

**SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION  
DIVISION 3 LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST  
FUND, FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES  
28 TAC §§5.4161 - 5.4167, 5.4171 - 5.4173, and 5.4181 - 5.4192**

**1. INTRODUCTION.** The Texas Department of Insurance (Department) proposes new §§5.4161 - 5.4167, 5.4171 - 5.4173, and 5.4181 - 5.4192 to implement legislative changes to the Insurance Code Chapter 2210 under House Bill (HB) 4409, 81st Legislature, 2009 Regular Session, and amend the plan of operation of the Texas Windstorm Insurance Association (Association). These sections set forth procedures for making and collecting member assessments and procedures for making and assessing premium surcharges under Chapter 2210, Insurance Code.

Under §2210.001 of the Insurance Code, 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 in the state's seacoast territories 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 under the Insurance Code §2210.005. The catastrophe area is underserved for insurance coverage and consists of the 14 Texas coastal counties and parts of Harris County. Persons seeking insurance coverage from the Association are unable to obtain comparable insurance coverage in the voluntary insurance market. The ability to obtain insurance coverage that will provide coverage for losses resulting from windstorm and hail is crucial to the

financial welfare of persons living and working in the designated catastrophe area. The absence of such coverage providing for the payment of losses results in the lack of an important element for economic stability in the region.

House Bill 4409 substantially amended how Association losses and operating expenses in excess of premium and other revenue are funded in new Subchapters B-1 and M, Chapter 2210, Insurance Code. In accordance with Chapter 2210 of the Insurance Code, compliance with these requirements is essential to assure the availability of Association insurance coverage for all eligible persons and properties. The proposed sections implement the legislative loss funding scheme. Thus, adoption of these proposed sections will affect the economic welfare of the state and its inhabitants, and positively impact the orderly growth and development of the state. Because of this need, if, prior to the adoption of these sections, an occurrence or series of occurrences is reasonably likely to impact the catastrophe area, all of these sections will be submitted for immediate effect as emergency rules.

The Association operates under a plan of operation which is adopted by rule. The Insurance Code §2210.151 provides that the Commissioner shall adopt by rule the Association's plan of operation to provide Texas windstorm and hail insurance in the catastrophe area. The Insurance Code §2210.152(a)(1) sets out the requirements of the plan of operation and specifies that the plan of operation must provide for the efficient, economical, fair and nondiscriminatory administration of the Association. Further, the Insurance Code §2210.152(a)(2)(G) provides that the plan of operation

may include other provisions considered necessary by the Department to implement the purposes of Chapter 2210.

Historically the Association's plan of operation has been specified in §5.4001 of this chapter (relating to Plan of Operation). Neither the Insurance Code §2210.151 nor §2210.152 require the Association's plan of operation to be in a single section of the Administrative Code. With the adoption of HB 4409 related requirements in §§5.4902 - 5.4908 and 5.4911 of this chapter (relating to Additional Requirements; Declination of Coverage; Flood Insurance, Minimum Retained Premium, Certificate of Compliance Approval Program, Certificate of Compliance Transition Program, Alter and Alteration; and Insurance Policy Forms, Endorsements, Manual Rules, Application Forms, and Underwriting Guidelines; respectively) the Department began to revise the format of the plan of operation into sections related to specific topics. Sections 5.4902 - 5.4908 and §5.4911 were adopted to control over conflicting provisions in §5.4001. Proposed §§5.4161 - 5.4167 and 5.4173 are proposed as part of the Association's plan of operation and have similar language with respect to controlling over §5.4001. However, references in this proposal to the plan of operation incorporate both §§5.4001, 5.4902 - 5.4908, and 5.4911, unless specified otherwise. Proposed §§5.4171, 5.4172 and 5.4181 – 5.4192 address requirements on property and casualty insurers generally, and are not proposed as part of the Association's plan of operation.

As stated, HB 4409 substantially amended how Association losses and operating expenses in excess of premium and other revenue are funded. It is necessary that these new requirements, which amend or augment the Association's

existing plan of operation, be integrated into the plan of operation. To this end the Department has proposed §§5.4101, 5.4102, 5.4111 - 5.4114, 5.4121, 5.4131 - 5.4134, and 5.4141 - 5.4147 in the July 23, 2010, issue of the *Texas Register*. Those proposed sections address: (i) the catastrophe reserve trust fund; (ii) financing arrangements; (iii) issuance of public securities; (iv) use of public securities proceeds; and (v) payment of public security obligations. Proposed §5.4102 also sets forth definitions that will be used in this section.

It is further necessary to establish the procedures and requirements for determining and collecting member assessments and premium surcharges for the payment of class 2 public security obligations and class 3 public security obligations under the Insurance Code §2210.613 and §2210.6135. Compliance with these requirements is essential to assure the availability of Association insurance coverage for all eligible persons and properties.

Thus, it is necessary to amend the plan of operation to address the following: (i) Association member assessments under the Insurance Code §2210.613 and §2210.6135; and (ii) the procedure for assessing class 2 public securities under the Insurance Code §2210.613. It is further necessary to establish the procedures and requirements for determining and collecting premium surcharges for the payment of class 2 public securities under the Insurance Code §2210.613.

To effect these necessary amendments, the Department proposes for adoption §§5.4161 - 5.4167, and 5.4173 to become part of the Association's plan of operation. Proposed §§5.4161 - 5.4167 move existing provisions concerning member

assessments that are currently in §5.4001(c)(2) of the plan of operation into this division. Except as required to comply with statutory changes, this proposal is intended to redesignate the existing provisions rather than to substantively change the existing requirements in §5.4001(c)(2). Including the Association's assessment procedure with other loss funding provisions will make it more accessible to interested persons. Finally, as necessary, the proposed section makes nonsubstantive updates and uses terminology more consistent with this proposal and current statutes and rules. Because §5.4001 addresses almost all aspects of the Association's operations, opening that section for direct amendment may result in unforeseen consequences that could adversely affect the Association's ability to fulfill its purpose under Chapter 2210. Thus, rather than amend §5.4001, proposed §§5.4161 - 5.4167 control over those provisions set forth in existing §5.4001 as provided in §5.4101.

Additionally, the Department proposes for adoption §§5.4181 - 5.4192, to establish the procedures and requirements for determining and collecting premium surcharges for the payment of class 2 public securities under the Insurance Code §2210.613.

This proposal explains in subsequent discussions each of the proposed sections in greater detail.

**§5.4161. Member Assessments.** Proposed §5.4161 reflects existing §5.4001(c)(2)(A) of this chapter, which it would control over. Proposed §5.4161 is not intended to significantly alter existing procedural requirements, but it differs from the existing rule because the statutory funding scheme for excess losses was amended by

HB 4409 and no longer relies on direct assessments to fund certain amounts. Rather, the Insurance Code, Chapter 2210, Subchapter B-1, now requires that losses in excess of the Association's premium and other revenue, the Catastrophe Reserve Trust Fund (CRTF), and available reinsurance proceeds, must be paid with the proceeds of class 1, class 2, and class 3 public securities. The Insurance Code §2210.613 and §2210.6135, provide that, if other funds are not available, up to 30 percent of the class 2 public security obligations and all of the class 3 public security obligations are payable from Association member company assessments. The Insurance Code §2210.608 requires the Texas Public Finance Authority (TPFA) to annually inform the Association of the amounts required to fund these public security obligations.

