

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
28 TAC §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4160 – 5.4162,
5.4164, 5.4167, and 5.4171.

INTRODUCTION. The Texas Department of Insurance proposes to amend 28 TAC §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4161, 5.4162, 5.4164, 5.4167, and 5.4171 and to adopt new 28 TAC §5.4160. The proposed amendments and new section concern Texas Windstorm Insurance Association (association) loss funding. The proposed changes implement certain provisions in House Bill 1900, 86th Legislature, Regular Session (2019).

EXPLANATION. The association is the insurer of last resort for windstorm and hail insurance in a designated area along the Texas coast. The association provides windstorm and hail insurance coverage to those who are unable to get that coverage in the private market.

By statute, the association must pay its losses (policyholder claims) and operating expenses from net premium and other revenue. If net premium and other revenue are not enough, the association must pay losses and operating expenses from the catastrophe reserve trust fund (CRTF), which is an account maintained by the Texas Comptroller. The CRTF is funded mainly from the association's yearly profits. Losses and operating expenses for a catastrophe year that are greater than the association's net premium and other revenue for that year and amounts in the CRTF must be paid with proceeds of alternating classes of public securities and member insurer assessments.

Amending §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4161, 5.4162, 5.4164, 5.4167, and 5.4171 and adopting new §5.4160 is necessary to implement the loss funding provisions in HB 1900, 86th Legislature, Regular Session (2019). HB 1900 amended Insurance Code §2210.453, which addresses the association's reinsurance funding, and

Insurance Code §2210.071 and §2210.0715, which address excess loss payment and payment from reserves and the CRTF.

The amendments to Insurance Code §2210.453 require that the association, with Commissioner approval, assess its member insurers to pay for any reinsurance it purchases in excess of the association's statutory minimum funding level. By statute, the association must maintain total available loss funding in an amount not less than the association's probable maximum loss for a catastrophe year with a one in 100-year probability. Member assessments to pay for reinsurance under HB 1900 are distinct from member assessments to pay losses and would not affect the association's ability to make loss assessments.

Current 28 TAC §5.4114(e) allows a CRTF disbursement to allow the association to buy reinsurance in an amount that enables the association to exceed its statutory minimum funding level. Because Insurance Code §2210.453 now requires members to pay this amount, TDI proposes repealing this provision and adopting rules establishing the process for determining member insurers' responsibility.

Proposed §5.4160 requires the association to discuss determining its one in 100-year probable maximum loss for the year at the year's first regular board meeting. Following the discussion at this meeting, the association must determine its one in 100-year probable maximum loss for the year and disclose it to the Commissioner not later than April 1. The association must disclose its method for determining its one in 100-year probable maximum loss at the same time.

HB 1900 does not specify how the association must determine its one in 100-year probable maximum loss or how transparent its method must be. Proposed 5.4160 requires the association to have a public discussion at its board meeting and to disclose information about its method so that anyone interested can see how the association determined its one in 100-year probable maximum loss. The determination and

information must be disclosed each year, regardless of whether the association requests a reinsurance assessment.

Under proposed §5.4160 if the association decides to buy reinsurance that exceeds its one in 100-year probable maximum loss, it must get a quote for reinsurance that equals the one in 100-year probable maximum loss. The association must disclose this quote to the board along with the total deposit premiums for all reinsurance for the year. The quote and the total deposit premiums must be disclosed not later than the board's second regular meeting of the year, which is usually in early May.

Members will be able to estimate the amount of reinsurance premium applicable to coverage that exceeds the one in 100-year probable maximum loss and for which they will be assessed. The association typically begins to negotiate for reinsurance in April, with contracts typically running from June 1 to May 31 of the following year. The deadlines for the association to provide its one in 100-year probable maximum loss and the quote and the total deposit premiums are proposed based on this schedule.

Under existing §5.4162 the association notifies each member of the amounts of net direct premiums the member wrote in Texas during the preceding calendar year and of net direct premiums of wind and hail insurance the member voluntarily wrote in the catastrophe area during the preceding calendar year. The association typically sends this notice to members in the late summer. Members have 30 days to appeal the amounts in the notice.

The association also notifies each member what its percentage of participation in an assessment will be, if there is an assessment during the current calendar year. The association typically sends the percentage of participation notice to members in the fall. Members have 30 days to appeal the percentage of participation in the notice.

Proposed 5.4162 requires that the notice of net direct premiums and voluntary wind and hail premiums and the notice of participation percentage inform members that

the participation percentage will be used for reinsurance assessments, if there are any during the current calendar year.

