

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 10. IMPLEMENTATION OF HOUSE BILL 4409
28 TAC §5.4902 – 5.4908

1. INTRODUCTION. The Commissioner of Insurance adopts on an emergency basis, to take immediate effect, §§5.4902–5.4908 implementing the requirements of HB 4409, 81st Legislature, 2009, Regular Session, relating to the Texas Windstorm Insurance Association's (Association) plan of operation concerning declinations of coverage, flood insurance, minimum retained premium, continuation of coverage for persons under the pre-existing certificate of compliance approval program, a certificate of compliance transition program, and the definition of the terms *alter* and *alteration*. Each of these sections affect a person's ability to obtain Association windstorm and hail insurance coverage (insurance coverage).

These sections are necessary to provide applicants, policyholders, the Association, and other interested persons with requirements and procedures necessary for persons to secure Association insurance coverage and to conform the Association's current plan of operation set forth in §5.4001 of this title (relating to Plan of Operation) with Chapter 2210 as amended by HB 4409. The Association offers insurance coverage in the designated catastrophe area, which consists of the 14 Texas coastal counties and parts of Harris County. The catastrophe area is underserved for insurance coverage. Persons seeking insurance coverage from the Association are unable to obtain comparable insurance coverage in the voluntary insurance market. Thus, persons who obtain coverage from the Association have few, if any, other sources from which they may obtain insurance coverage. Therefore, the ability to obtain insurance coverage from the Association has a direct effect on the welfare of persons living and working in the designated

catastrophe area, and the possible inability of such persons to obtain insurance coverage places them in imminent financial peril.

The legislature has found that the provision of windstorm and hail insurance is necessary for the economic welfare of the state. The legislature further determined that without that insurance, the orderly growth and development of the state would be severely impeded. Thus the adoption of these rules will affect the economic welfare of the state and the orderly development of the state.

The Association is created by the legislature and may only engage in those activities the legislature has authorized. The Association's primary activity is writing insurance coverage on eligible structures. Insurance coverage eligibility requirements were substantially amended by HB 4409. The amended requirements must be included in the Association's plan of operation, and either amend existing plan of operation requirements or are in addition to the existing plan of operation. Compliance with these requirements as expressed in statute is essential for persons to be assured that they may obtain insurance coverage through the Association.

Thus it is necessary to amend the plan of operation to address the declination requirement set forth in the Insurance Code §2210.202; the flood insurance requirement set forth in the Insurance Code §2210.203; the minimum retained premium requirement set forth in the Insurance Code §2210.204; the certificate of compliance waiver requirement set forth in the Insurance Code §2210.251(f); the availability of a transitional approval program as authorized in the Insurance Code §2210.251(a); and the definition of the terms *alter* and *alteration* as required in the Insurance Code §2210.008. Further, the minimum retained premium is a significant legislative requirement affecting the cost of insurance coverage for Association policyholders. Establishing this requirement in the plan of operation, including the methods of paying the

required minimum retained premium and the exceptions thereto may be a determining factor as to whether many persons may be able to obtain Association insurance coverage. Undo delay in adopting these amendments to the plan of operation may result in the possible inability of persons living and working in the designated catastrophe area to obtain Association insurance coverage, placing those persons in imminent financial peril and may affect the orderly development and the economic welfare of the state.

Additionally, because §§5.4902-5.4908 are necessary to conform the Association's current plan of operation with the requirements in the Insurance Code Chapter 2210 as amended by HB 4409, particularly as these requirements relate to eligibility for Association insurance coverage, these rules are essential for persons in the designated catastrophe area when making decisions concerning their insurance requirements and their ability to obtain insurance coverage as of September 1, 2009 and in the future. These requirements are the provisions in HB 4409 which became effective on June 19, 2009. Failure to conform the plan of operation to the requirements in the Insurance Code Chapter 2210, as amended, may cause persons to make decisions that they otherwise would not have made if they had been provided with additional information. The possibility that these decisions could limit the ability of such persons to obtain insurance coverage places them in imminent financial peril and may affect the orderly development and the economic welfare of the state.