The Department has also proposed removing the requirement that the Association's board of directors determine the Assessment amount. This phrasing is more consistent with other proposals in this division and, under the funding system adopted in the Insurance Code Chapter 2210, the assessment will be in large part determined by the amount of public securities issued, the terms of those public securities, and the choices the Association's board of directors makes with regards to excess assessment revenue. Excess revenue is to be expected because the Department has been advised by the TPFA that lenders will likely require a contractual coverage provision, which is the minimum amount that the Association is required to deposit into the applicable public security obligation revenue fund as security for the payment of debt service on the public securities, administrative expenses on public securities, or other payments required to be paid by the Association in connection with

public securities. The Department has proposed in §5.4145 and §5.4147 that these excess amounts be used to either reduce a future year's assessment or redeem outstanding class 2 or class 3 public securities.

As previously discussed, except as required by statute, §§5.4161 - 5.4167 are proposed to redesignate the existing requirements and incorporate them into this division. These section will continue to be considered part of the Texas Windstorm Insurance Association's plan of operation and shall control over any conflicting provision in §5.4001 of this subchapter. This is set forth in proposed §5.4161(c).

**§5.4162. Amount of Assessment.** Proposed §5.4162 reflects existing §5.4001(c)(2)(B) of this chapter, which it would control over. The section establishes member participation in the assessment and thus the proportionate amount each member shall be required to pay to the Association. Proposed §5.4162(a) incorporates the HB 4409 amendments to the Insurance Code §2210.052(e) which provides that the Association may not include in the assessment an insurer that became a member of the Association after September 1, 2009, and had not previously been a member of the Association, until after the second anniversary of the date on which the insurer first becomes a member of the Association. Because, the assessment period however, could run for up to ten years depending on the bond term, proposed §5.4162(a)(2) clarifies that the new member would be eligible for assessment after its second anniversary.

Proposed §5.4162(b) provides that the participation level shall be computed on a calendar year basis for the year in which the assessment is made. The participation

level may thus vary over the term of the public security and will not be fixed in the year that the catastrophic event occurred. In preparing the proposal, the Department solicited comments from the public and industry concerning this concept. The Department received comments that computing the participation level on calendar year basis for the year in which the assessment is made could result in insurers attempting to game the system and financial uncertainty or hardship.

The systemic concern is that the insures may determine that under a variable participation scheme it is best to stop writing wind and hail insurance coverage in the catastrophe area now and then return after the event to lower their participation percentage. The Department disagrees that insurers would reduce writings under this requirement as a general course of action. Since Hurricane Rita, insurers have reduced writing wind and hail insurance coverage in the catastrophe area to avoid exposure to catastrophic events without regard to the effect of even the potential of an unlimited assessment under former Insurance Code §2210.058. Assessments under the HB 4409 loss funding scheme set out in the Insurance Code §2210.613 and §2210.6135 would amount to an approximate maximum of \$800 million, plus interest and administrative expenses, over an eight to eleven year period following catastrophic event depending on the date of issuance, term, covenants, and potential early repayment of the public securities. Thus, the annual assessment requirements necessary under Insurance Code §2210.613 and §2210.6135 would approximate, albeit probably greater than, the former \$100 million assessment provision in the Insurance Code §2210.058(a)(1). Therefore, the Department does not believe that this provision

will encourage insurers to leave the catastrophe area. Rather, the calendar year method may encourage insurers to reduce their participation level by writing in the catastrophe area either before or after a catastrophic event.

Further, even under a fixed participation level, participation levels would vary due to insolvencies and carriers leaving the Texas market. The Association rules already provide for reallocating an assessment based on insolvency. As for insurers leaving the Texas Market, the Department notes that the Insurance Code Chapter 2210, does not have a provision such as that in the Insurance Code §2211.209(e), relating to the FAIR Plan Association. Barring the departure of a large market share insurer, these variances should be slight, but under either the fixed or annual basis they may be unavoidable. Also, while it is possible that annually successive catastrophic events could affect the Association resulting in a large net assessment burden, the extended payment scheme may also reduce the need for some insurers to rely on reinsurance as they would no longer be subject to the possibility of the unlimited assessment. For these reasons the Department has determined that the calendar year method is most consistent with the requirements of the Insurance Code Chapter 2210.

Finally, because §5.4001 defines terms for use in section 5.4001, it is necessary to incorporate the definition and calculation of “net direct premiums” into this section, which is provided for in proposed §5.4162(b).

Proposed §5.4162(c) incorporates the remainder of existing §5.4001(c)(2)(B) concerning member participation in the assessment. Proposed §5.4162(d) incorporates the Association’s existing calendar year formula for determining participation levels that

are set out in existing §5.4001(c)(2)(B)(i). The proposal also corrects an incomplete citation in the existing rule. The existing provision cites “subsection (a)(2)(i)(III) of this section.” As all items within §5.4001(a)(2) have a following capital letter designation, the citation does not refer to any provision. The Department has determined that this provision referred to net direct premium as of 1988 using the citation (a)(2)(I)(i)(III). In subsequent revisions the “(I)” was inadvertently omitted. The Department is not aware of any time in which this alternative provision was used in determining participation levels. The proposed section restates citation as §5.4001(a)(2)(N)(i)(III) using the correct reference to “net written premium.” This proposed section also incorporates Figure: 28 TAC §5.4162(d), which is the same as that adopted at §5.4001(c)(2)(B)(i).

Proposed §5.4162(e) is based on existing §5.4001(c)(2)(B)(ii) of this subchapter. Proposed §5.4162(f) is based on existing §5.4001(c)(2)(B)(iii) of this subchapter. Finally, as necessary, the proposed section makes nonsubstantive updates and uses terminology more consistent with this proposal and current statutes and rules.

**§5.4163. Notice of Assessment.** Proposed §5.4163 is based on existing §5.4001(c)(2)(C) of this subchapter. The proposed section divides the existing provision into three subsections to make it more accessible. As necessary, the proposed section makes nonsubstantive updates and uses terminology more consistent with this proposal and current statutes and rules.

**§§5.4164, 5.4165, 5.4166 and 5.4167. Payment of Assessment, Failure to Pay Assessment, Contest after Payment of Assessment, and Inability to Pay Assessment by Reason of Insolvency.** Proposed §5.4164, 5.4165, and 5.4166 are

based on existing §5.4001(c)(2)(D) of this subchapter. The proposed sections divide the existing provisions into three sections and various subsections to make them more accessible. Proposed §5.4167 is based on existing §5.4001(c)(2)(E) of this subchapter. As necessary, the proposed section makes nonsubstantive updates and uses terminology more consistent with this proposal and current statutes and rules.

**§5.4171. Premium Surcharge Requirement .** Proposed §5.4171(a) identifies insurers that are, and that are not, subject to the provisions proposed §§5.4171 - 5.4172 and 5.4181 -5.4192.

**§5.4172. Premium Surcharge Definitions.** Proposed §5.4172 provides definitions used in this subdivision. The definitions are derived in part from Subchapter M, Chapter 2210 Insurance Code. The definition of “insurer” was expanded from the definition contained in Subchapter M, Chapter 2210 Insurance Code to include the Association and the Texas FAIR Plan Association (FAIR Plan). Insurance Code §2210.613 provides that premium surcharges also apply to Association and FAIR Plan policyholders that reside in, have insured property or operations in the catastrophe area. This proposed section also provides definitions for “insured property,” “premises,” and “operations,” since these terms are not defined in Insurance Code §2210.613.

**§5.4173. Determination of the Surcharge.** Proposed §5.4173 establishes the procedure for the Association to request Commissioner approval of a premium surcharge in an amount that is sufficient to fund class 2 public security obligations, including any required contractual coverage amounts that are reported to the Association by the TPFA.

