

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 5. DEPOPULATION PROGRAMS
28 TAC §§5.4301 - 5.4309

1. INTRODUCTION. The Texas Department of Insurance adopts new 28 TAC §§5.4301 - 5.4309 to implement Insurance Code Chapter 2210, Subchapter O, enacted in SB 900, 84th Legislature, Regular Session (2015), concerning voluntary market and assumption reinsurance depopulation programs for the Texas Windstorm Insurance Association. The sections are adopted in new Division 5 of Chapter 5, Subchapter E, titled Depopulation Programs. Section 5.4303 and §5.4309 are adopted without changes to the proposed text published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7383). Sections 5.4301, 5.4302, and 5.4304 - 5.4308 are adopted with changes to the proposed text published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7383).

2. REASONED JUSTIFICATION. SB 900 enacted Insurance Code §§2210.701 - 2210.705 to create a depopulation program consisting of voluntary market and assumption reinsurance tracks. Insurance Code §2210.701 directs the Texas Windstorm Insurance Association to administer a depopulation program that, subject to commissioner approval, encourages the transfer of association policies to insurers through the voluntary market or assumption reinsurance. A fundamental consideration for depopulation programs under Insurance Code Chapter 2210, Subchapter O, is that the programs must provide necessary protections for the

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policyholders and policyholders' agents. In accordance with Insurance Code Chapter 2210, Subchapter O, and specifically Insurance Code §2210.705(5), the rules must provide that a reinsurance agreement include requirements that the commissioner determines are necessary for the protection of policyholders and the policyholders' agents. The adopted sections address this and other requirements set out in Insurance Code Chapter 2210, Subchapter O, as described in the following paragraphs.

Section 5.4301 defines terms used in Division 5 and Insurance Code Chapter 2210, Subchapter O. The department defines "insurer" to include only authorized insurers that have the authority to write property insurance in Texas. This is necessary to be consistent with the provisions of Insurance Code Chapter 2210, Subchapter O. This includes Insurance Code §2210.703(b), which requires the policy to provide generally comparable coverage and premiums. The department must review policy forms and endorsements to determine whether they provide generally comparable coverage. Authorized insurers are subject to these requirements under Insurance Code §2301.003(b). The department reviews rates under Insurance Code §2251.003(b). Surplus lines insurers are not included within the scope of those sections.

The department has added a definition for "department" and revised the adopted sections to be consistent with other divisions in this subchapter when referring to the Texas Department of Insurance.

In response to comments, the department has added a definition for the term "transfer," used in both Insurance Code §2210.701 and these rules. To clarify the scope

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of the adopted sections and Insurance Code Chapter 2210, Subchapter O, "transfer" is defined as the shifting of coverage from the association to an insurer who has identified the policyholder using information from the association's electronic policy information repository.

The definition limits transfers to situations involving insurers that have taken the step to access electronic repository information. Insurers may use that information only to solicit an association policyholder through the policyholder's agent of record, either to accept a voluntary transfer of coverage or to not opt out of an assumption reinsurance transfer of coverage.

The definition of transfer should assist insurers from inadvertently subjecting themselves to these rules when writing windstorm and hail coverage. Insurance Code §2210.704(a) limits use of the association policyholder information in the electronic information repository to depopulation programs under Insurance Code Chapter 2210, Subchapter O. Insurers participating in the depopulation programs are not authorized to share the electronic repository information with their own agents to solicit association policyholders in the traditional sense. Insurers seeking to write their own customers presumably would not need association information to solicit these customers through their own agents and, the department further presumes, would have existing contracts with their agents. The timing of the transfer at midterm or renewal is not a key factor; the factor is how the policy is solicited.

Section 5.4302 addresses the filing requirements for policy forms and endorsements that will be issued by the insurer; it does not affect novated policies.

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Section 5.4302 addresses only the filing of policy forms for approval. Insurance Code Chapter 2210, Subchapter O, provides for the use of those forms. In response to comments, the department has amended §5.4301 and §5.4302 to clarify this distinction, including removing references to "alternative windstorm and hail insurance."

