apply to all premium changes resulting from exposure or premium audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration. On inception of the policy, the contingent surcharge must be collected on the deposit premium paid. If, after exposure or premium audit, retrospective rating adjustment, or similar adjustment after policy expiration, an additional premium is required, an additional contingent surcharge must be paid. If, after exposure or premium audit, retrospective rating adjustment, or other similar adjustment after policy expiration, the deposit premium exceeds the actual premium, the excess contingent surcharge must be refunded to the policyholder, and the insurer, or surplus lines agent allowed by an affiliated surplus lines insurer to credit or refund excess surcharges, may credit any refund paid to the association through the offset process described in §5.4187 of this division. Additional contingent surcharges and refunds must be determined by applying the contingent surcharge percentage in effect on the inception date of the policy, or the anniversary date of the policy in the case of multiyear policies, to the additional premium (or return premium) attributable to insured property located in the catastrophe area.
 - (h) Even if a contingent surcharge was in effect on the inception date of the policy, or the anniversary date in the case of multiyear policies, no additional contingent surcharges or refunds will apply to premium changes resulting from exposure or premium audits, retrospective rating adjustments, or other similar adjustments that occur when there is no contingent surcharge in effect.
 - (i) An affiliated surplus lines insurer may allow a surplus lines agent to credit or refund contingent surcharges on its behalf. An affiliated surplus lines insurer, or surplus lines agent allowed to credit or refund contingent surcharges on its behalf, must credit or refund the excess surcharge to the policyholder under subsections (f) and (g) of this section not later than the last day of the month following the month in which the corresponding transaction was effective.
 - (j) An affiliated surplus lines insurer that allows an agent to credit or refund contingent surcharges on its behalf under subsection (g) of this section may be held liable by the department for the failure of its agent to comply with this section.

§5.4185. Mandatory Premium Surcharge Collection.

- (a) Insurers may not pay the surcharges instead of surcharging their policyholders; however, an insurer may remit a surcharge prior to collecting the surcharge from its policyholder.
- (b) Insurers must collect the contingent surcharges proportionately as the insurer collects the premium.

- (c) The association must collect the association surcharge in full when due for policies compliant with §5.4912 (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131) of Division 7 of this subchapter. For policies not yet compliant with §5.4912, the association must collect association surcharges in full no later than the effective date of the policy.
- (d) Under Insurance Code §§2210.612(d), 2210.613(d), and 2210.6131(d), the failure of a policyholder to pay the association surcharge constitutes failure to pay premium for the purposes of policy cancellation.
- (e) Before insurers may apply funds in a given payment to premiums, they must either:
 - (1) apply funds in the payment to any contingent surcharges due in that payment; or
 - (2) apply funds in the payment to any contingent surcharges due in that payment in proportion to the amount of contingent surcharges due in that payment.

§5.4186. Remittance of Contingent Surcharges.

- (a) Except as provided in §5.4143 of this division (relating to Premium Surcharge Trust Funds), insurers must remit to the association the aggregate amount of contingent surcharges as provided by this section. An affiliated surplus lines insurer may allow a surplus lines agent to remit contingent surcharges to the association on its behalf in compliance with any procedures established by the association relating to contingent surcharge remissions from surplus lines agents.
- (b) Insurers, or surplus lines agents allowed by affiliated surplus lines insurers to remit contingent surcharges under subsection (a) of this section, must remit all surcharges not later than the last day of the month following the month in which the corresponding written premium transaction was effective.
- (c) Insurers and agents may not allow or require policyholders to make separate payments for the surcharge amounts that are payable to the association or the premium surcharge trust fund or funds.
- (d) Subsection (b) of this section applies to all insurers regardless of whether the policyholder paid the contingent surcharge through an agent of the insurer or the policyholder paid the contingent surcharge directly to the insurer.
- (e) An affiliated surplus lines insurer that allows an agent to remit contingent surcharges to the association under subsection (a) of this section may be held liable by the department for the failure of its agent to remit the contingent surcharges or timely remit the contingent surcharges, under subsection (b) of this section.

§5.4187. Offsets.

- (a) An insurer may credit a contingent surcharge amount on its next remission to the association if the insurer has already remitted the amount to the association for:
 - (1) the portion of the surcharge the insurer was not able to collect from the policyholder, if the policy was canceled or expired;
 - (2) the portion of the surcharge remitted to the association, or deposited directly in the premium surcharge trust fund, that was later refunded to the policyholder as a result of a rescission, midterm cancellation, or midterm policy change, as described in §5.4184 of this division (relating to Application of Premium Surcharges); or
 - (3) the portion of a surcharge remitted to the association, or deposited directly in the premium surcharge trust fund or funds, in excess of a deposit premium as described in §5.4184 of this division.
- (b) An agent may not offset payment of a contingent surcharge or an association surcharge to the insurer for any reason; however, a surplus lines agent allowed by an affiliated surplus lines insurer to remit contingent surcharges to the association on its behalf under §5.4186(a) of this division (relating to Remittance of Contingent Surcharges), may offset as provided in this section.

§5.4188. Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges Not Subject to Commissions.

- (a) As provided by Insurance Code §§2210.612(d), 2210.613(d) and 2210.6131(d), association surcharges are not subject to either premium taxes or agents' commissions.

- (b) The association may not increase association surcharges for premium taxes or commissions, and agents may not collect or charge commissions for association surcharges.
- (c) Insurers may not increase contingent surcharges for commissions, and agents, including a surplus lines agent, may not collect or charge commissions for contingent surcharges.
- (d) Insurers may increase contingent surcharges in an amount equal to any premium or maintenance tax attributable to the contingent surcharge and owed to the comptroller.

§5.4189. Notification Requirements.

- (a) Insurers must provide written notice to policyholders receiving a contingent surcharge that their policy contains a surcharge and the dollar amount of the surcharge. The notice must read: "Texas Insurance Code Section 2210.6132 authorizes a premium surcharge to be added to certain property and casualty insurance policies providing coverage in the catastrophe area to pay the debt service on public securities issued to pay Texas Windstorm Insurance Association claims resulting from a catastrophic event. A premium surcharge {in the amount of \$ _____} has been added to your premium. Should your policy be canceled by you or the insurer prior to its expiration date, a proportionate amount of the premium surcharge will be refunded to you."
- (b) The association must provide written notice to policyholders receiving an association surcharge that their policy contains a surcharge and the dollar amount of the surcharge. The notice must read: "Texas Insurance Code Sections 2210.612, 2210.613, and 2210.6131 require a premium surcharge be added to Texas Windstorm Insurance Association policies to pay the debt service on public securities issued to pay association claims resulting from a catastrophic event. A premium surcharge {in the amount of \$ _____} has been added to your premium. Should your policy be canceled by you or the association prior to its expiration date, the premium surcharge will not be refunded to you. Failure to pay the surcharge is grounds for cancellation of your policy."
- (c) Except as provided in subsection (e) of this section, notices required under subsection (a) of this section must:
 - (1) be provided at the time the policy is issued, in the case of new business;
 - (2) be provided with the renewal notice, in the case of renewal business;
 - (3) be provided within 20 days of the date of the transaction for any midterm change in the premium surcharge; and
 - (4) use at least 12-point font and either be contained on a separate page or shown in a conspicuous location on the declarations page.
- (d) Notices required under subsection (b) of this section must:
 - (1) no later than 14 days after the date described in §5.4126(b)(8) of this division (relating to Determination of the Association Surcharge Percentage), be provided to policyholders whose policies comply, as of the date described in §5.4126(b)(8), with §5.4912(a) of Division 7 of this subchapter (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131);
 - (2) be provided with the renewal notice to policyholders whose policies will renew during the period described by paragraphs (8) and (9) of §5.4126(b);
 - (3) be provided at the time a new policy is issued, for new policies that go into effect during the period described by paragraphs (8) and (9) of §5.4126(b); and
 - (4) use at least 12-point font and either be contained on a separate page or shown in a conspicuous location on the declarations page.
- (e) An affiliated surplus lines insurer, or surplus lines agent allowed to provide notices on its behalf, must provide the notice required under subsection (c)(3) of this section to the policyholder not later than the last day of the month following the month in which the transaction for any midterm change in the premium surcharge became effective.
- (f) An affiliated surplus lines insurer that allows an agent to provide notices required under this section may be held liable by the department for the failure of its agent to comply with this section.

§5.4190. Annual Premium Surcharge Report.

- (a) This section applies to an insurer that, during the calendar year, wrote any of the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial

multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; or commercial automobile physical damage.

- (b) No later than 90 days following the end of a calendar year in which an association surcharge was in effect, the association must provide the department with an annual premium surcharge report for the calendar year.
- (c) No later than 90 days following the end of a calendar year in which a contingent surcharge was in effect, each insurer must provide the association with an annual premium surcharge report for the calendar year unless contingent surcharges were in effect for less than 45 days within the calendar year.
- (d) Annual premium surcharge reports must provide information for each insurance company writing property or casualty insurance in the State of Texas, including affiliated surplus lines insurers, and affiliated insurers not authorized to engage in the business of insurance that issued independently procured insurance policies covering insured property in the State of Texas.
- (e) Annual premium surcharge reports must provide information for the following annual statement lines of business: fire; allied lines; farmowners multiple peril; homeowners multiple peril; commercial multiple peril (nonliability portion); private passenger automobile no fault (PIP); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; or commercial automobile physical damage for which the insurer reported premium for the applicable calendar year.
- (f) Annual premium surcharge reports must provide the following information:
 - (1) the name and contact information of the individual responsible for submitting the report;
 - (2) the five-digit NAIC number of the insurance company;
 - (3) the name of the insurance company;
 - (4) for policies with effective dates, or multiyear policies with anniversary dates, within the calendar year, separately for each surcharge period in effect during the calendar year, and within each surcharge period in effect during the calendar year for all applicable lines of business:
 - (A) for all policies subject to a premium surcharge:
 - (i) the total written premium attributable to insured property located in the catastrophe area;
and
 - (ii) the total written premium attributable to insured property located outside the catastrophe area; and
 - (B) the total written premium for policies not subject to a premium surcharge because the policyholder had no insured property located in the catastrophe area;
 - (5) for policies effective in portions of the calendar year when no surcharge period was in effect, or in the case of multiyear policies with an anniversary date in portions of the calendar year when no surcharge was in effect, the total written premium;
 - (6) the total amount of premium surcharges collected during the applicable calendar year; and
 - (7) the total amount of premium surcharges remitted to the association during the applicable calendar year.
- (g) The association must:
 - (1) review the reports submitted to it under this section as necessary to determine:
 - (A) the consistency of contingent surcharges actually remitted to the association or deposited directly into the premium surcharge trust fund or funds, with contingent surcharges shown in the reports as collected and the contingent surcharges shown in the reports as remitted to the association or deposited directly into the premium surcharge trust fund or funds; and
 - (B) the consistency of premiums shown in the reports as attributable to the catastrophe area with contingent surcharges shown in the reports as collected by the insurer, given the requirements regarding the determination of contingent surcharges in this division;
 - (2) inform the department of any insurer the association believes may not be in compliance with the rules established under this division; and
 - (3) before July 1 on each year reports are required to be submitted to the association, provide an aggregate summary of the reports to the department.

§5.4191. Premium Surcharge Reconciliation Report

- (a1) This section applies to an insurer that, during an applicable calendar year, wrote any or all of the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; or commercial automobile physical damage.
- (b2) On a written request from the department, an insurer must provide the department with a premium surcharge reconciliation report for the year specified by the department in its request.
- (c3) Reconciliation reports must be provided to the department within 15 working days after the date the request is received by the insurer.
- (d4) Reconciliation reports must consist of information concerning premiums written and surcharges collected, separately for each applicable surcharge period, including periods in which no premium surcharges were in effect, within the specified year for:
 - (1A) premium written at policy issuance for policies effective within the year, including anniversary dates within the year on multiyear policies, separately for:
 - (Ai) premium on policies subject to a premium surcharge, including premium attributable to insured property located both in and outside of the catastrophe area; and
 - (Bi) premium on policies not subject to a premium surcharge, including premium attributable to insured property located both in and outside of the catastrophe area;
 - (2B) premium written due to midterm coverage changes occurring within the specified time period separately for:
 - (Ai) premium increases on policies subject to a premium surcharge, including premium attributable to insured property located both in and outside of the catastrophe area;
 - (Bi) premium decreases on policies subject to a refund or credit of the premium surcharge, including premium attributable to insured property located both in and outside the catastrophe area; and
 - (Cii) premium on policies not subject to a premium surcharge, including premium increases and decreases attributable to insured property located both in and outside of the catastrophe area;
 - (3C) unearned premiums returned due to midterm cancellations occurring within the specified time period separately for:
 - (Ai) return premium on policies subject to a premium surcharge, including return premium attributable to insured property located both in and outside the catastrophe area; and
 - (Bi) return premium on policies not subject to a premium surcharge, including return premiums attributable to insured property located both in and outside the catastrophe area;
 - (4D) total premium due to post term premium changes occurring within the specified time period, including adjustments caused by premium or exposure audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration, separately for:
 - (Ai) premium on policies subject to a premium surcharge, including premium attributable to insured property located both in and outside of the catastrophe area; and
 - (Bi) premium on policies not subject to a premium surcharge, including premium attributable to insured property located both in and outside of the catastrophe area;
 - (5E) separately for paragraphs (1)(A), (2)(A), and (4)(A) of this subsection, the amounts of premium surcharges collected;
 - (6F) separately for paragraphs (2)(B), (3)(A), and (4)(A) of this subsection, the amounts of premium surcharges refunded or credited to the policyholder;
 - (7G) the total amount of premium surcharges claimed as offsets by the insurer under §5.4187 of this division (relating to Offsets); and
 - (8H) the total amount of written premium for policies written in the State of Texas as reported in the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas.
- (e5) Nothing in this section limits the department's authority to obtain information from insurers under the Insurance Code.

§5.4192. Data Collection

- (a1) The department may request from each insurer the information necessary to enable the department to determine the premium surcharge percentage applicable to policyholders with insured property located in the catastrophe area.
- (b2) For lines of insurance subject to this division for policies in force on or after October 1, 2011, each insurer must maintain sufficient records to report, for policies where the premium surcharge was, or would be determined under this division, the total written premium attributable to insured property located in the catastrophe area.
- (c3) When possible, and practical, the department will obtain information from the Texas Surplus Lines Stamping Office prior to requesting information from affiliated surplus lines insurers.
- (d4) Nothing in subsection (c) of this section should be read to mean that subsections (a) and (b) of this section do not apply to affiliated surplus lines insurers.
- (e5) Nothing in this section limits the department's authority to obtain information from insurers under the Insurance Code.

Texas Administrative Code

Title 28. Insurance

Part 1. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter E. Texas Windstorm Insurance Association

Division 42. Consumer Assistance; Claim Processes

§5.4200. Definitions

- (1a) Appraiser--A person who is qualified to be an appraiser under §5.4212 of this title (relating to Appraisal Process--Appraiser Qualifications and Conflicts of Interest) and is selected by the association or a claimant to participate in the appraisal process.
- (2b) Association--Texas Windstorm Insurance Association. "Association" includes any authorized representative of the Texas Windstorm Insurance Association.
- (3c) Claimant--A person who makes a claim under an association policy.
- (4d) Department or TDI--The Texas Department of Insurance.
- (5e) Good cause--§5.4202 of this title (relating to Good Cause Extensions Under ~~Insurance Code §2210.205 the Act~~) defines good cause for purposes of ~~Insurance Code §2210.205 the Act~~.
- (6f) Mediator--A person who is qualified to be a mediator under §5.4232 of this title (relating to Mediation Process - Mediator Qualifications and Conflicts of Interest).
- (7g) Mediator roster--The roster of mediators maintained by the department.
- (8h) Mediator selection panel--A short list of potential mediators from the mediator roster from which the department will select a mediator.
- (9i) Party--The association or the claimant. "Party" includes employees and other representatives of a party.
- (10j) Umpire--A person who is qualified to be an appraisal umpire under §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest) and is selected by the appraisers or the department to participate in the appraisal process.
- (11k) Umpire roster--The roster of umpires maintained by the department.
- (12l) Umpire selection panel--A short list of potential umpires from the umpire roster from which the department will select an umpire.

§5.4201. Coastal Outreach and Assistance Services Team (COAST) Program

- (a) Establishment. The Texas Department of Insurance (department) establishes the Coastal Outreach and Assistance Services Team (COAST) Program to provide information and educational programs to assist persons insured under ~~Chapter 2210 of the Insurance Code Act~~ with the claim processes prescribed under Subchapter L-1, ~~Chapter 2210~~ of the ~~Insurance Code Act~~.
- (b) Administration. The COAST Program is administratively attached to the department and will be administered by the department.
- (c) Staffing. The COAST Program will include an ombudsman familiar with the claim processes prescribed under Subchapter L-1, ~~Chapter 2210~~, of the ~~Insurance Code Act~~, as well as sufficient staff to support its purpose. If a catastrophic event occurs, the COAST Program may expand as necessary to support the increased number of policyholders requiring assistance.
- (d) Funding. The COAST Program will be funded by the Texas Windstorm Insurance Association (the Association).
 - (1) Annual budget.
 - (A) The funding year shall be from May 1 of each year to April 30 of the following year.
 - (B) Not later than March 1 of each year, the department shall prepare and submit to the Commissioner of Insurance (commissioner) a budget for the COAST Program, including approval of all expenditures incurred to administer and operate the COAST Program. The department may include ongoing ombudsman activities related to a prior catastrophic event in the annual budget request. The commissioner will adopt or modify and adopt the budget not later than April 1 of each year.
 - (C) Not later than May 1 of each year, the Association shall transfer the budgeted amount adopted by the commissioner to the department for the COAST Program.
 - (2) Amended budget.
 - (A) Not later than 60 days after a catastrophic event, the department shall:
 - (i) prepare and submit an amended budget to the commissioner for approval, including staffing requirements and expenditures necessary to administer and operate the COAST Program; and
 - (ii) report to the commissioner the number of claimants eligible for COAST Program services.

