

**SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION**  
**DIVISION 1. Plan of Operation**  
**28 TAC §5.4001**

**1. INTRODUCTION.** The Commissioner of Insurance adopts amendments to §5.4001, concerning the Texas Windstorm Insurance Association Plan of Operation with changes to the proposed text as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5225). The amendment is adopted with changes because a typographical error in existing text, §5.4001(d)(1)(B)(ii) mistakenly contains a reference to subsection (f); the reference is corrected to read "in this subsection."

**2. REASONED JUSTIFICATION.** The amendments are necessary to authorize the Association to prepare financial information on a calendar year basis only rather than on both a calendar year and syndicate year basis, to calculate assessments for member companies on a calendar year basis rather than a syndicate year basis when funds available to the Association are insufficient to pay operating costs and/or catastrophe losses, and to eliminate a minimum cap (20 percent of a company's percentage of the statewide net direct written premiums) and a maximum cap (170 percent of a company's percentage of the statewide net direct written premiums) on a member company's Association assessment percentage.

Under the Insurance Code §2210.051, the Association is composed of all insurers authorized to transact property insurance in this state and operates

pursuant to Chapter 2210 of the Insurance Code. The purpose of Chapter 2210 is to provide an adequate market for windstorm and hail insurance. Chapter 2210 “provides a method by which adequate windstorm, hail, and fire insurance may be obtained in certain designated portions of this state.” The funding structure for the Association established in Chapter 2210 of the Insurance Code includes assessments to member companies in the event that the Association’s operating costs or catastrophe losses exceed the Association’s premium and other revenue.

The Insurance Code §2210.151 requires the Commissioner to adopt by rule a plan of operation for the Association to provide Texas windstorm and hail insurance in catastrophe areas. The Insurance Code §2210.152(a)(2)(A) requires the plan of operation to include a plan for the equitable assessment of the members of the Association to defray losses and expenses. The Insurance Code §2210.052(a) specifies that Association members shall be assessed Association operating expenses and losses in the proportion that the net direct premiums of a member bears to the aggregate net direct premiums of all members, and the Insurance Code §2210.052(c) specifies this proportion shall be determined annually in a manner provided by the plan of operation. (As used in this adoption order, terms such as “net direct premiums,” “voluntary writings in the catastrophe areas,” “voluntary premiums for the catastrophe areas,” and “similar insurance voluntarily written in the catastrophe areas,” refer to windstorm and hail insurance.) The Insurance Code §2210.052(d) specifies that members

are entitled to a credit for similar insurance voluntarily written in the catastrophe areas and that the credit shall reduce the member's share of the Association's expenses and losses in accordance with the plan of operation. The Insurance Code §2210.054(a) requires the Association to file annually with the Department a statement summarizing the transactions, conditions, operations and affairs of the Association during the preceding year. The Insurance Code §2210.054(a) also requires that the statement shall cover periods designated by the Department, and the Insurance Code §2210.054(b)(3) requires the statement to be in a form prescribed by the Department. Section 5.4001(b)(8) of the plan of operation requires the Association to submit to the Department an "annual report" on a calendar year basis. Section 5.4001(c)(1)(C)(i) of the plan of operation requires the Association to prepare each year a "statement of earnings" on a syndicate year basis.

**The Adoption of Amendments to Allow the Calendar Year to Be Used as the Basis for Association Calculations.** The adoption of amendments to §5.4001(c)(1)(C)(i), §5.4001(c)(1)(C)(ii), and §5.4001(c)(2)(B) of the plan of operation are necessary because the plan of operation requires the Association to use a syndicate year as a basis for calculations for two purposes: (i) to prepare each year an Association statement of earnings required by §5.4001(c)(1)(C)(i) of the plan of operation; and (ii) to calculate pursuant to §5.4001(c)(2)(B) of the plan of operation the total amount of member company assessments needed at a particular time to pay operating expenses and/or

catastrophe losses and then to calculate pursuant to §5.4001(c)(1)(C)(ii) of the plan of operation the specific amount of the assessment each member company is required to pay. The adoption of amended §5.4001(c)(1)(C)(i), §5.4001(c)(1)(C)(ii) and §5.4001(c)(2)(B) of the plan of operation will allow the Association to use a calendar year basis rather than a syndicate year basis for calculations for these two specified purposes.

Generally, calculations done on a calendar year basis are less cumbersome and time-consuming than calculations based on a syndicate year, can be prepared and finalized earlier, and reflect more current information. Thus, changing from the syndicate year basis for calculations for the Association to the calendar year basis for calculations is consistent with the requirements of the Insurance Code §2210.152(a)(1) that the plan of operation provide for the efficient and economical administration of the Association.

A syndicate year is determined by the effective and the expiration dates of a policy. For example, syndicate year 2007 covers all policies with an effective date beginning in 2007. Under the syndicate year system, earnings and losses cannot be fully determined until the syndicate year closes. The syndicate year closes when all policies with an effective date in 2007 expire, typically twelve months after the date a policy became effective. Therefore, earnings and losses from syndicate year 2007 will not be fully determined until late in the year 2008. Calculations done by syndicate year attempt to link earnings and losses

according to actual policy cycles and require the books for a syndicate year to be kept open for approximately two years.

A calendar year is determined by the Gregorian calendar beginning each year on January 1 and ending on December 31. All premiums and revenue taken in during a particular calendar year are added together, and losses and expenses incurred during the same calendar year are subtracted from the calendar year total of premiums and revenue. Calendar year premiums, revenue, and losses can be determined quickly after the close of the calendar year on December 31.

*The Adoption of Amendments to Allow the Calendar Year to Be Used as the Basis for the Statement of Earnings.* The Insurance Code §2210.054(a) requires the Association to file annually with the Department a statement summarizing the transactions, conditions, operations and affairs of the Association during the preceding year. Subsections (a) and (b)(3) of the Insurance Code §2210.054 require that the statement cover periods designated by the Department.

Section 5.4001(b)(8) of the plan of operation requires that the Association “file with the Department annually a statement which shall summarize the transactions, conditions, operations, and affairs of the Association during the preceding calendar year.” The report required by §5.4001(b)(8) of the plan of operation is the Association’s “annual report” and is prepared on a calendar year basis. Section 5.4001(c)(1)(C)(i) of the plan of operation currently provides that

“Each year the Association will prepare a statement of earnings by syndicate year.” Because §5.4001(b)(8) and §5.4001(c)(1)(C)(i) differ, the Association keeps two sets of books for its financial reporting: one by calendar year for the annual report and one by syndicate year for the statement of earnings.

References in §5.4001(c)(1)(C)(i) of the plan of operation to a “syndicate” year are deleted and replaced with the term “calendar” year and the explanation of a “syndicate” year in §5.4001(c)(1)(C)(i) of the plan of operation is deleted. Section 5.4001(b)(8) is not amended. As a result, the adoption of the amendments will eliminate the current requirement that the Association keep two sets of books, one by syndicate year and one by calendar year. The required financial reports of the Association, such as the annual report and the statement of earnings, will be uniformly made on a calendar year basis. The adopted amendments to §5.4001(c)(1)(C)(i) of the plan of operation will allow the Association to complete the statement of earnings following the close of a calendar year on December 31, rather than at the completion of the syndicate year many months later. The Association statement of earnings based on a calendar year will be produced more efficiently by the Association, be understood more easily by the member companies and the public, and be based on more current information. The book-keeping obligations of the Association will become more efficient.

The adoption of amendments to §5.4001(c)(1)(C) of the plan of operation will result in an improved Association plan of operation that will provide for a

more efficient and economical administration of the Association, as mandated by the Insurance Code §2210.152(a)(1).

*The Adoption of Amendments to Allow the Calendar Year to Be Used as a Basis for Association Assessments.* The Insurance Code §2210.152(a)(2)(A) requires the Association plan of operation to include a plan for the equitable assessment of the member companies to defray losses and expenses. Pursuant to §5.4001(c)(2)(A) of the plan of operation, the member companies may be required to pay assessments to the Association to adequately provide for the operating expenses of the Association and/or for catastrophe losses. If the board of directors of the Association determines that the funds then available to the Association are insufficient for either or both purposes, the board assesses member companies under the authority of §5.4001(c)(2)(A)(ii) of the plan of operation in reasonable and necessary amounts to provide for the operating expenses and/or catastrophe losses.

The plan of operation currently requires in §5.4001(c)(2)(B) that the board of directors determine the amount of assessment required for operating expenses and/or catastrophe losses using syndicate year calculations. For example, under the current system of calculating assessments by syndicate year, if a storm occurs in September 2008 and an assessment is necessary, the Association must determine how much of the assessment is due to Association policies with an effective date in 2007 (which may still be in effect in September 2008) and how much is due to policies with an effective date in 2008. Generally,

in order to calculate each member company's share of an assessment, the assessment is multiplied by each member company's assessment percentage. The assessment percentage is determined annually and is generally described as the ratio of the member company's net direct premiums written statewide to the aggregate net direct premiums written statewide by all members of the Association, adjusted by a credit for each member company's voluntary premiums written in the catastrophe areas.