Because authorized insurers are issuing the form, the section also reiterates that the form is subject to review and approval under Insurance Code Chapter 2301, and that rates are subject to review under Insurance Code Chapter 2251. The department has previously implemented rate and form filing rules in Chapter 5, Subchapter M that will apply to these forms and rate filings. However, because Insurance Code §2210.703(b) requires that the premium for generally comparable coverage not exceed 115 percent of the association premium, §5.4302(e) requires an additional filing demonstrating that the filed rates meet that requirement. In addition, the section also informs insurers that policy forms must meet requirements for other similar policies under the Insurance Code, including provisions under Chapter 551, Subchapters A, C, and D.

Section 5.4303 establishes that to be generally comparable, the coverage offered to the association policyholder must be the same basic coverage as the assumed association policy, including the endorsements in the assumed association policy. The section provides three examples of this requirement.

Section 5.4304 describes a limited service agreement that the insurer must offer the policyholder's agent under Insurance Code §2210.704(c). The agreement must include the terms described in Insurance Code §2210.704(b) and exist for the

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period that the insurer must offer renewals to the policyholder under Insurance Code §2210.704(a). In response to comments, the department has amended the section to allow insurers to offer that limited service agreement to the policyholder's agent through the insurer's managing general agent. In that instance, the insurer must also be bound by the limited service agreement. This does not create a new cost or requirement for insurers because under the proposed sections they were required to contract with each agent, and still may. Using a managing general agent is a business decision of the insurer and not a requirement of the adopted sections.

Based on Insurance Code §2210.705(4), §5.4304(c) provides that an insurer is not required to appoint an agent under a limited service agreement if the policyholder's agent services only policies assumed or transferred under the adopted sections and Insurance Code Chapter 2210, Subchapter O. Rather, as described in Insurance Code §2210.705(4), §5.4304(d) of this title provides that the insurer and agent still enjoy the freedom to contract by mutual agreement and be appointed as an agent under the Insurance Code.

Section 5.4305(a) requires the association to establish and maintain an electronic information repository based on Insurance Code §2210.702(a). The information contained in this repository is described in §5.4309 and is consistent with information insurers would need to determine whether to reinsure a policy. Section 5.4305(b) - (e) establishes confidentiality standards necessary to implement Insurance Code §2210.704(a).

Insurance Code §2210.701(a) provides that the association will administer a depopulation program through both the voluntary market and assumption reinsurance. However, Insurance Code Chapter 2210, Subchapter O does not prescribe the form that a voluntary market program must use other than it must be approved by the commissioner in Insurance Code §2210.701(a). This leaves significant flexibility for the association to develop a potential program, and the department does not want to limit that flexibility. A fundamental consideration for depopulation programs under Insurance Code Chapter 2210, Subchapter O, is that the programs must provide necessary protections for the policyholders and policyholders' agents. For voluntary market programs, §5.4306 maintains flexibility subject to the stated legislative guidance and commissioner approval.

Section 5.4307(a) establishes the submission requirements for the association and an insurer seeking commissioner approval of an assumption reinsurance agreement. Section 5.4307(b) lists the requirements stated in Insurance Code §2210.705.

Section 5.4308 has been amended based on comments. The amended section requires the association to demonstrate that the assumption reinsurance agreements will not violate Insurance Code §2210.616.

The department has also made nonsubstantive grammatical changes in the adopted sections based on department style guidelines.

3. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

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General

Comment: A commenter requests that the rules specify the criteria for the required notices sent to policyholders in connection with depopulation. The commenter proposes requiring basic information, applicable to all insurers, to protect policyholders and consistently implement the depopulation program.

Agency response: The department is concerned that establishing specific requirements may reduce the flexibility the association and insurers will have in creating depopulation programs. The department will review notices and other documentation for approval before approving a depopulation program. General guidance at this time would not eliminate the need for the department to review the actual notices when submitted for the department's approval. The department declines to make a change in response to this comment.

Comment: Two commenters requested that the rule define the term "transfer," which is used in the statute and the adopted sections. One commenter stated concern that insurers may unintentionally become subject to the requirements of Insurance Code Chapter 2210, Subchapter O, in their ordinary course of business.