- (B) The commissioner may modify the amended budget before adopting it.
- (C) Within 30 days after the commissioner adopts the amended budget, the Association must transfer the additional money required by the amended budget to the department for the COAST Program.
- (3) Return of unexpended funds. Not later than April 30 of each year, the department must return to the Association any unexpended funds that the COAST Program received from the Association in the previous year.
- (e) Services.
 - (1) The COAST Program may provide to persons insured under Chapter 2210 of the [Insurance Code Act](#) information and educational programs through means the COAST Program determines to be necessary and appropriate. Possible means include:
 - (A) informational materials;
 - (B) toll-free telephone numbers;
 - (C) public meetings;
 - (D) outreach centers;
 - (E) the Internet; and
 - (F) other reasonable means.
 - (2) The COAST Program shall prepare and make available to each person insured under [Chapter 2210 of the Insurance Code Act](#) information describing the functions of the COAST Program.
- (f) Notice Requirement. The Association must provide each person insured by the Association on or after November 27, 2011, notice of the operation of the COAST Program. The Association shall fulfill this requirement by complying with paragraphs (1), (2), and (3) of this subsection.
 - (1) The Association must include the notices set forth in subsection (g)(1) and (2) of this section with each policy delivered, issued for delivery, renewed, or otherwise processed by the Association. Notwithstanding §1.601(a)(3) of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures), the Association must fulfill this requirement by printing the notice on a separate piece of paper to be included with the policy or by incorporating the notice into the Important Notice required to be attached to the policy under §1.601 of this title.
 - (2) The Association must include the notice set forth in subsection (g)(1) of this section with each written communication acknowledging receipt of a claim. The Association must fulfill this requirement by printing the notice on a separate piece of paper to be included with the communication acknowledging receipt of a claim or by incorporating the notice into the acknowledgement.
 - (3) The Association must include the notice set forth in subsection (g)(1) of this section with each written communication accepting or denying coverage of a claim, in whole or in part, that is required to be provided to the claimant under the [Insurance Code Act](#) §2210.573(d). The Association must fulfill this requirement by printing the notice on a separate piece of paper to be included with the acceptance or denial communication or by incorporating the notice into the acceptance or denial document.
- (g) Notice. The notice required by subsection (f) of this section must include the following text and be in at least 10 point type.
 - (1) “The Texas Department of Insurance has established the Coastal Outreach and Assistance Services Team (COAST) Program to assist consumers with understanding the TWIA claim process. To obtain assistance from the COAST Program, please refer to the COAST Program website at www.tdi.texas.gov/COAST; email ConsumerProtection@tdi.state.tx.us@tdi.texas.gov; call toll-free 1-855-352-6278; or write to COAST Program--MC 111-1A, Texas Department of Insurance, PO Box 149104, Austin, TX 78714-9104.”
 - (2) “El Departamento de Seguros de Texas ha establecido el Programa de Alcance Comunitario y Servicios de Asistencia para el Área Costera (Coastal Outreach and Assistance Services Team (COAST) Program, por su nombre y siglas en inglés) para ayudar a los consumidores a entender el proceso de las reclamaciones de TWIA. Para obtener ayuda del Programa COAST, visite el sitio Web del Programa COAST en www.tdi.texas.gov/COAST; por medio de correo electrónico a ConsumerProtection@tdi.state.tx.us@tdi.texas.gov; o llame gratis al 1-855-352-6278; o escriba al Programa COAST--MC 111-1A, Texas Department of Insurance, PO Box 149104, Austin, TX 78714-9104.”

§5.4202. Good Cause Extensions Under ~~Insurance Code~~the Act §2210.205.

- (a) For purposes of ~~Insurance Code~~the Act §2210.205 and this section, good cause means objective facts beyond the insured's control that reasonably caused the insured to fail to file a claim under the policy within the one-year claim-filing deadline.
- (b) If an insured shows good cause, the commissioner may extend the one-year claim-filing period set by ~~Insurance Code~~the Act §2210.205(b). An extension granted under this section is effective on the date the one-year claim-filing period expires and may not exceed 180 days. The extension is limited to the claim for which it is granted.
- (c) A request for an extension under this section must:
 - (1) be sent in writing to the department, under §5.4251 of this title (relating to Requests and Submissions to the Department);
 - (2) describe the good cause that caused the insured to miss the one-year claim-filing deadline; and
 - (3) be signed by the insured or the insured's legal representative.

§5.4211. Appraisal Process

- (a) Applicability. Sections 5.4211-5.4222 of this title are the appraisal process and apply when:
 - (1) the association has accepted coverage for a claim, in full or in part;
 - (2) the claimant disputes the amount of loss the association will pay for the accepted portion of the claim; and
 - (3) the claimant demands an appraisal under the association policy within the time frame allowed by ~~Insurance Code~~the Act §2210.574.
- (b) Appraisal explanation. The association must include an explanation of the appraisal process with the notice accepting or denying coverage under ~~Insurance Code~~the Act §2210.573.
- (c) Appraiser selection. The association and the claimant must each select an appraiser who is independent and qualified under §5.4212 of this title (relating to Appraisal Process--Appraiser Qualifications and Conflicts of Interest).
- (d) Appraiser fee information. No later than five days after hiring an appraiser, each party must tell the other party the fees to be charged by the appraiser.
- (e) Umpire selection.
 - (1) The appraisers must select an umpire who is independent and qualified under §5.4214 of this title (relating to Appraisal Process--Umpire Qualifications and Conflicts of Interest).
 - (2) If the appraisers are unable to agree on an umpire, either appraiser may request the department to select an umpire. The appraiser must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must include the following information:
 - (A) the type of policy;
 - (B) a description of the claim and, if known, the claimed value of the covered loss;
 - (C) the association's claim acceptance letter, including the amount the association will pay for the loss; and
 - (D) any other information that the department requests.
- (f) Umpire participation. The selected umpire must participate in the resolution of the dispute if the appraisers fail to agree on a decision.
- (g) Decision. If the appraisers agree on the amount of loss, their decision is binding on the parties as to the amount of loss the association will pay for the claim. If the parties cannot agree, and the umpire participates, an itemized decision agreed to by any two of these three is binding on the parties as to the amount of loss the association will pay for the claim. Parties may challenge the decision only as permitted by ~~Insurance Code~~the Act §2210.574.

§5.4212. Appraisal Process--Appraiser Qualifications and Conflicts of Interest

- (a) Qualifications. To qualify as an appraiser, a person must be one of the following:
 - (1) an engineer or architect with experience and training in building construction, repair, estimating, or investigation of property damage;

- (2) an adjuster or public adjuster with experience and training in estimating property damage; or
 - (3) a general contractor with experience and training in building construction, repair, or estimating property damage.
- (b) Potential conflicts. A potential conflict of interest exists when an appraiser:
- (1) is a current or former association or claimant employee;
 - (2) is a current or former association or claimant contractor or contractor's employee, except that it is not a potential conflict for the appraiser to be a contractor solely to work on the pending appraisal;
 - (3) is related within a degree of relationship described by Government Code §573.002 to:
 - (A) a current or former association employee;
 - (B) a current or former association contractor or contractor's employee;
 - (C) the claimant or a representative of the claimant;
 - (D) a current or former claimant employee; or
 - (E) a current or former claimant contractor or contractor's employee;
 - (4) is a current association policyholder;
 - (5) currently has an open claim or acts as a representative or public adjuster on an open claim with the association, or previously filed a claim with the association;
 - (6) is a current employee or contractor of an insurance company or public insurance adjusting company;
 - (7) currently is a party or represents a party to a lawsuit with the association, or was a party or represented a party to a lawsuit with the association within the previous five years;
 - (8) adjusted the loss or acted as a public adjuster on the loss involved in the claim;
 - (9) is related to the adjuster or public adjuster who adjusted the loss;
 - (10) is an employee of the adjusting company or public insurance adjusting company that adjusted the loss or represented the claimant on the loss; or
 - (11) has any other direct or indirect interest, financial or otherwise, of any nature that substantially conflicts with the appraiser's duties.

§5.4213. Appraisal Process--Appraiser Obligations

- (a) Conflicts. An appraiser must disclose to both parties any potential conflicts of interest no later than the fifth day after being hired, and before the appraiser begins work on the appraisal. Potential conflicts of interest are listed in §5.4212 of this title (relating to Appraisal Process--Appraiser Qualifications and Conflicts of Interest).
- (b) Withdrawal prohibited. After an appraiser has accepted the responsibility for an appraisal, the appraiser may not withdraw or abandon the appraisal unless compelled to do so by unanticipated circumstances that would render it impossible or impractical to continue. The appraiser may not charge a fee for services if the appraiser withdraws or abandons the appraisal.
- (c) Postponement. An appraiser must postpone the appraisal for a reasonable amount of time if a party shows good cause for a postponement.
- (d) Duties. An appraiser must:
 - (1) consider all information provided by the parties and any other reasonably available evidence material to the claim;
 - (2) follow the association insurance policy when making the appraisal decision;
 - (3) carefully decide all issues submitted for determination regarding the amount of loss; and
 - (4) give the parties and the other appraiser an itemized written appraisal.
- (e) Fairness. An appraiser must conduct the appraisal process to advance the fair and efficient resolution of the matters submitted for decisions.
- (f) Independence. An appraiser may not:
 - (1) permit outside pressure to affect the appraisal; or
 - (2) delegate the duty to decide to any other person.
- (g) Prohibited communications. An appraiser may not communicate with an appraisal umpire without including the other party or the other party's appraiser, except as permitted under §5.4220 of this title (relating to Appraisal Process--Prohibited Communications).

§5.4214. Appraisal Process--Umpire Qualifications and Conflicts of Interest

- (a) Required qualifications. To qualify as an umpire, a person must:
 - (1) be one of the following:
 - (A) an engineer or architect with experience and training in building construction, repair, estimating, or investigation of property damage;
 - (B) an adjuster or public adjuster with experience and training in estimating property damage;
 - (C) a general contractor with experience and training in building construction, repair, or estimating property damage;
 - (D) a licensed attorney; or
 - (E) a current or former judge of any Texas court of record or the State Office of Administrative Hearings; and
 - (2) not have any disqualifying conflicts of interest listed in subsection (d) of this section.
- (b) Preferred qualifications. The following qualifications are preferred:
 - (1) experience with the appraisal of property damage claims; and
 - (2) experience as an appraisal umpire on at least three property damage claims in the previous 12 months.
- (c) Potential conflicts. A potential conflict of interest exists when an umpire:
 - (1) is a former association or claimant employee or contractor or contractor's employee;
 - (2) is related within a degree of relationship described by Government Code §573.002 to:
 - (A) a former association employee;
 - (B) a former association contractor or contractor's employee;
 - (C) a former claimant employee; or
 - (D) a former claimant contractor or contractor's employee;
 - (3) is a current association policyholder;
 - (4) previously filed a claim with the association;
 - (5) is a current employee or contractor of an insurance company or public insurance adjusting company; or
 - (6) was a party or represented a party to a lawsuit with the association within the previous five years.
- (d) Disqualifying conflicts. A potential umpire has a disqualifying conflict of interest if the potential umpire:
 - (1) is a current association or claimant employee;
 - (2) is a current association or claimant contractor, or contractor's employee, except that it is not a conflict for the umpire to be a contractor solely to work on the pending appraisal;
 - (3) is related within a degree of relationship described by Government Code §573.002 to:
 - (A) a current association employee;
 - (B) a current association contractor or contractor's employee;
 - (C) the claimant or a representative of the claimant;
 - (D) a current claimant employee; or
 - (E) a current claimant contractor or contractor's employee;
 - (4) currently has an open claim, or acts as a representative or public adjuster on an open claim with the association;
 - (5) is a party to or represents a party to a current lawsuit with the association;
 - (6) adjusted the loss or acted as a public adjuster on the loss involved in the claim;
 - (7) is related to the adjuster or public adjuster who adjusted the loss;
 - (8) is an employee of the adjusting company or public insurance adjusting company that adjusted the loss or represented the claimant on the loss; or
 - (9) has any other direct or indirect interest, financial or otherwise, of any nature that substantially conflicts with the umpire's duties.

§5.4215. Appraisal Process--Umpire Roster

- (a) Eligibility. To be placed on the umpire roster, a person must register with the department and must meet the qualifications in §5.4214 of this title (relating to Appraisal Process--Umpire Qualifications and Conflicts of Interest).
- (b) Registration. The registration must include contact information and details about:

- (1) the person's training and experience related to building construction, repair, estimating, or investigating property damage;
 - (2) any training and experience related to estimating property damage claims;
 - (3) whether the person's experience is with residential or commercial property damage;
 - (4) any relevant licenses or certifications;
 - (5) a general description of the approximate number, type of policies, and value and complexity of property damage claims on which the applicant worked over the previous three years;
 - (6) the counties in which the person is willing to work;
 - (7) the type of policies, and value and complexity of claims on which the person is willing to work;
 - (8) potential conflicts of interest, under §5.4214 of this title;
 - (9) any professional disciplinary actions or criminal convictions; and
 - (10) an up-to-date biography, resume, or curriculum vitae.
- (c) Notice. A person is not on the umpire roster until the department sends written notice of placement on the roster.
- (d) Limited number. The department may limit the number of umpires on the roster.
- (e) Publication. The department will publish the umpire roster on the department's website. Published roster information will include an umpire's name, contact information, preferred types of claims, and preferred geographic areas.
- (f) Disqualifying conflicts. The umpire must notify the department of a disqualifying conflict of interest under §5.4214 of this title within 10 days of learning about the conflict.
- (g) Term. An umpire will be on the umpire roster for a term of three years, except as provided under §5.4216 of this title (relating to Appraisal Process--Removal of Umpire from Roster). To remain on the roster for additional terms, an umpire must submit a new registration to the department.
- (h) Submissions. Notices and registrations sent to the department under this section must comply with §5.4251 of this title (relating to Requests and Submissions to the Department).

§5.4216. Appraisal Process--Removal of Umpire from Roster

- (a) Voluntary removal. An umpire may request removal from the roster at any time. The umpire must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department).
- (b) Removal by department. The department may, in its sole discretion, remove an umpire from the umpire roster for:
- (1) alleged dishonest, incompetent, fraudulent, or unethical behavior;
 - (2) alleged failure to respond promptly and completely to requests from the department and where the actions or failure to act are counter to the purpose of the appraisal;
 - (3) a disciplinary action by any other agency or disciplinary authority against the umpire, regardless of whether the agency or disciplinary authority's regulation relates to the appraisal;
 - (4) conviction of, or accepting deferred adjudication for, a crime under state or federal law;
 - (5) a disqualifying conflict of interest listed in §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest);
 - (6) failure to comply with any requirement of this title; or
 - (7) other factors relevant to the umpire's qualifications, conflicts of interest, or performance.

§5.4217. Appraisal Process--Umpire Selection by Department

- (a) Applicability. This section applies when the appraisers are unable to agree on an umpire and a party requests the department to select an umpire.
- (b) Notice. The department will notify at least five umpires of possible inclusion on an umpire selection panel.
- (c) Factors. When selecting an umpire for the umpire selection panel, the department may consider:
- (1) the umpire's preferred geographic locations and types of claims;
 - (2) the proximity of the claimant and the umpire;
 - (3) the umpire's areas of training and expertise;
 - (4) the extent of the umpire's experience with appraisal and with property damage claims;
 - (5) the subject of the dispute;

- (6) the type of policy;
 - (7) the value and complexity of the claim;
 - (8) any conflicts of interest; and
 - (9) other factors relevant to the dispute.
- (d) Umpire's response. Each umpire notified under subsection (b) of this section must respond to the department no later than the fifth day after receiving the notice.
- (1) The umpire's response must state whether the umpire will accept or reject selection as umpire for the appraisal; and
 - (2) provide:
 - (A) an up-to-date resume, curriculum vitae, or brief biographical sketch of the umpire;
 - (B) a statement of whether the umpire is insured by the association;
 - (C) a description of the nature and extent of any prior knowledge the umpire has of the dispute;
 - (D) a description of any contacts with either party, including association employees, within the previous three years;
 - (E) a description of other known potential conflicts of interest listed in §5.4214 of this title (relating to Appraisal Process--Umpire Qualifications and Conflicts of Interest); and
 - (F) any new disqualifying conflicts of interest listed in §5.4214 of this title.
- (e) Umpire selection panel. From the information provided, the department will determine which umpires will be on the umpire selection panel. The department will send the umpire selection panel to each party and each appraiser, along with the information the listed umpires provided.
- (f) Selection by agreement. The appraisers may select an umpire from the umpire selection panel. If the appraisers agree on an umpire, the association must inform the department no later than the third day after the agreement.
- (g) Selection if the appraisers fail to agree. If the appraisers are unable to agree on an umpire from the umpire selection panel:
- (1) each appraiser or party may object to umpires on the umpire selection panel under §5.4252(a)(1)(A) and (2)(A) of this title (relating to Objections); and
 - (2) the department will select an umpire from the umpires on the umpire selection panel that neither appraiser has objected to.
- (h) Notice. The department will notify the umpire selected under subsection (f) or (g) of this section and give the umpire the claim information provided under §5.4211 of this title (relating to Appraisal Process).

§5.4218. Appraisal Process--Umpire Obligations

- (a) Conflicts. An umpire must disclose to both parties any potential conflicts of interest. Conflicts of interest are listed in §5.4214 of this title (relating to Appraisal Process--Umpire Qualifications and Conflicts of Interest). The umpire must disclose the conflicts of interest no later than the fifth day after being hired, and before the umpire begins work. A person may not serve as umpire in an appraisal for which the person has a disqualifying conflict of interest.
- (b) Work. The umpire may begin work only if the association's appraiser and the claimant's appraiser fail to reach an agreement on the appraisal amount and tell the umpire in writing to begin work.
- (c) Review information. The parties and appraisers may request the umpire to review any information related to the claim, including itemized estimates and supporting documents such as photographs and diagrams. The umpire must review in detail all information the appraisers and parties submit related to the dispute, including the itemized appraisals. At a party's request, the umpire may also consider any conflicts of interest or objections to appraisers. The umpire must allow each appraiser a fair opportunity to present evidence and argument. The umpire may ask questions, and request documents or other evidence, including expert reports.
- (d) Limited scope. The umpire's work may only cover items about which the two appraisers disagree. The umpire must review the differences and seek agreement with one or both appraisers regarding the disputed items. The umpire may accept either appraiser's scope, quantities, values, or costs on items in dispute or may develop an independent decision on an item. The umpire may not visit the claimant's property without agreement from both appraisers.
- (e) Decision. An itemized decision agreed to by both appraisers or by one appraiser and the umpire is binding on the parties as to the amount of loss the association will pay for the claim. The umpire may enter into an

itemized decision with one or both appraisers on a compromise basis. The umpire can issue a decision if agreement is reached on the final total, even if there is disagreement on some of the individual items. The umpire must promptly give the parties and the appraisers an itemized written decision.