Proposed §5.4160 requires the association to issue any reinsurance assessment by no later than December 1. This date is based on when the association's total reinsurance costs for the year become known. The association pays an initial deposit premium in periodic installments. The deposit premium is based on the association's estimated exposure for that year's hurricane season. The association's final premium, based on its actual exposure during hurricane season, is not known until the end of October. Proposed §5.4160 requires the association to make the request within a reasonable time after its reinsurance costs for the year are known.

There are three reasons for requiring the association to issue any reinsurance assessment by no later than December 1.

First, issuing a reinsurance assessment only after the final premium is known avoids the risk that the association will need to adjust it or issue refunds to members.

Second, it allows time for any appeal of the association's determination of its one in 100-year probable maximum loss.

Third, it ensures that the association will be able to deduct the assessed amount from its reinsurance premium and include it in the net gain from operations from the same year. Under Insurance Code §2210.452 and 28 TAC §5.4111, the association must deposit its net gain from operations for each calendar year in the CRTF. The association typically makes the deposit in May of the following year.

The proposed rules also implement HB 1900's amendments to Insurance Code §2210.071, on payment of excess losses, and §2210.0715, on payment from reserves and the CRTF.

To ensure that it is clear that net premium earned in one catastrophe year can be pledged to repay public securities issued in prior catastrophe years, TDI proposes

amending the rules on the class 1 public security trust fund and the class 2 and class 3 public security trust funds, in Section 5.4141 and Section 5.4142, respectively. More specifically, amended Insurance Code §2210.071 prohibits the association from paying one catastrophe year's losses with premium earned in a later year. The proposed amendments clarify that net premium can be pledged to repay class 1, class 2, and class 3 payment obligations, even if those obligations are for public securities issued or disbursed to pay for losses resulting from an event that occurred in a prior year.

To harmonize the amendments to Insurance Code §2210.0715 with §2210.608, on use of public security proceeds, TDI proposes amending the rules on public security proceeds.

Finally, TDI proposes removing the requirement that each member insurer give the association a copy of its Exhibit of Premiums and Losses ("Statutory Page 14") from its Texas Property and Casualty Annual Statement. The information on Statutory Page 14 is accessible through the National Association of Insurance Commissioners (NAIC) and is published annually on TDI's website.

Section 5.4102. Definitions. Section 5.4102 is the definition section for Division 3.

An amendment to §5.4102(4), defining "association surcharge percentage," corrects a reference to the Administrative Code, changing §5.4127 to §5.4126.

An amendment to §5.4102(10), defining "catastrophic event," conforms the rule with definitions in Insurance Code §2210.602(1-b). The proposed amendment adds the qualifier "during a calendar year" to the definition.

An amendment to §5.4102(32), defining "net gain from operations," implements amendments to Insurance Code §2210.071 and §2210.453. The proposed amendments clarify that the association cannot include losses incurred in prior catastrophe years in its calculation of net gain from operations. Additionally, the amendments conform the rule

to Insurance Code §2210.453, requiring members to pay reinsurance premiums applicable to the reinsurance coverage that exceeds the association's one in 100-year probable maximum loss.

The proposed amendment to §5.4102(34), defining "net premium," implements amendments to Insurance Code §2210.071. The proposed amendment to §5.4102(34) works in conjunction with the proposed amendments to §5.4141 and §5.4142, which contain the rules on the class 1 public security trust fund and the class 2 and class 3 public security trust funds. The sentence "following the issuance of public securities, net premium may be pledged for the payment of class 1, class 2, and class 3 payment obligations" is removed from the definition and an equivalent sentence is added to §5.4141 and §5.4142. Because it is a substantive rule, the sentence is more appropriate in those sections than in a definition, and will be more visible there.

A proposed amendment adds new §5.4102(37) to define "one in 100-year probable maximum loss" as the minimum funding level required by Insurance Code §2210.453(b). Defining the term implements the amendments to Insurance Code §2210.453. Subsequent paragraphs in §5.4102 are renumbered as appropriate to reflect the new paragraph.

The proposed amendments to the definition of "other revenue" (currently §5.4102(38), renumbered as §5.4102(39)) implement the amendments to Insurance Code §2210.453 by excluding reinsurance assessments from other revenue. The proposed amendments implement the amendments to Insurance Code §2210.071 by excluding income on funds held by the Texas Treasury Safekeeping Trust Company from other revenue. These proposed amendments are designed to clarify what funds the association can pledge to repay public securities.

Section 5.4114. Disbursements from the Catastrophe Reserve Trust Fund.

Section 5.4114 describes the procedures for disbursing funds from the CRTF. Current §5.4114(e) allows a CRTF disbursement to buy reinsurance in an amount that enables the

association to exceed its one in 100-year probable maximum loss. Because Insurance Code §2210.453 now requires members to pay for reinsurance coverage that exceeds this amount, TDI proposes repealing subsection (e). The subsections that follow subsection (e) are redesignated as appropriate to reflect this change, and a reference to current subsection (g) in subsection (a)(4) is changed to reference redesignated subsection (f).