Using the example of a storm occurring in September 2008 and using the syndicate year basis of calculation required by §5.4001(c)(2)(C)(ii), the member company's assessment percentage applicable to 2007 will be multiplied by the amount of the assessment due to Association policies with an effective date in 2007 (syndicate year 2007), and the member company's assessment percentage applicable to 2008 will be multiplied by the amount of the assessment due to Association policies with an effective date in 2008 (syndicate year 2008). The resulting two figures will be added together to determine each company's total assessment amount for the single event occurring in September 2008.

However, there are two factors inherent in the use of a syndicate year as a basis of calculation: (i) final figures for a syndicate year are frequently not available at the time of an assessment and require later reconciliation; and (ii) the use of a syndicate year basis in determining assessments delays the effect of increases or decreases in voluntary writings in the catastrophe areas on the amount of a member company's assessment.

Using the September 2008 example, some of the premiums, revenue, expenses, and losses for Association policies with an effective date in 2007 that have not expired as of the date of the loss in September 2008, and much of the premiums, revenue, expenses, and losses for Association policies with an effective date in 2008 in effect as of the date of the loss, are not yet known. After the assessment is made, calculations for syndicate year 2007 must be finalized; and then even later in 2009, calculations for syndicate year 2008 must be completed. The assessment for the September 2008 storm must be reconciled against the final accounting for syndicate years 2007 and 2008. If member companies overpaid their share of an assessment, they receive a refund; if member companies underpaid their share of an assessment, they receive an additional notice of assessment.

As the September 2008 example illustrates, policies with effective dates in two different years are usually in effect at the time of an assessment. Section 5.4001(c)(1)(C)(ii) of the plan of operation currently requires that the assessment portion for the prior syndicate year be multiplied by the member company's prior year's assessment percentage and that the assessment portion for the current syndicate year be multiplied by the member company's assessment percentage for the current year. Assessment percentages, which are determined annually, are required by §5.4001(c)(2)(B) and §5.4001(c)(2)(B)(i) of the plan of operation to be adjusted by a credit for similar insurance voluntarily written in the catastrophe areas. Therefore, part of an assessment determined under the

current plan of operation is based on an assessment percentage applicable to a prior syndicate year, which may not reflect recent voluntary writings in the catastrophe areas, or may reflect voluntary writings no longer in effect.

Section 5.4001(c)(1)(C)(ii), §5.4001(c)(2)(B), and §5.4001(c)(2)(B)(i) of the plan of operation are adopted to be amended to delete references to “syndicate” year and replace them with the term “calendar” year so that assessments will be calculated on a calendar year basis. Using the September 2008 example and using the calendar year basis of calculation, the Association will determine the amount of assessment needed after the storm according to the premium and revenue available to date for calendar year 2008, including available funds in the catastrophe reserve trust fund and from reinsurance proceeds, if applicable. With the adoption of the amendments, the determination of the assessment will be based on the calendar year only and the Association will use one set of figures rather than the two required by the syndicate year basis, making the assessment easier to prepare. There will be no need to refer to 2007 calculations for the Association’s earnings and losses, because the assessment amount will be based on insured losses, operating expenses, and premiums and other revenue transactions of the Association that occurred during calendar year 2008. Under most circumstances, calculations for an assessment prepared on a calendar year basis will eliminate the need to reconcile final figures, reducing the need for refunds or further assessments. Under the adopted amendments, all of an assessment will be determined using the current assessment percentage,

which reflects member companies' most recent voluntary writings in the catastrophe areas. Eliminating the delay in the effect of member companies' increased or decreased voluntary writings in the catastrophe areas will provide an incentive to all member companies to maintain or provide similar insurance in the catastrophe areas, which may reduce property owners' reliance on the Association to provide windstorm and hail insurance coverage.

**The Adoption of Amendments to Eliminate Minimum and Maximum Caps on Member Companies' Assessment Percentages.** The Insurance Code §2210.052(a) and §2210.052(c) specify that Association members shall be assessed Association operating expenses and losses in the proportion that the net direct premiums of a member bears to the aggregate net direct premiums of all members and that this proportion shall be determined annually in a manner provided by the plan of operation. The Insurance Code §2210.052(b) requires the Department to review data and information it considers necessary to determine the annual assessment percentage and to provide that information to the Association. The Insurance Code §2210.152(a)(2)(A) requires the plan of operation to include a plan for the equitable assessment of the members of the Association to defray losses and expenses. The Insurance Code §2210.052(d) specifies that members are entitled to a credit for similar insurance voluntarily written in the catastrophe areas and that this credit is to be used to reduce a member's assessment percentage in accordance with the plan of operation. The plan of operation in §5.4001(c)(2)(B) and §5.4001(c)(2)(B)(i) specifies the

minimum and maximum caps to be used to adjust the calculation of a member company's assessment percentage. The adoption of amendments to §5.4001(c)(2)(B) and §5.4001(c)(2)(B)(i) will eliminate these minimum and maximum caps.

The elimination of minimum and maximum caps on companies' Association assessment percentages will result in assessment percentages that more accurately reflect the credit for a member company's voluntary writings in the catastrophe areas, or lack thereof.

Pursuant to §5.4001(c)(2)(B) and §5.4001(c)(2)(B)(iv) of the plan of operation, as a part of the regular operations of the Association, the Association receives information from the Department on the aggregate net direct premiums written in the state during the preceding calendar year and the net direct premiums written in the state by each member company during the same period. Each member company's percentage of the net direct premiums written in the state is calculated from those annual figures. Thus, a company's assessment percentage for 2008 is based on premium information supplied to the Department for calendar year 2007.

To implement the requirement in the Insurance Code §2210.052(d) that members are entitled to a credit for similar insurance voluntarily written in the catastrophe areas, §5.4001(c)(2)(B)(i) of the plan of operation requires the determination of a member company's "normal required quota" of business in the catastrophe areas for the preceding calendar year. A member company's normal

required quota of business in the catastrophe areas is calculated by multiplying its percentage of the net direct statewide market for the preceding calendar year by the total premiums written in the catastrophe areas (which are total Association premiums plus total voluntary premiums for the catastrophe areas) during the preceding calendar year. The total of the company's actual written premiums in the catastrophe areas for the preceding calendar year is then subtracted from the member company's normal required quota for the same time period. The difference is then divided by the total of all member companies' normal required quotas for the preceding calendar year minus their actual written premiums in the catastrophe areas during the preceding calendar year. The resulting quotient is a member company's unadjusted assessment percentage for the following calendar year.

Currently, pursuant to §5.4001(c)(2)(B)(i) of the plan of operation, the member company's unadjusted assessment percentage is then compared to its percentage of net direct statewide premiums written during the preceding calendar year. If the member company's unadjusted assessment percentage is less than 20 percent of the company's percentage of the net direct statewide premiums written during the preceding calendar year, the unadjusted assessment percentage is adjusted upward to 20 percent of the company's percentage of net direct statewide premiums written during the preceding calendar year (minimum cap). If the company's unadjusted assessment percentage is more than 170 percent of the company's percent of the net direct

statewide premiums written during the preceding calendar year, the quotient is adjusted downward to 170 percent of the company's percentage of net direct statewide premiums written during the preceding calendar year (maximum cap). While the application of minimum and maximum caps to the assessment percentage is required by the plan of operation, it is not required by Chapter 2210 of the Insurance Code. The adjusted assessment percentage (after the application of an offset factor designed to ensure that the sum of all member companies' assessment percentages totals 100 percent) is the net assessment percentage for a member company for the following calendar year.

If, pursuant to the Insurance Code §2210.052, §2210.058, and §2210.152(a)(2)(A), an assessment is necessary, the net assessment percentage for a member company is then multiplied by the total amount of assessment the board of directors has determined is needed pursuant to §5.4001(c)(2)(B) of the plan of operation. Under §5.4001(c)(2)(D)(i) of the plan of operation, the member company must remit this amount within 30 days of the receipt of the notice of assessment or have its certificate of authority to transact the business of insurance suspended by the Commissioner until such time as the Association certifies to the Commissioner that such assessment has been paid in full.

The adoption of amendments to §5.4001(c)(2)(B) and §5.4001(c)(2)(B)(i) of the plan of operation will eliminate the application of minimum and maximum caps on member companies' Association assessment percentages. The

elimination of minimum and maximum caps on companies' Association assessment percentages will result in assessment percentages that more accurately reflect a member company's voluntary insurance writings in the catastrophe areas, or lack thereof.