Further, the legislature has directed the Department to implement these rules on an emergency basis. Section 46 of HB 4409 indicates the legislative intent for adopting these rules prior to the appointment and seating of the Association's new board of directors by instructing the Department to adopt rules required by Chapter 2210 as soon as possible, but not later than 30 days after the effective date of HB 4409. HB 4409 was effective June 19, 2009 for all adopted

sections, except for §§5.4906 and 5.4907, which are effective September 1, 2009. The Department does not consider the 30-day rule adoption requirement to create a prohibition on adopting rules after that period. Such a reading would be unreasonable because it would be inconsistent with Insurance Code §2210.008(b) (Commissioner may adopt reasonable and necessary rules); §2210.151 (Commissioner shall adopt the plan of operation by rule); and §36.001 (the Commissioner may adopt necessary and appropriate rules). Nor does the Department interpret the 30-day requirement to be a prohibition against adopting emergency rules after that date. The imminent need for rules to implement HB 4409 to protect the welfare of coastal residents and businesses did not expire in July, 2009. The need to obtain coverage exists before a catastrophic hurricane or other windstorm event occurs. Further, there is no penalty provided for failure to comply with the 30-day requirement. Therefore it is reasonable to consider that the 30-day requirement is a directive to adopt emergency rules under Government Code §2001.034. The legislative requirement is to adopt those rules *as soon as possible*. Consistent with this requirement, the Department has determined that it was necessary to obtain input concerning the adopted sections from various stakeholders, including legislative offices, the Association, coastal policyholder representatives, and insurers. This process was intended to reduce potential unintended consequences in the emergency rules. Additional emergency rules may follow this adoption as necessary.

Formal rule proposals subject to notice, public comment, and an opportunity for public hearing, will follow this emergency adoption. Future proposals may address the requirements stated herein and additional matters necessary to implement HB 4409. Further, HB 4409 directs the Association's board of directors to propose to the Commissioner amendments to the Association's plan of operation on or before March 1, 2010. The board's proposed amendments

would then be proposed as a rule subject to notice, public comment, and an opportunity for public hearing.

Based on the foregoing facts, the Commissioner has determined that to ensure that persons in the catastrophe area will be able to continue to obtain Association insurance coverage, the Association's existing plan of operation must be amended to conform with the Insurance Code Chapter 2210 as amended by HB 4409. Additionally, the Commissioner has determined that it is necessary to adopt as rules §§5.4902 – 5.4908 to amend the Association's plan of operation and establish the procedures necessary to conform the Association's existing plan of operation with the Insurance Code Chapter 2210 as amended by HB 4409. Section 46, HB 4409 directs the Commissioner to adopt required rules as soon as possible, but not later than 30 days after the effective date of HB 4409 which is consistent with the requirement for an emergency rule under Government Code §2001.034. Additionally, there is imminent financial peril to the welfare of persons in the designated catastrophe area if they cannot obtain insurance coverage from the Association, a market of last resort, and also an impediment to the economic welfare and the orderly development of the state. Therefore, it is necessary to adopt these sections on an emergency basis.

§5.4902

Section 5.4902(a) establishes that §§5.4902–5.4908 are adopted as part of the Association's plan of operation and control in the event of any conflict between those sections and the plan of operation set forth in §5.4001 of this title. Section 5.4902(b) provides that the requirements in §§5.4903 and 5.4904 (relating to Declination of Coverage; and Flood Insurance, respectively) are in addition to other plan of operation requirements related to eligibility for coverage.

§5.4903

Section 5.4903 establishes the declination requirement as required by the Insurance Code §2210.202(a). Section 5.4903(a) recites the statutory requirement. The term *insurer authorized* is considered to be the same as the more commonly used term *authorized insurer* and means an insurer operating under a certificate of authority granted by the Department, and not a surplus lines carrier. The term *writing* is defined in §5.4903(b)(2) to mean offering new or renewal coverage.

Section 5.4903(b) defines the declination requirement. As set forth in §2210.202, the declination may either be a refusal to offer new or renewal coverage on the structure or a refusal to offer the basic insurance coverage sought by the applicant that is substantially equivalent to that offered by the Association. Several examples of factors that could be considered in determining substantially equivalent are provided; however, these examples are not exhaustive. Consideration of other potential factors such as affordability have been deferred to a formal rule proceeding.