Agency response: The department is satisfied that the statute is sufficiently clear that the use of the term in the context of depopulation programs refers only to coverage being moved from the association to an insurer that has identified the insured using the electronic information repository. The department bases this determination on the requirements of Insurance Code §§2210.701, 2210.702(a), and 2210.704(a). Insurance

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Code §2210.701 provides for "a depopulation program that encourages the transfer of association policies to insurers through the voluntary market or assumption reinsurance." This establishes two types of depopulation under Insurance Code, Chapter 2210, Subchapter O. Section 2210.702(a) requires the commissioner to establish by rule "policy information necessary for the insurers to determine whether to reinsure a policy ceded to the insurer by the association." While the statute designates this information to be of a type useful for assessing risks for reinsurance, this information is also useful for insurers seeking to acquire association policies in the voluntary market context. Insurance Code §2210.704(a) limits the use of the information to the purposes of Insurance Code Chapter 2210, Subchapter O, which, as stated in Insurance Code §2210.701, is the voluntary market and assumption reinsurance depopulation programs.

This limits "transfers" to insurers that have taken the step to access electronic repository information. Insurers may use that information only to solicit an association policyholder through the policyholder's agent of record--either to accept a voluntary transfer of coverage, or to accept an assumption reinsurance transfer of coverage. Insurers are not authorized to share the electronic repository information with their own agents or to otherwise solicit association policyholders in the traditional sense. Insurers seeking to write their own customers presumably would not need association information to solicit these customers through their own agents and would have existing contracts with their agents. The timing of the transfer at midterm or renewal is not a key factor; the factor is how the policy is solicited.

In response to this comment, the department has defined "transfer" as the shifting of an association policyholder's windstorm and hail insurance coverage from the association to an insurer who has identified the association policyholder using the electronic information repository.

Comment: A commenter states concern that SB 900 may impair existing agent contracts that prohibit a captive or direct agent from contracting with another insurer.

Agency Response: The department cannot comment on whether the hypothetical factual situation raised in the comment results in an impairment. Agents are not required to accept a contract or commission from a depopulation insurer.

Comment: A commenter states concern about agent conflicts in situations where an insurer offers wind coverage on a subsequent renewal of a homeowner's policy that previously excluded wind. The commenter questions whether an insurer can require its agent to offer only wind through the insurer or must the agent offer coverages through both the insurer and the assuming insurer.

Agency Response: The department cannot comment on the hypothetical factual situation. The rules do not address agent contracts beyond the requirement that the depopulation insurer must comply with §5.4304.

Comment: A commenter requests that the rules be amended to provide more clarity for the voluntary transfers contemplated by SB 900 as a means of depopulation.

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Agency Response: The department considers these rules a first step in creating a depopulation plan. The department may propose additional rules in the future, but at this time seeks to allow the market flexibility in developing the program.

Comment: A commenter encourages the department to develop other programs or incentives for voluntary writings that have the effect of depopulating the association that are not subject to the same requirements as would be required by new Chapter 2210, Subchapter O.

Agency Response: The department makes no change because these rules implement only Chapter 2210, Subchapter O.

Section 5.4301

Comment: Two commenters state that although surplus lines insurers are insurers "engaged in the business of property and casualty insurance" and thus presumably within the scope of Insurance Code §2210.701, surplus lines insurers are appropriately excluded from the definition of "insurer" for purposes of association depopulation programs. They are appropriately excluded because surplus lines insurers are not subject to department review of their policy forms and rates as required for the depopulation program under Insurance Code §2210.703(b).

Agency response: The department agrees with the comment and, based on similar reasoning expressed in the proposal and this adoption, has defined the term "insurers" to exclude surplus lines insurers.

Comment: Two commenters state that the benefit of guaranty fund coverage should not be considered in deciding whether surplus lines insurers should be allowed to participate in the depopulation programs, asserting that the surplus lines market is as financially healthy as – or healthier than – the admitted market. The commenters request that guaranty fund coverage not be considered. A commenter further submitted information on the financial health of the surplus lines industry.