**§§5.4181 - 5.4183. Premiums to be Surcharged, Allocation Method for Specified Lines of Insurance, and Allocation Method For Other Lines of Insurance.** Insurance policies can provide coverage for risks located in a single location, risks located in multiple locations, or even property in transit. Some insurance coverages, such as property insurance, are rated based on the specific location of the risk, and thus insurers can determine how much of the policy premium relates to insured property or operations located within the catastrophe area. Other lines of insurance may require an allocation calculation. Proposed §5.4181 sets forth which premium is to be surcharged. Proposed §5.4182 provides the method for determining the premium surcharge for certain lines of insurance, including fire, allied lines, multi-peril crop, farmowners, homeowners, commercial multi-peril, private passenger auto, and commercial auto policies rated based on the location of the vehicle(s). Proposed §5.4183 establishes the procedure for determining the premium surcharge for other lines of insurance, including those that are not rated based on the specific location of the risk.

**§5.4184. Application of the Surcharges.** Proposed §5.4184 provides that all applicable policies with effective dates on or after the date of the Commissioner's surcharge order are to be surcharged. It also makes clear that insurers are not responsible for collecting surcharges on policies that did not go into effect, or were cancelled as of the inception date, as well as provides instructions for surcharging policies that remain in effect for multiple years. Proposed §5.4184 further discusses how surcharges are to be determined when the policy is either cancelled mid-term or

the premium is changed on the policy in the middle of the policy period. The Insurance Code §2210.613 states that premium surcharges are non-refundable, thus there is no refund for the “unexpired” portion of the surcharge when a policy is cancelled prior to the expiration date. Similarly, since premium surcharges are non-refundable, when the premium on the policy is changed in mid-term resulting in a *reduction* in the total policy premium, there is no commensurate refund of the surcharge, but there is a commensurate increase in the premium surcharge for mid-term changes resulting in an increase in the premium. Proposed §5.4184(f) addresses policies that are subject to premium audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration.

**§5.4185. Premium Surcharges are Mandatory.** Proposed §5.4185 provides that premium surcharges are mandatory, and are paid on a “first dollar” basis. Insurers may not pay the surcharge on behalf of the insured, and insurers must apply policyholder payments to the surcharge before applying any payments to premiums or other amounts owed to the insurer. This subsection also reiterates the provision in Insurance Code §2210.613(d) that failure to pay a premium surcharge constitutes failure to pay premium for the purposes of policy cancellation.

**§5.4186. Remittance of Premium Surcharges.** Proposed §5.4186 establishes the procedure for remitting collected premium surcharges to the Association and provides that insurers shall remit all surcharges paid by its insureds not later than the fifteenth day of the month following the month in which the surcharge was received.

**§5.4187 and §5.4188. Offsets and Surcharges not Subject to Commissions or Premium Taxes.** Proposed §5.4187 provides a method for crediting an insurer for surcharges previously paid that were not due to the Association. Proposed §5.4188 provides that premium surcharges are neither subject to agents' commissions nor premium taxes. This reiterates the language contained in Insurance Code §2210.613(d), and prohibits an insurer from increasing the surcharge in order to pay agents' commissions or premium taxes on a surcharge, and prohibits an agent from collecting or charging a commission on a surcharge.

**§5.4189. Notification Requirements.** Proposed §5.4189 provides that insurers must provide insureds subject to a premium surcharge a notice that a premium surcharge has been applied to their policy. Proposed §5.4189(a) provides the text of the notice required for all policyholders subject to a premium surcharge, and §5.4189(b) requires that insurers provide to all policyholders subject to a premium surcharge the dollar amount of the premium surcharge. Proposed §5.4189(c) provides the additional information insurers that determine the premium surcharge under §5.4183(d) must provide to their insureds or applicants.

**§5.4190 and §5.4191. Annual Premium Surcharge Report and Premium Surcharge Reconciliation Report.** Proposed §5.4190 and §5.4191 specify the types of information insurers are required to maintain for the purposes of determining compliance with §§5.4171 - 5.4173 and 5.4181 and 5.4188 of this proposal. Proposed §5.4190 requires insurers to provide an annual report to the Association which provides information regarding the amount of premium collected subject to surcharge, the

amount of premium surcharges remitted to the Association, and the amount of premium surcharges collected by the insurer during the previous calendar year. These reports are required to be provided to the Association within 60 days after the end of a calendar year in which a surcharge is in effect. However, annual reports are not required if a surcharge has been in effect for less than 45 days in the applicable calendar year. Annual reports are required to be provided by annual statement line of business and by insurance company. Proposed §5.4191 requires insurers to maintain sufficient records in order to, within 10 days of a request, provide the Department with a reconciliation report for a time period specified in the request. These reports are proposed under the authority set forth in the Insurance Code §2210.008, as the reports are necessary to ensure compliance with this proposal and as such are necessary to the implementation of Chapter 2210.

**§5.4192. Data Collection.** Proposed §5.4192 requires each insurer to maintain sufficient records in order to report certain information to the Department. This information will provide the premium base available to be surcharged and thus is necessary to the implementation of the Insurance Code §2210.613. This section does not change, is not intended to change, and should not be construed as changing, any statistical plan reporting requirements established pursuant to the Insurance Code Chapter 38 or other requirement.

**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 sections 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 sections are in effect, there will be public benefits resulting from the proposal and there will be costs to persons required to comply with the proposal.

**Anticipated Public Benefits.**

Member Assessments. The anticipated public benefit will be ability of the Texas Windstorm Insurance Association (Association) to collect member assessments in order to fund its public security obligations associated with the issuance of class 2 and class 3 public securities as prescribed in the Insurance Code §2210.613 and §2210.6135. In the absence of the Association's ability to collect member assessments to fund its class 2 and class 3 public security obligations, the Association would not be able to market these classes of public securities and thus would lack the proceeds of those public securities to pay the insured losses of the Association's policyholders if a substantial hurricane made landfall on the Texas coast. Additionally, moving the existing requirements related to member assessments from §5.4001(c)(2) to this division will make the item more accessible to interested persons.

*Premium Surcharges.* The anticipated public benefit will be the ability of the Association to collect premiums surcharges in order to fund debt obligations associated with the issuance of class 2 Public Securities as prescribed in the Insurance Code §2210.613. In the absence of the Association's ability to collect premium surcharges to fund its class 2 public security obligations, the Association would not be able to market the class 2 public securities and thus would lack the proceeds of those public securities to pay the insured losses of the Association's policyholders if a substantial hurricane made landfall on the Texas coast. In addition, the proposed rule provides procedures for the allocation of premium to the catastrophe area for policyholders who have insured property or operations both within and outside the catastrophe area. The proposed procedures provide the benefit of a more equitable system of cost-sharing than would be provided if these policyholders were fully surcharged or not surcharged at all. The reports required under the proposed rule provide the benefit of allowing the Department to ensure insurers are determining the surcharges correctly and allows the Association to determine whether insurers are remitting the required surcharges to the Association. The proposed rule also provides the benefit of guidance to insurers, agents, and policyholders, regarding how surcharges are to be determined in various circumstances. Such guidance is necessary to allow insurers to determine the applicable premium surcharge for individual policyholders.

**Estimated Costs for Persons Required to Comply with the Proposal.** The persons that will incur costs for compliance with the proposal are the Association and insurers.

### **Member Assessments.**

*The Association.* It is not anticipated that the Association will incur any additional cost as a result of this proposal with respect to the member company assessments. Under the proposal the Association must determine that an assessment is necessary, calculate the amount of the assessment annually, notify insurers of the assessment, and collect the assessment. The Association performed each of these functions under the existing requirements. Costs associated with any requirement that the Association would be required to now assess annually for a period of years following the issuance of public securities, or that the Association may be required to issue separate assessments for class 2 and class 3 public security obligations do not result from this proposal, but from the statutory requirements of the Insurance Code §§2210.052, 2210.613, and 2210.6135.