Section 5.4903(c) addresses the requirement in the Insurance Code §2210.202(b) that the agent have proof of the declination when submitting the application for Association coverage. Under subsection (c) the agent must maintain the proof in written form and provide such proof to the Association if requested. Subsection (c) does not affect the statutory requirement for the Association to require an agent's statement on an application for new or renewal coverage. Finally, §5.4903(a) allows an agent to obtain a declination on behalf of the applicant.

5.4904

Section 5.4904 establishes the flood insurance requirement as required by the Insurance Code §2210.203(a-1). Section 5.4904(a) recites the statutory application requirement. For

purposes of this adoption, the requirement applies to construction, alterations, remodeling, and enlargement beginning on and after September 1, 2009. Further, as specified in §5.4904(d), for the purposes of this adoption the terms “constructed,” “altered,” “remodeled,” and “enlarged” refer only to those activities that require a certificate of compliance to be eligible for Association coverage under the Insurance Code §2210.251 and §2210.258.

The Insurance Code §2210.203(a-1) does not extend the flood insurance requirement to structures being repaired. The Department’s definition of repair is currently listed on the Department’s website in a document entitled Texas Windstorm Insurance Requirements (TWIA) Insurability Requirements as meaning: *any reconstruction/restoration of an existing structure that is deteriorated or damaged*. This definition was originally adopted by reference as part of the 1998 Building Code for Windstorm Resistant Construction in §5.4008 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, and before February 1, 2003.) Further, this adoption is not intended to change any Department rules related to building code requirements.

Section 5.4904(b) designates the Zone V and other similar zones where the Association is prohibited from writing insurance coverage unless either the applicant has flood insurance or flood insurance is unavailable from the National Flood Insurance Program (NFIP). Each of these zones is designated by the NFIP as having an additional hazard of either storm-induced waves (Zone V) or storm-induced velocity wave action. Agents, applicants, and the Association may determine whether or not a structure is located within a specific zone by entering the address of the structure into the NFIP’s website.

Section 5.4904(c) sets forth the amount of flood insurance that is required for a particular structure. This amount of coverage is necessary based on a determination that a structure in such zones is subject to significant flood damage. The amount is not set as being equal to Association coverage due to factors such as the available NFIP limits and inflation adjustments that might affect overall valuation of the structure. Additionally, the Department recognizes that flood insurance coverage may in certain cases be limited to actual cash value. Finally, as addressed in §5.4904(k), this requirement does not apply to movable property on or above the third floor of a structure. This requirement may be modified during additional rule proceedings related to the Association's plan of operation.

Section 5.4904(g), (h) and (j) address agent responsibilities concerning the flood insurance requirement as required by the Insurance Code §2210.202(b) and §2210.203(a-1). Section 2210.202(b) requires that the agent have proof of flood insurance coverage when submitting the application for Association coverage. Under subsection (h) the agent must maintain the proof in written form and provide such proof to the Association if requested. Thus, before the agent may submit application for Association coverage on a structure required to have flood insurance under the Insurance Code §2210.203(a-1) and §5.4904, the agent must first obtain this proof either from the agent's own work product, the applicant, or another agent. Finally, the Insurance Code §2210.203(a-1) requires that each agent soliciting Association insurance coverage in an area designated by the Commissioner under that subsection must offer flood insurance coverage. This requirement is restated in §5.4904(j).

Future formal rule proceedings may also consider other matters related to this requirement such as the consequences of failing to maintain flood insurance.

§5.4905

Section 5.4905 establishes the minimum retained premium required by Insurance Code §2210.204(e). The statute requires the minimum retained premium be for a period of not less than 180 days. Section 2210.204 requires that at least 180 days of premium be earned upon the effective date of coverage. Section 5.4905(a) establishes that the minimum retained premium will be the greater of the premium amount equal to 180 days or \$100.00. The \$100.00 amount is the Association's current minimum earned premium. The minimum retained premium will be considered earned premium, however, as provided in §5.4905(f) coverage for this period will not be extended beyond the effective cancellation date. The minimum retained premium of \$100 applies to those situations described in §5.4905(b).

Questions and concerns have arisen regarding this statutory requirement because the 180 day minimum premium could create an exceptionally high bar to certain persons seeking to obtain Association insurance coverage, but who need to obtain premium financing. Requiring the Association to withhold a full minimum premium would require persons financing premium to make a deposit in excess of 50% of the annual premium. This contrasts with current financing practices that may require considerably less of a deposit than 50% or more of the annual premium. A deposit of 50% or more of the annual premium may create an undue hardship for many persons.