- (f) Ethics. After accepting the responsibility to be the umpire for an appraisal, the umpire:
 - (1) may not withdraw or abandon the appraisal unless compelled to do so by unanticipated circumstances that would render it impossible or impractical to continue;
 - (2) may not be present or participate in settlement discussions unless requested by both parties; and
 - (3) must decide all matters fairly, exercising independent judgment and utmost integrity. An umpire may not permit outside pressure to affect the appraisal and may not delegate the umpire's decision under subsection (e) of this section to any other person.
- (g) Fees. The umpire must disclose all fees and must state whether the umpire charges for a minimum number of hours. The umpire may specify different charges for different types or values of claims. The parties may not pay the umpire on a contingent fee basis, percentage of the decision, barter arrangement, gift, favor, or in-kind exchange. This subsection does not apply to department-selected umpires under §5.4217 of this title (relating to Appraisal Process--Umpire Selection by Department).

§5.4219. Appraisal Process--Additional Obligations for Department-Selected Umpires

- (a) Applicability. The following umpire obligations apply only when the department selects an umpire under §5.4217 of this title (relating to Appraisal Process--Umpire Selection by Department).
- (b) Notices. No later than the seventh day after receiving notice of being selected for an appraisal, the umpire must send a notice to the parties and to the appraisers. This deadline may not be extended. The notice must:
 - (1) be in writing;
 - (2) inform the parties and appraisers that the umpire has been selected;
 - (3) state whether the umpire is insured by the association; and
 - (4) inform the parties of their right to object to the umpire under §5.4252 of this title (relating to Objections).
- (c) Contract. Before the umpire begins work, the parties and the selected umpire must sign an appraisal contract. The contract must require:
 - (1) the parties and the umpire to comply with the sections of this division related to appraisal; and
 - (2) each party to pay one-half of all appraisal costs described in §5.4221 of this title (relating to Appraisal Process--Costs).
- (d) Disposition. The umpire must notify the department when the appraisal process is complete and of the appraisal decision.
- (e) Fees. The umpire must charge an hourly rate of \$150 and may charge a two-hour minimum fee.
 - (1) The parties may not pay an umpire on a contingent fee basis, percentage of the decision, barter arrangement, gift, favor, or in-kind exchange.
 - (2) The umpire may charge for reasonable incurred travel costs, including mileage, meals, and lodging, according to the travel regulations adopted by the Texas Comptroller of Public Accounts under Government Code §660.021. The umpire must provide an estimate of travel costs as an addendum to the contract under subsection (c) of this section.

§5.4220. Appraisal Process--Prohibited Communications

- (a) Ex parte communications. After an umpire is selected and before the appraisal is completely resolved:
 - (1) The umpire may not communicate separately with either party or either party's appraiser regarding the pending appraisal unless the umpire notifies the other party and gives the other party the opportunity to participate.
 - (2) No party or appraiser may communicate with the umpire regarding the pending appraisal without including the other party or appraiser, except that:
 - (A) an appraiser may identify the parties' counsel or experts;
 - (B) an appraiser may discuss logistical matters, such as setting the time and place of meetings or making other arrangements for the conduct of the proceedings. The appraiser initiating this contact with the umpire must promptly inform the other appraiser; or

- (C) if an appraiser fails to attend a meeting or conference call after receiving notice, or if both parties agree in writing, the opposing appraiser may discuss the claim with the umpire who is present.
- (b) Confidentiality. After an umpire is notified that the umpire may be on an umpire selection panel, the umpire may not at any time communicate any information about the appraisal with anyone besides the parties, the association, the appraisers, and the department. However, the umpire may communicate information about the appraisal with the written consent of the parties.

§5.4221. Appraisal Process--Costs

- (a) One-half per party. Each party must pay one-half of all reasonable and necessary costs incurred or charged in connection with the appraisal, including:
 - (1) appraisers' fees;
 - (2) umpire's fee; and
 - (3) umpire's travel costs.
- (b) No umpire fee before work begins. If the parties settle before the umpire begins work, the umpire may not charge a fee.
- (c) Department not responsible. The department is not responsible for any appraisal costs.

§5.4222. Appraisal Process--Extensions of Deadlines

- (a) Extensions. For good cause, the commissioner may extend any deadline in this division related to appraisal, except the deadline for the umpire to notify the parties that the umpire is insured by the association, under §5.4218 of this title (relating to Appraisal Process--Umpire Obligations).
- (b) Request for extension. To request the commissioner to extend a deadline, a party, appraiser, or umpire must send the request in writing to the department, under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must explain the good cause for the extension. Good cause includes military deployment of the claimant.
- (c) Extension limit. Deadline extensions may not exceed an aggregate of 120 days. This limit does not apply to extensions of the deadline to file an objection because an umpire is insured by the association.

§5.4231. Mediation Process

- (a) Applicability. Sections 5.4231-5.4241 of this title are the mediation process and apply when:
 - (1) the association has denied coverage for a claim, in full or in part;
 - (2) the claimant disputes the denial and gives the association a notice of intent to file suit; and
 - (3) the association has requested mediation under the association policy within the time frame allowed under ~~Insurance Code~~ [the Act](#) §2210.575.
- (b) Mediation explanation. At the same time the association requests mediation, the association must give the claimant a notice explaining the mediation process.
- (c) Mediator selection. The association and the claimant must select a mediator who is qualified under §5.4232 of this title (relating to Mediation Process - Mediator Qualifications and Conflicts of Interest). If the parties are unable to agree on a mediator, either party may request the department to select a mediator. The party must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department), and must include the following information:
 - (1) the type of policy;
 - (2) a description of the claim and, if known, the potential claim amount;
 - (3) the association's denial letter;
 - (4) the policyholder's notice of intention to file suit; and
 - (5) any other relevant information that the department requests.
- (d) Representation. The parties may participate in the mediation without an attorney. Both parties must bring a person who is authorized to settle the case. An attorney representing the association may not attend the mediation unless an attorney representing the claimant participates.
- (e) Review information. The parties may ask the mediator to review any information related to the claim, including itemized estimates and supporting documents, such as photographs and diagrams.

- (f) Rules of evidence. The rules of evidence do not apply to mediation.
- (g) Confidentiality. Unless the parties agree otherwise, all information revealed in the mediation is part of confidential settlement negotiations in anticipation of litigation. This includes any documents presented or created during the mediation.
 - (1) No one may make audio or visual recordings of the mediation.
 - (2) Parties must give any notes, other than a signed agreement between the parties made during the mediation, to the mediator to be destroyed.
 - (3) This rule does not affect the discoverability or admissibility of documents that are otherwise discoverable or admissible.
- (h) Agreement. If the parties reach an agreement in mediation, they must put the agreement in writing. Both parties must sign the agreement.
 - (1) The agreement may include parts of the claim for which the association accepts coverage.
 - (2) The agreement may be a partial agreement resolving some parts of the dispute but not others.
 - (3) A mediation agreement does not affect rights on claims for damages that were undetected at the time of the agreement.

§5.4232. Mediation Process--Mediator Qualifications and Conflicts of Interest

- (a) Required qualifications. To qualify as a mediator, a person must:
 - (1) have completed a 40-hour basic mediation course:
 - (A) conducted by an alternative dispute resolution system described in Texas Civil Practice and Remedies Code §154.021(a)(1); or
 - (B) that complies with the mediation training standards established by the Texas Mediation Trainers Roundtable; and
 - (2) not have any disqualifying conflicts of interest listed in subsection (d) of this section.
- (b) Preferred qualifications. The following qualifications are preferred:
 - (1) has conducted at least three mediations in the previous 12 months; and
 - (2) has experience mediating property damage claims.
- (c) Potential conflicts. A potential conflict of interest exists when a mediator:
 - (1) is a former association or claimant employee;
 - (2) is a former association or claimant contractor or contractor's employee;
 - (3) is related within a degree of relationship described by Government Code §573.002 to:
 - (A) a former association employee;
 - (B) a former association contractor or contractor's employee;
 - (C) a former claimant employee; or
 - (D) a former claimant contractor or contractor's employee;
 - (4) is a current association policyholder;
 - (5) previously filed a claim with the association;
 - (6) is a current employee or contractor of an insurance company or public insurance adjusting company; or
 - (7) was a party or represented a party to a lawsuit with the association within the previous five years.
- (d) Disqualifying conflicts. A potential mediator has a disqualifying conflict of interest if the mediator:
 - (1) is a current association or claimant employee, contractor, or contractor's employee, except that it is not a conflict for the mediator to be a contractor solely to serve as mediator for the pending mediation;
 - (2) is related within a degree of relationship described by Government Code §573.002 to:
 - (A) a current association employee;
 - (B) a current association contractor or contractor's employee;
 - (C) the claimant or a representative of the claimant;
 - (D) a current claimant employee; or
 - (E) a current claimant contractor or contractor's employee;
 - (3) currently has an open claim, or acts as a representative or public adjuster on an open claim with the association;
 - (4) is a party to or represents a party to a current lawsuit with the association;

- (5) adjusted the loss or acted as a public adjuster on the loss involved in the claim, is related to the adjuster or public adjuster who adjusted the loss, or is an employee of the adjusting company or public insurance adjusting company that adjusted the loss or represented the claimant on the loss; or
- (6) has any other direct or indirect interest, financial or otherwise, of any nature that substantially conflicts with the mediator's duties.

§5.4233. Mediation Process--Mediator Roster

- (a) Eligibility. To be placed on the mediator roster, a mediator must register with the department and must meet the qualifications in §5.4232 of this title (relating to Mediation Process--Mediator Qualifications and Conflicts of Interest).
- (b) Registration. The registration must include contact information and details about:
 - (1) the mediator's mediation training;
 - (2) any mediation certification;
 - (3) any other relevant licenses or certifications;
 - (4) any training or experience relating to property damage claims;
 - (5) a general description of the approximate number, value, complexity, and nature of disputes mediated over the previous three years;
 - (6) the counties in which the mediator is willing to mediate;
 - (7) the types of policies, and value and complexity of claims the mediator is willing to mediate;
 - (8) potential conflicts of interest, under §5.4232 of this title;
 - (9) any professional disciplinary actions or criminal convictions;
 - (10) whether the mediator is insured by the association; and
 - (11) an up-to-date biography, resume, or curriculum vitae.
- (c) Notice. A person is not on the mediator roster until the department sends written notice of placement on the roster.
- (d) Limited number. The department may limit the number of mediators on the roster.
- (e) Publication. The department will publish the mediator roster on the department's website. Published roster information will include a mediator's name, contact information, preferred types of claims, and preferred geographic areas.
- (f) Disqualifying conflicts. The mediator must notify the department of a disqualifying conflict of interest, under §5.4232 of this title.
- (g) Term. A mediator will be on the mediator roster for a term of three years, except as provided under §5.4234 of this title (relating to Mediation Process--Removal of Mediator from Roster). To remain on the roster for additional terms, a mediator must submit a new registration to the department.
- (h) Submissions. Notices and registrations under this section must comply with §5.4251 of this title (relating to Requests and Submissions to the Department).

§5.4234. Mediation Process--Removal of Mediator from Roster

- (a) Voluntary removal. A mediator may request removal from the roster at any time. The mediator must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department).
- (b) Removal by department. The department may, in its sole discretion, remove a mediator from the mediator roster for:
 - (1) alleged dishonest, incompetent, fraudulent, or unethical behavior;
 - (2) alleged failure to respond promptly and completely to requests from the department and where the actions or failure to act are counter to the purpose of mediation;
 - (3) a disciplinary action by any other agency or disciplinary authority against the mediator, regardless of whether the agency or disciplinary authority's regulation relates to mediation;
 - (4) conviction of, or accepting deferred adjudication for, a crime under state or federal law;
 - (5) a disqualifying conflict of interest listed in §5.4232 of this title (relating to Mediation Process--Mediator Qualifications and Conflicts of Interest);
 - (6) failure to comply with any requirement of this title; or
 - (7) other factors relevant to the mediator's qualifications, conflicts of interest, or performance.

§5.4235. Mediation Process--Mediator Selection by Department

- (a) Applicability. This section applies when the parties are unable to agree on a mediator and a party requests the department to select a mediator.
- (b) Notice. The department will notify at least five mediators of possible inclusion on a mediator selection panel.
- (c) Factors. When selecting a mediator for the mediator selection panel, the department may consider:
 - (1) the mediator's preferred geographic locations and types of claims;
 - (2) the proximity of the claimant and the mediator;
 - (3) the mediator's areas of training and expertise;
 - (4) the extent of the mediator's experience with mediation and with property damage claims;
 - (5) the subject of the dispute;
 - (6) the type of policy;
 - (7) the value and complexity of the claim;
 - (8) any conflicts of interest; and
 - (9) other factors relevant to the dispute.
- (d) Mediator's response. Each mediator notified under subsection (b) of this section must respond to the department no later than the fifth day after receiving the notice. The mediator's response must state whether the mediator will accept or reject selection as mediator for the mediation; and must provide:
 - (1) an up-to-date resume, curriculum vitae, or brief biographical sketch of the mediator;
 - (2) a statement of whether the mediator is insured by the association;
 - (3) a description of the nature and extent of any prior knowledge the mediator has of the dispute;
 - (4) a description of any contacts with either party, including association employees, within the previous three years;
 - (5) a description of other known potential conflicts of interest. Potential conflicts of interest are listed in §5.4232 of this title (relating to Mediation Process--Mediator Qualifications and Conflicts of Interest); and
 - (6) any new disqualifying conflicts of interest listed in §5.4232 of this title.
- (e) Mediator selection panel. From the information provided, the department will determine which mediators will be on the mediator selection panel. The department will send the mediator selection panel to each party, along with the information the listed mediators provided.
- (f) Selection by agreement. The parties may select a mediator from the mediator selection panel. If the parties agree on a mediator, the association must inform the department no later than the third day after the agreement.
- (g) Selection if the parties fail to agree. If the parties fail to agree on a mediator from the mediator selection panel:
 - (1) each party may object to mediators on the mediator selection panel under §5.4252(a)(1)(A) and (2)(A) of this title (relating to Objections); and
 - (2) the department will select a mediator from the mediators on the mediator selection panel that neither party has objected to.
- (h) Notice. The department will notify the mediator selected under subsection (e) or (f) of this section and give the mediator the claim information provided under §5.4231 of this title (relating to Mediation Process).

§5.4236. Mediation Process--Mediator Obligations

- (a) Conflicts. A mediator must disclose to both parties any conflicts of interest. Conflicts of interest are listed in §5.4232 of this title (relating to Mediation Process--Mediator Qualifications and Conflicts of Interest). The mediator must disclose the conflicts of interest no later than the fifth day after being hired, and before the mediation begins. A mediator may not serve as mediator in a dispute for which the mediator has a disqualifying conflict of interest.
- (b) Schedule mediation. The mediator must set the date, time, and place for the mediation. The mediator must work with the parties to set a time that is convenient for all. The mediator should set the length of the mediation based on the type of policy, and value and complexity of the dispute.
- (c) Location. The mediator must hold the mediation in the county in which the property is located, or in another county to which the parties and mediator agree. The mediator must locate and arrange for a mediation facility.
- (d) Notice to parties. The mediator must notify the parties in writing of the date, time, and place for the mediation as soon as possible, but no later than the 14th day before the mediation.

- (e) Reschedule. The mediator must reschedule the mediation if either party asks, and the other party does not object. The mediator may reschedule for good cause, even if the other party objects. Good cause includes significant illness, injury, or other emergency that the parties could not control and, for the association, could not reasonably be remedied before the mediation by providing a replacement representative or otherwise.
- (f) Review information. The mediator must review all information that the parties submit.
- (g) Conduct mediation. The mediator should encourage and assist the parties in reaching a settlement, but may not compel or coerce them. The mediator must give the parties an opportunity to present their sides of the dispute. The mediator must inform the parties of the strengths and weaknesses of their positions. The mediator may meet with the parties separately.
- (h) Termination. The mediator may terminate the mediation if either party fails to negotiate in good faith. The mediator may also terminate the mediation for other reasons.
- (i) Confidentiality. The mediator may not disclose to either party information given in confidence unless the disclosing party expressly authorizes disclosure in writing. The mediator's activities are confidential and privileged. Unless required by other law, no one may call the mediator as a witness in any further proceedings regarding the claim.
- (j) Agreement. If the parties agree to settle the dispute, the mediator must ensure that the parties sign a written agreement.
- (k) Mediator ethics. A mediator must comply with the Ethical Guidelines for Mediators adopted by the Texas Supreme Court on June 13, 2005, in Miscellaneous Docket No. 05-9107, amended April 11, 2011, in Miscellaneous Docket 11-9062.
- (l) Fees. The mediator must disclose all fees and must state whether the mediator charges for a minimum number of hours. The mediator may specify different charges for different types or values of claims. This subsection does not apply to department-selected mediators under §5.4235 of this title (relating to Mediation Process--Mediator Selection by Department).