*Member Insurers.* It is not anticipated that Association member insurers will incur any additional cost as a result of this proposal with respect to the member company assessments. The requirement to pay the assessment arises from the statutory requirements of the Insurance Code §§2210.052, 2210.613, and 2210.6135. The Department further considers that no additional cost arises from the requirement that the Association determine the member's participation level each calendar year participation rather than fixing the participation level as of the year of the loss. Insurers would need to account for potential assessments under either basis as well as potential changes to those bases. Further, the proposed sections do not require or prohibit an

insurer from purchasing reinsurance. Purchase of reinsurance is a business decision of the member insurer based on the law and its response to perceived risk.

**Premium Surcharge.**

*The Association.* It is anticipated that the Association will incur additional cost as a result of this proposal with respect to the premium surcharges, both in its capacity as an administrator of the program and a participant insurer. The anticipated costs to the Association as an administrator will result from proposed §5.4173 and §5.4190(g).

Proposed §5.4173 requires the Association to review information provided by TPFA concerning the class 2 public security obligation, determine if a premium surcharge is necessary to fund the class 2 public security obligation, and request the Commissioner to set the premium surcharge. The Department estimates that the cost factors involved in completing the requirements set forth in this procedure would include the labor of senior Association management, Association actuarial staff, Association legal staff, and Association staff as well as materials, printing and mailing costs. The Department does not have a specific estimate from the Association related to its probable cost in completing this function. The Department does however, have recent estimates from the Association that its probable costs to determine the need for the issuance of public securities and make a request to the Commissioner to issue such public securities would be approximately \$800 per request event. The request described in proposed §5.4173 is similar in structure but smaller in scope than a request for public securities. Therefore the Department anticipates that the Association's estimated cost of compliance with proposed §5.4173 would be \$800, or less, per

request. It is anticipated that this cost would not change over the first five year period this proposal is to be in effect.

Proposed §5.4190(g) requires the Association to review insurer premium surcharge reports submitted under proposed §5.4190 for consistency with other premium reports, and report to the Department. The Association estimated the cost of this activity to be between \$13, 500 for the first year and less in subsequent years for the first five years this proposal is to be in effect. The cost estimate is based on labor in the amount of \$8,500, annually, and the onetime addition of an accounting receivables module for an estimated price of \$5,500. In subsequent years the Association would only have the licensing expense for the receivables module, so annual cost would be reduced.

Insurers. In this cost analysis “insurer” has the same meaning as proposed in §5.4172 and thus refers to each property and casualty insurer authorized to engage in the business of property or casualty insurance in the State of Texas and an affiliate of such an insurer, as described by the Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property or casualty insurance in the State of Texas, the Association, and the Texas Fair Access to Insurance Requirements Plan Association. The term specifically includes a county mutual insurance company, a Lloyd’s plan, a reciprocal or interinsurance exchange.

The total probable economic cost to each insurer to comply with the requirements set forth in the Insurance Code §2210.613 and this proposal is expected to range from several hundred thousand dollars to several million dollars. Although for

some insurers, the cost could reach millions of dollars, the department does not expect costs to reach this level for the large majority of insurers. These costs arise from requirements to identify policyholders with premises, operations, or insured property in the catastrophe area, allocate the policyholder's premium, assess the premium surcharge, collect the premium surcharge, remit the premium surcharge to the Association, notify the policy holder of the premium surcharge, and report premium and premium surcharge information to the Department and the Association. The actual cost to each insurer will vary based on a number of factors, including the size of the insurer, the quality of the insurer's data processing equipment, the quality of the insurer's data, the types of insurance written by the insurer, and whether the insurer writes large multi-location commercial risks, or small single-location risks.

§§5.4181 - 5.4188. Proposed §§5.4181 - 5.4188 address the requirements to identify policyholders with premises, operations, or insured property in the catastrophe area, allocate the policyholder's premium, assess the premium surcharge, collect the premium surcharge, remit the premium surcharge to the Association. Some of this cost is result of this proposal, and some of this cost would be borne in the absence of this proposal as a direct result of the enactment of the Insurance Code §2210.613. With respect to each section the difference may depend on the line of business and the business model of the insurer. Further, because each requirement is not required of each insurer, this cost analysis set forth those requirements that may apply to an insurer complying with the proposed sections.

A significant cost factor for insurers resulting from these sections may include the cost of establishing and programming their policy issuance systems, premium rating algorithms, and accounting systems to calculate the premium surcharges, any additional premium surcharges during the policy period, and refunds of surcharges as a result of premium audits, retrospective rating adjustments, or similar adjustments. Insurers may need to account for the premium surcharges separately from premiums in their accounting ledgers, ensure agents' commissions were not determined based on the surcharge, collect the surcharges, and remit the appropriate amount of surcharge to the Association. Insurers may also be required to program their billing systems to track each payment, how much of the payment is applied to premium, and how much of the payment is applied to the surcharge. Insurers may also program their data processing systems in order to track, collect, and use an allocation percentage which allocates premium to the catastrophe area. These systems may then prepare required reports to the Association and the Department under proposed §§5.4190 - 5.4192. Should the insurer not have these types of systems, or should they be inadequate, the insurer may need to invest in the necessary hardware or develop a manual procedure for compliance.

For certain property, automobile, multiple peril, and personal lines of insurance, insurers may be required to determine whether each risk on the policy was located within the catastrophe area. For most of these lines, there will be little additional cost since most insurers already collect and code either county risk location or ZIP Code risk location for the purposes of determining the premium on the policy, or for the purposes

for reporting under the Department's residential, commercial, or private passenger automobile statistical plans. For insurers that do not use risk location when determining policy premium for these lines of insurance, and are not required to report this data to one of the Department's designated statistical agents, there could be the additional cost of determining whether each risk on the policy is located within the catastrophe area and the corresponding exposures, or premium basis, for risks located within the catastrophe area. This may require obtaining the information, as well as programming data processing systems in order to capture and retain this information.

Additionally, insurers may be required to identify whether risks located in Harris County are located within the designated catastrophe area. For some risks insurers will need to determine whether the precise location is within certain ZIP Codes of Harris County and determine whether those risks are located within the catastrophe area. This could involve a manual process of entering addresses into geographic mapping software to determine the precise location of each risk.

For risks that have some operations within the catastrophe area and some operations outside of the catastrophe area, it may be necessary for insurers to annually obtain information regarding whether the insured had some, none, or all of its operations located within the catastrophe area. This requirement mostly affects insurers that write medium-sized or large commercial risks. In addition to the cost of obtaining this information, there could also be costs associated with insurers programming their electronic data processing systems in order to track, collect, and use this information. It may also be necessary for these insurers to program their electronic

data processing systems in order to track, collect, and use, an allocation percentage which allocates premium to the catastrophe area. The proposal however, does not require insurers to obtain this information. Instead insurers may use a default premium allocation system.

Additionally, under 5.4183(d), insurers may be required to receive and review information provided by policyholders regarding whether a lesser allocation percentage is appropriate for the insured. The review would require an underwriter to review the information provided by the insured, and determine whether a lesser allocation percentage is warranted. Insurers would also be required to provide notice and explanation to the insured in cases where the application for a lesser percentage is denied by the insured. Some insurers may require their agents to perform these duties, but there is no requirement under the proposed rule that the agents perform these duties. These costs would not be borne until and unless an actual surcharge was in effect. Insurers may decide to collect detailed exposure information from their policyholders before there has been a catastrophic event or a premium surcharge, but there is no requirement in the rule that insurers do so.