Additionally, the elimination of the minimum cap allows a member company to fully realize the benefits of its voluntary writings in the catastrophe areas and results in a less costly assessment for the company if an assessment is necessary. Under current §5.4001(c)(2)(B)(i) of the plan of operation, a company that has written its entire normal required quota in the catastrophe areas during the preceding calendar year would have an unadjusted assessment percentage calculated at less than 20 percent of its percentage of net direct statewide premiums written during the preceding calendar year. The unadjusted assessment percentage would nonetheless be adjusted upward to 20 percent of its percentage of net direct statewide premiums written during the preceding calendar year, resulting in a loss of credit for voluntary writings greater than zero percent but less than 20 percent of a company's percentage of net direct statewide premiums written during the preceding calendar year. After the adoption of amendments to §5.4001(c)(2)(B)(i) of the plan of operation, if a member company's unadjusted assessment percentage ranges from any percentage greater than zero to 20 percent of its percentage of net direct statewide premiums written, that percentage will become the net assessment

percentage (after application of a final offset factor) reflecting full credit for voluntary writings in the catastrophe area during the preceding calendar year.

Conversely, under current §5.4001(c)(2)(B)(i) of the plan of operation, a company with a sizable market share but a small amount of voluntary writings in the catastrophe areas during the preceding calendar year may have an unadjusted assessment percentage calculated that is more than 170 percent of its percentage of net direct statewide premiums written during the preceding calendar year. After the adoption of the amendments, the assessment percentage will not be adjusted down to 170 percent of its percentage of net direct statewide premiums written during the preceding calendar year. The maximum cap will not provide a member company a credit for voluntary writings that do not exist.

**3. HOW THE SECTION WILL FUNCTION.** Adopted amendments to §5.4001(c)(1)(C)(i) will require the Association to prepare a statement of earnings by calendar year. This will be consistent with the requirement in §5.4001(b)(8) that the Association file an annual report with the Department each calendar year.

Adopted amendments to §5.4001(c)(1)(C)(ii) will require that each company apply its assessment percentage applicable to each calendar year. Adopted amendments to §5.4001(c)(2)(B) will require that the board of directors determine on a calendar year basis which members of the Association will be

assessed for operating expenses or catastrophe losses. When the board of directors determines pursuant to §5.4001(c)(2) that an assessment of members is necessary, the amount of assessment will be calculated according to the calendar year and only the assessment percentage for that calendar year will be used to determine a member's share of the assessment.

Adopted amendments to §5.4001(c)(2)(B)(i) no longer require the application of minimum and maximum caps in determining a member's assessment percentage. The chart summarizing the procedures of §5.4001(c)(2)(B)(i) is updated and Columns 10 and 11 of the chart are deleted because they describe the application of minimum and maximum caps to assessment percentages. Existing §5.4001(c)(2)(B)(ii) and §5.4001(c)(2)(B)(iii) are deleted, and amended §5.4001(c)(2)(B)(iv) and §5.4001(c)(2)(B)(v) are redesignated as §5.4001(c)(2)(B)(ii) and §5.4001(c)(2)(B)(iii).

#### **4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.**

**Comment:** One commenter noted that the use of the syndicate year was appropriate in the early days of the Association because it was thought that members would share in the "equity" of the Association. The evolution of the Association has made that concept outdated. In the commenter's opinion, the calendar year method of calculation reflects more accurately the Association's true financial status and is therefore superior for determining member's assessments.

The same commenter supported the elimination of minimum and maximum caps on the assessment percentages because the elimination of the caps will increase incentives to write voluntary insurance in the catastrophe areas.

**Agency Response:** The Department appreciates the supportive comments

**5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.**

**For:** Galveston Windstorm Action Committee.

**Against:** None.

**6. STATUTORY AUTHORITY.** The amendments are adopted pursuant to the Insurance Code Chapter 2210 and §36.001. The Insurance Code §2210.151 requires the Commissioner by rule to adopt the Association plan of operation to provide Texas windstorm and hail insurance in the catastrophe areas. The Insurance Code §2210.152(a)(1) requires that the plan of operation provide for the efficient, economical, fair, and non-discriminatory administration of the Association.

The Insurance Code §2210.054 requires the Association to file an annual statement containing information prescribed by the Department and in the form prescribed by the Department.

The Insurance Code §2210.152(a)(2)(A) requires the plan of operation to include a plan for the equitable assessment of the members of the Association to defray losses and expenses. The Insurance Code §2210.052(a) requires that a member company share in the losses and/or expenses of the Association based on the proportion that the net direct premiums of that member during the preceding calendar year bears to the aggregate net direct premiums by all members of the Association. Under the Insurance Code §2210.052(c), a member company's share of the losses and/or expenses of the Association is required to be determined annually and in the manner provided by the plan of operation. In the determination of a member company's share of the losses and/or expenses of the Association, the Insurance Code §2210.052(d) specifies that members are entitled to a credit for insurance voluntarily written in the catastrophe areas. The Insurance Code §2210.052(d) also requires that the method for calculating the credit be contained in the plan of operation. The Insurance Code §2210.053(b) encourages the Department to develop a program designed to create incentives for insurers to write voluntary windstorm and hail insurance in the catastrophe areas.

Pursuant to the Insurance Code §2210.153(a)(1), the Association may present a recommendation for a change in the plan of operation to the Department. The Insurance Code §2210.153(b) requires proposed changes to the plan of operation to be in writing in the manner prescribed by the Commissioner. The proposed change does not take effect unless adopted by

the Commissioner by rule. The Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

## **7. TEXT.**

### **§5.4001. Plan of Operation**

#### **(a) Definitions.**

(1) Words defined in Act. Unless the context clearly dictates the contrary, words defined in the Texas Catastrophe Property Insurance Pool Act (the Insurance Code, Article 21.49, as amended) and not specifically defined in this section shall have the same definition when used in this section as they have in such Act. The terms "this section" and "plan of operation" are used interchangeably herein.

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

(A) Act--The Texas Catastrophe Property Insurance Pool Act, Senate Bill 31, Acts of the 62nd Legislature, 1971, as amended; codified as the Insurance Code, Article 21.49, as amended.

(B) Application--An application for catastrophe insurance.

(C) Association--The Texas Catastrophe Property Insurance Association.

(D) Board--The State Board of Insurance

(E) Board of directors--The board of directors of the Texas Catastrophe Property Insurance Association.

(F) Catastrophe insurance--For the purpose of this plan of operation, means Texas windstorm and hail insurance.

(G) Catastrophe loss--A loss to property insured by a policy of Texas windstorm and hail insurance. "Catastrophe losses" means more than one catastrophe loss.

(H) Chair of the board--The chair of the board of directors of the Texas Catastrophe Property Insurance Association.

(I) Commissioner--Commissioner of Insurance of the State of Texas.

(J) Corporeal property--Tangible personal property.

(K) Department--Texas Department of Insurance.

(L) Indirect losses--Personal Lines.

(i) Except as provided in clause (iii) of this subparagraph, a policy of windstorm and hail insurance issued by the association for a dwelling as defined by the Department in the association's rates and rules manual, must include coverage for:

- (I) wind-driven rain damage, regardless of whether an opening is made by the wind;
- (II) loss of use, meaning additional living expenses; and
- (III) consequential losses.
- (ii) Except as provided in clause (iii) of this subparagraph, a policy of windstorm and hail insurance issued by the association for tenant contents of a dwelling or other residential building must include coverage for:
- (I) loss of use, meaning additional living expenses; and
- (II) consequential losses.
- (iii) The association is not required to:
- (I) offer coverage for indirect losses as provided in clauses (i) and (ii) of this subparagraph unless the coverage was excluded from a companion policy issued in the voluntary market; or
- (II) provide loss of rents or loss of rental value coverage as part of a loss of use coverage or additional living expense coverage to a secondary or non-primary residence.
- (M) Member--An insurer required to be a member of the association by the Act, §4, or where the context indicates, any duly authorized

agent or representative of such insurer. "Members" shall mean more than one member.