§5.4237. Mediation Process--Additional Obligations for Department-Selected Mediators

- (a) Applicability. The following mediator obligations apply when the department selects a mediator, under §5.4235 of this title (relating to Mediation Process--Mediator Selection by Department).
- (b) Notices. No later than the seventh day after receiving notice of selection to mediate a dispute, the mediator must send a notice to the parties. This deadline may not be extended. The notice must:
 - (1) be in writing;
 - (2) inform the parties that the mediator has been selected;
 - (3) state whether the mediator is insured by the association; and
 - (4) inform the parties of their right to object to the mediator under §5.4235 and §5.4252 of this title (relating to Objections).
- (c) Disposition. The mediator must notify the department when the mediation is complete, whether or not the parties have reached an agreement.
- (d) Contract. Before the mediation, the parties and the selected mediator must sign a mediation contract. The contract must require:
 - (1) the parties and the mediator to comply with this division; and
 - (2) each party to pay one-half of all costs of mediation described in §5.4240 of this title (relating to Mediation Process--Costs).
- (e) Fees. The mediator must charge an hourly rate of \$150 and may charge a four-hour minimum fee. The mediator may charge for reasonable incurred travel costs, including mileage, meals, and lodging, according to the travel regulations adopted by the Texas Comptroller of Public Accounts under Government Code §660.021. The mediator must provide an estimate of travel costs as an addendum to the contract under subsection (d) of this section.

§5.4238. Mediation Process--Association Obligations

- (a) Mediation explanation. At the same time the association requests mediation, the association must give the claimant a notice explaining the mediation process.

- (b) Representative. The association must send an authorized representative to participate in the mediation. The association's representative must know the facts of the dispute and must be authorized to make an agreement to resolve the claim. The association must come prepared to present any relevant documents, such as insurance policies, payment receipts, adjuster reports, repair estimates, claim files, or other documents.
- (c) Assistance. In addition to its primary representative, the association may bring other people to the mediation to help the primary representative. This may include contractors, adjusters, engineers, and interpreters.
- (d) Association participants. No later than the seventh day before the mediation, the association must tell the claimant who will be attending the mediation for the association. The association may be represented by an attorney in the mediation only if the claimant is represented by an attorney.
- (e) Rescheduling or canceling. No later than 24 hours before the scheduled mediation, the association must tell the mediator if the association wants to cancel or reschedule the mediation.
- (f) Failure to appear.
 - (1) If the association has good cause for a failure to appear, the mediator may reschedule one time. Rescheduling does not relieve the association from the obligation to pay the rescheduling fee.
 - (2) The association will be deemed to have failed to appear if the association's representative lacks authority to settle the full amount of the claim or lacks the ability to disburse the settlement amount within a reasonable time following the mediation.
- (g) Contract. If the department selects the mediator, then before mediation begins, the association must sign the mediation contract under §5.4237 of this title (relating to Mediation Process--Additional Obligations for Department-Selected Mediators).
- (h) Good faith. The association must negotiate in good faith to attempt to resolve the dispute. However, there is no requirement that the dispute be resolved in mediation.

§5.4239. Mediation Process--Claimant Obligations and Privileges

- (a) Participation. The claimant must participate in the mediation. A claimant who participates in mediation must know the facts of the dispute and must be authorized to make an agreement to resolve the claim. The claimant must come prepared to present any relevant documents, such as insurance policies, payment receipts, adjuster reports, repair estimates, claim files, or other documents.
- (b) Assistance. The claimant may bring other people to help in presenting the claim. This may include contractors, adjusters, engineers, and interpreters.
- (c) Attorney. The claimant may, but is not required to, be represented by an attorney in the mediation.
- (d) Claimant participants. No later than the seventh day before the mediation, the claimant must tell the association if the claimant's attorney will be participating in the mediation. At the same time, the claimant must also tell the association who else will be attending the mediation with the claimant.
- (e) Rescheduling. No later than 24 hours before the scheduled mediation, the claimant must tell the mediator if the claimant wants to reschedule the mediation.
- (f) Failure to appear. If the claimant fails to appear for a scheduled mediation for which the association appears, but the claimant has good cause for a failure to appear, the mediator may reschedule one time. Rescheduling does not relieve the claimant from the obligation to pay the rescheduling fee.
- (g) Contract. If the department selects the mediator, then before mediation begins, the claimant must sign the mediation contract under §5.4237 of this title (relating to Mediation Process--Additional Obligations for Department-Selected Mediators).
- (h) Good faith. The claimant must negotiate in good faith to attempt to resolve the dispute. However, there is no requirement that the dispute must be resolved in mediation.
- (i) Rescission. The claimant has three days from the date of an agreement to rescind the mediation agreement if the claimant has not accepted payment from the association by:
 - (1) cashing or depositing any check or payment; or
 - (2) agreeing in writing to accept an electronic funds transfer.
- (j) Release. If the claimant does not rescind the settlement, it acts as a release of the association's liability on the claim, limited to the specific issues presented at the mediation. If an attorney representing the claimant is present at the mediation and the attorney signs the agreement, the agreement is immediately effective and may not be rescinded.

§5.4240. Mediation Process--Costs

- (a) One-half per party. Each party must pay one-half of all reasonable and necessary costs incurred or charged in connection with the mediation, including:
 - (1) mediator's fee;
 - (2) mediator's travel costs;
 - (3) cost of renting space for the mediation; and
 - (4) food or beverages provided during the mediation.
- (b) Mediator fee if pre-mediation settlement. If the parties settle before mediation, the mediator may charge a reasonable fee for time already spent on preparation.
- (c) Rescheduling fee. A party must pay the mediator a \$50 rescheduling fee if the party cancels or fails to attend the mediation with less than 24 hours notice to the mediator before the mediation. This is in addition to any fee for the actual mediation.
- (d) Failure to appear. If the association fails to appear for a scheduled mediation for which the claimant appears, the association must pay the claimant for any actual costs incurred in attending the mediation plus the value of lost wages.
- (e) Payment from proceeds of claim. If the claimant fails to pay any amount owed for the mediation, the association may pay the amount owed out of any proceeds the association owes the claimant.
- (f) Department not responsible. The department is not responsible for any mediation costs.

§5.4241. Mediation Process--Deadlines and Extensions

- (a) Deadline. Mediation must be completed by the 60th day after the association notifies the claimant that the association is requesting mediation, unless the deadline is extended. If the association does not ask the department to select a mediator before the 60-day deadline, or any extension of that deadline, the association waives its right to require mediation under [Insurance Code the Act](#) §2210.575 and this division.
- (b) Extensions.
 - (1) The association and the claimant may agree to extend the 60-day deadline for mediation in subsection (a) of this section.
 - (2) If the commissioner extends the 60-day deadline in subsection (a) of this section, the extension must comply with the 120-day limit in [Insurance Code the Act](#) §2.2210.581(b).
 - (3) For good cause, the commissioner may extend any deadline in this division related to mediation, except the deadline for the mediator to notify the parties that the mediator is insured by the association, under §5.4236 of this title (relating to Mediation Process--Mediator Obligations), may not be extended.
- (c) Lawsuit. If mediation is not complete by the 60-day deadline or an extension, the claimant may file suit.
- (d) Request for extension. To request the commissioner to extend a deadline, a party or mediator must send the request in writing to the department, under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must explain the good cause for the extension. Good cause includes military deployment of the claimant.
- (e) Extension limit. For claims filed during a particular catastrophe year, deadline extensions by the commissioner may not exceed an aggregate of 120 days. This limit does not apply to extensions of the deadline to file an objection because a mediator is insured by the association.

§5.4251. Requests and Submissions to the Department

- (a) Items submitted under this section must be submitted in writing to the chief clerk, Texas Department of Insurance. They may be:
 - (1) hand delivered;
 - (2) mailed; or
 - (3) sent in a manner that is otherwise acceptable to the department.
- (b) The date of the item will be the date the department receives the item.
- (c) When a party submits a request to the commissioner or the department under this section, the party must provide a copy of the request to the other party at the same time.

§5.4252. Objections

- (a) Objections. A party or appraiser may object to an umpire or a mediator as follows:
 - (1) for good cause:
 - (A) no later than the third day after the party or appraiser receives the selection panel, based on the information provided with the selection panel, or based on other information not provided with the selection panel that is known to the party or the appraiser at the time the selection panel is received; and
 - (B) at any time no later than 30 days after the mediation or appraisal is complete based on other information not provided with the selection panel and discovered after the selection of the umpire or mediator; or
 - (2) because the umpire or mediator is insured by the association no later than the earlier of:
 - (A) the seventh day after receiving the selection panel and the information provided with it; or
 - (B) the seventh day before the mediator or umpire begins work.
- (b) Details for objections for good cause. A party or appraiser may object for good cause based on information the department provides with a selection panel or based on other information. Good cause for an objection includes:
 - (1) any conflict of interest listed in §§5.4212, 5.4214, or 5.4232 of this title (relating to Appraisal Process--Appraiser Qualifications and Conflicts of Interest, Appraisal Process--Umpire Qualifications and Conflicts of Interest, or Mediation Process--Mediator Qualifications and Conflicts of Interest, respectively);
 - (2) a mediator or an umpire who lacks independence or is unable to competently or promptly handle the duties of a mediator or an umpire; or
 - (3) other reasons that would reasonably be expected to impair the mediation or appraisal.
- (c) How to submit objections. All objections must be sent to the department under §5.4251 of this title (relating to Requests and Submissions to the Department). An objection must include the following information:
 - (1) names of the parties involved in the dispute;
 - (2) name of the person submitting the objection;
 - (3) the association claim number;
 - (4) name of the mediator or umpire that the party or appraiser wants to object to;
 - (5) an explanation of the good cause for objecting to the mediator or umpire; and
 - (6) an explanation of any direct financial or personal interest that the mediator or umpire has in the outcome of the dispute.
- (d) Replacement. If the commissioner determines that good cause exists to replace a mediator or an umpire who was selected for a dispute, the commissioner will select a replacement mediator or umpire.

§5.4253. Contract Administrator

The department may contract with one or more entities to administer the umpire roster, the mediator roster, or any of the department's or the commissioner's functions in this division.

§5.4260. Composition of the Expert Panel

- (a) The expert panel must have a minimum of three and a maximum of seven members.
- (b) The commissioner or the commissioner's designee must appoint one member as the presiding officer of the expert panel.
- (c) Panel members may be individuals, firms, institutions, or governmental bodies.
- (d) Panel members that are firms, institutions, or governmental bodies must designate an individual to represent the panel member and inform the commissioner of the individual representing the panel member.
- (e) Collectively, the expert panel must have professional expertise in, and be knowledgeable concerning, the geography and meteorology of the Texas seacoast territory, as well as the scientific basis for determining the extent to which property damage is caused by wind, waves, tidal surges, or rising waters not caused by waves or surges.

§5.4261. Qualifications and Application

- (a) A member of the expert panel must have expertise in one or more of the following areas:
 - (1) geography of the Texas seacoast territory;
 - (2) meteorology of the Texas seacoast territory;
 - (3) the scientific basis for determining the extent to which property damage is caused by wind, waves, tidal surges, or rising waters not caused by waves or surges;
 - (4) wind engineering;
 - (5) structural engineering;
 - (6) coastal engineering;
 - (7) wave engineering;
 - (8) flood engineering; or
 - (9) the formation and flow of waves or rising waters due to tropical cyclones.
- (b) To be considered for the expert panel, an applicant must submit an application and meet the qualifications in subsection (a) of this section. The application must include contact information and details about the applicant's relevant:
 - (1) education;
 - (2) experience;
 - (3) professional designations;
 - (4) research;
 - (5) publications;
 - (6) anticipated costs; and
 - (7) potential conflicts of interest, under §5.4262 of this title (relating to Conflicts of Interest).

§5.4262. Conflicts of Interest

- (a) Potential conflicts. An applicant or member of the expert panel may have a conflict of interest if the applicant or member of the expert panel:
 - (1) is an employee or a contractor of the association;
 - (2) has a relative within one of the degrees of relationship described by [Government Code §573.002](#) who is an employee or contractor of the association;
 - (3) has an open claim with the association;
 - (4) is a party to a lawsuit against the association;
 - (5) is a former association employee or contractor;
 - (6) is related, within one of the degrees of relationship described by [Government Code §573.002](#), to a former association employee or contractor;
 - (7) is an association policyholder;
 - (8) has ever filed a claim with the association;
 - (9) is an employee or contractor of an insurance company;
 - (10) has been a party to a lawsuit against the association; or
 - (11) has any other direct or indirect interest, financial or otherwise, of any nature that is in substantial conflict with the expert panel's duties.
- (b) Duty to update. A member of the expert panel must inform the commissioner or the commissioner's designee if any potential conflict of interest arises after the member's appointment to the expert panel.
- (c) Consideration of potential conflicts of interest. The commissioner or the commissioner's designee may consider the potential conflicts of interest described in this section in making appointments to the panel and in removing members from the panel under §5.4265 of this title (relating to Removal of Expert Panel Member).

§5.4263. Selection

- (a) The commissioner or the commissioner's designee must, in his or her sole discretion, select the members of the expert panel.

- (b) When selecting a member of the expert panel, the commissioner or the commissioner's designee may consider:
 - (1) the applicant's education, experience, and expertise;
 - (2) the composition of the expert panel; and
 - (3) the applicant's ability to further the purpose of the expert panel.
- (c) The department will notify the selected expert panel members.

§5.4264. Expert Panel Term

- (a) A member of the expert panel must serve for a term set by the contract described in §5.4268 of this title (relating to Contracting, Compensation, and Expenses), except as provided in subsections (b) and (c) of this section.
- (b) At any time:
 - (1) the commissioner or the commissioner's designee may review an expert panel member's performance; and
 - (2) the commissioner or the commissioner's designee may remove an expert panel member from the panel under §5.4265 of this title (relating to Removal of Expert Panel Member).
- (c) An expert panel member may submit a request to the commissioner or the commissioner's designee to be removed from the panel at any time.

§5.4265. Removal of Expert Panel Member

The commissioner or the commissioner's designee may, in his or her sole discretion, remove an expert panel member for:

- (1a) alleged dishonest, incompetent, fraudulent, or unethical behavior;
- (2b) alleged failure to respond promptly and completely to requests from the department, where the actions or failure to act are counter to the purpose of the expert panel;
- (3c) a disciplinary action by any other agency or disciplinary authority against the expert panel member, regardless of whether the agency or disciplinary authority's regulation relates to the expert panel;
- (4d) conviction of, or acceptance of deferred adjudication for, a crime under state or federal law;
- (5e) conflicts of interest as determined by the commissioner; or
- (6f) undermining or impeding the purpose of the expert panel.

§5.4266. Expert Panel Duties

- (a) The expert panel must develop methods or models for determining the extent to which a loss to insurable property, as defined in ~~Insurance Code~~the Act §2210.004, may be or was incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges in the catastrophe area designated by the commissioner in ~~Insurance Code~~the Act §2210.005.
- (b) The expert panel must promptly respond to requests for information from the commissioner or the commissioner's designee.
- (c) The expert panel must transfer records of the data and research it used to develop the methods or models described in this section to the department, which must store the records.
- (d) The department owns and retains ownership of data the expert panel gathers in performing its duties under this section and of the methods or models developed under this section.

§5.4267. Expert Panel Meetings

- (a) On request. The expert panel must meet at the request of the department or the presiding officer.
- (b) Public meetings.
 - (1) Purpose. The purposes of an expert panel public meeting are:
 - (A) to inform the public about the progress of the expert panel's work;
 - (B) for the public to observe the members of the expert panel discussing their work among themselves; and

- (C) for the public to comment on the expert panel's work.
- (2) Commissioner request. The presiding officer must hold a public meeting at a location determined by, and at the request of, the commissioner or the commissioner's designee.
- (3) Notice. The chief clerk must provide public notice on the department's website at least 10 days before any public meeting.
- (4) Quorum. Each public meeting of the expert panel must have a quorum of members in attendance. At least 50 percent of the panel members constitutes a quorum.

§5.4268. Contracting, Compensation, and Expenses

- (a) Each panel member must enter into a contract with the association for services and payment.
- (b) To be effective, a panel member's contract with the association must be approved by the commissioner or the commissioner's designee.
- (c) A contract may not set a term that exceeds 36 months; however, contracts may be renewed.
- (d) The association must pay the expenses of the expert panel including:
 - (1) panel member compensation;
 - (2) equipment;
 - (3) contract personnel;
 - (5) peer review;
 - (6) travel, lodging, and per diem; and
 - (7) meeting space.
- (e) The commissioner or the commissioner's designee will have sole control over the expenses of the expert panel, the composition of the expert panel, and the expert panel's fulfillment of its duties.

Texas Administrative Code

Title 28. Insurance

Part 1. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter E. Texas Windstorm Insurance Association

Division 53. Depopulation Programs

§5.4301. Definitions

The following terms, when used in connection with this division and Insurance Code Chapter 2210, Subchapter O, mean the following:

- (1) Association--The Texas Windstorm Insurance Association.
- (2) Assumption reinsurance agreement--A written agreement between the association and an insurer under which the association's legal and contractual obligations for certain association policies are transferred to the insurer by novation, as further evidenced by an assumption certificate issued to affected insureds.
- (3) Department--Texas Department of Insurance.
- (4) Generally comparable coverage--Coverage described in §5.4303 of this title.
- (5) Electronic information repository--Association policyholder information database described in §5.4305 of this title.
- (6) Insurer--An insurer authorized to engage in the business of insurance in Texas and to write property insurance. This does not include an eligible surplus lines insurer.
- (7) Limited service agreement--An agreement described in §5.4304 of this title.
- (8) Transfer--The shifting of an association policyholder's windstorm and hail insurance coverage from the association to an insurer who has identified the association policyholder using the electronic information repository.

Source: The provisions of this §5.4301 adopted to be effective December 22, 2015, 40 TexReg 9296.