Agency response: The department agrees that the reference to the guaranty fund is superfluous as it relates to the surplus lines industry or of any insurer in that industry, because surplus lines insurers are not defined as insurers within the scope of Insurance Code Chapter 2210, Subchapter O.

Comment: A commenter states it is unclear why otherwise excluded surplus lines insurers should be excluded from participating in the depopulation program as an alternative "necessary protection" for the association policyholder's existing agents from the assumed "significant burdens" involved in a surplus lines insurance policy transaction. The commenter provides details that property and casualty agents are involved in numerous surplus lines transactions.

Agency response: The department agrees that the reference to the additional agent requirements is superfluous as it relates to the surplus lines industry or of any surplus lines insurer, because surplus lines insurers are not included as insurers within the scope of Insurance Code Chapter 2210, Subchapter O.

Comment: A commenter recommends amending the definition of assumption reinsurance agreement to read: "[A] written agreement by an insurer authorized to engage in business in this state to where the responsibilities to assume claims and policy obligations of the association are transferred to the insurer, as further evidenced by an assumption certificate issued to the insured."

Agency Response: The department agrees in part and amends the definition to read: "[A] written agreement between the association and an insurer under which the association's legal and contractual obligations for certain association policies are transferred to the insurer by novation, as further evidenced by an assumption certificate issued to affected insureds."

Comment: A commenter recommends adding a definition for "assumption certificate" to mean an endorsement or other policy form issued to the insured that changes the name of the insurer to the assuming insurer.

Agency Response: The department believes that this definition is unnecessary and declines to make a change in response to the comment.

Comment: A commenter recommends adding a definition for "transfer" to mean any agreement other than a reinsurance agreement where the responsibilities to assume claims and policy obligations are transferred from the association to an insurer, as further evidenced by an endorsement or other certificate issued to the insured.

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Agency Response: As discussed in a previous response to comment, the department has added a definition of the term "transfer."

Section 5.4302

Comment: A commenter is concerned that §5.4302(b) prohibits the provisions of Insurance Code Chapter 2210, Subchapter L-1, from applying to claims under assumed association policies while they are still on association paper and before they are renewed on the assuming insurer's paper, which is inconsistent with Insurance Code §2210.703(c).

Agency Response: The department agrees with the commenter that Insurance Code §2210.703(c) does not apply to the remaining term on novated policies. Insurance Code §2210.702(b) provides that "... the insurer is legally and contractually responsible for the association policy ceded to the insurer on the effective date...[and] the insurer shall administer the policy and process, adjust, and pay claims in accordance with the policy."

Section 5.4302 does not affect novated policies. It addresses only the filing of policy forms for approval. The use of those forms is stated in Insurance Code Chapter 2210, Subchapter O. The department has amended §5.4301 and §5.4302 to clarify this distinction, including removing references to "alternative windstorm and hail insurance."

Comment: A commenter requests that the department clarify that this section only applies to policies renewed under a depopulation plan.

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Agency response: The department agrees that this section applies only to policies for use with depopulation plans and has revised the section to clarify this application.

Section 5.4304

Comment: A commenter reads §5.4304 to require that the insurer that takes a policy out of association must either contract with or provide a limited service agreement to the current association policyholder's agent of record. The commenter asks if such contracts may use a managing general agent and requests that, if allowed, the insurer who accepts the risk remains ultimately responsible to meet the requirements of §5.4304.

Agency Response: The department agrees with the comment. Insurance Code §2210.704(b) and (c) require the insurer to contract with the agent. If the insurer remains bound to perform the agreement with the agent, the department does not believe that excluding managing general agents from the functions they are otherwise authorized to perform would be inconsistent with the statute. The department amends §5.4304(a) and adds §5.4304(d) in response to this comment.

Comment: A commenter suggests enlarging the definition of "insurer" to include the insurer's licensed and appointed managing general agent.

Agency Response: The department disagrees with the comment. While managing general agents have broad authority under Insurance Code Chapter 4053, they are not insurers. Including managing general agents within the scope of the definition of an

insurer under Insurance Code Chapter 2210, Subchapter O, would exceed the authorized activities of a managing general agent.

Comment: A commenter asks what terms and conditions are referred to in §5.4304, because the association has no contracts with agents.