(N) Net direct premiums--

(i) For association policies with inception dates on and after January 1, 1993, "net direct premiums" shall mean all statewide direct written premiums (excluding direct written premiums in catastrophe area as designated by the Commissioner) and shall be the sum of the following:

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

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

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

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

(-a-) 40% of the total premium for any commercial policy issued under a composite rate; or

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

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

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

(II) 90% of the extended coverage and other allied lines portion of the direct written premiums on the multiple peril line of

business as reported in accordance with the property statistical plan promulgated by the Commissioner for property insurance, which the association shall obtain from the Department, and as may be furnished to the association by the Department after review of the insurer's annual statement, other reports, and other statistics the Department shall deem necessary;

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

(IV) the extended coverage and other allied lines portion of the following policies, which shall not be restored to manual rate levels, and which shall be calculated as follows:

(-a-) 40% of the total policy premium or the combined actual extended coverage and other allied lines premium charged, whichever is the greater, for any commercial policy issued pursuant to the Insurance Code, Article 5.13-2 or Article 5.26(c), or for policies issued pursuant to the Insurance Code, Article 5.31; or

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

(iii) For association policies with inception dates on and after January 1, 1983 through December 31, 1987, inclusive, net direct premiums means the sum of the following premiums:

(I) 90% of the direct written premiums on the extended coverage line of business as reflected on line two, column (1), of the insurer's last Texas annual statement;

(II) 90% of the extended coverage portion of the direct written premiums on the multiple peril line of business as reported on line eight, column (1), of the insurer's last Texas annual statement; and

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

(iv) For association policies with inception dates on and after January 1, 1978, through December 31, 1982, inclusive, net direct premiums means the sum of the following premiums:

(I) 90% of the direct written premiums on the extended coverage line of business as reflected on line two, column (1), of the insurer's last Texas annual statement;

(II) 90% of the extended coverage portion of the direct written premiums on the multiple peril line of business as reported on line eight, column (1), of the insurer's last Texas annual statement; and

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

(O) Secretary-treasurer--The secretary-treasurer of the Texas Catastrophe Property Insurance Association.

(P) Texas windstorm and hail insurance--Deductible insurance against direct loss and indirect losses resulting from a direct loss to

insurable property as a result of windstorm or hail as such terms shall be defined and limited in policies and forms approved by the Commissioner. The deductible amount which shall be applied to all risks written by the association shall be determined by the board of directors and approved by the Commissioner.

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

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

(1) Members.

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

(B) Notice of meetings. Written or printed notice stating the place, day, and hours of the meeting, and in case of a special meeting, the

purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chair of the board of directors, the secretary-treasurer, or other person calling the meeting, to each member entitled to vote as such meeting.

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

(1) Members.

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

(B) Notice of meetings. Written or printed notice stating the place, day, and hours of the meeting, and in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less

than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chair of the board of directors, the secretary-treasurer, or other person calling the meeting, to each member entitled to vote as such meeting.

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

(D) Quorum. Twenty-five percent of the members represented by person or by proxy shall constitute a quorum at a meeting of the members. If less than 25% of the members are represented at a meeting, a majority of the outstanding members so represented may adjourn the meeting from time to time without further notice. At the next meeting after adjournment at

which a quorum shall be present or represented, any business may be transacted at the meeting as originally notified. The members represented at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough persons to leave less than a quorum.

(E) Voting.

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

(ii) There shall be 1,000 outstanding votes allocated to the members of the association by the secretary-treasurer. The secretary-treasurer shall determine the percentage of each member's participation in the writings, expenses, profits, and losses of the association computed on the date of the end of the last calendar year preceding such annual meeting at which information necessary to make such computation is available from the

Department, and shall allocate to each member a like percentage of the total outstanding votes allocated to the members of the association. Each member shall be entitled to vote its allocated number of outstanding shares at the annual meeting and each special meeting until the next annual meeting of the association at which time the outstanding votes shall be again allocated to the members in the manner set forth previously.

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

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

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

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

(2) Directors.

(A) Election. At the first annual meeting of members and at each annual meeting thereafter, the members shall elect the appropriate number of directors from the membership of the association in accordance with

subparagraph (B) of this paragraph. Directors, other than from the membership, shall be appointed in accordance with subparagraph (C) of this paragraph. The total number of directors of the association shall be nine.

(B) Directors elected from the membership.

(i) Five directors shall be five different insurers licensed in Texas and members of the association and elected by the members. No member shall fill more than one seat on the board of directors.

(ii) No later than 60 days prior to the annual meeting in March 1992, the board of directors shall nominate the five-member companies to serve on the board of directors. In making such nominations, the board of directors shall consider the following factors in nominating a member to serve.

(I) A minimum of three members shall be companies with multistate operations.

(II) A minimum of one member shall be a company domiciled in the State of Texas.

(III) Consideration should be given to voluntary market shares of members; voluntary participation in the catastrophe area; specific expertise in the underwriting, claims handling, or reinsurance of insurance required to be provided by the association; companies that represent as far as possible the view of the member companies; and other factors deemed relevant by the board of directors.

(iii) No later than 60 days prior to the annual meetings, the chair shall appoint a nominating committee of not less than three, nor more than seven, member companies, each to act through its designated representative, said committee to represent as far as possible the view of the member companies. Said committee shall prepare and present to member companies a list of nominations for the board of directors.

(iv) Members also have the right to nominate any member by submitting such nominee's name to the nomination committee. In order to be eligible for election to the board of directors, a member must be nominated at least 30 days prior to the annual meeting at which directors are elected.

(C) Directors appointed by the Commissioner. The number of directors composed of licensed local recording agents and members of the public shall be four. Each of these directors must be from different counties in the designated catastrophe area.

(i) The Commissioner shall appoint two public representatives nominated by the Office of the Public Insurance Counsel to serve on the board of directors. The public representatives shall be persons who are policyholders of the association as of the date of appointment.

(ii) The Commissioner shall appoint two licensed local recording agent representatives to serve on the board of directors.

(D) Term of office. Each director shall hold office for the term of three years from the date of the election or appointment or until a successor shall have been elected or appointed. The terms of the directors shall be staggered so that three directors shall be elected by the membership of the association and/or appointed by the Commissioner annually. A person may hold a seat on the board of directors for not more than three consecutive full terms, not to exceed nine years.

(E) Regular meetings. A regular meeting of the board of directors shall be held with notice to the directors at least ten days before each regular meeting as provided for in this subsection. Notice of any regular meeting of the directors shall also be given to the Department in care of the associate commissioner of property-casualty, or such other person as may be designated by the Commissioner, as required by the Texas Insurance Code, Article 21.49, §5(k). Public notice of meetings shall be given as required by the Government Code, Chapter 551.

(F) Notice of regular or emergency meeting.

(i) Notice of any regular meeting shall be given to the directors at least ten days prior thereto by notice delivered personally or mailed to each director at his/her business address or by telegram, or such other reasonable means of notice to provide actual notice to each director. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed with postage thereon prepaid. If the notice be given by

telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. If the notice is by other reasonable means, the association shall maintain a written record of the method of notification. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice to the director of such meeting, except where a director attends a meeting for the express purpose of objection to the transaction of any business because the meeting is not lawfully called or convened.

(ii) In case of emergency or urgent public necessity, notice to directors and to the Department shall be given at least two hours before a meeting is convened. Notice to the public shall be given as required for an emergency meeting pursuant to the Government Code, §551.045.

(iii) Any meeting of the board of directors of the association conducted by conference call is subject to the same requirements applicable to other meetings of the board of directors.

(G) Regular or emergency meetings. Regular or emergency meetings of the board of directors may be called by the chair of the board or at the request of any two directors. The person or persons authorized to call a meeting of the board of directors may fix any place as the place for holding any meeting of the board of directors called by them. If no place is designated, then the office of the association shall serve as the place of such meeting.

(H) Statement of purpose of meeting required. The business to be transacted at, and the purpose of, any regular or emergency meeting of the board of directors shall be specified in the notice to directors and in notice required by statute as required by the Government Code, Chapter 551.

(I) Quorum. A majority of the number of directors fixed by this section shall constitute a quorum for the transaction of business at any meeting of the board of directors. Action taken by a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors. If at any meeting of the board of directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained.

(J) Presumption of assent. A director of the association who is present at the meeting of the board of directors at which action on any matter is taken shall be presumed to have assented to the action taken unless the director's dissent shall be entered in the minutes of the meeting, or unless the director shall file a written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof, or shall forward such dissent by registered mail to the secretary of the association immediately after the adjournment of the meeting. Such right to dissent shall not be available to a director who voted in favor of such action.

(K) Compensation. By resolution of the board of directors, the directors may be reimbursed for their actual expenses. No other payment

shall be made to directors other than provided herein, except however, that nothing herein shall be construed as preventing any director from serving the association in any other capacity and receiving reimbursement for actual expenses incurred.