Current through 40 Tex.Reg. No. 9820, dated December 25, 2015, as effective on or before December 31, 2015

§5.4302. Policy Forms, Endorsements, and Rates

- (a) Policy forms and endorsements offered by insurers for voluntary market and assumption reinsurance programs under §5.4306 or §5.4307 of this title must be approved by the department. This section does not apply to the remaining term of a novated policy.
- (b) Insurance Code Chapter 2210, Subchapter L-1, does not apply to policy forms and endorsements offered by insurers under this section.
- (c) Except as provided in Insurance Code Chapter 2210, the terms of the policy forms and endorsements offered by insurers for voluntary market and assumption reinsurance programs must comply with the Insurance Code, including Chapter 551, Subchapters A, C, and D.
- (d) Insurers must submit the policy forms and endorsements offered by insurers for voluntary market and assumption reinsurance programs under Insurance Code Chapter 2301 and Chapter 5, Subchapter M, of this title.
- (e) Rates for policy forms and endorsements offered by insurers for voluntary market and assumption reinsurance programs are subject to the requirements in Insurance Code Chapter 2251. In addition to information required under Chapter 5, Subchapter M of this title, when submitting rates for policy forms and endorsements offered by insurers for assumption reinsurance programs under Insurance Code §2210.703 and §5.4307 of this title, insurers must provide an exhibit that demonstrates that each rate filed by the insurer is no more than 115 percent of the corresponding rate charged by the association.

Source: The provisions of this §5.4302 adopted to be effective December 22, 2015, 40 TexReg 9296.

Current through 40 Tex.Reg. No. 9820, dated December 25, 2015, as effective on or before December 31, 2015

§5.4303. Generally Comparable Coverage

As used in this division and Insurance Code Chapter 2210, Subchapter O, a policy provides generally comparable coverage if the policy provides the same basic coverage(s) as the assumed association policy, including the endorsements included in the assumed association policy. For example, a policy does not provide generally comparable coverage if:

- (1) the association policy provided coverage on a replacement cost basis, and the policy being offered by the insurer only provides coverage on an actual cash value basis;
- (2) the association policy provided a certain windstorm and hail deductible amount, and the minimum windstorm and hail deductible amount on the policy being offered by the insurer is in excess of that amount;
or
- (3) the association policy provided policy limits in excess of the limits on the policy offered by the insurer.

Source: The provisions of this §5.4303 adopted to be effective December 22, 2015, 40 TexReg 9296.

Current through 40 Tex.Reg. No. 9820, dated December 25, 2015, as effective on or before December 31, 2015

§5.4304. Limited Service Agreement

- (a) A limited service agreement is an agreement between an insurer or its managing general agent and the agent of record on an association policy being acquired or assumed by the insurer, and which provides that the agent continue to provide service to the policyholder as authorized under Insurance Code Chapter 2210, Subchapter O.
- (b) A limited service agreement must include the prevailing terms, conditions, and commissions of the agent that exist under the association plan of operation and guidelines at the time the policy is acquired or assumed by the insurer. The agreement will expire at the expiration of the third renewal of the insurer's policy.
- (c) An appointment is not required for a limited service agreement if the agent only services association policies that have been assumed or transferred under this division and Insurance Code Chapter 2210, Subchapter O.
- (d) This section does not prohibit the agent and insurer from agreeing to enter into an appointment and agent agreement on different terms.
- (e) An insurer must be bound by the terms of a limited service agreement entered into by its managing general agent in accordance with subsection (a) of this section.

Source: The provisions of this §5.4304 adopted to be effective December 22, 2015, 40 TexReg 9296.

Current through 40 Tex.Reg. No. 9820, dated December 25, 2015, as effective on or before December 31, 2015

§5.4305. Electronic Information Repository

- (a) The association must:
 - (1) create an electronic information repository containing the information listed in §5.4309 of this title;
and
 - (2) update the electronic information repository with current policy data through the prior month-end not later than the 15th day of the current month.
- (b) The association must prepare a written confidentiality agreement that governs obligations of insurers who access the electronic information repository. An insurer must enter into the written confidentiality agreement before the association may grant the insurer access to the electronic information repository. The

written agreement and signatures indicating acceptance of the terms of the agreement may be in an electronic format.

- (c) The association must not contract to provide or otherwise allow any agent, managing general agent, administrator, or person other than an insurer that has entered into the confidentiality agreement to access the electronic information repository.
- (d) An insurer must not allow any agent, managing general agent, administrator, affiliate, other insurer, or any other person to access the electronic information repository.
- (e) An insurer may access the electronic information repository only for the purpose of providing windstorm and hail insurance to association policyholders either through a voluntary market depopulation program approved under §5.4306 of this title or assumption reinsurance program under §5.4307 of this title.

Source: The provisions of this §5.4305 adopted to be effective December 22, 2015, 40 TexReg 9296.

Current through 40 Tex.Reg. No. 9820, dated December 25, 2015, as effective on or before December 31, 2015

§5.4306. Voluntary Market Depopulation Program

- (a) Except as provided in §5.4307 of this title, the association and an insurer must submit to the department for approval any depopulation program that encourages the transfer of association policies to insurers through the voluntary market. The submission must include all necessary documents, including notices and policy forms.
- (b) The program must provide necessary protections for the policyholders and policyholders' agents, including Insurance Code §2210.704(b).
- (c) An insurer and the association must not proceed with the voluntary market depopulation program, and it is not effective unless the commissioner approves the program in writing.

Source: The provisions of this §5.4306 adopted to be effective December 22, 2015, 40 TexReg 9296.

Current through 40 Tex.Reg. No. 9820, dated December 25, 2015, as effective on or before December 31, 2015

§5.4307. Assumption Reinsurance Program

- (a) An insurer and the association must submit to the department the written assumption reinsurance program, including the assumption reinsurance agreement and all necessary documents, including notices and policy forms evidencing generally comparable coverage and premiums, to allow the department to determine that policyholders and the policyholders' agents have the necessary protections.
- (b) The assumption reinsurance program and assumption reinsurance agreement must comply with Insurance Code Chapter 2210, Subchapter O. The assumption reinsurance agreement must include:
 - (1) an offer commencement date of December 1;
 - (2) the opportunity for the policyholder to opt out of the assumption reinsurance agreement on or before May 31;
 - (3) a transfer of the earned premium on a reinsured policy to a trust account to be held until the expiration of the policyholder opt-out period when the earned premium for the final reinsured policy will be transferred to the insurer;
 - (4) a period of not less than 60 days for the agent of record to accept an appointment or other written agreement with the insurer; and
 - (5) the effective date of the assumption.
- (c) The insurer and the association must not proceed with the assumption reinsurance program, and it is not effective unless the commissioner approves the assumption reinsurance program in writing.

Source: The provisions of this §5.4307 adopted to be effective December 22, 2015, 40 TexReg 9296.

Current through 40 Tex.Reg. No. 9820, dated December 25, 2015, as effective on or before December 31, 2015

§5.4308. Effect on Existing Contracts

The association may not enter into a voluntary market depopulation program or assumption reinsurance agreement that would violate Insurance Code §2210.616. The association must demonstrate compliance with the section in each filing under §5.4306 or §5.4307 of this title.

Source: The provisions of this §5.4308 adopted to be effective December 22, 2015, 40 TexReg 9296.

Current through 40 Tex.Reg. No. 9820, dated December 25, 2015, as effective on or before December 31, 2015

§5.4309. Repository Information

The association must make the following information available through the electronic information repository:

- (1) Policy Expiration Date;
- (2) Policy ID;
- (3) Policy Holder Name;
- (4) Mailing Address;
- (5) Item Number;
- (6) Item Description;
- (7) Premium;
- (8) Structure Coverage Amount;
- (9) Contents Coverage Amount;
- (10) Deductible;
- (11) Coinsurance;
- (12) Construction Type;
- (13) Roof Type;
- (14) Total Area;
- (15) Stories;
- (16) Risk Location Address;
- (17) City;
- (18) County;
- (19) Zip;
- (20) Occupancy;
- (21) Primary/Secondary;
- (22) Replacement Cost;
- (23) Cash Value;
- (24) Companion Policy Type;
- (25) Wind Driven Rain;
- (26) Companion Policy Provider;
- (27) Construction Date;
- (28) Addition Date;
- (29) Re-Roof Date;
- (30) Re-Roof Description;
- (31) Repair Date;
- (32) Repair Reason;
- (33) Increased Cost of Construction;
- (34) Contents Replacement Cost;
- (35) ACV Roof Endorsement;
- (36) WPI-8 Waiver;

- (37) Location of Risk;
- (38) Building Code;
- (39) Building Code Credit Type;
- (40) Mortgage;
- (41) Agent Name;
- (42) Agent Phone Number;
- (43) Agent Address;
- (44) Policy Type;
- (45) Class Code;
- (46) Structure Value;
- (47) Structure Deductible;
- (48) Appurtenant Structures Coverage Amount;
- (49) Appurtenant Structures Value;
- (50) Appurtenant Structures Deductible;
- (51) Contents Value;
- (52) Contents Deductible;
- (53) Additional Living Expense (ALE) Coverage Amount;
- (54) Business Interruption (BI) Coverage Amount;
- (55) List of Endorsements;
- (56) Claim - Loss Date;
- (57) Claim - Report Date;
- (58) Claim - Loss Paid;
- (59) Claim - ALE Paid;
- (60) Claim - BI Paid;
- (61) Claim - Adjustment Expense Paid; and
- (62) Claim - Closed Date.

Source: The provisions of this §5.4309 adopted to be effective December 22, 2015, 40 TexReg 9296.

Current through 40 Tex.Reg. No. 9820, dated December 25, 2015, as effective on or before December 31, 2015

~~.4401.— Repealed eff. March 26, 2010~~

~~Current through 40 Tex.Reg. No. 5104, dated August 7, 2015, as effective on or before August 7, 2015~~

~~.4501.— Repealed eff. March 26, 2010~~

~~Current through 40 Tex.Reg. No. 5104, dated August 7, 2015, as effective on or before August 7, 2015~~

Texas Administrative Code

Title 28. Insurance

Part 1. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter E. Texas Windstorm Insurance Association

Division 4. Inspections for Windstorm and Hail Insurance

§5.4601. Short Title

This section, §5.4602, and §5.4603 of this title (relating to Windstorm Inspection Manual; and Forms for Windstorm Inspections) contain rules and regulations governing and implementing inspections for windstorm and hail insurance written by the Texas ~~Catastrophe Property~~Windstorm Insurance Association, as provided in the ~~Insurance Code, Article 21.49~~Act, and shall be known as the Windstorm Inspection Manual.

§5.4602. Windstorm Inspection Manual

The following paragraphs are applicable to inspections for compliance with building specifications on all structures that are constructed or repaired, or to which additions are made, on or after January 1, 1988, and that are to be considered insurable property as defined in the ~~Insurance Code, Article 21.49~~Act, for windstorm and hail insurance written by the Texas ~~Catastrophe Property~~Windstorm Insurance Association (the association).

- (~~1~~a) Building ~~instruction~~construction requirements. Structures located in the designated catastrophe area must comply with the following codes set forth in the plan of operation of the association.
- (~~A~~1) Structures located inland of the Intracoastal Canal must comply, at a minimum, with the Southern Standard Building Code, as amended, effective May 8, 1973. Subsequent amendments of that code do not apply.
 - (~~B~~2) Structures located seaward of the Intracoastal Canal must comply with the current Windstorm Resistant Construction Code.
- (~~2~~b) Operation.
- (~~A~~1) As soon as possible, the contractor or owner will notify the Windstorm Inspection Section of the ~~State Board~~Texas Department of Insurance (the ~~board~~Department), by Form WPI-1 or by letter, of any intention to build, add to, or repair a structure. Notification by letter must contain the same information required by Form WPI-1.
 - (~~B~~2) Upon the receipt of notice, the information will be entered into the computer and a file number assigned. The contractor or owner shall be notified of this file number and of a toll-free number to call for purposes of requesting an inspection date and time.
 - (~~C~~3) Requests for inspections by using the toll-free number will prompt an inspection request by facsimile machine, computer, or other appropriate manner. Requests will be received by the board during normal business hours. Upon receipt of notice, the proper field office will be notified of a request and shall conduct an inspection within 48 hours. This 48-hour period shall not include Saturdays, Sundays, or state holidays.
 - (~~D~~4) All structures that meet building construction requirements and are inspected or approved by the board will be eligible for a certificate of compliance as evidence of insurability by the association.
 - (~~E~~5) Inspections required to be made by the State Board of Insurance for the certification of compliance with approved building construction requirements must be in accordance with the schedule of fees shown as follows. The required inspection fee must be paid by check or money order made payable to the State Board of Insurance in advance of any on-site inspection. Payment as specified must accompany the initial application for inspection and should be mailed to the ~~Windstorm Inspection Section of the Inspections Division, State Board~~Texas Department of Insurance, MC 9999, ~~1110 San Jacinto Boulevard~~333 Guadalupe, P.O. Box 149104, MC 103-3A, Austin, Texas ~~78701-1998~~78714-9104. On-site inspections will not be made prior to payment of the appropriate inspection fee.
 - (~~1~~A) New buildings. For all required inspections from the commencement of construction until completion, the fee is \$100.

- (#B) Other structures or additions. For all required inspections for any additions to new or existing structures, the fee is \$35.
- (#Ci) Repairs. For all inspections for repairs to any new or existing building or structure, there is no charge.
- (F6) If an inspection indicates that a structure fails to comply with a building construction requirement, a Form WPI-7 shall be posted at job site noting the unsatisfactory items and the proper compliance procedure to be applied.
- (G7) The Windstorm Inspection Section of the State Board of Insurance will make inspections of mobilemanufactured homes to survey the tie-down method used for those mobilemanufactured homes seeking insurance through the association.
 - (iA) Inspection of tie-down methods used on mobilemanufactured homes will only be made at the request of the association.
 - (#B) Inspection of tie-down methods for mobilemanufactured homes is a report only and does not determine if the property is otherwise insurable through the association. The report is to be made to the association and will be provided on State Board of Insurance Form WPI-MH-1.
 - (##C) The State Board of Insurance will not inspect the mobilemanufactured home to determine compliance with any required construction standards of the mobilemanufactured home itself.
 - (+D) If underskirting or other obstructions prevent a proper inspection, such underskirting or obstructions must be removed from the mobilemanufactured home. The association shall bear the responsibility to have the underskirting or obstructions removed.
- (3e) Periodic inspections. Each required periodic inspection will be made after a request is received from the contractor or owner using the same process outlined in paragraph (2)(C) of this section.
- (4d) Coordinating inspections. A copy of Form WPI-1 will be mailed to the proper governmental inspection authorities in the respective area. Each request by contractor or owner will alert the local office of the State Board of Insurance to notify governmental inspection authorities in order to coordinate inspections, when possible.
- (5e) Inspection schedule. Inspections shall be conducted in accordance with this manual to the best of the board's ability. Failure to comply with this manual shall not impede building progress. Inspections made subsequent to prescribed schedules shall keep disturbances at a minimum.
- (6f) Inspection standards.
 - (A1) Buildings shall be inspected to determine compliance with the applicable building construction requirements under paragraph (1) of this section. The three following inspections, under normal circumstances and normal building conditions, shall be adequate for certification.
 - (B2) The three inspections shall be as follows.
 - (iA) Foundation. Foundations shall be inspected for reinforcement and bolt tie-downs on slab foundations. Pilings or pier and beam foundations shall be inspected prior to installation of floor joists or other materials which would impede proper inspection process. The fee for this inspection shall be waived if a certificate of foundation design and construction, Form WPI-10, is furnished to the board prior to inspection.
 - (#B) Framing. Framing, exterior siding underlayment, and roof decking shall be inspected after installation, but prior to the installation of any interior finish which would impede the ability to verify the connections of various members and/or the nailing pattern of various materials.
 - (##C) Final framing. The exterior finish, less any trim that would conceal the nailing pattern, and the roof covering shall be inspected. A fourth inspection of mechanical equipment may be required.
 - (E3) To qualify for windstorm coverage by the association, all structures, additions, or repairs, construction of which is commenced on or after January 1, 1988, must be inspected and certified in accordance with this manual or by a qualified engineer. A qualified engineer's certification must be submitted on the Building Certificate Form WPI-2.
 - (D4) The repairs or other procedures listed in this paragraph, when done to non-engineer-designed buildings or structures, do not require inspection by the State Board of Insurance for the purposes of certification or recertification for compliance with building construction requirements. In addition, if no structural change is made, the initial installation or replacement of the listed items, when done to non-engineer-designed buildings or structures, may be made without requiring an inspection by the State Board of Insurance. The repairs and procedures are as follows:

- (~~ix~~A) repairs to roofs covering less than 100 square feet (one square);
- (~~ix~~B) repairs to gutters;
- (~~ix~~C) door and window replacement (if no framing is involved);
- (~~ix~~D) garage door installation or replacement (if no framing is involved);
- (~~ix~~E) repairs to wheelchair ramps;
- (~~ix~~F) fascia replacement;
- (~~ix~~G) repairs to porch and balcony railings;
- (~~ix~~H) repairs to steps;
- (~~ix~~I) protective measures before a storm;
- (~~ix~~J) temporary repairs after a storm;
- (~~ix~~K) leveling or procedures done to existing foundations, other than repairs;
- (~~ix~~L) leveling and repairs to an existing slab on grade foundation, unless wall anchorage is being altered or repaired;
- (~~ix~~M) fence repairs;
- (~~ix~~N) repairs to detached carports, patio covers, and pool covers, garages, gazebos, and other outbuildings unless specifically insured;
- (~~ix~~O) painting and carpeting, plumbing and electrical repairs;
- (~~ix~~P) repairs to slabs poured on the ground for patios (including slabs under houses on pilings);
- and
- (~~ix~~Q) replacement of light bulbs and glass covers.

(7g) Education program.

- (~~A~~1) The board shall publish pamphlets that outline the necessary steps to meet the basic building construction requirements that deem to comply with the plan of operation of the association.
- (~~B~~2) Pamphlets shall be distributed to local government offices handling building permits or health and safety requirements in the designated catastrophe area.
- (~~C~~3) Pamphlets will be distributed to building trade associations and building supply outlets in the designated catastrophe area.
- (~~D~~4) The board shall utilize all news media, including public service announcements, to advertise the windstorm program.
- (~~E~~5) The board shall provide and promote a public speaking program to service clubs and professional organizations.
- (~~F~~6) The board shall provide educational programs relating to building construction requirements for contractors, owners, and other appropriate parties.