The anticipated costs to comply with the described requirements in proposed §§5.4181 - 5.4188 are expected to include information technology services, underwriting services, accounting services, materials and postage, and computer hardware. Further, most of these costs would occur within the first months or year the proposal was in effect, because the significant portion of these costs involves laying the infrastructure necessary to identify policyholders with premises, operations, or insured

property in the catastrophe area, allocate the policyholder's premium, and then performing those tasks. It is necessary that this be done before the occurrence of a catastrophic event, because this information will be used to justify to the financial markets the Association's financial ability to promptly issue class 2 public securities for the payment of the Association's policyholder's insured losses as prescribed by the insurance Code §2210.073. This infrastructure is also necessary to comply with the reporting requirements set forth in proposed §§5.4190 - 5.4192. Therefore, the insurer must consider these additional requirements associated with extracting the data from the insurers accounting or policy systems and aggregating the data at the appropriate level of detail necessary to complete these reports in determining its system for compliance.

The cost for each of these functions will vary by the insurer's line of business, labor practices, and current systems. This analysis considers the cost of an insurance company to implement proposed §§5.4181 - 5.4188 in-house, because ultimately the insurance company is responsible for compliance with the proposed requirements and the in-house reporting method is available to every insurance company. This method is not required by the proposal and other methods of compliance may be available to the insurance company. The method of compliance and ultimate cost of compliance is a business decision of the insurance company and not a requirement of this proposal.

Proposed §§5.4181 - 5.4188 do not require an insurer to use an automated process. However, as most, if not all insurers do, the proposed sections will generate a need for information technology services. Such needs are expected to range from

hundreds of person-hours to several thousands of person-hours of systems design, systems analysis, computer programming, and testing. Though each insurance company has the information needed to estimate its individual costs, the Department estimates that to analyze and adapt an insurance company's current information systems, the insurance company may incur costs related to information technology services, including the services of programmers, software engineers, database managers, and computer support specialists. While it is not feasible to determine the actual cost of such employees and the actual amount of time that will be needed for such employees for each insurance company, the Texas Workforce Commission's Labor Market & Career Information Department's *2009 Texas Statewide Wages, Occupational Employment Statistics Program* indicates that the average hourly wages for these professions are \$38.52 for a computer programmer, \$44.22 for a computer software applications engineer, \$44.11 for computer software systems engineers, \$37.45 for a database administrator, and \$22.76 for a computer support specialist. However, the actual number, types, and cost of personnel will be determined by the insurance company's existing data systems and staffing.

Similarly, the insurer will need to account for these premium surcharges. To the extent the insurer uses an automated accounting system, upgrading that system would be included within the scope of the information technology services portion of this cost analysis. The insurer may also incur additional accounting labor costs, which may vary by insurer. Each insurance company has the information needed to estimate its individual costs with respect to accounting and the requirements in proposed §§5.4181 -

5.4188. While it is not feasible to determine the actual cost of such employees and the actual amount of time that will be needed for such employees for each insurance company, the Texas Workforce Commission's Labor Market & Career Information Department's *2009 Texas Statewide Wages, Occupational Employment Statistics Program* indicates that the average hourly wages for an accountant or auditor in Insurance Carriers & Related Activities is \$33.33. However, the actual number, types, and cost of personnel will be determined by the insurance company's existing data systems and staffing.

Likewise, the insurer may incur additional underwriting costs to review information necessary to determine whether the policyholder has premises, operations or property in the catastrophe area. Insurers may also incur additional underwriting costs if they are required to review an insured' claim that an allocation percentage other than the default allocation percentage is appropriate. Each insurance company has the information needed to estimate its individual costs with respect to underwriting and the requirements in proposed §§5.4181 -5.4188. While it is not feasible to determine the actual cost of such employees and the actual amount of time that will be needed for such employees for each insurance company, the Texas Workforce Commission's Labor Market & Career Information Department's *2009 Texas Statewide Wages, Occupational Employment Statistics Program* indicates that the average hourly wage for an insurance underwriter is \$30.02. However, the actual number, types, and cost of personnel will be determined by the insurance company's existing data systems and staffing.

Materials and postage cost will vary but are primarily based on the review requirement set forth in proposed §5.4183(d). The Department estimates correspondence costs, including paper, ink, and postage at \$1.00 per letter. The cost of preparing the letter will vary but in this analysis is considered to be included within the scope of underwriter labor costs. It is likely that each review will generate at least one letter either agreeing or disagreeing with the insured. Additional correspondence would be expected to vary.

As previously stated, proposed §§5.4181 - 5.4188 do not require the insurer to use an automated system. Thus, the method of compliance is left to the insurer and the purchase of a system or the upgrade an existing system is a business decision of the insurer. Further, because proposed §§5.4181 - 5.4188 apply to almost every type of property and casualty insurer and line of property and casualty insurance, it is not feasible to determine the actual cost of such computer hardware .

Additionally, many insurance companies writing insurance in Texas and/or other states may only need to make minor modifications to their automated systems, accounting procedures, or underwriting practices to comply with proposed §§5.4181 - 5.4188 because these insurance companies currently outsource some portion of these functions to managing general agents (MGAs) or other contracted vendors, who may write policies or perform services on behalf of multiple insurance companies. As such, to the extent that insurance companies utilize MGAs or vendors to perform these functions and these MGAs or vendors make the necessary changes on behalf of all of their contracted insurance company clients, compliance costs associated with proposed

§§5.4181 -5.4188 may be minimized significantly. Use of an MGA or other contractor does not reduce or eliminate the insurer's responsibility for compliance with this proposal.

§5.4189. Proposed §5.4189 requires insurers to provide applicants and insureds with information about the premium surcharge and the actual dollar amount of the premium surcharge assessed on their policy. If the insured uses the default allocation method set forth in §5.4183(d), the insured must also provide the insured or applicant the additional information set forth in §5.4189(c) concerning the applicant or insured's ability to contest the allocation. The notices must be provided upon quoting the policy, renewal of the policy, and within 10 days of any mid-policy term transition period, which is defined in proposed §5.4184(c) as a mid-term policy change that consists of all transactions on a policy occurring within a seven day period that result in a change in the premium. Depending on the line of business and the term of the policy, and the propensity of an insured to change coverage, the insurer may be required to send multiple notices during the course of the year.

It is anticipated that insurers may develop a means to generate and send the required notices. To the extent that this requires information technology services, the Department refers to its prior discussion of cost and wages related to information technology professionals. Implementing an automated notice system would be in addition to the requirements necessary to implement §§5.4181 - 5.4188. Further, this proposal does not require insurers to shift this delivery requirement to agents. Thus, to the extent that insurers may attempt to shift some or all of the cost to agents would not

be a cost of compliance with this section but a matter of contract between the insurer and the agent. The Department estimates correspondence costs, including paper, ink and postage at \$1.00 per notice. Costs associated with printing notices and mailing notices would not be borne until and unless an actual premium surcharge was in effect. The costs would then continue for the term of the public securities, which would be approximately the next 10 years.

§5.4190 - 5.4192. Proposed §5.4190 and §5.4191 require insurers to prepare and submit reports to the Association or the Department. The costs associated with these reports are the costs for extracting the data from the insurers accounting or policy systems, aggregating the data into a report, and transmitting the report to the Association or the Department. The costs associated with these tasks in drafting and submitting the reports under proposed §5.4190 or 5.4191 would not be borne until and unless an actual premium surcharge is in effect. The costs associated with these tasks in drafting and submitting data under proposed §5.4192 could be borne annually. The anticipated costs to comply with the described requirements in proposed §§5.4190 - 5.4192 are expected to include information technology services, underwriting services, accounting services, materials and postage, and computer hardware. Further, the costs incurred in creating the infrastructure to make these reports relies and builds upon the systems created by the insurer for compliance with §§5.4181 - 5.4188. Costs associated with §5.4190 and §5.4191, as well would likely not be borne until and unless an actual premium surcharge was in effect. The costs would then continue for the term of the public securities, which would be approximately the next 10 years. Costs

associated with creating a system to produce reports in compliance with §5.4190 - 5.4192 could begin upon the adoption of this proposal, with system maintenance and §5.4192 reporting costs continuing in each subsequent year of the first five years this proposed requirement is in effect.

