

**SUBCHAPTER E. Texas Windstorm Insurance Association  
28 TAC §§5.4111, 5.4113, and 5.4114**

**INTRODUCTION.** The Texas Department of Insurance proposes to amend 28 TAC §§5.4111, 5.4113, and 5.4114, concerning the Texas Windstorm Insurance Association's (association's) catastrophe reserve trust fund (CRTF). The amendments implement Senate Bill 900, 84th Legislature, Regular Session (2015).

**EXPLANATION.** The CRTF is an account administered by the Texas Comptroller dedicated to the payment of future association catastrophe losses. SB 900 requires the Commissioner to adopt rules for the release of money from the CRTF to pay operating expenses, including reinsurance and alternative risk financing mechanisms, when premium is not enough. It is necessary to amend §§5.4111, 5.4113, and 5.4114 to implement SB 900, in order to allow the association to pay operating expenses with money normally set aside in the CRTF to pay claims when it does not have enough premium and other revenue to pay its operating expenses.

**Section 5.4111** concerns the CRTF's general operation, payments, and maintenance. Amending §5.4111 is necessary to reflect that SB 900 amended Insurance Code §2210.453 to prohibit the association's reinsurance from attaching at a point lower than the aggregate amount of all available funding.

**Section 5.4113** concerns how the Texas Treasury Safekeeping Trust Company invests CRTF funds. Amending §5.4113 is necessary to conform the statutory references to SB 900's changes. SB 900 added Insurance Code §2210.4521, requiring that CRTF funds above the amount necessary to pay for insured losses and for reinsurance or alternative risk financing be invested in accordance with Government Code §404.024(j). Subsection (j) of

§404.024 describes an investment standard that a person of "ordinary prudence, discretion, and intelligence" would use in managing their own affairs. CRTF funds below the specified amount are invested as provided in Government Code §404.106 and the remainder of Government Code §404.024.

**Section 5.4114** describes the procedures for disbursing funds from the CRTF. Amending §5.4114 is necessary to reflect that SB 900 amended Insurance Code §2210.453 to prohibit the association's reinsurance from attaching at a point lower than the aggregate amount of all available funding. Amending §5.4114 is also necessary to establish procedures for disbursing funds from the CRTF to pay for the association's operating expenses, including reinsurance or alternative risk financing mechanisms, when the association does not have sufficient premium or other revenue. The association must request CRTF funds for operating expenses by submitting a written request to the Commissioner that includes an itemized list of operating expenses and describes the event that caused the need for the disbursement. Except for disbursements to pay for reinsurance or alternative risk financing mechanisms, the Commissioner will authorize the release of funds only for operating expenses the Commissioner deems essential on a short-term basis. The Commissioner may authorize an operating expense disbursement in an amount that allows the association to exceed the minimum funding level required under Insurance Code §2210.453.

In addition to the previously described amendments, the proposed amendments to §§5.4111, 5.4113, and 5.4114 include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and to improve clarity.

TDI received comments on an informal working draft posted on TDI's website on April 26, 2018. TDI considered those comments when drafting this proposal. The comments supported the proposed amendments.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Mark Worman, acting deputy commissioner of the Regulatory Policy Division, has determined that for each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of this proposal.

Mr. Worman does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Mr. Worman expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Insurance Code §§2210.452, 2210.4521, and 2210.453. The amendments will also have the public benefit of providing a transparent means for the association to request and receive CRTF funds for reinsurance or to meet operating expenses when it does not have sufficient premium and other revenue. Finally, in allowing the Commissioner to approve a disbursement for reinsurance in excess of the amount needed to meet the statutory minimum, the amendments give the association flexibility in the amount of reinsurance it can purchase.

Mr. Worman expects that the proposed amendments will impose an economic cost on the association. According to the association, it will incur this cost by describing the events that necessitate a disbursement to pay for operating expenses. The association estimates that accomplishing this task will cost less than \$500. The other requirements

the amendments impose for an operating expense disbursement request, itemizing operating expenses and giving the amount requested, call for information the association already gathers in its normal course of business. The current rules address requests for funds to pay for a catastrophic event or to pay for costs associated with maintaining the CRTF. The proposed amendments do not add to the costs associated with requests addressed in the current rules.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. As specified in the Public Benefit and Cost Note section of this proposal, the proposed amendments will have a small economic impact on the association. The association is not a small or micro business or a rural community as defined in Government Code §2006.001. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments are necessary to implement legislation. The proposed rule implements Insurance Code §2210.452 and §2210.453, as amended by SB 900, 84th Legislature, Regular Session (2015) and §2210.4521, as added by SB 900. SB 900 does not specifically state that Government Code §2001.0045 applies to rules implementing it.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amendments are in effect,