The Department believes the intent of the amendment to Insurance Code §2210.204 was not to adversely affect persons with limited financial resources but rather to limit persons from simply buying coverage only when a storm appeared to be entering the Gulf of Mexico. Such purchases are adverse to the Association's rate structure and premium collections which attempt to spread the cost of insurance coverage over the entire year even though the risk is concentrated primarily during hurricane season.

Thus, §5.4905(c) provides that if a person who finances an Association policy has not previously canceled an Association policy after the effective date of this section, the Association shall refund the premium pro-rata in excess of \$100 to the premium finance company if the policy is canceled within 180 days of its effective date. Except for those cancellations resulting from the exceptions set forth in §5.4905(b), the person would still owe the remainder of the 180 day minimum retained premium to the Association and would be ineligible to purchase future insurance coverage from the Association until the balance of the 180 day amount is paid. Additionally, on such future policies, the Association would no longer make a pro rata refund to a premium finance company in the manner described in §5.4905(c)(1).

Finally, because implementing this section may require modifications to the Association's policy forms, the implementation period is delayed.

§5.4906

Section 5.4906 sets forth how the Insurance Code §2210.251(f) will apply to persons who have obtained Association insurance coverage pursuant to the approval program initiated on April 12, 2006. The lapse provision in §5.4906(2) is meant to address those situations where a person intends to continue coverage, but for some reason a gap in coverage exists.

§5.4907

Section 5.4907 extends coverage to those persons who are not insured by the Association as of September 1, 2009, but are otherwise similarly situated. The purpose of §5.4907 is to begin the process of creating a transition plan to enable insurance coverage eligibility for these persons between September 1, 2009 and August 31, 2011.

§5.4908

Section 5.4908 defines the terms *alter* and *alteration* for the purposes of the Insurance Code Chapter 2210 as required in the Insurance Code §2210.008(c). The definition provided is the same as that currently provided on the Department's website in a document entitled Texas Windstorm Insurance Requirements (TWIA) Insurability Requirements. This definition was originally adopted by reference as part of the 1998 Building Code for Windstorm Resistant Construction in §5.4008 of this title. Because this definition is already in use, this section is not anticipated to result in any change to current Department rules or procedures.

2. STATUTORY AUTHORITY. Sections 5.4902–5.4908 are adopted under the Government Code §2001.034 and the Insurance Code §§2210.008, 2210.151, 2210.202, 2210.203, 2210.204, 2210.251 and 36.001 and Section 46, HB 4409, 81st Legislature, 2009, Regular Session. The Insurance Code §2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules in the manner prescribed in Subchapter A, Chapter 36, Insurance Code. The Insurance Code §2210.152 authorizes the Commissioner to adopt the Association's plan of operation by rule. The Insurance Code §2210.202(a) requires that a declination be defined in the Association's plan of operation. The Insurance Code §2210.202(b) requires the agent to possess proof of the declination described by §2210.202(a) and proof of flood insurance coverage or unavailability of that coverage as described by §2210.203(a-1). The Insurance Code §2210.203(a-1) requires the purchase of flood insurance in a Zone V area and other similar areas designated by the Commissioner under that section. The Insurance Code §2210.204(d) and (e) require that the minimum retained premium be set forth in the plan of operation and that the plan of operation specify events that reflect a significant change in the exposure or the policyholder concerning the insured property that would be exemptions from the minimum retained premium requirement. The Insurance Code §2210.251(a) authorizes the plan of operation to include an

approval program for determining whether a structure is eligible for Association insurance coverage. The Insurance Code §2210.251(f) establishes that structures insured by the Association as of September 1, 2009, may continue to be considered insurable property notwithstanding the requirements of §2210.251. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state. Section 46 of HB 4409, directs the Commissioner to adopt rules required by Chapter 2210 as soon as possible but not later than the 30th day after the effective date of HB 4409. The Government Code §2001.034 authorizes a state agency to adopt administrative rules on an emergency basis without prior notice and hearing under certain statutorily specified circumstances, including a finding that there is imminent peril to the public health, safety, or welfare.

3. TEXT.

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 10. IMPLEMENTATION OF HOUSE BILL 4409

§5.4902. Additional requirements.