§5.4603. Forms for Windstorm Inspections

- (a) The Texas Department of Insurance adopts by reference the following forms for use in windstorm inspection:
 - (1) Application for Certificate of Compliance, Form WPI-1, effective January 1, 2005;
 - (2) Inspection Verification, Form WPI-2-BC-1, effective January 1, 2008;
 - (3) Inspection Verification, Form WPI-2-BC-2, effective January 1, 2008;
 - (4) Inspection Verification, Form WPI-2-BC-3, effective January 1, 2008;
 - (5) Inspection Verification, Form WPI-2-BC-4, effective January 1, 2008;
 - (6) Inspection Verification, Form WPI-2-BC-5, effective January 1, 2008;
 - (7) Design Certification, Form WPI-2D, effective January 1, 2008;
 - (8) Field Form, Form WPI-7, effective January 1, 2005;
 - (9) Certificate of Compliance, Form WPI-8, as amended October 1, 1998.
- (b) These forms are published by and available from the Texas Department of Insurance. Copies of these forms may be obtained from the Windstorm Inspections Section of the Inspections Division, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, MC 103-3A, Austin, Texas 78714-9104 and the Texas Department of Insurance website at www.tdi.state.tx.us www.tdi.texas.gov.

§5.4604. Appointment of Engineers as Qualified Inspectors

- (a) Purpose and Scope. The purpose and scope of this section is to:

- (1) provide procedures for the approval and appointment of a Texas licensed professional engineer to conduct inspections of structures and provide engineered analyses and designs, pursuant to the [Insurance Code Article 21.49 §6A Act](#), for compliance with building specifications in the plan of operation of the Texas Windstorm Insurance Association and any other building specifications promulgated by the Texas Department of Insurance to determine insurability for windstorm and hail insurance covered by the Texas Windstorm Insurance Association and issue certifications of compliance for risks to qualify for insurability through the Texas Windstorm Insurance Association;
 - (2) establish qualifications for the appointment of Texas licensed professional engineers to conduct windstorm inspections;
 - (3) specify the responsibilities of an engineer performing windstorm inspections;
 - (4) outline the method of applying for appointment of a Texas licensed professional engineer to perform windstorm inspections;
 - (5) specify the oversight functions of the Department; and
 - (6) adopt by reference the application form to be submitted by the engineer requesting approval by the Commissioner for appointment as a qualified inspector.
- (b) Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise.
- (1) Commissioner--Commissioner of Insurance of the State of Texas.
 - (2) Department--Texas Department of Insurance.
 - (3) Manual--The Windstorm Inspection Manual as set forth in §5.4602 of this title (relating to Windstorm Inspection Manual).
 - (4) Qualified inspector--A person determined by the Commissioner to be qualified to perform building inspections pursuant to the [Insurance Code Article 21.49 §6A Act](#), who must be approved and appointed by the Commissioner to perform building inspections for the purpose of establishing that a building or structure is eligible for windstorm and hail insurance through the Texas Windstorm Insurance Association.
 - (5) Association--Texas Windstorm Insurance Association.
 - (6) Engineer(s)--A Texas Licensed Professional Engineer.
- (c) Appointment of an Engineer as a Qualified Inspector. The Commissioner may appoint an engineer as a qualified inspector to perform windstorm inspections and shall be responsible for inspections pursuant to this section and the [Insurance Code Article 21.49 §6A the Act](#).
- (d) Requirements for Appointment of an Engineer as a Qualified Inspector.
- (1) The engineer shall be a licensed engineer with demonstrable experience, education or training in the design of building structures in high wind areas.
 - (2) The engineer shall affirm to the Commissioner through a sworn statement the engineer's qualifications pursuant to paragraph (1) of this subsection and shall also confirm in the sworn statement the currency and non-restricted status of the engineer's license through the Texas Board of Professional Engineers.
- (e) Application for Appointment of an Engineer as a Qualified Inspector.
- (1) The engineer shall submit to the Department a completed application form requesting approval by the Commissioner for appointment as a qualified inspector to conduct windstorm and hail inspections as outlined in this section and in [Article 21.49 §6A](#) of the [Insurance Code Act](#). The application form shall be developed by and available from the Department. No engineer shall be approved and appointed by the Commissioner until the engineer's fully completed application form has been filed and reviewed by the Department. The engineer shall not, for the purposes of [Article 21.49 §6A the Act](#), conduct windstorm and hail inspections until formal action has been taken by the Commissioner to appoint the engineer as a qualified inspector.
 - (2) The application form shall contain at a minimum the name, address, and telephone number of the applicant; name, address and telephone number of employer; the Texas license number of the applicant; the applicant's field of expertise in engineering; schools or courses attended; experience in design of structures in high wind areas; and a sworn statement verifying qualifications and licensing.
 - (3) The Department shall notify the engineer by letter of the approval and appointment or disapproval of the appointment by the Commissioner of the engineer as a qualified inspector. Any letter of disapproval shall state the reasons for disapproval and shall notify the applicant that he or she has 30 days from the date of the letter of disapproval to make a written request for hearing. If a hearing is requested, the

hearing will be granted and the procedures for a contested case under the Administrative Procedure Act, Government Code, Chapter 2001, shall apply.

- (f) Cancellation or Revocation of an Engineer's Appointment as a Qualified Inspector.
- (1) After notice and opportunity for hearing, the Commissioner may cancel or revoke an approval and appointment made under this section if the holder or possessor of the approval and appointment is found to be in violation of, or to have failed to comply with, any provisions of this section or any other rule or regulation of the Department or any statute enacted to govern inspections of structures to be insured for windstorm and hail insurance through the Association. In lieu of cancellation or revocation, the Commissioner, upon determination from the facts that it would be fair, reasonable, or equitable, may order one or more of the sanctions specified in subparagraphs (A)-(D) of this paragraph.
 - (A) he Commissioner may order the suspension of the approval or appointment for a specific period, not to exceed one year.
 - (B) The Commissioner may issue an order directing the holder or possessor of the appointment to cease and desist from the specified activity determined to be in violation of any provisions of this section or any rule or regulation of the Department or any statute enacted to govern inspections of structures to be insured for windstorm and hail insurance through the Association.
 - (C) The Commissioner may issue an order directing the holder or possessor of the appointment to remit within a specified time, a sum not to exceed \$5,000, if the person approved and appointed is found by the Commissioner to have knowingly, willfully, fraudulently, or with gross negligence, signed or caused to be prepared an inspection report or sworn statement that contains a false, fictitious, or fraudulent statement or entry; or
 - (D) The Commissioner may order any other statutory sanction that may be enacted pursuant to the [Insurance Code Articles 21.49 §6A, 1.10 and 1.10E Act](#).
 - (2) If it is found after notice and opportunity for hearing that any engineer approved and appointed by the Commissioner to conduct inspections pursuant to this section and [Article 21.49](#) of the [Insurance Code Act](#) has failed to comply with an order issued by the Commissioner pursuant to this section or Articles 21.49, 1.10 or 1.10E of the Insurance Code, the Commissioner shall, unless the Commissioner's order is lawfully stayed, cancel the appointment.
 - (3) The Commissioner may informally dispose of any matter under this section by consent order or default.
 - (4) Revocation or suspension of an engineer's license issued by the Texas Board of Professional Engineers automatically cancels any approval and appointment made pursuant to this section.
 - (5) Pursuant to the Texas Engineering Practice Act, Texas Civil Statutes, Article 3271a, the Commissioner shall notify the Texas Board of Professional Engineers of any action taken against an engineer as a qualified inspector.
- (g) Responsibilities of an Engineer Conducting Windstorm Inspections.
- (1) The engineer shall comply with [Article 21.49 §6A](#) of the [Insurance Code Act](#); §§5.4001, 5.4601, 5.4602, and 5.4603 of this title (relating to Plan of Operation and Inspections for Windstorm and Hail Insurance).
 - (2) The engineer shall design, inspect and prepare plans and structural calculations for a building or structure in accordance with the wind load requirements of the construction standards adopted by the Commissioner in the Association's plan of operation as adopted by reference in §5.400720 and §5.400821 of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made Prior to September 1, 1998; and Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made on and after September 1, 1998); however, the plans and calculations are not routinely required to be submitted to the Department for the issuance of a certification of compliance by the Department. The plans and calculations shall be documented by the engineer as meeting the wind load requirements of the construction standards adopted by the Commissioner and shall bear the seal of the engineer.
 - (3) Alternatively, the engineer shall inspect in accordance with the prescriptive building code or construction guide adopted by the Commissioner and notify the department that a building or structure complies with the prescriptive building code or construction guide without preparing the plans and structural calculations for the building or the structure. Inspection under the prescriptive building code or construction guide adopted by the Commissioner requires strict compliance with that code or guide

with no modifications. Any modifications or deviations from the prescriptive building code or construction guide adopted by the Commissioner require the engineer to comply with paragraph (2) of this subsection.

- (4) The engineer shall submit to the Department a building compliance form, developed by the Department, notifying the Department that the building or structure was erected, altered and/or repaired to meet the wind loads specified in the appropriate construction standards adopted by the Commissioner.
 - (5) The engineer shall be responsible for the inspection of each building or structure during each major phase of construction. Major phases of construction shall be the foundation stage, rough framing stage, final framing stage and installation of mechanical equipment. The engineer's employee(s) may assist in the conduct of the inspections for which the engineer is personally responsible.
- (h) Oversight of Engineer Appointed as a Qualified Inspector.
- (1) The Department shall maintain oversight of all aspects of the inspection and notification of compliance of buildings or structures by an engineer pursuant to [Article 21.49-§6A](#) of the [Insurance Code Act](#) and the requirements of this section.
 - (A) The Department may perform random periodic audits of buildings or structures in the course of construction for which an Application for Windstorm Building Inspection has been submitted to the Department by the engineer; or random periodic audits of buildings or structures which have been documented by the engineer as being in compliance with the wind loads of the construction standards adopted by the Commissioner.
 - (B) The Department, at its discretion, may require random submissions of sealed plans and calculations for buildings and structures which have been documented by the engineer as being in compliance with the wind loads of the construction standards adopted by the Commissioner.
 - (2) If the Department finds a building or structure that does not meet the required wind loads of the construction requirements adopted by the Commissioner or does not meet the prescriptive building code or construction guide, a certificate of compliance will not be issued by the Department; or if a certificate of compliance has been issued on a building or structure found not to be in compliance with the wind loads of the construction standards adopted by the Commissioner, the certificate of compliance may be rescinded.
 - (3) If the Department finds a building or structure that does not meet the wind loads of the construction standards adopted by the Commissioner, and has been submitted to the Department for the issuance of a certificate of compliance, the appointed qualified inspector that conducted the inspection of the building or structure and submitted the notice of compliance to the Department may be subject to sanctions by the Department, pursuant to [Insurance Code Articles 21.49-§6A, 1.10 and 1.10E](#) [the Act](#).
 - (4) If the Department finds a building or structure may not meet the wind loads of the construction standards adopted by the Commissioner, the engineer must provide:
 - (A) all substantiating information such as plans and calculations bearing the engineer's seal;
 - (B) inspection forms and field notes; and
 - (C) dates of the inspections conducted by the engineer for assurance of compliance with design and construction of the building or structure.
 - (5) Failure to provide the information requested by the Department in paragraph (4) of this subsection will result in a certification of compliance not being issued by the Department for the building or structure in question and the engineer may be subject to sanctions by the Department.
- (i) The application form required in subsection (e) of this section, Application for Appointment as a Qualified Inspector, Form ENG-1, is adopted by reference, effective for inspections conducted on or after February 1, 1999.

§5.4605. Items Not Requiring an Inspection for the Purposes of Windstorm and Hail Insurance Coverage through the Texas Windstorm Insurance Association

The items listed in this section do not require an inspection for compliance for the purposes of windstorm and hail insurance coverage through the Texas Windstorm Insurance Association provided that any repairs, replacements, or procedures are made with like kind and quality materials, fasteners, and craftsmanship as compared to the structure before the repairs, replacements, or procedures are made, and as compared to the parts of the building

which are not repaired. In addition, if no structural change is made, the initial installation or replacement of the listed items may be made without requiring an inspection. The items are as follows:

- (1a) repairs to roofs less than 100 square feet (one square),
- (2b) repairs or replacement of gutters,
- (3c) replacement of decorative shutters,
- (4d) repairs to breakaway walls,
- (5e) fascia repairs,
- (6f) repairs to porch and balcony railings,
- (7g) repairs to stairways/steps and wheelchair ramps,
- (8h) protective measures before a storm,
- (9i) temporary repairs after a storm,
- (10j) leveling and repairs to an existing slab on grade foundation, unless wall and/or foundation anchorage is altered or repaired,
- (11k) fence repair,
- (12l) painting, carpeting, and refinishing,
- (13m) plumbing and electrical repairs,
- (14n) repairs to slabs poured on the ground for patios (including slabs under homes on pilings),
- (15o) repairs or replacement of soffits less than 24 inches in width,
- (16p) repairs or replacement of non-structural interior fixtures, cabinets, partitions (non-loadbearing), surfaces, trims or equipment,
- (17q) replacement of glass in windows or glass doors or replacement of exterior doors not involving the frames provided that the area is less than 10% of the surface area of the affected side (elevation) of the structure, and
- (18r) replacement of exterior siding provided that the area is less than 10% of the surface area of the affected side (elevation) of the structure.

§5.4606. Requirements for Temporary Appointment of Qualified Inspectors

- (a) The purpose of this section is to specify qualifications, requirements, and procedures pursuant to the [Insurance Code Article 21.49 §6A\(d\) Act](#) for the appointment for a temporary period of persons to perform windstorm re-roof inspections of residential structures in Jefferson and/or Chambers counties of Texas. Persons appointed under this section must meet the qualifications for appointment under this section and shall perform inspections in accordance with the provisions of this section, §§5.4001-5.4010 of this title relating to the Texas Windstorm Insurance Association plan of operation, §§5.4601-5.4605 of this title relating to inspections for windstorm and hail insurance, and the [Insurance Code Article 21.49 §6A Act](#). The following persons are eligible to apply for a Temporary Appointment as a Qualified Inspector:
 - (1) A person who is certified as a coastal construction inspector by the International Code Council and who has at least two years of construction, design or inspection experience on buildings or structures located in high wind areas; this may include a person employed full-time by a municipality of this state who meets the qualifications as stated in this paragraph; or
 - (2) A Texas registered architect with construction, design or inspection experience on buildings or structures located in high wind areas; or
 - (3) Any person with experience, education, or training in programs at an accredited university which shall include at a minimum successful completion of at least two years of technical or university training in the field of civil or architectural engineering, the field of architecture, or the field of construction technology or construction science and at least two years of construction, design or inspection experience on buildings or structures located in high wind areas.
- (b) For the purposes of this section, the following words and terms shall have the following meanings:
 - (1) Commissioner--Commissioner of Insurance of the State of Texas.
 - (2) Department--Texas Department of Insurance.
 - (3) Person--An individual and includes a resident or non-resident of this state.
 - (4) Re-roof--The process of recovering or replacing an existing roof covering and includes the following terms:

- (A) Roof covering--The covering applied to a roof deck for weather resistance, fire classification or appearance.
 - (B) Roof deck--The flat or sloped surface not including its supporting members or vertical supports.
 - (C) Roof recover--The process of installing an additional roof covering over a prepared roof covering without removing the existing roof covering.
 - (D) Roof replacement--The process of removing the existing roof covering, repairing any damaged substrate and installing a new roof covering.
- (5) Temporary appointee--A person who has been issued a Temporary Appointment as a Qualified Inspector under this section.
- (c) A person applying for a temporary appointment under this section must complete and file an application for Temporary Appointment as a Qualified Inspector on a form prepared, maintained, and obtainable from the department.
 - (d) Persons applying under the requirements of paragraph (1) of subsection (a) of this section shall also affirm to the Commissioner through a sworn statement the current, active, and good-standing status of their certification and/or shall also provide a Certification of Employment affidavit from the municipality as applicable.
 - (e) Persons applying under the requirements of paragraph (2) of subsection (a) of this section shall also affirm to the Commissioner through a sworn statement the current, active, and good-standing status of the architect's registration through the Texas Board of Architectural Examiners.
 - (f) Persons applying under the requirements of paragraph (3) of subsection (a) of this section shall also provide a certified copy of a completed degree, if any, certificate, or transcript.
 - (g) A temporary appointee shall not have a financial interest either directly or indirectly in or be employed by a business that is financially interested either directly or indirectly in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building, nor have current employment or accept compensation or accept other employment or compensation during the period of appointment which could reasonably be expected to impair the temporary appointee's independence of judgment in the performance of inspections pursuant to this section.
 - (h) A temporary appointee shall comply with and utilize all windstorm inspection forms required by §5.4604 of this title relating to appointment of engineers as qualified inspectors, with such forms modified to substitute "qualified inspector" for "engineer" as applicable.
 - (i) Except as otherwise provided in this section, a temporary appointee shall be subject to all provisions of §5.4604 of this title including oversight by the department as specified in subsection (h) of §5.4604. If there is a conflict between the provisions of this section and the provisions of §5.4604 of this title, this section shall control.
 - (j) A temporary appointee is prohibited from delegating the duties under this section to any other person. The delegation/assistance provision of subsection (g)(5) of §5.4604 of this title shall not apply to a temporary appointee.
 - (k) A temporary appointee is only authorized to perform in Jefferson and Chambers counties re-roof inspections of residential structures during the construction process on risks that could be considered insurable property for windstorm and hail insurance. No other types of inspections by temporary appointees will be considered valid for purposes of the [Insurance Code Article 21.49 Act](#).
 - (l) A Temporary Appointment as a Qualified Inspector issued under this section shall be valid until December 31, 2006, unless extended by the department based on demonstrated need in Jefferson or Chambers counties.
 - (m) In addition to any other remedy available under [Insurance Code Article 21.49 §6A the Act](#), and Chapters 82 and 84, and §5.4604 of this title relating to appointment of engineers as qualified inspectors, the department may issue an emergency cease and desist order pursuant to Insurance Code Chapter 83 to any person who violates any provision of this subchapter or any other rule or statute relating to inspections of structures to be considered insurable property for windstorm and hail insurance.
 - (n) If a court of competent jurisdiction holds that any provision of this section is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of this section shall remain in effect.