Agency Response: The rule incorporates the requirement in Insurance Code §2210.704(b). The department has clarified a typographical error in §5.4304(b) to clarify that the requirement refers to "the prevailing terms, conditions, and commissions of the agent that exist under the association plan of operation and guidelines at the time the policy is acquired or assumed by the insurer."

Comment: A commenter asks whether the assuming insurer is required to pay the same commissions at all subsequent renewals of the novated policy.

Agency Response: Section 5.4304(b) provides that the "limited service agreement must include the prevailing terms, conditions, and commissions of the agent that exist under the association plan of operation and guidelines at the time the policy is acquired or assumed by the insurer." The subsection further provides that "[T]he agreement will expire at the expiration of the third renewal of the insurer's policy."

Comment: A commenter asks if the assuming insurer is required to pay the association commission rate if the amount of work imposed on an agent is considerably less than

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required for the association. The commenter also asks what other guidelines will be required.

Agency Response: As addressed in a previous comment, this section incorporates this requirement in Insurance Code §2210.704(b) to “offer the policy through the agent of record for the association policyholder under the prevailing terms, conditions, and commissions of the agent.” The statute does not provide an exception to that requirement. However, the parties maintain the ability to contract for other terms by mutual agreement.

Section 5.4305

Comment: Two commenters state concerns that an insurer must be a party to an approved depopulation program before it may access the electronic information repository, because §5.4305(e) appears to provide insurers access "only" for the purpose of providing insurance through the depopulation program.

Agency response: The department disagrees with the commenter's interpretation. Section 5.4305(e) restates Insurance Code §2210.704(a), which limits use of the repository information only for the purposes of Insurance Code Chapter 2210, Subchapter O. The section does not require that the insurer have an approved depopulation program before it can access the electronic information repository.

Comment: A commenter states that §5.4305 should be amended or eliminated, because the electronic information repository should be available to other voluntary

incentive programs as contemplated in Insurance Code §2210.009. Another commenter suggests that §5.4305(e) should be amended to allow access to the electronic information repository to insurers "to voluntarily write business in the catastrophe area."

Agency Response: The department disagrees. Insurance Code §2210.704(a) limits use of the electronic repository information to be used only for the purposes of depopulation under Insurance Code Chapter 2210, Subchapter O.

Comment: A commenter suggests that §5.4305(e) may be overbroad because it implies that other voluntary incentives may have to meet the definition of an "Alternative Texas Windstorm and Hail Insurance" policy.

Agency Response: As addressed in responses to comments concerning §5.4302, the department has revised §5.4305(e) and eliminated references to "alternative windstorm insurance." These revisions resolve the concern raised by this commenter.

Section 5.4306

Comment: A commenter states concern that the voluntary market depopulation program will allow for transfer of coverage by a means other than through offer and acceptance of coverage.

Agency Response: The department does not envision that voluntary market depopulation would be by a means other than offer and acceptance. However, to allow the association and insurers the flexibility to craft programs, the department declines to prescribe a specific process in these rules.

Comment: Two commenters request that the section be amended to provide more clarity for the voluntary market transfers contemplated by Insurance Code Chapter 2210, Subchapter O, as a means of depopulation.

Agency Response: The department considers these rules a first step in creating a depopulation program. The department may propose additional rules in the future, but at this time declines to establish a specific process for voluntary market transfers in order to allow the association and the market flexibility in developing the program.

Section 5.4307

Comment: A commenter suggests that the statutory six-month opt out period stated in §5.4307(b)(2) unduly prolongs the process of moving risks to the assuming reinsurer's paper and entails a protracted period during which the association and the assuming reinsurer must account for risks and premiums. The commenter proposes allowing the assuming reinsurer to renew the association policies on its own paper during the opt out period, construing the policyholder's payment of the premium as consent to the assumption and a waiver of the remaining opt out period.

Agency response: The department declines to change §5.4307(b)(2), because Insurance Code §2210.705 requires that the six-month opt out period be included in assumption reinsurance agreements.

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Comment: A commenter requests that the department amend §5.4307(b)(3) to provide that earned premium held in a trust account pending the expiration of the opt out period in the assumption reinsurance program is an admitted asset of the association.