- the proposed rule will not create or eliminate a government program;
- the proposed rule will not require the creation of new employee positions or the elimination of existing employee positions;
- the proposed rule will not require an increase or decrease in future legislative appropriations to the agency;
- the proposed rule will not require an increase or decrease in fees paid to the agency;
- the proposed rule will create a new regulation in 28 TAC §5.4114(c);
- the proposed rule will not expand, limit, or repeal an existing regulation;
- the proposed rule will not increase or decrease the number of individuals subject to the rule's applicability; and
- the proposed rule will not positively or adversely affect the Texas economy because any effects are due to SB 900's amendments to Insurance Code §§2210.452, 2210.4521, and 2210.453. The method the proposed amendments use to implement SB 900 impose some costs on the association, as stated in the Public Benefit and Cost Note, but these costs are too small to affect the Texas economy. It is possible that allowing the disbursement of CRTF funds to exceed the minimum required funding level would enable the association to obtain better reinsurance rates than it could otherwise, which could positively affect the Texas economy. But this effect is too uncertain to claim.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action.

As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** Submit any written comments on the proposal no later than 5 p.m., Central time, on January 7, 2019. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov); or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be received by the department no later than 5:00 p.m., Central time, on January 7, 2019. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes amendments to §§5.4111, 5.4113, and 5.4114 under Insurance Code §§2210.008, 2210.452(f), and 36.001. Section 2210.008 allows the Commissioner to adopt rules as reasonable and necessary to implement Chapter 2210. Section 2210.452(f) directs the Commissioner to adopt rules establishing the procedure for distributing funds from the CRTF to pay for operating expenses. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS-REFERENCE TO STATUTE.** Section 5.4111 implements Insurance Code §2210.453, enacted by SB 900, 84th Legislature, Regular Session (2015). Section 5.4113

implements Insurance Code §2210.4521, enacted by SB 900. Section 5.4114 implements Insurance Code §2210.452 and §2210.453, enacted by SB 900.

**TEXT.**

**§5.4111. Operation of the Catastrophe Reserve Trust Fund.**

(a) In general [~~General~~].

(1) The comptroller must [~~shall~~] administer the CRTF [~~catastrophe reserve trust fund~~] in accordance with Insurance Code Chapter 2210[~~7~~] and this subchapter.

(2) The comptroller must [~~shall~~] ensure that all money received from the association under [~~Association pursuant to~~] subsection (b) of this section is deposited with the trust company in the CRTF [~~catastrophe reserve trust fund~~].

(3) The trust company must [~~shall~~] receive, disburse, invest, hold, and manage all money deposited in the CRTF [~~catastrophe reserve trust fund~~].

(4) All money, including investment income, deposited in the CRTF constitutes [~~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 [~~Funds~~] to the CRTF [~~Catastrophe Reserve Trust Fund~~].

(1) Except as provided by statute, on an annual basis, the association must [~~Association shall~~] pay the net gain from operations of the association [~~Association~~] directly to the comptroller for deposit with the trust company in the CRTF [~~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 must [~~Association shall~~] pay all premium surcharges collected under [~~the~~] Insurance Code §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 CRTF [~~catastrophe reserve trust fund~~]. Premium surcharges [~~collected by~~] the association collects under [~~Association pursuant to the~~] Insurance Code §2210.259 and investment income on those funds are not gross premium or other revenue of the association [~~Association~~] and must be accounted for separately from the association's [~~Association's~~] gross premium and other revenue.

(3) As necessary, the association must [~~Association shall~~] pay directly to the comptroller for deposit with the trust company in the CRTF [~~catastrophe reserve trust fund~~] all:

(A) excess public security proceeds resulting from [~~the~~] Insurance Code §2210.608; and

(B) excess premium surcharges resulting from [~~the~~] Insurance Code §2210.611 and §5.4144 of this title [~~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 must [~~shall~~] be deposited in the CRTF [~~catastrophe reserve trust fund~~] immediately on [~~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 CRTF [Catastrophe Reserve Trust Fund].~~

(1) In maintaining and managing the CRTF [catastrophe reserve trust fund], the trust company has the same [shall be charged with the] duty of care that [-which] applies to the comptroller as trustee of funds in the treasury.