Section 5.4133. Public Security Proceeds. Amendments to §5.4133 clarify how HB 1900's amendments to Insurance Code §2210.0715 harmonize with Insurance Code §2210.608(b). The amendments to §2210.0715 prohibit including the proceeds of public securities issued for one catastrophe year with reserves available for a subsequent catastrophe year. Section 2210.608(b) allows "proceeds remaining after the purposes for which the public securities were issued are satisfied" to be used to pay for outstanding public securities or administrative expenses. Then, any remaining proceeds must be put in the CRTF.

The proposed amendments to §5.4133 add new subsections (e) and (f). These subsections describe how public security proceeds may be used during the catastrophe year for which they are issued or disbursed and during subsequent years. The proposed amendments ensure that the proceeds put in the CRTF (which may be used for to pay for losses in later catastrophe years) are not confused with the reserves referenced in §2210.0715 (which may not be used to pay for losses in later catastrophe years).

Section 5.4134. Excess Public Security Proceeds. Amendments to §5.4134 clarify that Insurance Code §2210.608(b) describes the permissive uses of excess public security proceeds remaining after the purposes for which the public securities were issued or disbursed are satisfied. The amendments add subsection (b) to the Insurance Code citation and insert the words "or disbursed."

Section 5.4141. Class 1 Public Security Trust Fund. The amendment to §5.4141 implements amendments to Insurance Code §2210.071(b). This proposed amendment

works in conjunction with the proposed amendment to §5.4102(34), which defines "net premium." The sentence "following the issuance of public securities, net premium may be pledged for the payment of class 1, class 2, and class 3 payment obligations" is removed from the definition and an equivalent sentence is added to §5.4141 and §5.4142. The proposed amendment is added to §5.4141 as new subsection (e). It clarifies that net premium can be pledged to repay class 1 payment obligations, even if those obligations are for public securities issued to pay for losses from a catastrophic event that occurred in a prior year.

Section 5.4142. Class 2 and Class 3 Public Security Trust Funds. The amendment to §5.4142 implements amendments to Insurance Code §2210.071(b). This proposed amendment works in conjunction with the proposed amendment to §5.4102(34), which defines "net premium." The sentence "following the issuance of public securities, net premium may be pledged for the payment of class 1, class 2, and class 3 payment obligations" is removed from the definition and an equivalent sentence is added to §5.4141 and §5.4142. The proposed amendment is added to §5.4142 as new subsection (e). It clarifies that net premium can be pledged to repay class 2 and class 3 payment obligations, even if those obligations are for public securities issued to pay for losses from a catastrophic event that occurred in a prior year.

Section 5.4160. Member Assessments to Pay for Reinsurance. New §5.4160 describes the procedures for assessing members for reinsurance or alternative risk financing mechanisms. New §5.4160 implements new subsections (d) and (e) in Insurance Code §2210.453, requiring members to pay for any reinsurance coverage that exceeds the association's one in 100-year probable maximum loss.

This section also describes the deadlines the association must meet during each year.

The association must discuss with the board its methodology for determining its one in 100-year probable maximum loss for the calendar year at the first regular board meeting in the calendar year but before April 1. The association must also disclose to the Commissioner its one in 100-year probable maximum loss for the calendar year and the association's method for determining that probable maximum loss on the day after the effective date of this rule and no later than April 1 during each subsequent year.

If the association elects to purchase reinsurance or alternative risk financing mechanisms that provide coverage in excess of its one in 100-year probable maximum loss, then the association must also get a quote for coverage that provides funding equal to its one in 100-year probable maximum loss. The association must provide the quote to the board by the second regular board meeting in the calendar year, which is typically in early May. The purpose of this requirement is to allow members to estimate the amount of reinsurance premium for coverage that exceeds the association's one in 100-year probable maximum loss and for which they will be assessed

The association must issue any assessment no later than December 1 of the calendar year for which the assessment is issued.

Proposed §5.4160 also requires that the association include, in any request to the Commissioner to approve an assessment, the portion of the reinsurance premium that provides coverage above its one in 100-year probable maximum loss. In other words, the association's request must provide the amount of the reinsurance assessment it wants to make. The association must also provide the methodology it used to calculate that amount.

Proposed §5.4160 requires the association to make the request within a reasonable time after its reinsurance costs for the year are known. This requirement is intended to ensure that the request can be approved in time for the association to issue the assessment no later than December 1.