(a) This section and §§5.4903–5.4908 of this title (relating to Declination of Coverage; Flood Insurance, Minimum Retained Premium, Certificate of Compliance Waiver Program, Certificate of Compliance Transition Program, and Alter and Alteration respectively) shall be considered to be a part of the Texas Windstorm Insurance Association's (Association) plan of operation. These sections shall control over any conflicting provision in §5.4001 of this title (relating to Plan of Operation).

(b) In addition to the requirements set forth in §5.4001, including §5.4001(d)(2)(E), prior to the issuance of an Association policy on insurable property, the Association must have 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; and

(2) if applicable, flood insurance that was obtained for the property to be insured as provided for in §5.4904 or the unavailability of flood insurance for such property.

§5.4903. Declination of Coverage

(a) To be eligible to obtain new or renewal windstorm and hail insurance coverage from the Texas Windstorm Insurance Association (Association) an applicant or applicant's agent must have received at least one declination of coverage for the property to be insured by the Association 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.

(b) The following terms shall have the following meanings:

(1) "Declination" means:

(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 is not substantially equivalent if the policy pays for damage to covered property on an actual cash value basis

compared to an Association policy that pays for damage to covered property on a replacement cost basis or a policy that has a minimum windstorm and hail deductible that is in excess of the deductible the applicant is seeking and that is available through the Association.

(2) "Writing" shall mean offering new or renewal coverage.

(c) An agent shall maintain and submit, at the request of the Association, written documentation that indicates proof of the declination required under subsection (a) of this section.

§5.4904. Flood Insurance.

(a) This section applies to a structure constructed, altered, remodeled, or enlarged on or after September 1, 2009 that is located within the catastrophe area as designated pursuant to Insurance Code §2210.005. This section does not apply to the repair of a structure.

(b) The Texas Windstorm Insurance Association (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) 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, and

(C) Zone V1- V30; and

(2) flood insurance is available from the NFIP.

(c) The flood insurance policy 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. Actual cash value under this subsection means the replacement cost of an insured property at the time of loss, less the value of physical depreciation for the property.

(d) In this section 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 under Insurance Code §2210.251 and 2210.258, prior to the structure being considered to be an insurable property eligible for insurance coverage from the Association.

(e) 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 company" regardless of any applicable waiting period that may apply to the flood insurance policy.

(f) A refusal by the NFIP or a participating "write your own company" to insure the insurable property shall be considered evidence that flood insurance is not available.

(g) For each new or renewal application on insurable property subject to this section, the agent shall provide confirmation to the Association that the agent has the information required under subsection (h) of this section.

(h) The agent shall maintain and at the request of the Association, submit written documentation demonstrating compliance with this section. Acceptable documentation may include a copy of the flood insurance policy declarations page, a copy of the flood insurance policy, or evidence that the flood insurance was not available. The Association may specify in its underwriting standards and post on its website additional documentation that constitutes evidence of a flood insurance policy being in effect.

(i) Flood insurance must be maintained throughout the entire period the Association policy is in effect.

(j) Each agent offering or selling a Texas windstorm and hail insurance policy in a portion of the designated catastrophe area subject to this section must offer NFIP flood insurance coverage to the prospective insured if that coverage is available.

(k) This section does not apply to corporeal movable property located on or above the third floor of a structure.

§5.4905. Minimum Retained Premium.

(a) Except as provided in this section the minimum retained premium on a Texas Windstorm Insurance Association (Association) policy issued on an annual basis shall be the premium amount equal to the greater of 180 days of the annual policy term or \$100.00. 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.

(b) An Association policy canceled due to the reasons specified in paragraphs (1) – (4) of this subsection is subject to a \$100.00 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 property insured in the Association policy;

(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) An Association policy that is canceled and that the premium is financed through a person authorized to finance premiums under the Insurance Code Chapter 651 is subject to the following:

(1) A \$100.00 minimum retained premium applies, except as provided for in paragraph (3) of this subsection. The \$100.00 minimum retained premium is fully earned on the effective date of the policy. The unearned premium in excess of the \$100.00 minimum retained premium shall be refunded to the premium finance company on a pro-rata basis.