§5.4607. Requirements for the Appointment of Temporary Qualified Windstorm Inspectors for a Limited Period on an As-needed Basis

- (a) Purpose. The purpose of this section is to specify the procedures for the Commissioner of Insurance to appoint temporary qualified inspectors for a specified limited period to conduct inspections for windstorm and hail insurance pursuant to the ~~Insurance Code Article 21.49~~ §6AAct and to specify qualifications, requirements, and procedures pursuant to the ~~Insurance Code Article 21.49~~ §6A(d)Act for the appointment of persons to perform such inspections.
- (b) Public Hearing. The Commissioner may make the temporary inspector appointments only upon a determination by the Commissioner after notice and a public hearing pursuant to the ~~Insurance Code Article 21.49~~ §5AAct that qualified inspectors are not reasonably available in the first tier coastal counties specified in ~~Article 21.49~~ the Act and/or in designated catastrophe areas as defined by ~~Article 21.49~~ §3(h)the Act. If the Commissioner makes such a determination, the Commissioner shall issue an order specifying the reasons for the determination, the designated catastrophe areas in which the temporary inspector appointments are authorized, the types of inspections temporary appointees are authorized to perform, the period of time for which the appointments are effective, and any other requirements necessary to properly ensure the availability of qualified inspectors as needed in the designated catastrophe areas.
- (c) Qualifications.
 - (1) Persons appointed under this section must meet the qualifications for appointment under this section and shall perform inspections in accordance with the provisions of this section, §§5.4001-5.4010 of this title (relating to the Texas Windstorm Insurance Association plan of operation), §§5.4601-5.4605 of this title (relating to inspections for windstorm and hail insurance), the ~~Insurance Code Article 21.49~~ §6Athe Act, and the order issued by the Commissioner pursuant to subsection (b) of this section. The following persons are eligible to apply for an appointment as a temporary qualified inspector:
 - (A) a person who is certified as a coastal construction inspector by the International Code Council and who has at least two years of construction, design or inspection experience on buildings or structures located in high wind areas; this may include a person employed full-time by a municipality of this state who meets the qualifications as stated in this paragraph; or
 - (B) a Texas registered architect with construction, design or inspection experience on buildings or structures located in high wind areas; or
 - (C) any person with experience, education, or training in programs at an accredited university which shall include at a minimum successful completion of at least two years of technical or university training in the field of civil or architectural engineering, the field of architecture, or the field of construction technology or construction science and at least two years of construction, design or inspection experience on buildings or structures located in high wind areas.
 - (2) Persons applying under the requirements of paragraph (1)(A) of this subsection must affirm to the Commissioner through a sworn statement the current, active, and good-standing status of their certification and/or shall also provide a Certification of Employment affidavit from the municipality as applicable.
 - (3) Persons applying under the requirements of paragraph (1)(B) of this subsection must affirm to the Commissioner through a sworn statement the current, active, and good-standing status of the architect's registration through the Texas Board of Architectural Examiners.
 - (4) Persons applying under the requirements of paragraph (1)(C) of this subsection must provide a certified copy of a completed degree, if any; certificate; or transcript.
- (d) Definitions. For the purposes of this section, the following words and terms shall have the following meanings:
 - (1) Appointee--A person who has been issued a temporary appointment as a qualified inspector under this section.
 - (2) Commissioner--Commissioner of Insurance of the State of Texas.
 - (3) Department--Texas Department of Insurance.
 - (4) Person--An individual and includes a resident or non-resident of this state.
- (e) Application. A person applying for a temporary inspector appointment under this section must complete and file an application on a form prepared, maintained, and obtainable from the Department.

- (f) Training. An appointee must attend within 30 days of the person's appointment a two-hour orientation and training session provided by the Department at one of its field offices or in Austin, Texas.
- (g) Financial interest prohibitions. An appointee must not have a financial interest either directly or indirectly in or be employed by a business that is financially interested either directly or indirectly in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building, nor have current employment or accept compensation or accept other employment or compensation during the period of appointment which could reasonably be expected to impair the appointee's independence of judgment in the performance of inspections pursuant to this section.
- (h) Inspection forms. An appointee shall comply with and utilize all windstorm inspection forms required by §5.4604 of this title (relating to appointment of engineers as qualified inspectors), with such forms modified to substitute "appointed temporary inspector" for "engineer" as applicable.
- (i) Department oversight. Except as otherwise provided in this section, an appointee is subject to all provisions of §5.4604 of this title including oversight by the Department as specified in subsection (h) of §5.4604. If there is a conflict between the provisions of this section and the provisions of §5.4604 of this title, this section controls.
- (j) Delegation prohibition. An appointee is prohibited from delegating the duties under this section to any other person. The delegation/assistance provision of subsection (g)(5) of §5.4604 of this title shall not apply to an appointee,
- (k) Limited authorization.
 - (1) An appointee is only authorized to perform inspections of structures for insurability for windstorm and hail insurance as provided in the Commissioner's order issued pursuant to subsection (b) of this section. No other types of inspections by the temporary inspector appointees will be considered valid for purposes of the ~~Insurance Code Article 21.49~~ [the Act](#).
 - (2) An appointment made under this section is valid only for the designated catastrophe areas and period of time specified by the Commissioner in the Commissioner's order issued pursuant to subsection (b) of this section; at the end of such period or upon action by the Department, the appointment will expire.
- (l) Administrative remedies. In addition to any other remedy available under the ~~Insurance Code Article 21.49~~ [§6A](#) [the Act](#), and Chapters 82 and 84, and §5.4604 of this title (relating to appointment of engineers as qualified inspectors), the Department may issue an emergency cease and desist order pursuant to the Insurance Code Chapter 83 to any person who violates any provision of this subchapter or any other rule or statute relating to inspections of structures to be considered insurable property for windstorm and hail insurance.
- (m) Severability clause. If a court of competent jurisdiction holds that any provision of this section is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of this section shall remain in effect.

§5.4608. Texas Board of Professional Engineers Roster

- (a) The requirements in this section are in addition to the appointment requirements set forth in §5.4604 of this title (relating to Appointment of Engineers as Qualified Inspectors). This section shall control over any conflicting provision in §5.4604 of this title.
- (b) Each engineer appointed as a qualified inspector must be on the roster of engineers maintained by the Texas Board of Professional Engineers under Occupations Code §1001.652. An engineer who is not on the roster may not act as an appointed engineer on or after January 1, 2013.
- (c) To continue an existing appointment after December 31, 2012, each appointed engineer must submit to the department Form ENG-2 no later than December 31, 2012, affirming that the engineer is on the roster of engineers maintained by the Texas Board of Professional Engineers under Occupations Code §1001.652. The department will cancel the appointment of each appointed engineer who does not submit the Form ENG-2 on or before December 31, 2012. An engineer whose appointment is canceled under this section may reapply for appointment as a qualified inspector.
- (d) Each engineer applying for appointment as a qualified inspector must submit to the department Form ENG-2, affirming that the engineer is on the roster of engineers maintained by the Texas Board of Professional Engineers under Occupations Code §1001.652.

- (e) After December 31, 2012, the department will not accept windstorm applications, certifications, or verifications from engineers who are not on the roster maintained by the Texas Board of Professional Engineers under Occupations Code §1001.652.
- (f) Form ENG-2 is adopted by reference. The form may be obtained at www.tdi.texas.gov/forms/form13windstorm.html.

Texas Administrative Code

Title 28. Insurance

Part 1. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter E. Texas Windstorm Insurance Association

Division 5. Rates

§5.4700. Rate Reduction

(a) Purpose. The purpose of this section is:

- (1) to specify, pursuant to ~~Article 21.49, §8E of the Insurance Code~~ the Act, the percentage of rate reduction which must be applied to windstorm and hail insurance policies issued by the Texas Windstorm Insurance Association for new residential construction, excluding additions or repairs to existing structures, that have been built to the standards of the Texas Windstorm Insurance Association Building Code for Windstorm Resistant Construction, which became effective on September 1, 1998, or the 2000 International Residential Code/2000 International Building Code, as revised by the Texas Revisions, which became effective on February 1, 2003;
- (2) to specify the percentage of rate reduction which must be applied to windstorm and hail insurance policies issued by the Texas Windstorm Insurance Association for new residential construction, excluding additions or repairs to existing structures, that have been built to a higher standard of construction than that required by the Texas Windstorm Insurance Association Building Code for Windstorm Resistant Construction, which became effective on September 1, 1998, or the 2000 International Residential Code/2000 International Building Code, as revised by the Texas Revisions, which became effective on February 1, 2003; and
- (3) to specify the percentage of rate reduction which must be applied to windstorm and hail insurance policies issued by the Texas Windstorm Insurance Association for residential structures constructed prior to September 1, 1998, or February 1, 2003, as applicable, which have been retro-fitted with exterior opening protection that meets the windborne debris impact-resisting standards of the Texas Windstorm Insurance Association Building Code for Windstorm Resistant Construction, which became effective on September 1, 1998, or the 2000 International Residential Code/2000 International Building Code, as revised by the Texas Revisions, which became effective on February 1, 2003, or equivalent criteria recognized by the Department pursuant to the procedures of the Texas Windstorm Insurance Association Building Code for Windstorm Resistant Construction, which became effective on September 1, 1998, or the 2000 International Residential Code/2000 International Building Code, as revised by the Texas Revisions, which became effective on February 1, 2003.

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

- (1) ~~Article 21.49, §8E—Section 8E of Article 21.49 of the Insurance Code—~~The Act as added by Acts 1997, 75th Legislature, chapter 1000, §3, effective September 1, 1997.
- (2) Association--Texas Windstorm Insurance Association.
- (3) TWIA Building Code--Texas Windstorm Insurance Association Building Code for Windstorm Resistant Construction, which became effective on September 1, 1998.
- (4) Department--Texas Department of Insurance
- (5) Exterior openings--Openings in the exterior walls or roofs of residential structures, including, but not limited to, windows, doors, garage doors, and skylights.
- (6) Inland I areas--Areas inland of the Intracoastal Canal and within approximately 25 miles of the Texas coastline and east of the boundary line specified in §5.40084021(b)(2)(A) of this title, and certain areas in Harris County as specified in §5.402108(b)(2)(B) of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made on and after September 1, 1998).
- (7) Inland II areas--Areas inland and west of the boundary line specified in §5.400821(b)(2)(A) of this title.
- (8) IRC--2000 International Residential Code, as revised by the Texas Revisions, which became effective on February 1, 2003.

- (9) IBC--2000 International Building Code, as revised by the Texas Revisions, which became effective on February 1, 2003.
- (c) Percentage Rate Reduction for New Residential Construction Built to TWIA Building Code or IRC/IBC Standards.
- (1) Areas seaward of the Intracoastal Canal. The Association shall implement a rate reduction of 26% for dwelling coverage and 20% for personal property coverage for new residential construction built to the TWIA Building Code standards and 28% for dwelling coverage and 23% for personal property coverage for new residential construction built to the IRC/IBC standards for residential structures located in areas seaward of the Intracoastal Canal.
 - (2) Inland I areas. The Association shall implement a rate reduction of 24% for dwelling coverage and 19% for personal property coverage for new residential construction built to the TWIA Building Code standards and 26% for dwelling coverage and 21% for personal property coverage for new residential construction built to the IRC/IBC standards for residential structures located in the Inland I areas.
 - (3) Inland II areas. The Association shall implement a rate reduction of 26% for dwelling coverage and 20% for personal property coverage for new residential construction built to the IRC/IBC standards for residential structures located in the Inland II areas.
- (d) Percentage Rate Reduction for New Residential Construction Built to Higher Standards than Required by the TWIA Building Code or the IRC/IBC.
- (1) Inland I areas. The Association shall implement a rate reduction of 29% for dwelling coverage and 23% for personal property coverage for new residential construction in the Inland I areas that meets the TWIA Building Code standards for a residential structure located in areas seaward of the Intracoastal Canal and 31% for dwelling coverage and 25% for personal property coverage for new residential construction in the Inland I areas that meets the IRC/IBC standards for a residential structure located in areas seaward of the Intracoastal Canal.
 - (2) Inland II areas.
 - (A) The Association shall implement a rate reduction of 27% for dwelling coverage and 21% for personal property coverage for new residential construction located in the Inland II area that meets the TWIA Building Code standards for a residential structure located in the Inland I areas and 28% for dwelling coverage and 23% for personal property coverage for new residential construction in the Inland II area that meets the IRC/IBC standards for a residential structure located in the Inland I areas.
 - (B) The Association shall implement a rate reduction of 32% for dwelling coverage and 25% for personal property coverage for new residential construction located in the Inland II areas that meets the TWIA Building Code standards for a residential structure located in the areas seaward of the Intracoastal Canal and 33% for dwelling coverage and 28% for personal property coverage for new residential construction in the Inland II areas that meets the IRC/IBC standards for a residential structure located in the areas seaward of the Intracoastal Canal.
- (e) Percentage Rate Reduction for Certain Retro-fitted Residential Structures. The Association shall implement a rate reduction of 10% for dwelling coverage and 10% for personal property coverage for residential structures in any of the designated catastrophe areas which were constructed prior to September 1, 1998, or February 1, 2003, as applicable, which have been retro-fitted with exterior opening protection that meets the windborne debris impact-resisting standards of the TWIA Building Code or the IRC/IBC or equivalent criteria recognized by the Department pursuant to TWIA Building Code or IRC/IBC procedures. All exterior openings of the residential structure must be protected for the structure to be eligible for the rate reductions specified in this subsection.
- (f) -Certification Required to Qualify for Rate Reduction. A residential structure must be certified by the Department as meeting the standards specified in the TWIA Building Code or the IRC/IBC to qualify for the rate reductions specified in this section.
- (g) Effective Date. The rate reductions specified in this section shall be applied to windstorm and hail insurance policies issued by the Association on and after February 28, 1999, for the TWIA Building Code and on and after July 31, 2003, for the IRC/IBC.

§5.4701. Requests for Additional Supporting Information

- (a) The department shall post on the department's website and with the Texas Secretary of State notice of the Texas Windstorm Insurance Association's (Association) annual rate filing under the ~~Insurance Code Act~~ §2210.352, other than a filing under the ~~Insurance Code~~the Act §2210.352(a-1)). The notice shall provide:
 - (1) notice of the filing;
 - (2) information on how to obtain a copy of the filing;
 - (3) the time period for submitting written requests for additional supporting information as provided in the ~~Insurance Code Act~~ §2210.354;
 - (4) the time period for submitting written comments or information related to the filing as provided in the ~~Insurance Code Act~~ §2210.352; and
 - (5) the applicable mail, delivery, and electronic addresses for submitting written requests for additional supporting information and written comments or information related to the filing.
- (b) All written requests for additional supporting information and written comments or information related to the filing must be submitted to the Office of the Chief Clerk no later than 5:00 p.m. on the date specified in the notice issued pursuant to subsection (a) of this section.
- (c) A written request for additional supporting information must meet the requirements of the Insurance Code §2210.354 and be submitted as required in the ~~Insurance Code Act~~ §2210.354 and this section. The period for submitting a written request for additional supporting information as provided in the ~~Insurance Code Act~~ §2210.354 and specified in the notice issued in subsection (a) of this section shall be no later than the earlier of:
 - (1) September 1 of the year in which the filing is made; or
 - (2) the 16th day after the day the filing is received by the department.
- (d) All written comments or information related to the annual rate filing must be submitted as required under this section not later than October 1 of the year in which the filing is made.

Texas Administrative Code

Title 28. Insurance

Part 1. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter E. Texas Windstorm Insurance Association

Division 6. Windstorm Building Code Advisory Committee on Specifications and Maintenance

§5.4800. Form Promulgated for Use in Proposing a Change to Windstorm Building Requirements or Procedures in the Texas Windstorm Insurance Association Plan of Operation

The Commissioner of Insurance adopts by reference a standard form promulgated for use by a person or organization in presenting a proposal for change in building requirements or procedures in the Texas Windstorm Insurance Association plan of operation for consideration by the Windstorm Building Code Advisory Committee on Specifications and Maintenance and presentation of such proposed change to the Commissioner for acceptance or rejection. Specimen copies of this form are available from the Inspections Division of the Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, MC 103-3A, Austin, Texas 78714-9104 and the Texas Department of Insurance website at www.tdi.state.tx.us www.tdi.texas.gov. The form is more specifically identified as BCAC FORM NO. 100-99, as amended January 1, 2005--Proposed Change to Windstorm Building Requirements or Procedures in the Texas Windstorm Insurance Association Plan of Operation.

Texas Administrative Code

Title 28. Insurance

Part 1. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter E. Texas Windstorm Insurance Association

Division 7. Eligibility and Forms

§5.4902. Additional Requirements

- (a) This section, §§5.4903-5.4908, and §5.4911 of this division (relating to Declination of Coverage; Flood Insurance; Minimum Retained Premium; Certificate of Compliance Approval Program; Certificate of Compliance Transition Program; Alter and Alteration; and Insurance Policy Forms, Endorsements, Manual Rules, Application Forms, and Underwriting Guidelines, respectively) shall be considered to be a part of the Texas Windstorm Insurance Association's plan of operation. These sections shall control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).
- (b) In addition to the requirements set forth in §5.4001 of this subchapter, including §5.4001(d)(2)(E) of this subchapter, prior to the issuance of an Association policy on insurable property, the Association must have received an application for a new or renewal Association policy that contains a statement that the agent possesses proof of:
 - (1) a declination of coverage from an authorized insurer writing windstorm and hail insurance as provided in §5.4903 of this division; and
 - (2) if applicable, flood insurance that was obtained for the property to be insured as provided for in §5.4904 of this division or the unavailability of flood insurance for such property.
- (c) The following words and terms when used in this division shall have the following meanings unless the context clearly indicates otherwise:
 - (1) Association--The Texas Windstorm Insurance Association.
 - (2) Commissioner--The Texas Commissioner of Insurance.
 - (3) Department--The Texas Department of Insurance.
- (d) The Association shall implement an agent audit procedure to verify that agents possess and maintain proof of the declination and flood insurance as required under §5.4903 of this division and, if applicable, §5.4904 of this division.
- (e) In addition to the requirement in subsection (d) of this section, the Association shall on or before June 1, 2010, submit to the commissioner for approval a proposal to ensure compliance with the requirements set forth in §5.4903 and §5.4904 of this division.
- (f) The Association on or before June 1, 2010, shall submit to the commissioner a proposal to amend the plan of operation to establish a procedure for suspending the acceptance of new or renewal insurance applications from an agent if the Association determines that the agent failed to comply with this section and §5.4903 and §5.4904 of this division. The proposal must also include a procedure for an agent to obtain a review of the suspension.