Additionally, proposed §5.4160 uses the term "alternative risk financing mechanisms" as used in Insurance Code §2210.453(a) and §2210.453(d) rather than "other financial arrangements" as used in Insurance Code §2210.612(e) and §2210.072(d), because alternative risk financing mechanisms are used in the context of reinsurance and are alternative ways for the association to transfer risk out of the association. Conversely, other financial arrangements include other types of borrowing—including public securities—which do not transfer risk out of the association.

Section 5.4161. Member Assessments to Pay Claims. The amendment to Section 5.4161 deletes the current text of subsection (j). A provision similar to current subsection (j) is incorporated in new §5.4160 as subsection (f). Current subsection (j) lists sections on member assessments that are part of the association's plan of operation and that control over any conflicting provisions in §5.4001 of this title (relating to Plan of Operation). Because proposed new §5.4160 will be the first section on member assessments, the provision included in current subsection 5.4161(j) is more appropriate in §5.4160.

Section 5.4161's heading, "Member Assessments," is also amended to add the words "to Pay Claims." This amendment clarifies that §5.4161 specifies the requirements for assessments for claims, while §5.4160 specifies requirements for assessments to pay for reinsurance coverage.

In addition, current subsections (f) - (i) are redesignated as (e) - (h) to correct an error in the current rule text; the current rule text does not contain a subsection (e).

Finally, new subsection (i) is added stating "The association may use the proceeds from assessments only for losses and expenses resulting from the catastrophe year for which the assessments were made." This provision conforms the rule to HB 1900's amendments to Insurance Code §2210.0715.

Section 5.4162. Member Assessments to Pay Claims. Section 5.4162 addresses the procedure for determining the amount a member is required to pay when participating in an assessment.

Section 5.4162(a) is amended to add a citation to new §5.4160.

Section 5.4162(a)(1) is amended to conform with HB 3496, 85th Legislature, Regular Session (2017). The proposed amendment removes the paragraph's last sentence, which states that the anniversary date of an insurer's membership in the association is the date the insurer became an authorized property insurer in Texas.

Section 5.4162(b) contains nonsubstantive stylistic edits and the citation to 28 TAC §5.4001 is amended to be more specific by revising it to include a reference to "(a)(2)(N)."

Subsection (c) is amended to separate it into subsection (c) and a new subsection (d), to aid in readability. The subsections that follow it are redesignated as appropriate.

Current subsection (d), redesignated as subsection (e), is subdivided into paragraphs, to aid in readability.

Current subsection (e) is broken into three subsections which are designated as subsections (f), (g), and (h). Additionally, new subsection (g) is divided into paragraphs with non-substantive rewording. These changes are made to aid in readability.

Text is added to new subsection (h) to specify that the association must take action under the subsection "[w]ithin a reasonable period of time after sending the notice described in subsection (g)." Additional changes to the text of the subsection consist of non-substantive rewording to aid in readability.

An amendment adds new subsection (i), which requires that the association's notice of net direct premiums and voluntary wind and hail premiums and notice of participation percentage must inform members that the participation percentage will be used for reinsurance assessments, if there are any during the current calendar year. The association typically sends the notice of net direct premiums and voluntary wind and hail

premiums in late summer. The notice of participation percentage is typically sent in the fall.

The proposed amendment removes current subsection (f), which requires that each member insurer give the association a copy of its Exhibit of Premiums and Losses (Statutory Page 14) from its Texas Property and Casualty Annual Statement. This requirement is no longer necessary, as members already file their annual statements electronically with the NAIC. TDI has access to the information through the NAIC and in practice already provides it to the association and publishes it annually on TDI's website. Removing this requirement reduces the burden on members and the association.

Section 5.4164. Payment of Assessment. Section 5.4164 requires members to pay their share of any assessment not later than the 30th day after receiving their notice of assessment. Section 5.4164 is amended to remove exceptions to the requirement, because they are no longer relevant. The exceptions cite other association rules that were repealed to implement Senate Bill 900, 84th Legislature, Regular Session (2015), which changed the association's funding structure.

Section 5.4167. Inability to Pay Assessment by Reason of Insolvency. Amendments to §5.4167 conform the section to the amendments to Insurance Code §2210.071 and §2210.0715. The language "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," is replaced with "in the event an assessment is necessary in the year the insurer is declared impaired." An assessment may be necessary to cover operating expenses and losses from a year other than the year in which the assessment is made.

Section 5.4171. Premium Surcharge Requirements. Amendments to §5.4171 conform the rule to Insurance Code §221.001(c), in accordance with HB 3496. The proposed amendment revises subsection (e) to clarify that §5.4171 and other sections apply to farm mutual insurance companies that are acting as fronting insurers.