The cost for each of these functions will vary by the insurer's line of business, labor practices, and current systems. This analysis considers the cost of an insurance company to implement proposed §§5.4190 - 5.4192 in-house, because ultimately the insurance company is responsible for the compliance with the proposed requirements and the in-house reporting method is available to every insurance company. This method is not required by the proposal and other methods of compliance may be available to the insurance company. The method of compliance and ultimate cost of compliance is a business decision of the insurance company and not a requirement of this proposal.

Proposed §§5.4190 - 5.4192 do not require an insurer to use an automated process. However, as most, if not all insurers do, the proposed sections will generate a need for information technology services. As these sections build on the systems required to comply with §§5.4181 - 5.4188, it is anticipated that an insurer would have similar information technology services needs, cost factors, and labor needs in creating a system to prepare the required reports. In preparing the reports, insurers may also incur costs related to accounting services and underwriting. These costs could be for internal review, and if the system is not automated preparation of the report. Though each insurance company has the information needed to estimate its individual costs, the

Department estimates that to analyze and adapt an insurance company's current information systems, the insurance company may incur costs related to information technology services, including the services of programmers, software engineers, database managers, computer support specialists, accountants and underwriters. While it is not feasible to determine the actual cost of such employees and the actual amount of time that will be needed for such employees for each insurance company, the average hourly wages for these professions would not differ from those figures previously provided with respect to §§5.4181 - 5.4188 analysis. However, the actual number, types, and cost of personnel will be determined by the insurance company's existing data systems and staffing.

The preferred method of delivering reports will be electronic. As this may not be available to all insurers the cost will be evaluated for materials and postage cost. These costs may vary but are primarily based on the submission of a one or two page report. The Department estimates that each report would be approximately one page in length and thus correspondence costs, including paper, ink and postage at \$1.00 per report.

As previously stated, proposed §§5.4181 - 5.4188 do not require the insurer to use an automated system. Thus, the method of compliance is left to the insurer, and the purchase of a system or the upgrade an existing system is a business decision of the insurer. Further, because proposed §§5.4190 - 5.4192 apply to almost every type of property and casualty insurer and line of property and casualty insurance, it is not feasible to determine the actual cost of such computer hardware .

Additionally, many insurance companies writing insurance in Texas and/or other states may only need to make minor modifications to their automated systems, accounting procedures, or underwriting practices to comply with proposed §§5.4190 - 5.4192 because these insurance companies currently outsource some portion of these functions to managing general agents (MGAs) or other contracted vendors, who may write policies or perform services on behalf of multiple insurance companies. As such, to the extent that insurance companies utilize MGAs or vendors to perform these functions and these MGAs or vendors make the necessary changes on behalf of all of their contracted insurance company clients, compliance costs associated with proposed §§5.4190 -5.4192 may be minimized significantly. Use of an MGA or other contractor does not reduce or eliminate the insurer's responsibility for compliance with this proposal.

All other costs to the Association, insurers and others result from the legislative enactment of the Insurance Code Chapter 2210 and the amendments to Chapter 2210 in HB 4409 and are not a result of the adoption, enforcement, or administration of this proposal.

**4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** The Government Code §2006.002(c) provides 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 “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” 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 no more than 20 employees. The Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.002(b) – (d) for small businesses.

The Department will consider the economic impact of (i) proposed sections §§5.4161 - 5.4167 concerning member assessment and ; and (ii) §§5.4171- 5.4173 and §§5.4181 - 5.4192 concerning premium surcharges separately.

**Member Assessments.**

As discussed in the Public Benefit/Cost Note section of this proposal, the Department does not anticipate that proposed §§5.4161 - 5.4167 will result in additional costs for the Association or its member insurers. Therefore, an analysis of the economic impact of proposed §§5.4161 - 5.4167 pursuant to the Government Code §2006.002(c) is not required.

**Premium Surcharge.**

*The Association.* As discussed in the Public Benefit/Cost Note section of this proposal, it is anticipated that the Association will incur additional cost as a result of this proposal with respect to the premium surcharges, both in its capacity as an administrator of the program and a participant insurer. The anticipated costs to the Association as an administrator will result from proposed §5.4173 and §5.4190(g). The Association does not meet the definition of a *small business* under Government Code §2006.001(2). The Association is an *association... composed of all property insurers authorized to engage in the business of property insurance in this state*, formed under the authority of Insurance Code §2210.051. It is not a corporation, partnership nor sole proprietorship. It is not formed for the purpose of making a profit, but to provide a method by which adequate windstorm and hail insurance may be made available in certain designated portions of this state, as mandated by Insurance Code §2210.001. Under Insurance Code §2210.056, the net earnings of the Association may not inure to the benefit of private shareholders or individuals; and the assets of the Association may not be used, except to satisfy claims on policies, make investments authorized under applicable law, pay reasonable and necessary administrative expenses, satisfy the obligations of the Association, including public securities, financial instruments and the purchase reinsurance, or prepare for or mitigate the effects of catastrophic natural events. Under Insurance Code §2210.452, the net gain from operations of the Association in excess of incurred losses and operating expenses, is paid to a catastrophe reserve trust fund or used to procure reinsurance. Further, under Insurance Code §2210.056 and §2210.452, upon dissolution of the Association, all

assets revert to the state. The Association is not *independently owned and operated*. In addition to not being owned by its members, under Insurance Code §2210.101 and §2210.102, the Association operates with a board of directors, which is responsible and accountable to the Commissioner. The Association provides windstorm and hail insurance according to a plan of operation as specified by Insurance Code §2210.152 and adopted by the Commissioner by rule pursuant to Insurance Code §2210.151. Further, the Association has approximately 150 employees (including employees who are providing services by contract to the FAIR Plan) and net receipts well over \$6 million. Therefore, based on these factors, the Association does not meet the definition of a small or micro business under the Government Code §2006.001(1) and (2), and an analysis of the economic impact of this proposal on the Association pursuant to the Government Code §2006.002(c) is not required.

Insurers. As discussed in the Public Benefit/Cost Note section of this proposal, it is anticipated that insurers subject to proposed §§5.4171 - 5.4173 and §§5.4181 - 5.4192 would be subject to additional costs arising from the adoption and enforcement of those proposed sections. The costs would generally arise from the requirements under proposed §§5.4181 -5.4188 to identify policyholders with premises, operations, or insured property in the catastrophe area, allocate the policyholder's premium, assess the premium surcharge, collect the premium surcharge, remit the premium surcharge to the Association; proposed §5.4189 to notify the insurer of the assessment and of options the insured may have concerning the assessment allocation under proposed §5.4183(d); and proposed §§5.4190 - 5.4192, concerning reporting requirements.

As provided in the Public Benefit/Cost Note section of this proposal, in this analysis “insurer” has the same meaning as proposed in §5.4172 and thus refers to each property and casualty insurer authorized to engage in the business of property or casualty insurance in the State of Texas and an affiliate of such an insurer, as described by the Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property or casualty insurance in the State of Texas, the Association, and the Texas Fair Access to Insurance Requirements Plan Association. The term specifically includes a county mutual insurance company, a Lloyd’s plan, a reciprocal or interinsurance exchange.