(L) General powers. The board of directors shall have the management of the business and affairs of the association and may exercise all of the powers herein enumerated and all other powers incidental or appropriate thereto, subject only to the restrictions imposed by law. Included among the powers of the board of directors, but not in limitation thereof, are the following:

(i) to make and change regulations not inconsistent with this section for the management of the business affairs of the association;

(ii) to purchase or otherwise acquire for the association any property, rights, or privileges which the association is authorized to acquire;

(iii) to remove any officer for cause, summarily without cause, and in their discretion, from time to time, to dissolve the powers and duties of any officer and to confer such powers and duties upon any other person for the time being;

(iv) to appoint and remove or suspend such subordinate officers, attorneys, or representatives as they may deem necessary and to determine their duties, and fix, and from time to time change their salaries or remuneration, and to require security as and when they think fit;

(v) to confer upon any officer of the association the power to appoint, remove, and suspend subordinate officers, employees, and representatives;

(vi) to determine who shall be authorized on the association's behalf to make and sign bills, notes, acceptances, endorsements, checks, releases, receipts, contracts, and other instruments;

(vii) to delegate any of the powers of the board of directors in relation to the ordinary business of the association to any standing or special committee, or to any officer or agent (with power to subdelegate) upon such terms as they may deem appropriate;

(viii) to contract with a servicing facility to perform such services for the association as it may deem appropriate;

(ix) to approve expenses, levy assessments, including preliminary assessments;

(x) to have all other powers and to perform all other duties reasonably necessary to accomplish the purposes of the Act.

(M) Executive committee. An executive committee shall consist of at least three, and not more than four, of the directors of the association and shall include the chair, vice-chair, and secretary-treasurer. At least one director appointed by the Commissioner must be elected as an officer. The board of directors may elect an additional director to be a member of the executive committee for the sole purpose of ensuring the inclusion of at least one

insurer, one agent, and one public member on the executive committee. To the extent provided by resolution or resolutions of the board of directors, the executive committee shall have and may exercise the powers delegated by the board of directors in the day-to-day administrative management of the association. Such committee shall keep regular minutes of its proceedings and report the same to the board of directors. The delegation to a committee of authority consistent with this section shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon the board of directors or member by law.

(N) Vacancies.

(i) A particular directorship shall be considered to be vacant upon the resignation of the member holding such directorship.

(ii) Any vacancy occurring in the directors elected from the membership may be filled at the next meeting of the board of directors following the occurrence of such vacancy. Subject to the provisions of subparagraph (B) of this paragraph, such vacancy shall be filled by the affirmative vote of a majority of the remaining directors elected from the membership though less than a quorum. A director elected to fill a vacancy shall be elected for the unexpired term of the predecessor in such directorship.

(iii) Any vacancy occurring in the directors appointed by the Commissioner shall be filled by appointment of a new director in accordance with the provisions of subparagraph (C) of this paragraph.

(3) Officers.

(A) Number. The officers of the association shall be the chair of the board of directors, the vice chair of the board of directors, and the secretary-treasurer, all of whom shall be elected by the board of directors. No two offices may be held by the same person. The chair, vice-chair, and secretary-treasurer shall serve on the executive committee. At least one director appointed by the Commissioner must be elected as a member of the executive committee.

(B) Election and term of office. The officers of the association may be elected annually by the board of directors at the first meeting of the board of directors held after each annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until the officer's successor shall have been duly elected and shall have qualified or until the officer's death or until the officer shall resign or shall have been otherwise removed. The board of directors shall provide for a rotation of directors elected as officers at least every two years.

(C) Removal of officers. Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the association would be served thereby or otherwise in accordance with this section, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. A

vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

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

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

(F) Secretary-treasurer. The secretary-treasurer shall:

- (i) keep the minutes of the members and of the board of directors' meetings in one or more books provided for that purpose;
- (ii) see that all notices are duly given as required by the provisions of this plan of operation. In case of the secretary-treasurer's

absence or refusal or neglect to give the required notice, such notice may be given at the direction of the chair of the board of directors, of the directors, or of the members upon whose request the meeting is called;

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

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

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

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

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

(4) Legal Counsel.

(A) Types of Representation. The association may engage one or more attorneys to provide the following:

(i) legal representation, in matters other than disputes involving policyholder claims, before the Commissioner, the Department and the Texas Legislature;

(ii) legal representation in any dispute involving a policyholder claim against the association; and

(iii) legal advice and assistance relating to any other matter within the authority and responsibility of the association.

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

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

(ii) Qualifications.

(I) To be engaged to provide such legal representation, an attorney must:

(-a-) be licensed to practice law in Texas for at least five years;

(-b-) maintain professional liability insurance with an insurer authorized to do business in Texas in an amount of not less than \$1 million;

(-c-) be experienced in and practice in the areas of insurance and administrative law;

(-d-) have no impermissible conflict of interest before representation is undertaken, in accordance with the Texas Disciplinary Rules of Professional Conduct adopted by the Texas Supreme Court and the Comments prepared by the Model Rules Committee of the State Bar of Texas and amended by Supreme Court Order (Government Code, Title 2, Subtitle G, Appendix A, Article 10, §9) and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas; and

(-e-) have never been suspended or disbarred from the practice of law or convicted of a felony.

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

(iii) Conflict of Interest.

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

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

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

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

representation and any advantages involved, to the chair of the board and the general manager and either:

(-1-) withdraw from such representation; or

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

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

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

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

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

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

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

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

(-2-) If the board of directors determine that a conflict of interest exists, the written decision shall state the

reasons for such decision and state either that the legal counsel may not represent the association in the matter or that the board of directors consent to the representation by legal counsel and that legal counsel may represent the association in the matter so long as the legal counsel also believes that there will be no materially adverse effect upon the association by such representation.

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

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

(C) Legal Representation in Any Dispute Involving a Policyholder Claim Against the Association.

(i) Selection. The general manager of the association shall select, in accordance with this plan of operation, legal counsel to represent the association in handling disputes involving policyholder claims against the association. Selection of legal counsel to represent the association in such disputes shall be made on a case-by-case basis.

(ii) Qualifications.

(I) To be engaged to provide such legal representation, an attorney must:

(-a-) be licensed to practice law in Texas for at least five years;

(-b-) maintain professional liability insurance with an insurer authorized to do business in Texas in an amount of not less than \$1 million;

(-c-) be experienced in the defense of claims against insurers;

(-d-) have no impermissible conflict of interest before representation is undertaken, in accordance with the Texas Disciplinary Rules of Professional Conduct adopted by the Texas Supreme Court and the Comments prepared by the Model Rules Committee of the State Bar of Texas and amended by Supreme Court Order (Government Code, Title 2, Subtitle G, Appendix A, Article 10, §9) and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas; and

(-e-) have never been suspended or disbarred from the practice of law or convicted of a felony.

(II) The board of directors of the association may adopt additional qualifying criteria for legal counsel representing the association in matters involving policyholder claims against the association by amending this plan of operation.

(iii) Conflict of Interest.

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

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

(III) In determining whether legal counsel has a conflict of interest, as defined in the Texas Disciplinary Rules of Professional Conduct and the official Comments to these rules and ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas, the general manager shall require the legal counsel to submit to the general manager in writing evidence that a thorough conflicts check has been conducted to assure that no conflict of interest exists. Such evidence of a conflicts check shall be

maintained by the general manager in the association's records as confidential and not available for public inspection.

(IV) The general manager may approve, in accordance with Rule 1.06(c) of the Texas Disciplinary Rules of Professional Conduct and the official Comments to this rule and any related ethics opinions issued by the Professional Ethics Committee of the Supreme Court of Texas, an attorney to represent the association in a matter involving a policyholder claim against the association in which a potential conflict of interest may exist if:

(-a-) the attorney reasonably believes the representation of the association will not be materially adversely affected; and

(-b-) the general manager consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.

(V) If legal counsel accepts an engagement from the association to represent it in a dispute involving a policyholder claim against the association and fails to disclose a conflict of interest, as required in this clause, such legal counsel shall be barred for a period of five years, from the date on which the conflict of interest is disclosed to the association, from representing the association as legal counsel in any dispute involving a policyholder claim against the association.

(iv) Review and Termination.

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

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

(5) Fiscal year. The fiscal year of the association shall be the calendar year.

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

(7) Protection of directors, members, officers, and employees. The association shall indemnify each former, present, and future director, member, officer, and employee of the association against, and each such director, member, officer, and employee shall be entitled without further act on his/her part of indemnity from the association for, all costs and expenses (including the amount of judgments and the amount of reasonable settlements made with a

view to the curtailment of costs of litigation, other than amounts paid to the association itself) reasonably incurred by him/her in connection with or arising out of any action, suit, or proceeding in which he/she may be involved by reason of his/her being or having been a director, member, officer, or employee of the association or of any other association or company which he/she serves as a director, member, officer, or employee at the request of the association, whether or not he/she continues to be such director, member, officer, or employee at the time of incurring such costs or expenses; provided, however, that such indemnity shall not include any costs or expenses incurred by any such director, member, officer, or employee in respect of matters as to which he/she shall be finally adjudged in any such action, suit, or proceeding to be liable for willful misconduct in the performance of his/her duty as such director, member, officer, or employee, or in respect of any matter in which any settlement is effected in any amount in excess of the amount of expenses which might reasonably have been incurred by such director, member, officer, or employee had such litigation been conducted to a final conclusion; provided, further, that in no event shall anything herein contained be so construed as to protect, or to authorize the association to indemnify such director, member, officer, or employee against any liability to the association or to its members to which he/she would otherwise be subject by reason of his/her willful misfeasance or malfeasance, bad faith, dishonesty, gross negligence, or reckless disregard of the duties or responsibilities involved in the conduct of his/her office or employment as such director, member, officer, or

employee. The foregoing right of indemnification shall inure to the benefit of the heirs, executors, or administrators of each such director, member, officer, or employee and shall be in addition to all other rights to which such director, member, officer, or employee may be entitled as a matter of law. This indemnification shall in no way indemnify a member of the association from participating in the writings, expenses, profits, and losses of the association in the manner set out in this plan of operation or the Act.