In addition to the specific amendments previously noted, the proposed amendments include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and to improve the rules' clarity. These changes include the following: Punctuation has been revised in places for clarity and grammatical accuracy. The word "Commissioner" has been capitalized whenever it appears lower case, and the word "association" has been made lowercase where it is capitalized, unless it begins a sentence. The word "division" is changed to "title" where the word appears in citations to Texas Administrative Code sections. The word "shall" has been replaced with "must" or "will" as appropriate give the context of the provision, to add clarity.

TDI received comments on an informal working draft posted on TDI's website on July 18, 2019. TDI considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Mark Worman, deputy commissioner of the Property and Casualty Division, has determined that during each year of the first five years the proposed rules are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering them, other than that imposed by the statute. This determination was made because the proposed rules do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed rules.

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 rules are in effect, Mr. Worman expects that enforcing or administering the proposed rules will have the public benefits of ensuring that TDI's rules conform to Insurance Code §§221.001, 2210.006, 2210.071, 2210.0715, 2210.453, and 2210.608. The proposed rules

provide clarity on what the association may pledge to repay public security obligations. They also ensure that the association determines its one in 100-year probable maximum loss with public input and provides time for the appeal of that determination before any reinsurance assessment is made.

Finally, the proposed rules relieve members of having to provide the association with Statutory Page 14 from their annual statements.

Mr. Worman expects that the proposed amendments will impose an economic cost on the association. The association estimates that it will cost \$4,540 to discuss determining its one in 100-year probable maximum loss for the year at the year's first regular board meeting, \$1,530 to get the required reinsurance quotes and provide them at the year's second regular board meeting, and \$530 to request a reinsurance assessment.

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 a regulated person, the association. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed rules are necessary to implement legislation. The proposed rules implement Insurance Code §§2210.071, 2210.0715, and 2210.453, as

amended by HB 1900. All the costs in the proposal will be incurred implementing §2210.453. The costs will be borne by the association, which estimates a total cost of approximately \$6,000. As described in the Public Benefit and Cost Note and elsewhere in this proposal, the costs result from requirements that are designed to implement §2210.453 transparently and effectively.

The exception in Government Code §2001.0045(c) applies. The proposed rules reduce the burden or responsibilities the rule imposes on regulated persons, by relieving members of having to provide the association with Statutory Page 14 from their annual statements.

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;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will limit an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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. TDI will consider any written comments on the proposal that are received by TDI no later than 5 p.m. central time on July 20, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2822 at 1 p.m. central time, on July 14, 2020. To avoid the risk of transmission of COVID-19, TDI will hold the public hearing remotely using online resources. Details of how to view and how to participate in the hearing will be made available on TDI's website at www.tdi.texas.gov/alert/event/2020/07/docket-2822.

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

28 TAC §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4160 – 5.4162, 5.4164, 5.4167, and 5.4171.

STATUTORY AUTHORITY. TDI proposes new §5.4160 and amended TAC §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4161, 5.4162, 5.4164, 5.4167, and 5.4171 under Insurance Code §§2210.008, 2210.151, 2210.152, 2210.452, and Insurance Code §36.001.

Insurance Code §2210.008 provides that the Commissioner may adopt rules as reasonable and necessary to implement Chapter 2210.

Insurance Code §2210.151 provides that the Commissioner adopt the association's plan of operation by rule.

Insurance Code §2210.152 provides that the plan of operation must include a plan for the equitable assessment of association members, procedures for obtaining and repaying amounts under any financial instruments authorized under Chapter 2210, and other provisions considered necessary by TDI to implement the purposes of Chapter 2210.

Insurance Code §2210.452 requires the Commissioner to adopt rules governing association payments to the catastrophe reserve trust fund and disbursements from the catastrophe reserve trust fund.

Insurance Code §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.

The amendments to §5.4102 implement Insurance Code §§2210.071, 2210.453, and 2210.602.

The amendments to §5.4114 implement Insurance Code §2210.453.

The amendments to §5.4133 implement Insurance Code §2210.0715.

The amendments to §5.4134 implement Insurance Code §2210.0715.

The amendments to §5.4141 implement Insurance Code §2210.071.

The amendments to §5.4142 implement Insurance Code §2210.071.

New §5.4160 implements Insurance Code §2210.453.

The amendments to §5.4161 implement Insurance Code §2210.0715 and §2210.453.

The amendments to §5.4162 implement Insurance Code §2210.006 and §2210.453.

The amendments to §5.4164 implement Insurance Code §§2210.0725, 2210.074, and 2210.0742.

The amendments to §5.4167 implement Insurance Code §2210.071 and §2210.0715.

The amendments to §5.4171 implement Insurance Code §221.001.

TEXT.