§§5.4181 - 5.4188. Proposed §§5.4181 - 5.4188 address the requirements to identify policyholders with premises, operations, or insured property in the catastrophe area, allocate the policyholder’s premium, assess the premium surcharge, collect the premium surcharge, and remit the premium surcharge to the Association. Costs associated with these sections will be significant both as to developing systems to handle the information and the ongoing integration of new policyholders into that system.

In accordance with the Government Code §2006.002(c-1), the Department has determined that even though proposed §§5.4181 - 5.4188 may have an adverse economic effect on insurers operating as small or micro businesses, that these entities are required to comply with the premium surcharge requirements set forth in the Insurance Code §2210.613 and thus the Department is not required to prepare a regulatory flexibility analysis as required in §2006.002(c)(2) of the Government Code

for the following reasons. First, insurers operating as small or micro businesses are not required by statute or by this proposed rule to sell insurance coverage in the catastrophe area. Therefore, those small and micro businesses that sell insurance coverage do so at their own choice, and as a result, agree to bear the additional costs required for compliance with this proposal. The costs outlined in the Public Benefit/Cost Note section of this proposal provide sufficient cost information for insurers operating as small or micro businesses to make an informed business decision on whether to sell insurance coverage in the catastrophe area.

Secondly, §2006.002(c)(2) of the Government Code requires a state agency, before adopting a rule that may have an adverse economic effect on small or micro businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses would not be protective of the health, safety, and environmental and economic welfare of the state.

As specified in §2210.001 of the Insurance Code, 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 in

the state's seacoast territories 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 in the catastrophe area designated by the Commissioner under the Insurance Code §2210.005. The Insurance Code §2210.613 premium surcharge requirement ensures that the Association has access to class 2 public security funding to pay loss claims.

As a means of implementing these requirements, the Insurance Code §2210.613 requires the insurer to assess policies insuring premises, operations and insured property in the catastrophe area. The statutory requirements in the Insurance Code §2210.613 and the requirements in proposed §§5.4181 - 5.4188 are integral to implementing the Legislature's determination 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 in the state's seacoast territories would severely impede the orderly growth and development of the state. Therefore, the Department has determined, in accordance with §2006.002(c-1) of the Government Code, that because the purpose of the Insurance Code §2210.613 and proposed §§5.4181 - 5.4188 is to protect the economic welfare of the state and its inhabitants, there are no additional regulatory alternatives to proposed §§5.4181 - 5.4188 that will sufficiently protect the economic welfare of the state and its inhabitants.

§5.4189. Proposed §5.4189 sets forth a requirement to notify insureds of the premium surcharge, their premium surcharge amount, the insureds ability to question an allocation under proposed §5.1483(d). These notices are intended to provide

consumers with information and add transparency to the process. These notification requirements create a cost for insurers. Therefore, the Department, in accordance with the Government Code §2006.002(c-1), has considered the following alternative method of achieving the purpose of the proposed rule while reducing costs to insurers operating as small and micro businesses: reduce or eliminate the notice requirement. The Department has determined that the alternative to reduce or eliminate the notice requirement for small or micro businesses is not practical because it would have a discriminatory affect on those consumers that are insured by insurers operating as small and micro businesses.

§§5.4190 - 5.4192. Proposed §§5.4190 - 5.4192 address the reporting requirements related to the collection of premium surcharge assessments. These proposed sections are intended to ensure that insurers fulfill the requirements to identify policyholders with premises, operations, or insured property in the catastrophe area, allocate the policyholder's premium, assess the premium surcharge, collect the premium surcharge, remit the premium surcharge to the Association. Costs associated with these §§5.4190 - 5.4192 will involve developing systems to generate the reports and making the reports.

In accordance with the Government Code §2006.002(c-1), the Department has determined that even though proposed §§5.4190 - 5.4192 may have an adverse economic effect on insurers operating as small or micro businesses, that these entities are required to comply with the premium surcharge requirements set forth in the Insurance Code §2210.613 and thus the Department is not required to prepare a

regulatory flexibility analysis as required in §2006.002(c)(2) of the Government Code for the following reasons. First, insurers operating as small or micro businesses are not required by statute or by this proposed rule to sell insurance coverage in the catastrophe area. Therefore, those small and micro businesses that sell insurance coverage do so at their own choice, and as a result, agree to bear the additional costs required for compliance with this proposal. The costs outlined in the Public Benefit/Cost Note section of this proposal provide sufficient cost information for insurers operating as small or micro businesses to make an informed business decision on whether to sell insurance coverage in the catastrophe area.

Secondly, §2006.002(c)(2) of the Government Code requires a state agency, before adopting a rule that may have an adverse economic effect on small or micro businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses would not be protective of the health, safety, and environmental and economic welfare of the state.

As specified in §2210.001 of the Insurance Code, 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 in the state's seacoast territories 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 in the catastrophe area designated by the Commissioner under the Insurance Code §2210.005. The Insurance Code §2210.613 premium surcharge requirement and this proposal ensure that the Association has access to class 2 public security funding to pay loss claims.

As a means of implementing these requirements, the Insurance Code §2210.613 requires the insurer to assess policies insuring premises, operations and insured property in the catastrophe area. To be meaningful requirements, the determination of these amounts, both as to establishing the premium base to be surcharged and the amounts to be collected must be subject to later verification. The statutory requirements in the Insurance Code §2210.613 and the requirements in proposed §§5.4181 - 5.4188 and §§5.4190 - 5.4192 are integral to implementing the Legislature's determination 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 in the state's seacoast territories would severely impede the orderly growth and development of the state. Therefore, the Department has determined, in accordance with §2006.002(c-1) of the Government Code, that because the purpose of the Insurance Code §2210.613 and proposed §§5.4181 - 5.4188 is to protect the economic welfare of the state and its inhabitants, there are no additional regulatory alternatives to

proposed §§5.4181 - 5.4188 that will sufficiently protect the economic welfare of the state and its inhabitants.

**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 30, 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 new sections in a public hearing under Docket No. 2718, 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 sections are proposed under the Insurance Code §§2210.008, 2210.052, 2210.053, 2210.071, 2210.072, 2210.073, 2210.074, 2210.151, 2210.152, 2210.609, 2210.613, 2210.6135, and 36.001. Section 2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules in the manner prescribed in Subchapter A, Chapter 36, Insurance Code. 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. Section 2210.052(e) provides an exemption from participation in any insured losses and operating expenses of the Association in excess of premium and other revenue of the Association until the second anniversary of the date on which the insurer first becomes a member of the Association for an insurer that becomes a member of the association and that has not previously been a member of the Association. 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. Section 2210.071(a) provides that if an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the Association in excess of premium and other revenue of the Association, the excess losses and operating expenses shall be paid as provided by Subchapter B-1, Chapter 2210, Insurance Code. Section 2210.072(a) provides that losses not paid under the Insurance Code §2210.071 shall be paid as provided by this section from the proceeds from class 1 public securities. Section 2210.072(b) authorizes class 1 public securities to be issued in a principal amount not to exceed \$1 billion per year. Section 2210.072(c) requires class 1 public securities to be repaid in the manner prescribed by Subchapter M, Chapter 2210, Insurance Code, from Association premium revenue. Section 2210.073 provides that losses not paid under Insurance Code §2210.072 shall be paid as provided by this section from the proceeds from class 2 public securities issued in accordance with Subchapter M, Chapter 2210, Insurance Code. Section 2210.073(b) authorizes class 2 public securities to be issued in a principal amount not to exceed \$1 billion per year and requires class 2 public securities to be repaid in the manner prescribed by Subchapter M, Chapter 2210, Insurance Code. Section 2210.074(a) provides that losses not paid under Insurance Code §2210.072 and §2210.073 shall be paid as provided by this section from the proceeds from class 3 public securities issued in accordance with Subchapter M, Chapter 2210, Insurance Code. Section 2210.074(b) authorizes class 3 public securities to be issued in a principal amount not to exceed \$500 million per year and requires class 3 public securities to be repaid in the manner prescribed by Subchapter