§5.4903. Declination of Coverage

- (a) To be eligible to obtain windstorm and hail insurance coverage from the Association for a property, an applicant or applicant's agent must have received at least one declination of coverage for the property from an insurer authorized to engage in the business of, and writing, property insurance providing windstorm and hail insurance coverage in the first tier coastal counties:
 - (1) in order to obtain new Association coverage; and
 - (2) every three calendar years, in order to obtain renewal Association coverage.
- (b) The following words and terms when used in this division shall have the following meanings unless the context clearly indicates otherwise:
 - (1) Authorized insurer and insurer authorized--An insurer operating under a certificate of authority issued by the Texas Department of Insurance.
 - (2) Declination--

- (A) A refusal to offer or a refusal to renew coverage for the perils of windstorm and hail from an authorized insurer; or
 - (B) An offer of a policy that includes coverage for the perils of windstorm and hail that is not substantially equivalent to the coverage offered by the Association. A policy is not substantially equivalent to an Association policy if the policy that is being offered does not provide the basic coverage(s) that the applicant is seeking. For example, a policy being offered to the applicant that includes coverage for the perils of windstorm and hail is not substantially equivalent to the coverage offered by the Association:
 - (i) when the applicant is seeking a policy that provides coverage on a replacement cost basis and the policy being offered to the applicant only provides coverage on an actual cash value basis; or
 - (ii) when the applicant is seeking a policy with a certain windstorm and hail deductible amount and the windstorm and hail deductible amount on the policy being offered is in excess of that amount.
- (3) Writing--Offering new or renewal coverage.
- (c) An agent shall maintain and submit to the Association at its request documentation that indicates proof of the declination required under subsection (a) of this section and that was relied upon by the agent in completing the Association's application for insurance coverage as set forth in §5.4902(b) of this division (relating to Additional Requirements). The proof must document the name of the authorized insurer that declined to offer coverage and the date of the declination. Documentation must be maintained either in writing or in an electronic format that may be printed by the agent. Documentation must be maintained for a period of not less than five years following the date of the submission of the application for Association coverage. The Association may also allow an agent to submit the requested documentation electronically in a manner that is acceptable to the Association.
 - (d) If the Association determines that a structure does not have a declination as required by this section, the ~~Insurance Code~~ Act §2210.202, and §5.4902(b) of this division, the Association may cancel insurance coverage on the structure. The Association shall provide the policyholder and the policyholder's agent with written notice of the cancellation not later than the 30th day before the effective date of the cancellation. In accordance with §5.4001(d)(3)(A)(ii) of this subchapter (relating to Plan of Operation), the notice of cancellation must state the reason for cancellation and provide the policyholder with notice of their right to appeal the Association's action. If the policyholder, or the policyholder's agent, provides the Association prior to the date of the cancellation of the policy with proof of a declination as required by this section, the ~~Insurance Code~~ the Act §2210.505, and §5.4902(b) of this division, the Association shall rescind the cancellation notice and continue coverage under the policy.

§5.4904. Flood Insurance

- (a) The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:
 - (1) Actual cash value--The replacement cost of an insured property at the time of loss, less the value of physical depreciation for the property.
 - (2) The terms constructed, altered, remodeled, and enlarged--Refer to any building activity or action on a structure that would require the insured or applicant to obtain a certificate of compliance, prior to the structure being considered to be an insurable property eligible for insurance coverage from the Association.
 - (3) Repair--The reconstruction or restoration of a structure that is deteriorated or damaged.
- (b) The Association may not issue or renew a policy unless evidence is shown that a flood insurance policy is in effect for the insurable property if:
 - (1) the structure is constructed, altered, remodeled, or enlarged on or after September 1, 2009;
 - (2) all or any part of the insurable property is located in any of the following zones designated by the National Flood Insurance Program (NFIP):
 - (A) Zone V;
 - (B) Zone VE;
 - (C) Zones V1-V30; and

- (3) flood insurance is available for the insurable property from the NFIP.
- (c) This section does not apply to:
 - (1) the repair of a structure; and
 - (2) insurable corporeal movable property located on or above the third floor of a structure.
- (d) The flood insurance policy required under subsection (b) of this section must provide the following coverage:
 - (1) if replacement cost coverage is available through the NFIP for the property to be insured by the Association, the flood insurance policy must provide coverage for the property in an amount at least equal to the lesser of:
 - (A) ninety percent of the amount of insurance for the property insured under the Association policy; or
 - (B) the maximum coverage amount available under the NFIP for the property; or
 - (2) if replacement cost coverage is not available through the NFIP for the property to be insured by the Association, the flood insurance policy must provide coverage for the property in an amount at least equal to the lesser of:
 - (A) ninety percent of the actual cash value for the property; or
 - (B) the maximum coverage amount available under the NFIP for the property.
- (e) A flood insurance policy required under subsection (b) of this section must be maintained throughout the entire period the Association policy is in effect.
- (f) For purposes of this section, a flood insurance policy is considered to be in effect upon application and presentment of payment of the premium for the flood insurance policy to the NFIP or a participating “write your own insurance company” regardless of any applicable waiting period that may apply to the flood insurance policy.
- (g) The agent shall maintain and submit to the Association at its request documentation demonstrating proof of the flood insurance coverage, or proof of the unavailability of flood insurance coverage required under this section, that was relied upon by the agent in completing the Association’s application for insurance coverage as set forth in §5.4902(b) of this division (relating to Additional Requirements). Acceptable proof shall include a copy of the flood insurance policy declarations page, or a copy of the flood insurance policy, or written or printable electronic evidence from the NFIP or the participating “write your own insurance company” that the flood insurance is unavailable through the NFIP. The Association may specify additional types of documentation that may be used to demonstrate compliance with this subsection. Proof must be maintained either in writing or in an electronic format that may be printed by the agent. Documentation must be maintained for a period of not less than five years following the date of the submission of the application for Association coverage. The Association may also allow the requested proof to be submitted electronically in a manner that is acceptable to the Association.
- (h) Each agent offering or selling a Texas windstorm and hail insurance policy in an area subject to this section must offer NFIP flood insurance coverage to the prospective insured if that coverage is available.
- (i) If the Association determines that a structure does not have flood insurance as required by this section, the Insurance Code §2210.203(a-1), and §5.4902(b) of this division, the Association may cancel insurance coverage on the structure. The Association shall provide notice of the cancellation not later than the 30th day before the effective date of the cancellation. In accordance with §5.4001(d)(3)(A)(ii) of this subchapter (relating to Plan of Operation), the notice of cancellation must state the reason for cancellation and provide the policyholder with notice of their right to appeal the Association’s action. If the policyholder, or the policyholder’s agent, provides the Association prior to the date of the cancellation of the policy with proof of flood insurance coverage, or proof of the unavailability of flood insurance coverage, as required by this section, the Insurance Code §2210.203(a-1), and §5.4902(b) of this division, the Association shall rescind the cancellation notice and continue coverage under the policy.

§5.4905. Agent Suspension

- (a) The Association shall deem an agent to have failed to comply with section §5.4903 (Declination of Coverage) or §5.4904 (Flood Insurance) as applicable if:
 - (1) The agent fails to respond timely to the Association’s audit requests; or
 - (2) An audit by the Association finds that the agent has maintained the required proof of declination or flood insurance in less than 70% of the files audited.
- (b) If an agent has failed to comply under subsection (a)(1), the association shall notify the agent that the association will, after 10 calendar days, suspend the agent’s authority to submit new or renewal applications.
- (c) If an agent has failed to comply under subsection (a)(2), the association shall notify the agent that the association will, after 30 calendar days, suspend the agent’s authority to submit new or renewal applications.
 - (1) An agent may avoid suspension once during any twelve-month period by completing an underwriting guideline training course designated by the Association.
 - (2) If the agent avoids suspension, the Association will review additional files to ensure the agent is compliant.
- (d) A notice of suspension shall include the reason for the suspension, an explanation that the suspension is indefinite, and instructions for how to request a review of the suspension or reinstatement.
- (e) Upon suspension of an agent the Association shall notify each of the insureds in the agent’s book of policies of the suspension and how it will affect their policy renewals.
- (f) An agent may obtain a review of a suspension at any time by submitting a written request to the Association along with supporting documentation. Upon receipt of a written request, the Association shall review the request and supporting information and issue a decision within 30 calendar days. The Association may require the agent to meet additional conditions, which may include additional training and/or review of additional files, in order to have the suspension lifted and the authority to issue new and renewal insurance applications reinstated.

Minimum Retained Premium

- ~~(a) Except as provided in this section, the minimum retained premium on an Association policy issued on an annual basis shall be:
 - ~~(1) equal to the greater of:
 - ~~(A) 90 days of the annual policy term or \$100, for policies that become effective on and after November 27, 2011; or~~
 - ~~(B) 180 days of the annual policy term or \$100, for policies that become effective before November 27, 2011; and~~~~
 - ~~(2) fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata.~~~~
- ~~(b) An Association policy canceled due to the reasons specified in paragraphs (1) (4) of this subsection is subject to the \$100 minimum retained premium. The minimum retained premium shall be fully earned on the effective date of the policy. Unearned premium in excess of the minimum retained premium set forth in this subsection shall be refunded pro-rata.
 - ~~(1) A change in majority ownership of the insured property, including sale of the insured property to an unrelated party, or foreclosure of the insured property;~~
 - ~~(2) the replacement of the Association policy with other similar coverage in the voluntary market;~~
 - ~~(3) the removal of the item(s) insured under an Association policy due to a total loss of the item(s), including demolition of the item(s); or~~
 - ~~(4) the death of the policyholder.~~~~
- ~~(c) The Association shall not issue a new or renewal policy to an applicant who owes premium on a prior Association policy.~~
- ~~(d) The minimum retained premium shall not create or extend coverage beyond the policy’s effective cancellation date.~~

§5.4906. Certificate of Compliance Approval Program

- (a) This section applies to each residential structure insured by the Association under a policy that was issued in accordance with the approval process regulations initiated April 12, 2006 and continued to be eligible for that coverage on September 1, 2009.
- (b) A person may continue to obtain insurance through the Association for a structure described in subsection (a) of this section subject to the following requirements. The insured must comply with:
 - (1) the mandatory building code requirement specified in the ~~Insurance Code Act~~ §2210.0258, effective June 19, 2009;
 - (2) the declination requirement specified in the ~~Insurance Code Act~~ §2210.0202 and §5.4902 and §5.4903 of this division (relating to Additional Requirements and Declination of Coverage, respectively);
 - (3) if applicable, the flood insurance requirement specified in the ~~Insurance Code Act~~ §2210.0203 and §5.4902 and §5.4904 of this division (relating to Additional Requirements and Flood Insurance, respectively); and
 - (4) all other Association underwriting requirements, including maintaining the structure in an insurable condition.

§5.4907. Certificate of Compliance Transition Program

- (a) Except as provided in §5.4906 of this division (relating to Certificate of Compliance Approval Program) after 12:01 a.m. September 1, 2009, and until expiration of this section, an applicant may obtain insurance through the Association for a residential structure without a certificate of compliance if:
 - (1) within the 12-month period prior to the date of application for Association coverage the structure has been insured on an annual basis under a property policy that included windstorm and hail coverage;
 - (2) the insurer that underwrote the policy on the structure:
 - (A) discontinues providing windstorm and hail insurance under the policy; or
 - (B) the insurer that underwrote the policy on the structure discontinues providing residential property insurance in the portion of the catastrophe area where the structure is located; and
 - (3) the applicant complies with:
 - (A) the mandatory building code requirement specified in the Insurance Code §2210.258, effective June 19, 2009;
 - (B) the declination requirement specified in the Insurance Code §2210.202 and §5.4902 and §5.4903 of this division (relating to Additional Requirements and Declination of Coverage, respectively);
 - (C) if applicable, the flood insurance requirement specified in the Insurance Code §2210.203 and §5.4902 and §5.4904 of this division (relating to Additional Requirements and Flood Insurance, respectively); and
 - (D) all other Association underwriting requirements, including maintaining the structure in an insurable condition and payment of premium.
- (b) Coverage issued under this section that expires prior to the expiration of this section may be renewed one time during the duration of the transition program provided the policyholder complies with all statutory requirements and Association underwriting requirements as provided in subsection (a)(3) of this section.
- (c) This section expires on August 31, 2011. No person may obtain insurance through the Association under the certificate of compliance transition program described in this section after August 31, 2011.
- (d) Under an alternative certification being developed by the department, policyholders will be able to continue coverage on the structure through the Association after the transition program expires.

§5.4908 Alter and Alteration

For purposes of the Insurance Code Chapter 2210 and this chapter, the term “alter” and “alteration” shall mean any modification to a structure that physically changes portions of the structure subject to wind forces without increasing the square footage of area of the structure.

§5.4911. Insurance Policy Forms, Endorsements, Manual Rules, Application Forms, and Underwriting Guidelines

- (a) The Association shall submit insurance policy forms, endorsements, manual rules, and application forms to the department for commissioner approval.
 - (1) Each policy form, endorsement, manual rule, and application form submission must include all information required by §5.9310 and §5.9320 of this chapter (relating to Property and Casualty Filing Transmittal Form and Required Information for the Preparation and Submission of Policy Form, Endorsement, or Manual Rule (other than rating manual) Filings, respectively).
 - (2) The department shall provide public notice of the submission not later than the 10th day after the filing is received by the department. The notice, shall be posted on the department's website and in the Texas Register, and shall indicate that the submission is available for review at the Office of the Chief Clerk of the Texas Department of Insurance during the period the petition is pending.
 - (3) Not later than the 20th day after notice of the submission is posted as provided under paragraph (2) of this subsection, a person may request a public hearing on the submission. The request must be in writing and submitted to the commissioner through the Chief Clerk of the Texas Department of Insurance.
 - (4) The department will provide not less than 10 days notice of a public hearing to consider a submission under this section. The department may set a public hearing without a request under paragraph (3) of this subsection. Notice of the hearing shall be posted in the Texas Register.
 - (5) Written comments on the submission must be submitted within 30 days after notice of the submission is posted as provided under paragraph (2) of this subsection, or on or before the date of a public hearing, if that date is later.
 - (6) The commissioner shall approve or disapprove by order any submission made under this section. The commissioner may delegate this authority to department staff as the commissioner deems necessary and appropriate.
- (b) The Association may not submit under this section any filing required to be made under [Chapter 2210, Subchapter H](#), of the [Insurance Code Act](#), including a filing required to be made under the [Insurance Code Act](#) §§2210.351, 2210.352, or 2210.361.
- (c) The commissioner shall not be required to approve or disapprove submitted items as a group. The commissioner may approve some items and disapprove other items submitted; however, the commissioner must approve or disapprove each form in its entirety without modification, and if the commissioner disapproves a form, the commissioner shall notify the Association of the reasons for such disapproval. Except as provided in this section, the Association may not use an insurance policy form, endorsement, manual rule, or application form that has not been approved by the commissioner.
- (d) The Association may:
 - (1) modify or withdraw a submission, in whole or in part, before it is approved or disapproved by providing written notice to the department;
 - (2) seek to amend an approved insurance policy form, endorsement, manual rule, or application form pursuant to the procedures set forth in subsection (a) of this section; and
 - (3) seek to withdraw an approved insurance policy form, endorsement, manual rule, or application form by requesting withdrawal of the items pursuant to the procedures set forth in subsection (a) of this section.
- (e) Any submission pending on March 26, 2010, shall be considered as being submitted on March 26, 2010.
- (f) The commissioner may without further notice and hearing approve without modification, in whole or in part, the Association's insurance policy forms, endorsements, and manual rules that have been previously adopted by reference under this title, including the policy forms and manual rules that have been adopted on an emergency basis under §5.4909 of this subchapter (relating to Policy Forms and Manual Rules) and §5.4910 of this subchapter (relating to Cancellation and Minimum Retained Premium). The commissioner may approve the previously adopted-by-reference forms to be effective on or before March 26, 2010. After March 26, 2010, the Association may not use any previously adopted-by-reference insurance policy forms, endorsements, or manual rules that have not been approved by the commissioner pursuant to this section.
- (g) The Association must submit its current residential and commercial underwriting guidelines to the department on or before March 31, 2010. The Association must submit any amendments to its residential and commercial underwriting guidelines not later than the 10th day after the date that the amended underwriting guideline

becomes effective. Underwriting guideline submissions must include all information required by §5.9342 of this chapter (relating to Filing Requirements). As used in this subsection, the term “underwriting guidelines” means a rule, standard, guideline, or practice, whether written, oral, or electronic, that is used by the Association or its agent as required by the Association to determine whether to accept or reject an application for coverage under a residential or commercial Association insurance policy or to determine how to classify those risks that are accepted for the purpose of determining a rate.

- (h) The Association must submit for approval its current application forms to the department on or before March 31, 2010. The Association may continue to use the application forms submitted under this subsection unless the forms are disapproved by the Commissioner.

§5.4912. Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.131.

(a) Not later than the 15th day after the effective date of this section, the association must file with the department policy forms that provide:

- (1) that the policy is immediately subject to any surcharge the commissioner may determine under §5.4126 (relating to Determination of the Association Surcharge Percentage) of Division 1 of this subchapter;
- (2) that the policyholder has 120 days from the date the policyholder received the notice described in §5.4189(b) (relating to Notification Requirements) of Division 1 of this subchapter to pay the surcharge; and
- (3) on the declarations page, a conspicuous notice in at least 12-point bolded font that the policy may be subject to an immediate premium surcharge, and that failure to pay will result in cancellation.

(b) The association must issue only policies that comply with subsection (a) of this section not later than 60 days after the department approves the policy forms filed under subsection (a) of this section.