§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 [~~commissioner~~] under §5.4126(c) [~~§5.4127(e)~~] or (d) of this title [~~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 [~~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 [~~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 during a calendar year 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 [~~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: current catastrophe year incurred losses; operating expenses; reinsurance premium not paid or payable from member assessments; 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) One in 100-year probable maximum loss--The minimum funding level required by Insurance Code §2210.453(b).

(38) [(37)] Operating reserve fund--Association or trust company held fund for the payment of budgeted scheduled policy claims and budgeted operating expenses.

(39) [(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, [ø] 2210.0742, or 2210.453 and interest income on those amounts. Other revenue does not include income on funds held by the trust company.

(40) [(39)] Plan of operation--The association's plan of operation as adopted by the Commissioner [commissioner] under Insurance Code §2210.151 and §2210.152.

(41) [(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, or [and] 2210.6132.

(42) [(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.

(43) [(42)] Public securities--Collective reference to class 1 public securities, class 2 public securities, and class 3 public securities.

(44) [(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.

(45) [(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.

(46) [(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.

(47) [(46)] Trust company--The Texas Treasury Safekeeping Trust Company managed by the comptroller under Government Code §404.101, et seq.

(48) [(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.

(49) [(48)] TPFA--The Texas Public Finance Authority.

(50) [(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.

§5.4114. Disbursements from the Catastrophe Reserve Trust Fund.

(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 paragraph (1) of this subsection [(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 (f) [~~(g)~~] of this section applies.

(b) To disburse funds to pay for costs associated with maintaining or managing the CRTF, 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.

(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) of this section for operating expenses the Commissioner deems essential on a short-term basis.

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

(e) ~~[(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.

(f) ~~[(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.

§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^[(i)]

(1) for the payment of incurred claims and operating expenses of the association^[(j)] or

(2) other amounts as authorized in Insurance Code §2210.608.

(b) The association's written request must specify:

(1) the amount of the request; and

(2) 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.

(e) When public securities are issued after a catastrophic event, the association may use the proceeds as follows:

(1) for any purpose authorized in Insurance Code §2210.608(a), during the catastrophe year for which the public securities were issued;

(2) only to pay for losses and expenses resulting from the catastrophe year for which the public securities were issued, after that catastrophe year has ended; and

(3) after all losses and expenses resulting from the catastrophe year for which the public securities were issued are paid, the association may only use excess proceeds in accordance with Insurance Code §2210.608(b) and §5.4134 of this title (relating to Excess Public Security Proceeds).

(f) When public securities are issued before a catastrophic event, the association may use the proceeds as follows:

(1) for any purpose authorized in Insurance Code §2210.608(a) and (c), during the catastrophe year for which the proceeds were disbursed;

(2) only to pay for losses and expenses resulting from the catastrophe year for which the proceeds were disbursed, after that catastrophe year has ended; and

(3) after all losses and expenses resulting from the catastrophe year for which the proceeds were disbursed are paid, the association may only use excess proceeds in accordance with Insurance Code §2210.608(b) and §5.4134 of this title.

§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 or disbursed are satisfied in accordance with Insurance Code §2210.608(b) [§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 [~~commissioner~~] approves.

§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.

(e) Following the issuance of public securities, net premium may be pledged for the payment of class 1 payment obligations. Net premium earned in one catastrophe year may be pledged for the repayment of public securities issued in prior catastrophe years.

§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.

(e) Following the issuance of public securities, net premium may be pledged for the payment of class 2 and class 3 payment obligations. Net premium earned in one catastrophe year may be pledged for the repayment of public securities issued in prior catastrophe years.

§5.4160. Member Assessments to Pay for Reinsurance.

(a) The association, with the Commissioner's approval, must assess members as provided by Insurance Code §2210.453. If, in a calendar year, the association must assess its members under Insurance Code §2210.453,

(1) then the association must request the Commissioner's approval within a reasonable time after it knows its total reinsurance costs for that calendar year, and

(2) must issue the assessment no later than December 1 of that year.

(b) At the first regular board meeting in each calendar year, but before April 1, the association must discuss with the board its methodology for determining its one in 100-year probable maximum loss for the calendar year. In discussing its methodology, the association must provide the information described in subsection (d) of this section and make that information available to its members and the public.

(c) On the day after the effective date of this section, and not later than April 1 of each subsequent year, the association must disclose to the Commissioner its one in 100-year probable maximum loss for the calendar year and the association's method for determining that probable maximum loss.

