

SUBCHAPTER S. CATASTROPHE RESERVE TRUST FUND
28 TAC §§5.9901- 5.9906

1. INTRODUCTION. The Texas Department of Insurance proposes the repeal of Subchapter S, §§5.9901- 5.9906, concerning the Catastrophe Reserve Trust Fund (CRTF) used by the Texas Windstorm Insurance Association (Association). The repeal is necessary to incorporate the requirements set forth in these sections and the Insurance Code §2210.452 and §2210.453 into proposed new §§5.4101, 5.4102, and 5.4111 - 5.4114 of this chapter. In conjunction with this proposal, the Department is proposing the adoption of new §§5.4101, 5.4102, 5.4111 - 5.4114, 5.4121, 5.4131 – 5.4134, and 5.4141 – 5.4147 of this chapter, also published in this edition of the *Texas Register*.

The Legislature has determined that the provision of windstorm and hail insurance is necessary for the economic welfare of the state and its inhabitants, and that the lack of such insurance would severely impede the orderly growth and development of the state. The Association was created by the Legislature and serves as a residual insurer of last resort for windstorm and hail insurance coverage (insurance coverage) in the catastrophe area designated by the Commissioner of Insurance under the Insurance Code §2210.005. The CRTF is a primary source for funding Association losses in excess of premium and other revenue.

The proposed adoption of new §§5.4101, 5.4102, and 5.4111 - 5.4114 is necessary to incorporate the operation and use of the CRTF into the Association's plan of operation and create a more efficient rule structure by grouping these requirements

with other related Association loss funding mechanisms. To effect this change it is necessary to repeal §§5.9901- 5.9906.

2. FISCAL NOTE. Marilyn Hamilton, Associate Commissioner of the Property and Casualty Program, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Ms. Hamilton also has determined that for each year of the first five years the proposed repeal is in effect, the anticipated public benefit will be the more efficient operation of the Association, because the repeal of these sections will allow for the incorporation of these requirements into the Association's plan of operation and create a more efficient rule structure by grouping with other related Association loss funding mechanisms. There are no anticipated economic costs to persons who are required to comply with the proposed repeal. There will be no effect on small or micro businesses.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Section 2006.002(c) of the Government Code requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an

economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(2) defines a *small business* as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. The Government Code §2006.001(1) defines *micro business* similarly to *small business* but specifies that such a business may not have more than 20 employees. The Government Code §2006.001(1) does not specify a maximum level of gross receipts for a *micro business*.

There will be no new costs to any person to comply with the repeal. There is no anticipated adverse economic effect on small or micro businesses regarding the regulatory cost of compliance with the repeal; therefore, preparation of an economic impact statement and regulatory flexibility analysis is not statutorily required.

5. TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on August 24, 2010, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the adoption of the proposed repeal in a public hearing under Docket No. 2717, scheduled for August 24, 2010, at 9:30 a.m., in Room 100 of the William P. Hobby, Jr., State Office Building, 333 Guadalupe Street, Austin, Texas. Written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The repeal of these sections is proposed pursuant to the Insurance Code Chapter 2210 and §36.001. The Insurance Code §2210.008 authorizes the Commissioner to adopt rules necessary to carry out the purposes of Insurance Code Chapter 2210. Section 2210.151 requires the Commissioner to adopt the Association's plan of operation as a rule. Section §2210.152(a)(1) requires the Association's plan of operation to provide for the efficient, economical, fair and nondiscriminatory administration of the Association. Section 2210.452 requires the Commissioner to adopt rules under which the Association makes payments to the CRTF including the net gain from operations of the association at the end of each calendar year or policy year; and the procedure relating to the disbursement of money

from the trust fund to the Association to fund the obligations of the trust fund under Subchapter B-1, Chapter 2210, Insurance Code. Section 2210.452(b) further provides that the comptroller, as custodian of the trust fund, shall administer the trust fund strictly and solely as provided by Chapter 2210, Insurance Code and Commissioner rules. Section 2210.452(d) provides that the trust fund may be terminated only by law and that on termination of the trust fund, all assets of the trust fund revert to the state to provide funding for the mitigation and preparedness plan established under the Insurance Code §2210.454. Section 2210.453 provides that the Association may purchase reinsurance that operates in addition to or in concert with the CRTF, public securities, financial instruments, and assessments authorized by Chapter 2210, Insurance Code. Section 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.

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

<u>Rule</u>	<u>Statute</u>
§§5.4101, 5.4102, and 5.4111 - 5.4114	Insurance Code §§2210.151, 2210.152, 2210.452, and 2210.453

9. TEXT.

SUBCHAPTER S. CATASTROPHE RESERVE TRUST FUND

§5.9901. Purpose and Scope.

§5.9902. Definitions.

§5.9903. Operation of the Trust Fund.

§5.9904. Termination of Trust Fund.

§5.9905. Investments of Trust Fund.

§5.9906 Duties and Responsibilities.