(2) The department will [shall] pay the trust company an amount sufficient to reimburse the trust company for the actual monthly costs of administering and maintaining the CRTF [catastrophe reserve trust fund]. The trust company must [shall] deduct the appropriate amount directly from the CRTF's earnings [of the catastrophe reserve trust fund] and advise the department monthly in writing of the amount of these costs.

(3) The trust company must [shall] submit to the department a report of all transactions relating to the CRTF [catastrophe reserve trust fund] promptly after the end of each month. The trust company must [shall] furnish other information relating to the

CRTF [~~catastrophe reserve trust fund~~] as the department may reasonably request from time to time.

(4) The trust company must [~~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 CRTF [~~catastrophe reserve trust fund~~] in accordance with generally accepted accounting principles. The records must [~~shall~~] be available for inspection by an authorized representative of the department at all reasonable hours of the business day and under reasonable conditions.

#### **§5.4113. Investments of Catastrophe Reserve Trust Fund.**

(a) Subject to Insurance Code §2210.4521, the [~~The~~] money in the CRTF [~~catastrophe reserve trust fund~~] may only be invested in investments as authorized by [~~the~~] Government Code §404.024 and §404.106, and as amended.

(b) The association [~~Association~~] does not have authority to direct investments or money in the CRTF [~~catastrophe reserve trust fund~~].

(c) All earnings and losses from the investment of funds in the CRTF must [~~catastrophe reserve trust fund shall~~] be credited to or charged against the CRTF [~~catastrophe reserve trust fund~~]. Investment income on money in the CRTF must [~~trust fund shall~~] be maintained as part of the funds in the CRTF [~~trust fund~~].

(d) CRTF [~~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. Disbursements from the Catastrophe Reserve Trust Fund [~~Duties and Responsibilities~~].**

(a) Disbursements in response to a catastrophic event require the following:

(1) In the event that the association reasonably estimates that a catastrophic event has occurred, the general manager of the association must provide the Commissioner and the comptroller a definitive written statement containing the total amount of the estimated catastrophic losses, potential reinsurance recoveries related to those losses, and the estimated portion of the catastrophic losses that exceeds the catastrophe year's premium and other revenue of the association;

(2) The Commissioner or an authorized representative of the department, on receiving the statement described in (a)(1), must have determined that a catastrophic event has occurred;

(3) The Commissioner or an authorized representative of the department must provide the trust company with a letter of instruction to pay the association or any third-party payee an amount from the CRTF that is equal to the lesser of either:

(A) the portion of the catastrophic loss that exceeds the catastrophe year's premium and other revenue of the association, or

(B) the balance of the CRTF; and

(4) The association must report to the Commissioner and the comptroller any subsequent change in the amount of catastrophic losses. If the change results in an increase in the amount of catastrophic losses, the association may request additional disbursements under this subsection. If the change results in a decrease in the amount of catastrophic losses, subsection (g) of this section applies. [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.]

(b) To disburse funds to pay for costs associated with maintaining or managing the CRTE, the Commissioner or an authorized representative of the department must issue a letter of instruction to the trust company specifying the amount of money to be paid and specifying any third-party payee. ~~[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.]~~

(c) To request a disbursement to pay for operating expenses, including reinsurance or alternative risk financing mechanisms under Insurance Code §2210.453, the association must submit a written request to the Commissioner, copied to the comptroller, that includes:

- (1) an itemized list of operating expenses;
- (2) the total amount of funds the association is requesting under this subsection; and
- (3) a description of the event or events that caused the association to lack sufficient premium and other revenue to pay for the listed operating expenses.

(d) With the exception of disbursements to pay for reinsurance or alternative risk financing mechanisms under Insurance Code §2210.453, the Commissioner may only

authorize the release of funds under subsection (c) for operating expenses the Commissioner deems essential on a short-term basis.

(e) The Commissioner may authorize a disbursement under subsection (c) in an amount that enables the association to exceed the minimum funding level required under Insurance Code §2210.453. ~~[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.]~~

(f) In authorizing the release of CRTF 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.

(g) The association must remit to the CRTF any funds remaining after the purpose for which the funds were disbursed from the CRTF has been met.

**CERTIFICATION.** This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 26, 2018.

/s/ Norma Garcia

Norma Garcia  
General Counsel  
Texas Department of Insurance