(d) In disclosing its method for determining its one in 100-year probable maximum loss, the association must include:

(1) the hurricane model or models it relied on, including the model vendors, the model names, and the versions of each model;

(2) the in-force date and the total amount of direct exposures in force for the policy data used as the input for each hurricane model the association relied on;

(3) all user-selected hurricane model input assumptions used with each hurricane model the association relied on;

(4) the one in 100-year probable maximum loss model output produced by each hurricane model the association relied on;

(5) if the association relied on more than one hurricane model, the methodology the association used to blend or average the hurricane model outputs, including all weighting factors used; and

(6) any adjustments the association or another party made to the one in 100-year probable maximum loss model outputs or the blended or averaged output, including any adjustments to include loss adjustment expenses.

(e) The department will post the information disclosed under subsections (c) and (d) of this section on its website.

(f) If, in a year, the association elects to purchase coverage for reinsurance or alternative risk transfer mechanisms in excess of the one in 100-year probable maximum loss, then the association must also obtain a quote for coverage that provides funding equal to the one in 100-year probable maximum loss. The premium quote must assume the minimum required attachment point described in Insurance Code §2251.453(c).

(g) No later than the second regular board meeting of the calendar year, the association must provide each of the following to its board and make this information available to its members and the public:

(1) the reinsurance or alternative risk transfer mechanism premium quote required under subsection (f) of this section; and

(2) the total deposit premiums for all reinsurance or alternative risk transfer mechanism coverage for the year.

(h) If, at the time of the second regular board meeting of the calendar year, deposit premiums described in subsection (g) of this section are not known, then the association must provide its best estimate of those premiums to the board and make the estimate available to its members. As soon as the association knows the deposit premiums described in subsection (g) of this section, the association must provide them to the board and make them available to its members.

(i) In its request to the Commissioner to approve an assessment under Insurance Code §2210.453, the association must submit the following information:

(1) the portion of the association's reinsurance premium that provides coverage for losses or loss adjustment expenses above the association's one in 100-year probable maximum loss; and

(2) the methodology the association used to calculate the amount described in paragraph (1) of this subsection.

(j) This section and §§5.4161 – 5.4167 of this title (relating to Member Assessment to Pay Claims; 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 title (relating to Plan of Operation).

(k) Sections 5.4162 – 5.4167 of this title apply both to member assessments to pay for reinsurance and to §5.4161 of this title.

§5.4161. Member Assessments to Pay Claims.

(a) The association, with the approval of the Commissioner [~~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 [~~commissioner~~] to approve a class 1, class 2, or class 3 assessment under Insurance Code §§2210.0725, 2210.074, or [~~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 title ~~[division]~~ (relating to Issuance of Class 1 Public Securities before a Catastrophic Event and ~~[or]~~ Issuance of Public Securities after a Catastrophic Event ~~[, respectively]~~) cannot be issued based on the factors described in §5.4135 of this title ~~[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 ~~[commissioner]~~ may approve the imposition of class 1 assessments as provided in this section.

(d) In its request to the Commissioner ~~[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 title ~~[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) ~~[(f)]~~ The association must request the issuance of the statutorily authorized principal amount of class 1 public securities before the association may request the Commissioner ~~[commissioner]~~ approve a class 1 assessment under Insurance Code §2210.0725.

(f) ~~[(g)]~~ The association must request the issuance of the statutorily authorized principal amount of class 2 public securities before the association may request the Commissioner ~~[commissioner]~~ approve a class 2 assessment under Insurance Code §2210.074.

(g) ~~[(h)]~~ The association must request the issuance of the statutorily authorized principal amount of class 3 public securities before the association may request the Commissioner ~~[commissioner]~~ approve a class 3 assessment under Insurance Code §2210.0742.

(h) [i] If the Commissioner ~~[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 Insurance Code Chapter 2210 and these rules.

(i) The association may use the proceeds from assessments only for losses and expenses resulting from the catastrophe year for which the assessments were made.

~~[(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).]~~

§5.4162. Amount of Assessment.

(a) The association [~~Association~~] must [~~shall~~] determine which members of the association must [~~Association shall~~] participate in any assessment [~~to provide for the Association's required obligations as determined~~] under §5.4160 and §5.4161 of this title [~~division~~] (relating to Member Assessments to Pay for Reinsurance and Member Assessments to Pay Claims).

(1) The association [~~Association~~] may not include in the assessment an insurer that became a member of the association [~~Association~~] after September 1, 2009, and that had not previously been a member of the association [~~Association~~], until after the second anniversary of the date on which the insurer first becomes a member of the association [~~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.~~]

(2) The association must [~~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 [~~Association~~] without regard as to whether the catastrophic event that gave rise to the class of assessments [~~public securities~~] occurred prior to the second anniversary of the date on which the insurer first became a member of the association [~~Association~~].

(3) The association [~~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 Insurance Code §2210.052(c)[~~]~~ that a federal agency or court of competent jurisdiction determines to be exempt from the assessment formula under [~~the~~] Insurance Code Chapter 2210.