Agency response: Insurance Code, Chapter 2210, Subchapter O, does not address the statutory accounting aspects of depopulation; other statutes and rules govern statutory accounting. Therefore, §5.4307(b)(3) is not the appropriate place to define what is included as an admitted asset of an association, and the department will not amend the depopulation rule as requested.

Comment: A commenter is concerned that strict interpretation of the requirement in §5.4307(b)(3) that earned premium on a reinsured policy be held in trust through May 31 may create issues with devising a workable reinsurance assumption program. The commenter is concerned that the assuming insurer might begin handling claims on assumed policies beginning December 1, but be in the difficult position of incurring claims costs against policies for which the insurer has received no premium. The commenter proposes allowing the premium in trust to be released to the assuming insurer monthly, as it is earned, between December 1 and May 31. The commenter believes that this proposed solution is consistent with the letter and the spirit of the law.

Agency Response: The department declines to make a change, because the incremental release of earned premium held in trust directly conflicts with the Insurance Code §2210.705(3) requirement that assumption reinsurance agreements include language that has been incorporated in §5.4307(b)(3).

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Comment: A commenter requests that the department amend §5.4307 to clarify that the "assuming insurer will report premiums and losses associated with the novated policies in the assumption reinsurance agreement as direct business on the Exhibit of Premiums and Losses (Statutory Page 14) - Texas and other pages in the Annual Statement filed with the department."

Agency response: Insurance Code, Chapter 2210, Subchapter O, does not address the reporting aspects of depopulation. Annual report guidelines are addressed in other statutes and rules including 28 TAC §7.18 and §7.68. The department declines to make amend the rule to make this change.

Section 5.4308

Comment: A commenter asks what contracts, other than public securities agreements, are being referred to in §5.4308.

Agency Response: The department has amended the section to clarify that the section applies only to contracts covered by Insurance Code §2210.616.

4. NAMES OF THOSE COMMENTING ON THE PROPOSAL.

For, with changes: Independent Insurance Agents of Texas; Insurance Council of Texas; Office of Public Insurance Counsel; Texas Windstorm Insurance Association; Weston Insurance Company

Neither for nor against: National Association of Professional Surplus Lines

Offices; Texas Surplus Lines Association

5. STATUTORY AUTHORITY. The new sections are proposed under Insurance Code §§2210.008 2210.701 - 2210.705, and 36.001. Section 2210.008(b) provides that the commissioner may adopt rules as reasonable and necessary to implement Insurance Code Chapter 2210. Section 2210.701 provides that the association, subject to commissioner approval, must administer depopulation programs under Chapter 2210, Subchapter O. Section 2210.702 provides that the commissioner will, by rule, establish what information the Texas Windstorm Insurance Association must make available to insurers participating in assumption reinsurance.

Section 2210.703 requires an insurer to renew coverage with generally comparable coverage and premiums to the association policy as determined by commissioner rule. Section 2210.704 provides that an insurer may use information concerning a specific policy or insured provided by the association under §2210.702(a) only for the purposes of Chapter 2210, Subchapter O; and that if an insurer elects to renew a policy for an association policyholder identified from information provided to the insurer under §2210.702, the insurer must offer the policy through the insurance agent of record for the association and the insurer must allow the policyholder's agent to enter into a limited service agreement with the insurer.

Section 2210.705 provides that the commissioner will, by rule, establish the procedure by which reinsured policies are transferred, addressing not only enumerated

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concerns but also any other requirements as the commissioner determines necessary for the protection of policyholders and the policyholders' agents. Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

6. CROSS REFERENCE TO STATUTE. Proposed §§5.4301 - 5.4309 affect the following statutes: Insurance Code §§2210.701 - 2210.705.

7. TEXT.

DIVISION 5. DEPOPULATION.

§5.4301. Definitions. The following terms, when used in connection with this division and Insurance Code Chapter 2210, Subchapter O, mean the following:

(1) Association--The Texas Windstorm Insurance Association.

(2) Assumption reinsurance agreement--A written agreement between the association and an insurer under which the association's legal and contractual obligations for certain association policies are transferred to the insurer by novation, as further evidenced by an assumption certificate issued to affected insureds.