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

(c) Financial Operation of the Association.

(1) Collection, investment, and allocation of funds.

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

(B) Investment. All funds collected by the association which are not otherwise required to be expended as provided in paragraph (3) of this

subsection may be retained in a checking account or accounts in any bank or banks doing business in the State of Texas and/or may be invested only in the following:

- (i) in interest-bearing time deposits or certificates of deposit in any bank or banks doing business in the State of Texas; and/or
- (ii) in treasury notes of the government of the United States of America; and/or
- (iii) in money market funds which invest exclusively in the bonds or other evidence of indebtedness of the United States of America or any of its agencies when such obligations are guaranteed as to principal and interest by the United States of America; except, however:
  - (I) such money market funds may make loans to or purchases of the described bonds and other evidence of indebtedness from a solvent bank or securities broker, registered under the Securities Act of 1934, under an agreement (commonly called a "repurchase agreement") which provides for the purchase by the money market fund of the type of securities described and which agreement matures in 90 days or less and provides for the repurchase by such entity of the same or similar securities purchased by the money market fund, provided that the total market value of such securities shall equal or exceed the amount of such loan or repurchase when it is made; and
  - (II) such loan collateral or securities purchased from any one bank or securities broker may not exceed the greater of 5.0% of the

assets of the money market fund or 5.0% of the amount of capital, surplus, or individual profits of such bank or securities broker; and/or

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

(C) Allocation.

(i) Each year the association will prepare a statement of earnings by calendar year. All premiums written, commissions paid, unearned and earned premiums, loss and loss expenses paid and pending will be charged to the calendar year. All general expense and interest income received will be charged or credited to the current calendar year.

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

(2) Assessment of members.

(A) Assessment. If the chair of the board of directors or any members of the board of directors determine that an assessment of the members is necessary, a special meeting of the board of directors shall be called to determine if the funds then available to the association are:

(i) of insufficient size to provide adequately for the operating expenses of the association for the remainder of the then existing fiscal year of the association (or if such special meeting is within 60 days of the end of the then fiscal year, the board of directors may also determine if the funds available to the association during the next fiscal year will be insufficient to adequately provide for the operating expenses of the association for the next succeeding fiscal year); and/or

(ii) of insufficient size to adequately provide for an existing catastrophe loss or losses. If the board of directors shall determine funds available to the association are of insufficient size under the provisions of this clause and/or clause (i) of this subparagraph, then it shall assess the members of the association in such amount as it shall deem reasonable and necessary to provide for such operating expense and/or such catastrophe loss of losses.

(B) Amount of assessment. The board of directors shall determine which members of the association shall participate in any assessment for operating expenses and/or catastrophe losses. This determination shall be computed on a calendar year basis. The designated members of the association shall participate in any assessment levied in the proportion that the net direct premiums of such member written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association as furnished to the association by the Department after review of annual statements, other reports, and required statistics; provided,

however, that if at the time of such assessment the Department has not furnished to the association information necessary to compute a member's participation during the preceding calendar year, then each member's participation shall be based upon information furnished to the association from the last calendar year in which such information is available and, upon obtaining the necessary information from the Department, the association shall reassess or refund to each member such amounts as are necessary to properly reflect such member's participation; provided, further, that a member shall be entitled to receive the following credit for insurance, similar to catastrophe insurance, written in such catastrophe areas.

(i) Participation in the association for policies after January 1, 1988. Procedure for determining the percent of participation respecting association policies with inception dates on or after January 1, 1988, for members of the association reflecting credit for voluntary premiums written in the designated areas. (All premiums are for the most recent preceding calendar year ending December 31, as furnished by the Department.) Column 1(a): Statewide net direct premiums for extended coverage and other allied lines. Column 1(b): Statewide net direct premiums for extended coverage and other allied lines portion of the multiple peril line. Column 1(c): Statewide net direct premiums for homeowners and farm and ranch owners. Column 2: The sum of the statewide net direct premiums at 90% of the extended coverage and other allied lines, and 50% of the homeowners and farm and ranch owner's, or such

percentage as may be determined in accordance with subsection (a)(2)(i)(III) of this section (90% of Column 1(a) plus 90% of Column 1(b) plus 50% of Column 1(c)). Column 3: Each company's percentage of the net direct premiums as described in Column 2, which is the basis for indicating normal required participation in the association prior to credits for voluntary writings in the designated areas. Column 4: Total windstorm and hail premiums in the designated areas (association premiums plus voluntary premiums). Column 5: Normal company quota of total windstorm and hail premiums (Column 3 x Column 4). Column 6: Each company's voluntary writings in the designated areas multiplied by the same percentages as shown in Column 2. Note: Maximum credit shall be limited to company's normal quota. Column 7: Each company's maximum possible allocation after applying credits for voluntary writings (Column 5 minus Column 6). Negative allocation to be shown as zero. Column 8: Percentage participation of each member company in the association, prior to application of offset. Note: The offset figure measures the excess premiums developed by the maximum credit in Column 6. Column 9: Percentage participation of each member company in the association.

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

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

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

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

(iii) To assist the association in determining each member insurer's percentage of participation as soon as possible in the calendar year, each member insurer shall furnish to the association on or before March 1

of each year a copy of its Exhibit of Premiums and Losses (Statutory Page 14 Data) for the State of Texas that is filed annually with the Department as part of the insurer's Texas Fire and Casualty Annual Statement Form 2.

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

paragraph. The time period for an appeal of an act, ruling, or decision of the association respecting net direct premiums or percentage of participation is computed from the date of the act, ruling, or decision of the association respecting same.

(D) Failure to pay assessment.

(i) Each member shall remit to the association payment in full of its assessed amount of any assessment levied by the board of directors within 30 days of receipt of notice of assessment. If the association has not received payment in full of a member's allocated amount of assessment within 40 days of notice of the receipt by the member of the notice of assessment, then the association shall report to the Commissioner the fact that such assessment has not been paid, and the Commissioner shall immediately issue an order suspending such member's certificate of authority to transact the business of insurance in the State of Texas until such time as the association certifies to the Commissioner that such assessment has been paid in full. Removal of a member's certificate of authority to transact business in the State of Texas by the Commissioner shall in no way affect the right of the association to proceed against such member in any court of law or equity in the United States for any remedy provided by law or contract to the association, including, but not limited to, the right to collect such member's assessment. In addition to any other remedy provided herein, the board of directors may offset assessments due from a member against any amounts in any account of such delinquent member.

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

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

(3) Use of funds.

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

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

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

(B) Funds are to be disbursed from the catastrophe reserve trust fund in accordance with §5.9903(c) of this title (relating to Operation of the Trust Fund). Funds disbursed from the catastrophe reserve trust fund may not be distributed to any member of the association for any purpose, and any funds disbursed to the association from the catastrophe reserve trust fund that remain unspent after payment of all losses and loss adjustment expenses arising out of an occurrence or series of occurrences shall be remitted to the comptroller for redeposit in the catastrophe reserve trust fund.

(d) Catastrophe Insurance.

(1) The policy.

(A) Approval. The association shall cause to be issued policies providing for catastrophe insurance and application forms therefor. The board of directors shall submit such policies and application forms to the

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

(B) Insurable property. The property eligible for catastrophe insurance shall be that property defined as "insurable property" in the Act, provided, however, that the term "insurable property" shall not include:

- (i) motor vehicles; and
  - (ii) any structure consisting, in whole or in part, of a mobile home except as a mobile home may be described as being insurable property in this subsection.

**(C) Limits of liability.**

- (i) The maximum limits of liability shall be determined by statute and set forth in the rules manual of the association adopted pursuant

to §5.4501 of this title (relating to Rules and Regulations for Texas Catastrophe Property Insurance Association).

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

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

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

(2) Applicant, acceptance, and rejection.

(A) Forms. Any person having an insurable interest in insurable property located in a catastrophe area shall be entitled to apply to the association for catastrophe insurance in the manner provided herein. All applications for catastrophe insurance shall be made on forms prescribed by the board of directors of the association and approved by the Commissioner as provided in paragraph (1)(A) of this subsection. Such application forms shall contain a statement as to whether or not there are any unpaid premiums due

from the applicant for insurance on the property. All applications shall be made on behalf of the applicant by a local recording agent.