(b) Each member company's percentage of participation must [~~This determination shall~~] be computed on a calendar year basis for the year in which the assessment is made. The percentage of participation is not [~~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 must ~~[shall]~~ be determined as provided under §5.4001(a)(2)(N) ~~[§5.4001]~~ of this title ~~[subchapter]~~ (relating to Plan of Operation).

(c) The participating members of the association must participate in insured losses and operating expenses of the association, in excess of premium and other revenue, in the proportions required by Insurance Code §2210.052 and as depicted in subsection (e) of this section. A participating member is entitled to receive credit for insurance voluntarily written in the catastrophe area, as provided in Insurance Code §2210.052. ~~[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.]~~

(d) If at the time of an 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 must be based upon information furnished to the association from the last calendar year for which such information is available. When the association receives the necessary information from

the department, the association must reassess or refund to each participating member the amounts necessary to properly reflect the member's participation.

(e)~~[(d)]~~ The Figure: 28 TAC §5.4162(e) ~~§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.

Figure: 28 TAC §5.4162(e)

~~[Figure: 28 TAC §5.4162(d)]~~

(1) 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.

(2) 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 §5.4001(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)).

(3) 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 ~~[Association]~~ prior to credits for voluntary writings in the designated areas.

(4) Column 4: Total windstorm and hail premiums in the designated areas (association ~~[Association]~~ premiums plus voluntary premiums).

(5) Column 5: Normal company quota of total windstorm and hail premiums (Column 3 x Column 4).

(6) Column 6: Each company's voluntary writings in the designated areas multiplied by the same percentages as shown in Column 2. Note: Maximum credit must ~~[shall]~~ be limited to company's normal quota.

(7) 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.

(8) Column 8: Percentage participation of each member company in the association [~~Association~~], prior to application of offset. Note: The offset figure measures the excess premiums developed by the maximum credit in Column 6.

(9) Column 9: Percentage participation of each member company in the association [~~Association~~].

(f)~~(e)~~ The department will [~~shall~~] furnish to the association [~~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.

(g) Within a reasonable time after receiving the information described in subsection (f) of this section [~~the receipt of same~~] from the department, the association must [~~Association shall~~] notify each member company, in writing, [~~sent~~] by certified mail, of the following:

(1) the amount of net direct premiums the member company wrote on property in this state during the preceding calendar year; [~~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~~]

(2) the amount of net direct premiums of similar insurance the member company voluntarily wrote in the catastrophe area during the preceding calendar year;

~~and [written in the catastrophe areas, upon which such company's percentage of participation will be determined.]~~

~~(3) that the notice and contents are [Such notice shall state that such notification, and the content thereof, is] an act, ruling, or decision of the association [Association] and that the member company to whom the [such] notice is given is [shall be] entitled to appeal it not later than the 30th day after [such act, ruling, or decision within 30 days from] the date shown on the notice in accordance with [the] Insurance Code §2210.551.~~

~~(h) Within a reasonable period of time after sending the notice described in subsection (g) of this section, [Thereafter,] the association must [Association shall] determine the percentage of participation for each member company in the manner provided in this section and must [shall] notify each member company of its percentage of participation [thereof], in writing, [sent] by certified mail. The notice must state that the notice and contents are [Such notice shall state that such notification, and the content thereof, is] an act, ruling, or decision of the association [Association] insofar as the mathematical determination of the percentage of participation is concerned and that the member company to whom the [such] notice is given is [shall be] entitled to appeal not later than the 30th day after the date shown on the [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.~~

~~(i) In the notices required under subsections (g) and (h) of this section, the association must disclose to its members that the resulting participation percentages will be used for any reinsurance assessments for the calendar year that may be required under Insurance Code §2210.453(d).~~

~~[(f) 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.]~~

§5.4164. Payment of Assessment.

~~Each [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.~~

§5.4167. Inability to Pay Assessment by Reason of Insolvency.

In the event a member of the association [~~Association~~] is placed in temporary or permanent receivership under order of a court of competent jurisdiction based on [~~upon~~] a finding of insolvency, and such member has been designated an impaired insurer by the commissioner, and in the event an assessment is necessary [~~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 must [~~shall~~] be reallocated among the remaining members of the association [~~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 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, and 5.4184 – 5.4192 of this title ~~[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 title ~~[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 ~~title~~ division do not apply to:

(1) a farm mutual insurance company operating under Insurance Code Chapter 911, unless the company is acting as a fronting insurer, as defined by Insurance Code §221.001(c);

(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.

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 6/8/2020.

DocuSigned by:

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James Person, General Counsel
Texas Department of Insurance