(3) Department--Texas Department of Insurance.

(4) Generally comparable coverage--Coverage described in §5.4303 of this title.

(5) Electronic information repository--Association policyholder information database described in §5.4305 of this title.

(6) Insurer--An insurer authorized to engage in the business of insurance in Texas and to write property insurance. This does not include an eligible surplus lines insurer.

(7) Limited service agreement--An agreement described in §5.4304 of this title.

(8) Transfer--The shifting of an association policyholder's windstorm and hail insurance coverage from the association to an insurer who has identified the association policyholder using the electronic information repository.

§5.4302. Policy Forms, Endorsements, and Rates.

(a) Policy forms and endorsements offered by insurers for voluntary market and assumption reinsurance programs under §5.4306 or §5.4307 of this title must be approved by the department. This section does not apply to the remaining term of a novated policy.

(b) Insurance Code Chapter 2210, Subchapter L-1, does not apply to policy forms and endorsements offered by insurers under this section.

(c) Except as provided in Insurance Code Chapter 2210, the terms of the policy forms and endorsements offered by insurers for voluntary market and assumption reinsurance programs must comply with the Insurance Code, including Chapter 551, Subchapters A, C, and D.

(d) Insurers must submit the policy forms and endorsements offered by insurers for voluntary market and assumption reinsurance programs under Insurance Code Chapter 2301 and Chapter 5, Subchapter M, of this title.

(e) Rates for policy forms and endorsements offered by insurers for voluntary market and assumption reinsurance programs are subject to the requirements in Insurance Code Chapter 2251. In addition to information required under Chapter 5, Subchapter M of this title, when submitting rates for policy forms and endorsements offered by insurers for assumption reinsurance programs under Insurance Code §2210.703 and §5.4307 of this title, insurers must provide an exhibit that demonstrates that each rate filed by the insurer is no more than 115 percent of the corresponding rate charged by the association.

§5.4303. Generally Comparable Coverage. As used in this division and Insurance Code Chapter 2210, Subchapter O, a policy provides generally comparable coverage if the policy provides the same basic coverage(s) as the assumed association policy, including the endorsements included in the assumed association policy. For example, a policy does not provide generally comparable coverage if:

(1) the association policy provided coverage on a replacement cost basis, and the policy being offered by the insurer only provides coverage on an actual cash value basis;

(2) the association policy provided a certain windstorm and hail deductible amount, and the minimum windstorm and hail deductible amount on the policy being offered by the insurer is in excess of that amount; or

(3) the association policy provided policy limits in excess of the limits on the policy offered by the insurer.

§5.4304. Limited Service Agreement.

(a) A limited service agreement is an agreement between an insurer or its managing general agent and the agent of record on an association policy being acquired or assumed by the insurer, and which provides that the agent continue to provide service to the policyholder as authorized under Insurance Code Chapter 2210, Subchapter O.

(b) A limited service agreement must include the prevailing terms, conditions, and commissions of the agent that exist under the association plan of operation and guidelines at the time the policy is acquired or assumed by the insurer. The agreement will expire at the expiration of the third renewal of the insurer's policy.

(c) An appointment is not required for a limited service agreement if the agent only services association policies that have been assumed or transferred under this division and Insurance Code Chapter 2210, Subchapter O.

(d) This section does not prohibit the agent and insurer from agreeing to enter into an appointment and agent agreement on different terms.

(e) An insurer must be bound by the terms of a limited service agreement entered into by its managing general agent in accordance with subsection (a) of this section.

§5.4305. Electronic Information Repository.

(a) The association must:

(1) create an electronic information repository containing the information listed in §5.4309 of this title; and

(2) update the electronic information repository with current policy data through the prior month-end not later than the 15th day of the current month.

(b) The association must prepare a written confidentiality agreement that governs obligations of insurers who access the electronic information repository. An insurer must enter into the written confidentiality agreement before the association may grant the insurer access to the electronic information repository. The written agreement and signatures indicating acceptance of the terms of the agreement may be in an electronic format.