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

(C) Submission. Application for catastrophe insurance shall be on the prescribed form and shall be accompanied by payment of the full amount of the premium and the inspection fee, if any.

(D) Inspection of the risk. The board of directors shall determine the manner and scope which risks are to be inspected prior to the issuance of a policy of catastrophe insurance. The board of directors may issue a policy of catastrophe insurance on certain types of risks without an inspection provided that the application is accompanied by such information as the board of directors may require. The board of directors shall prepare a set of regulations dealing with the inspection of risks. Such regulations shall be submitted to the Commissioner for approval. The Commissioner may reject all or any portion of such regulations within 10 days of the date of their submission. If the Commissioner shall fail to reject all or any part of such regulations within 30 days

of the date of their submission, then such regulations shall be deemed to have been approved.

(E) Receipt of the application.

(i) After receipt of the application, the full amount of the premium (and inspection fee, if any) and any required inspection report, the association shall:

(I) cause a policy of catastrophe insurance to be issued; or

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

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

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

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

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

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

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

(-3-) its present use or housekeeping;

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

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

(ii) New or increased coverage will be effective on the date received by the association or effective on the date the application is mailed if sent by registered or certified mail, or by United States Postal Service Express Mail, or if sent by regular mail that is hand canceled by the United States Postal Service, or if sent by such other similar mailing procedure as approved by the board of directors, prior to the time specified in this clause as an exception, unless the application for new or increased coverage stipulates a later date. Renewal policies will be effective to provide continuous coverage if the request

for a renewal is received on or before the expiration of the existing policy. Exception: no new or increased coverage applications will be accepted on the day (beginning at 12:01 A.M.) or after a windstorm designated as a hurricane by the United States Weather Bureau is in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude, until the General Manager determines that the storm no longer threatens property within the designated catastrophe area of the Texas Windstorm Insurance Association. This exception does not apply to any new or increased coverage application that meets underwriting criteria that is submitted as follows: delivered in person to the Texas Windstorm Insurance Association's Austin office during its normal business hours prior to a windstorm designated as a hurricane by the United States Weather Bureau being in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude; or mailed prior to the first day that a windstorm designated as a hurricane by the United States Weather Bureau is in the Gulf of Mexico or within the boundaries of 80 degrees west longitude and 20 degrees north latitude by registered or certified mail or United States Postal Service Express Mail or regular mail that is hand-canceled by the United States Postal Service or such other mailing procedure as approved by the Board of Directors. Such applications will be accepted and become effective on the date delivered in person or mailed or a later date if stipulated on the applications. This exception also does not apply to any renewal policy affording windstorm coverage if the expiring policy was written by the Texas Windstorm

Insurance Association and if the application for renewal was received by the Texas Windstorm Insurance Association on or before the expiration of the existing Texas Windstorm Insurance Association policy or if mailed by registered or certified mail or United States Postal Service Express Mail or by regular mail that is hand-canceled by the United States Postal Service, or if sent by such other similar mailing procedure as approved by the board of directors, prior to the expiration of the existing Texas Windstorm Insurance Association policy.

(3) Cancellation.

(A) By the association.

(i) The association shall not cancel a policy of catastrophe insurance issued under this section except for:

(I) nonpayment of premium; or

(II) evidence of fraud or material misrepresentation; or

(III) cause which would have been grounds for nonacceptance of the risk under this plan of operation had such cause been known to the association at the time the policy was issued; or

(IV) any cause arising subsequent to the issuance of the policy which would have been grounds for nonacceptance of the risk under this plan of operation had such cause existed at the time of acceptance.

(ii) Upon cancellation of a policy of catastrophe insurance issued under this paragraph, the association shall send to the insured notice of cancellation together with a statement of the reason therefor and a statement of the reason the insured has the right to appeal as hereinafter provided. Upon cancellation of a policy of catastrophe insurance by the association, the association shall refund to the insured the excess of paid premium according to the standard pro rata table.

(B) By the insured.

(i) A policy of catastrophe insurance may be canceled at any time:

(I) by the insured upon demand and surrender of the policy; or

(II) by an agent, or some other person, firm, or corporation if such agent, person, firm, or corporation shall finance the payment of all or a portion of the premium of such policy and there is a balance due for the financing of such premium and such balance, or any portion thereof is not paid within ten days after the due date, and such agent, person, firm, or corporation to whom such balance is due has:

(-a-) requested cancellation of the policy and returned the policy with proof that the insured was notified of such return; or

(-b-) requested the association to cancel such policy by notice mailed to the insured and any others shown in the policy as having an insurable interest in the policy, in which case the association shall refund the excess of paid premium according to the standard short rate table.

(ii) A policy of catastrophe insurance may be reduced at any time in which case the association shall, upon demand, refund the excess of paid premium according to the standard short rate table.

(4) Payment of claims.

(A) Report of loss. All losses shall be reported by agents to the association in the manner prescribed by the board of directors.

(B) Adjustment of loss. All losses shall be adjusted in the manner designated by the board of directors. The assignment of losses shall be on an equitable basis to qualified insurance adjusters at such fee as shall be determined by the board of directors.

(C) Payment of losses. After report of the loss in the manner specified by the board and the adjustment of the loss as provided for herein, the association shall remit to the insured any sums owing to the insured in the manner specified in the catastrophe insurance policy, or in the absence of such specification, in the manner specified by the board of directors.

(D) Notice of appeal.

(i) The association shall, immediately upon total or partial denial of a claim of any person insured pursuant to the Insurance Code, Article 21.49, give written notice by certified mail, return receipt requested, to such person of the right to appeal such total or partial denial under the Insurance Code, Article 21.49, §9 and/or §9A. An offer of less than the amount claimed on the claimant's proof of loss is considered a partial or total denial of a claim. The notice must, at a minimum, contain the following information placed in a prominent position:

(I) a clear, accurate, and complete description and statement of the partial or total denial of the claim;

(II) a statement that the person has the right to appeal the association's determination either to the Commissioner under the Insurance Code, Article 21.49, §9; or bring an action against the association in the county in which the covered property is located or in a district court of Travis County under the Insurance Code, Article 21.49, §9A. A person may not proceed under both the Insurance Code, §9 and §9A, for the same determination by the association;

(III) a statement that, under applicable law, an aggrieved person who chooses to appeal to the Commissioner must make a written request to the Commissioner within 30 days after such determination of the association;

(IV) a statement of the date of such determination;

(V) a statement that a person who files a written notice of appeal to the Commissioner is entitled to a hearing in either the county in which the covered property is located or in Travis County; and

(VI) language which describes the time limit for filing an appeal as specified in clause (ii) of this subparagraph.

(ii) An act, ruling, or decision of the association is deemed to be timely filed with the Commissioner if an appeal is sent to the chief clerk of the Department by first-class or by certified or registered United States mail in an envelope or wrapper properly addressed and stamped and deposited in the mail one day or more before the last day for filing the appeal, if the appeal is received by the chief clerk's office not more than ten days subsequent to the due date for filing.

(e) Mobile Homes.

(1) General provisions. The terms, conditions, and underwriting requirements set forth in this subsection apply to the Texas special mobile home windstorm and hail insurance policy covering all mobile homes which may be insurable property as described in this subsection, located in the designated catastrophe areas and written by the Texas Catastrophe Property Insurance Association. In the event of a conflict in the provisions of this subsection and subsections (a) - (e) of this section, the terms and conditions and underwriting

requirements set forth herein in this subsection as relating to mobile homes shall be, in all respects, controlling; otherwise the provisions of subsections (a) - (e) of this section remain in full force and effect.

(2) Insurable property. The property eligible for catastrophe insurance under this subsection shall be that property defined as "insurable property" in the Act, provided, however, that the term "insurable property" shall not include motor vehicles or any structure consisting, in whole or in part, of a mobile home unless the same is a structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein, and which is physically attached to the land, immovable, and is constructed, blocked, supported, anchored, secured, and installed in accordance with the underwriting requirements set forth in paragraph (3)(C) and (E) of this subsection.

(3) Underwriting requirements. In order for a mobile home to be insured by the association, it must meet the following underwriting requirements:

(A) The property eligible for catastrophe insurance shall be that property defined as "insurable property" in the Act, provided, however, that the term "insurable property" shall not include motor vehicles or any structure consisting, in whole or in part, of a mobile home unless the same is a structure,

transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein, and which is physically attached to the land, immovable, and is constructed, blocked, supported, anchored, secured, and installed in accordance with the underwriting requirements set forth in subparagraphs (C) and (E) of this paragraph.

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

- (i) the amount of insurance requested, together with other insurance is within reasonable relationship to the actual cash value of the property involved;
- (ii) consideration of the physical condition of the property, such as its construction, maintenance, or general deterioration;
- (iii) consideration of its present use or housekeeping;
- (iv) whether its use is in violation of law, public policy and morals,
- (v) and the consideration of the character or integrity of the property owner or occupant.