(2) Except as provided for under subsection (b) of this section, the named insured shall owe to the Association the unpaid balance of the minimum retained premium under subsection (a) of this section that is in excess of \$100.00 and shall not be eligible for coverage until the balance is paid.

(3) Subsection (a) of this section applies to an Association policy that the premium is financed for a person that was insured under a prior Association policy effective on or after the effective date of this section and the premium for such policy was financed and the policy was canceled within 180 days of the effective date of the policy.

(d) The Association shall maintain a list of all persons that are subject to subsection (c)(2) of this section. The list may only be shared with persons authorized by the department to engage in the business of premium finance under the Insurance Code Chapter 651 and the department. A person may be removed from the list if on petition by the person to the Association, the Association determines that the cancellation resulted due to one or more of the events set forth in subsection (b) of this section.

(e) The Association shall not issue a new or renewal policy to an applicant who is indebted to the Association on a prior Association policy.

(f) The minimum retained premium shall not create or extend coverage beyond the policy's effective cancellation date. A person making a payment on a balance due as provided under subsection (e) of this section shall not be entitled to any additional coverage beyond the policy's effective cancellation date.

(g) This rule does not address or affect any requirement under statute or rule concerning the qualifications or licensure of persons engaging in the business of premium finance.

(h) This section applies to each Association policy that is issued or renewed on or after November 1, 2009.

§5.4906. Certificate of Compliance Approval Program

This section applies to each residential structure insured by the Texas Windstorm Insurance Association (Association) under a policy in effect as of 12:01 a.m., September 1, 2009 that was

issued in accordance with the approval program initiated April 12, 2006. For the purposes of this section, a residential structure will be considered insured by the Association if as of 12:01 a.m., September 1, 2009 there was a lapse in coverage on the structure and the lapse in coverage was for a period of less than 30 days. An insured may continue to obtain insurance through the Association for that structure subject to the following requirements:

(1) the insured must comply with:

(A) the mandatory building code requirement under Insurance Code § 2210.258, effective June 19, 2009;

(B) the declination requirement under Insurance Code § 2210.202 and § 5.4902 and 5.4903 of this title (relating to Additional Requirements and Declinations, respectively);

(C) If applicable, the flood insurance requirement under Insurance Code § 2210.203 and § 5.4902 and § 5.4904 of this title (relating to Flood Insurance); and

(D) all other Association underwriting requirements, including maintaining the structure in an insurable condition and payment of premium.

(2) there may not be a lapse in coverage on the structure for a period of 30 days or more. If coverage for the structure lapses for a period of 30 days or more, the insured will be required to demonstrate that the structure has been inspected and issued a certificate of compliance under the applicable building code in accordance with Insurance Code §2210.251 and §2210.258 in order to obtain coverage from the Association.

§5.4907. Certificate of Compliance Transition Program

(a) Except as provided in §5.4906 of this title (relating to Certificate of Compliance Waiver Program) after 12:01 a.m. September 1, 2009 and until expiration of this section an applicant

may obtain insurance through the Texas Windstorm Insurance Association (Association) for a residential structure without a certificate of compliance if:

(1) within the twelve 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 under Insurance Code § 2210.258, effective June 19, 2009;

(B) the declination requirement under Insurance Code § 2210.202 and §§ 5.4902 and 5.4903 of this title;

(C) if applicable, the flood insurance requirement under Insurance Code § 2210.203 and § 5.4902 and § 5.4904 of this title (relating to Flood Insurance); 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 standards 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 that date.

§5.4908. Alter and Alteration.

For the purposes of Insurance Code Chapter 2210, the term "alter" and "alteration" shall mean any modification that physically changes the exterior of a structure without increasing the square footage of area of the structure.

4. CERTIFICATION. This agency hereby certifies that the adopted sections have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on August 28, 2009.



Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that §§5.4902 – 5.4908 specified herein, relating to the Texas Windstorm Insurance Association's plan of operation concerning declinations of coverage, flood insurance, minimum retained premium, continuation of coverage for persons under the pre-existing certificate of compliance approval program, a certificate of compliance transition program, and the definition of the terms *alter* and *alteration* are adopted on an emergency basis pursuant to the Government Code §2001.034 to take immediate effect.

09-0714

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 5 Property and Casualty Insurance

Emergency Sections
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AND IT IS SO ORDERED.


MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:


Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO **09-0714**

AUG 28 2009