(c) The association must not contract to provide or otherwise allow any agent, managing general agent, administrator, or person other than an insurer that has entered into the confidentiality agreement to access the electronic information repository.

(d) An insurer must not allow any agent, managing general agent, administrator, affiliate, other insurer, or any other person to access the electronic information repository.

(e) An insurer may access the electronic information repository only for the purpose of providing windstorm and hail insurance to association policyholders either through a voluntary market depopulation program approved under §5.4306 of this title or assumption reinsurance program under §5.4307 of this title.

§5.4306. Voluntary Market Depopulation Program.

(a) Except as provided in §5.4307 of this title, the association and an insurer must submit to the department for approval any depopulation program that encourages the transfer of association policies to insurers through the voluntary market. The submission must include all necessary documents, including notices and policy forms.

(b) The program must provide necessary protections for the policyholders and policyholders' agents, including Insurance Code §2210.704(b).

(c) An insurer and the association must not proceed with the voluntary market depopulation program, and it is not effective unless the commissioner approves the program in writing.

§5.4307. Assumption Reinsurance Program.

(a) An insurer and the association must submit to the department the written assumption reinsurance program, including the assumption reinsurance agreement and all necessary documents, including notices and policy forms evidencing generally comparable coverage and premiums, to allow the department to

determine that policyholders and the policyholders' agents have the necessary protections.

(b) The assumption reinsurance program and assumption reinsurance agreement must comply with Insurance Code Chapter 2210, Subchapter O. The assumption reinsurance agreement must include:

(1) an offer commencement date of December 1;

(2) the opportunity for the policyholder to opt out of the assumption reinsurance agreement on or before May 31;

(3) a transfer of the earned premium on a reinsured policy to a trust account to be held until the expiration of the policyholder opt-out period when the earned premium for the final reinsured policy will be transferred to the insurer;

(4) a period of not less than 60 days for the agent of record to accept an appointment or other written agreement with the insurer; and

(5) the effective date of the assumption.

(c) The insurer and the association must not proceed with the assumption reinsurance program, and it is not effective unless the commissioner approves the assumption reinsurance program in writing.

§5.4308. Effect on Existing Contracts. The association may not enter into a voluntary market depopulation program or assumption reinsurance agreement that would violate Insurance Code §2210.616. The association must demonstrate compliance with the section in each filing under §5.4306 or §5.4307 of this title.

§5.4309. Repository Information. The association must make the following information available through the electronic information repository:

- (1) Policy Expiration Date;
- (2) Policy ID;
- (3) Policy Holder Name;
- (4) Mailing Address;
- (5) Item Number;
- (6) Item Description;
- (7) Premium;
- (8) Structure Coverage Amount;
- (9) Contents Coverage Amount;
- (10) Deductible;
- (11) Coinsurance;
- (12) Construction Type;
- (13) Roof Type;
- (14) Total Area;
- (15) Stories;
- (16) Risk Location Address;
- (17) City;
- (18) County;
- (19) Zip;

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- (20) Occupancy;
- (21) Primary/Secondary;
- (22) Replacement Cost;
- (23) Cash Value;
- (24) Companion Policy Type;
- (25) Wind Driven Rain;
- (26) Companion Policy Provider;
- (27) Construction Date;
- (28) Addition Date;
- (29) Re-Roof Date;
- (30) Re-Roof Description;
- (31) Repair Date;
- (32) Repair Reason;
- (33) Increased Cost of Construction;
- (34) Contents Replacement Cost;
- (35) ACV Roof Endorsement;
- (36) WPI-8 Waiver;
- (37) Location of Risk;
- (38) Building Code;
- (39) Building Code Credit Type;
- (40) Mortgage;
- (41) Agent Name;

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

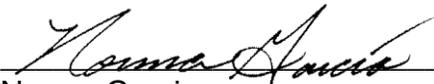
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8. CERTIFICATION. This agency certifies that legal counsel has reviewed the adopted provisions and finds them to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas on December 1, 2015.



Norma Garcia
General Counsel
Texas Department of Insurance

The commissioner adopts 28 TAC §§5.4301 - 5.4309.



David C. Mattax
Commissioner of Insurance