(C) Each mobile home manufactured after December 31, 1975, shall be designed for location in or as though destined for the catastrophe

area where wind records are hereby found to indicate wind forces of 125 miles per hour, or greater, and shall be constructed in accordance with such design as set forth in either the Texas Mobile Homes Standards Code adopted by the Texas Department of Labor and Standards pursuant to the provisions of Texas Civil Statutes, Article 5221f, or the Mobile Home Construction and Safety Standards established under the Housing and Community Development Act of 1974, Title VI, titled The National Mobile Home Construction and Safety Standards Act of 1974 (42 United States Code §5401, et seq.) as may be appropriate under Texas Civil Statutes, Article 5221f, §5.

(D) Each mobile home described in subparagraph (C) of this paragraph or sold by a dealer, as that term is defined in Texas Civil Statutes, Article 5221f, after August 31, 1975, shall bear a seal of approval issued by the Texas Department of Labor and Standards.

(E) Each mobile home shall be blocked, anchored, and secured, and an appropriate support, and anchoring systems shall be installed as will resist overturning and lateral movement (sliding) of the mobile home in the manner and in accordance with the Texas Mobile Home Standards Code adopted by the Texas Department of Labor and Standards pursuant to the provisions of Texas Civil Statutes, Article 5221f, or the Mobile Home Construction Safety Standards established under the Housing and Community Development Act of 1974, Title VI, titled The National Mobile Home Construction and Safety Standards Act of 1974 (42 United States Code §5401, et seq.) for

mobile homes located in the catastrophe area, as may be appropriate under Texas Civil Statutes, Article 5221f, §5.

(F) Coverage shall not be provided for loss or damage to:

- (i) awnings, carports, and patio covers, whether permanently attached or not;
- (ii) outdoor radio or television antennas including their lead-in wiring, masts, or towers;
- (iii) fences;
- (iv) seawalls, property line, and similar walls;
- (v) greenhouses, hot houses, slat houses, trellises, pergolas, or cabanas;
- (vi) wharfs, docks, piers, boathouses, bulkheads, or other structures located over or partially over water and the property therein or thereon;
- (vii) lawns, trees, shrubs, or plants;
- (viii) patio covers, screening, and supports enclosing or partially enclosing pools, patios, or other areas, whether a separate structure or attached to a building (however, with reference to this exclusion, nothing therein shall be construed to exclude loss to screening and supports of porches which are a part of a building);
- (ix) paint or waterproofing material applied to the exterior of the buildings or structures covered hereunder.

(G) This association shall not be liable for loss or damage caused by:

- (i) blizzard or change in temperature;
- (ii) sand or dust;
- (iii) snowstorm;
- (iv) tidal wave;
- (v) high water, or overflow, whether driven by wind or

not; nor

(vi) for any loss or damage caused by rain, whether driven by wind or not, unless the wind or hail shall first make an opening in the walls or roof of the described building, and shall then be liable only for loss to the interior of the building, or the insured property therein, caused immediately by rain entering the building through such openings. This association shall not be liable under this coverage for damage caused by ensuing fire.

(H) The liability of the association for loss or damage to a mobile home shall:

- (i) not exceed the lowest of:
  - (I) the difference between the actual cash value of the insured property immediately before the loss and its actual cash value immediately after the loss; or
  - (II) the cost of repairing the damage; or

- (III) the actual cash value of the insured property immediately preceding the loss; or
- (IV) the cost of replacing the insured property;  
or
- (V) the limit of liability stated in the declarations; and the liability thus determined shall, in addition, be subject to any deductible amount stipulated in the policy;
- (ii) in any loss involving part of a pair, set, or series of objects, pieces, or panels (whether interior or exterior), be determined by reference to:
- (I) a fair and reasonable proportion of the part of the total value of the pair, set, or series; or
- (II) the reasonable cost of repairing or replacing the damaged part so as to match the remainder as closely as reasonably possible under the circumstances; or
- (III) the reasonable cost of providing a reasonably acceptable alternative decorative effect or utilization, as the circumstances may warrant. The association does not guarantee the availability of parts or replacements and shall not, in the event of such damage to or loss of a part, be obligated for the value of, or to repair or replace, the entire pair, set, or series.

(I) The association shall not be liable on any one loss with respect to personal effects for more than \$250 on money, coin collections, or other numismatic property and paraphernalia; gold bullion; silver bullion; passports; airline, railroad, and other tickets; securities; manuscripts, stamps or other philatelic property and paraphernalia; any one article of jewelry including, but without being limited to, watches, necklaces, bracelets, gems, precious and semiprecious stones, and articles of gold and platinum; art, including, but without being limited to, paintings, sculptures, drawings, etchings, ceramics, and china; heirlooms; furs, including any article containing fur which represents its principal value; or guns.

(J) No forms may be used to provide catastrophe insurance for a mobile home risk unless such form has been specifically approved by the Commissioner for use in insuring mobile homes risks by the association.

(K) Catastrophe insurance shall not provide insurance coverage for any one insurable risk in excess of \$84,000 on the mobile home and on household goods contained therein, which shall include all personal property usual to a residence of the insured and the insured's family.

(L) The limit of liability for mobile homes shall be adjusted annually for inflation at a rate that reflects any change in the BOECK Index or other index that may accurately reflect changes in the cost of construction or residential values in the catastrophe area. Such adjustment shall be made by

the Commissioner as part of the annual rate hearings held pursuant to Article 5.101 of the Insurance Code.

(4) Application.

(A) The legislature of the State of Texas has declared that an adequate market for windstorm, hail, and fire insurance for insurable property, which is immovable property at fixed locations, is necessary to the economic welfare of the State of Texas and has further declared that mobile homes have become a primary housing resource of many of the citizens of the state.

(B) An applicant for catastrophe insurance shall apply to the association for a policy of insurance, and such application shall contain a declaration to the effect that the mobile home is physically attached to the land, immovable, and such application shall be accompanied by the following:

(i) a certificate of inspection applicable to mobile homes manufactured after December 31, 1975, to the effect that such mobile home has been constructed in accordance with the underwriting requirements set forth in paragraph (3)(C) of this subsection. Such certificate of inspection may be made by the manufacturer of such mobile homes, by the terms of which the construction of such mobile home is warranted to be in accordance with the underwriting requirements set out in paragraph (3)(C) of this subsection. The association may rely upon such warranty in the issuance of a policy of catastrophe insurance. This warranty is made by the manufacturer, and not the policyholder. The certificate of inspection with reference to such mobile home

may be made by the Texas Department of Labor and Standards or by such inspector as may be appointed or approved by it, or by an inspector designated by the association. Appropriate evidence satisfactory to the association of the issuance of a seal of approval by the Texas Department of Labor and Standards issued pursuant to the provisions of Texas Civil Statutes, Article 5221f, may, at the option of the association, satisfy the requirements of this paragraph; and

(ii) a certificate or other appropriate evidence required by the association evidencing the issuance of a seal of approval by the Texas Department of Labor and Standards issued pursuant to Texas Civil Statutes, Article 5221f, §8(b), as to mobile homes manufactured prior to January 1, 1976, and sold by a dealer, as that term is defined in Texas Civil Statutes, Article 5221f, subsequent to August 31, 1975;

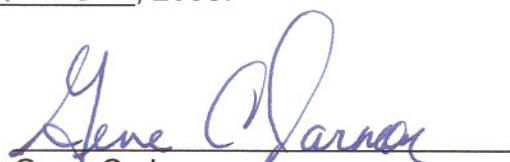
(iii) a certificate of inspection to the effect that such mobile home has been properly blocked, supported, anchored, secured, and installed as required by paragraph (3)(E) of this subsection. Such certificate of inspection may be made by an installer as that term is defined in Texas Civil Statutes, Article 5221f, by a certificate addressed to the association, by the terms of which the blocking, supporting, anchoring, securing and installing of such mobile home is warranted to be in accordance with such underwriting standard. The association may rely upon such warranty in the issuance of a policy of catastrophe insurance, or the certificate of inspection may be made by an

inspector designated by the association. The warranty referred to herein is made by the installer and not the policyholder;

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

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

Issued at Austin, Texas, on August 12, 2008.



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

**IT IS THEREFORE THE ORDER** of the Commissioner of Insurance that amendments to §5.4001 specified herein, concerning the plan of operation of the Texas Windstorm Insurance Association, are adopted.

**08 - 0718**

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

Adopted Section  
Page 89 of 89

**AND IT IS SO ORDERED.**



Mike Geeslin  
Commissioner of Insurance

ATTEST:



Gene C. Jarmon  
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO.

**08 - 0718**

AUG 12 2008