M, Chapter 2210, Insurance Code. Section 2210.151 authorizes the Commissioner to adopt the Association's plan of operation to provide Texas windstorm and hail insurance coverage in the catastrophe area by rule. Section 2210.152 provides that the Association's plan of operation provide for the efficient, economical, fair, and nondiscriminatory administration of the Association and include both underwriting standards and other provisions considered necessary by the Department to implement the purposes of this chapter. 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. Section 2210.609 provides that the Association shall repay all public security obligations from available funds, and if those funds are insufficient, revenue collected in accordance with the Insurance Code §§2210.612, 2210.613, and 2210.6135. Section 2210.609 further provides that the Association shall deposit all revenue collected under §§2210.612, 2210.613, and 2210.6135 in the public security obligation revenue fund and further provide for the payment of the public security obligations and the public security administrative expenses by irrevocably pledging revenues received from premiums, premium surcharges, and amounts on deposit in the public security obligation revenue fund, together with any public security reserve fund. Section 2210.613 provides that the Association shall pay class 2 public securities issued under §2210.073 with premium surcharges and member assessments as provided by §2210.613. Section 2210.6135 provides that the Association shall pay class 3 public securities issued under Section §2210.074 as provided by §2210.6135 through member assessments. Section 36.001

provides that the Commissioner of Insurance may 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 the state.

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

<u>Rule</u>	<u>Statute</u>
§5.4161 - 5.4167	Insurance Code §§2210.052, 2210.071, 2210.072, 2210.073, 2210.074, 2210.151, 2210.152, 2210.609, 2210.613, and 2210.6135
§§5.4171 - 5.4173	Insurance Code §§2210.608, 2210.609, and 2210.613
§5.4181 - 5.4192	Insurance Code §§2210.608, 2210.609, and 2210.613

**9. TEXT.**

**§5.4161. Member Assessments.**

(a) The Association shall determine if a member assessment is necessary to fund the Association's outstanding class 2 and class 3 public security obligations, including any required contractual coverage amount (required obligations) based upon the evaluation of information that is provided to the Association by the Texas Public Finance Authority.

(b) Pursuant to Insurance Code Chapter 2210 and the Association's plan of operation, if the Association determines that a member assessment is required to fulfill the Association's required obligations the Association shall assess the members of the

Association in an amount the Association determines to be reasonable and necessary to fully provide for the Association's required obligations.

(c) Sections 5.4161 - 5.4167 of this division are a part of the Texas Windstorm Insurance Association's plan of operation and shall control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).

**§5.4162. Amount of Assessment.**

(a) The Association shall determine which members of the Association shall participate in any assessment to provide for the Association's required obligations as determined under §5.4161 of this division (relating to Member Assessments).

(1) The Association may not include in the assessment an insurer that became a member of the Association after September 1, 2009, and had not previously been a member of the Association, until after the second anniversary of the date on which the insurer first becomes a member of the Association. The anniversary date shall be the date the insurer is authorized by the department to engage in the business of property insurance in this state.

(2) The Association shall include in the assessment an insurer described under paragraph (1) of this subsection after the second anniversary of the date on which the insurer first becomes a member of the Association without regard as to whether the catastrophic event that gave rise to the class of public securities occurred prior to the second anniversary of the date on which the insurer first became a member of the Association.

(b) This determination shall be computed on a calendar year basis for the year in which the assessment is made. This determination shall not be based on the year in which the catastrophic event occurred, except for an assessment made during that year. Net direct premiums shall be determined as provided under §5.4001 of this chapter (relating to Plan of Operation).

(c) The designated members of the Association shall participate in any assessment levied in the proportion that the net direct premiums of such member written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the Association as furnished to the Association by the department after review of annual statements, other reports, and required statistics; provided, however, that if at the time of such assessment the department has not furnished to the Association information necessary to compute a member's participation during the preceding calendar year, then each member's participation shall be based upon information furnished to the Association from the last calendar year in which such information is available and, upon obtaining the necessary information from the department, the Association shall reassess or refund to each member such amounts as are necessary to properly reflect such member's participation; provided, further, that a member shall be entitled to receive the following credit for insurance, similar to catastrophe insurance, written in such catastrophe areas.

(d) The Figure: 28 TAC §5.4162(d) graphically depicts the Texas Windstorm Insurance Association Procedure For Calculating Member Assessment Percentages Including Credit For Voluntary Writings. All premiums are for the most recent preceding

calendar year ending December 31, as furnished by the department. 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 §5.4001(a)(2)(N)(i)(III) of this chapter (90% of Column 1(a) plus 90% of Column 1(b) plus 50% of Column 1(c)). 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.

**Figure: 28 TAC §5.4162(d):**

<b><u>TEXAS WINDSTORM INSURANCE ASSOCIATION</u></b>			
<b><u>PROCEDURE FOR CALCULATING MEMBER ASSESSMENT</u></b>			
<b><u>PERCENTAGES INCLUDING CREDIT FOR VOLUNTARY WRITINGS</u></b>			
[1] <u>STATEWIDE</u> <u>DIRECT</u> <u>WRITTEN</u> <u>PREMIUMS</u>	[2] <u>NET</u> <u>DIRECT</u> <u>WRITTEN</u> <u>PREMIUMS</u>	[3] <u>COMPANY</u> <u>PERCENT</u> <u>OF</u> <u>STATEWIDE</u> <u>PREMIUMS</u> <u>WRITTEN</u>	[4] <u>TOTAL PREMIUMS</u> <u>IN CATASTROPHE</u> <u>AREAS</u>
(a)(b)(c) <u>E.C. CMP HO</u>	Total of <u>Col. [1](a) &amp; (b) x</u> <u>90%</u> <u>Col. [1](c) x 50%</u>	[2] ÷ Total of [2]	(ASSOCIATION + <u>VOLUNTARY)</u>
[5] <u>NORMAL</u> <u>REQUIRED</u> <u>QUOTA</u> <u>IN</u> <u>DESIGNATED</u> <u>AREAS</u>	[6] <u>CREDIT</u> <u>FOR</u> <u>COMPANY'S</u> <u>VOLUNTARY</u> <u>PREMIUMS</u>	[7] <u>DIFFERENCE</u> <u>BETWEEN NORMAL</u> <u>REQUIRED</u> <u>PARTICIPATION</u> <u>AND VOLUNTARY</u> <u>CREDIT PREMIUMS</u>	[8] <u>ASSOCIATION</u> <u>ASSESSMENT</u> <u>PERCENTAGE</u> <u>PRIOR TO OFFSET</u>

<u>[(3] x [4]</u>	<u>(not to exceed</u> <u>column [5])</u>	<u>[(5] - [6])</u>	<u>[7] ÷ Total of [7]</u>
<u>[9]</u> <u>NET</u> <u>ASSOCIATION</u> <u>ASSESSMENT</u> <u>PERCENTAGE</u>			
<u>(After application of</u> <u>offset)</u>			

(e) 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 such act, ruling, or decision within 30 days from the date shown on the 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 this section 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.

(f) To assist the Association in determining each member insurer's percentage of participation as soon as possible in the calendar year, each member insurer shall furnish to the Association on or before March 1 of each year a copy of its Exhibit of Premiums and Losses (Statutory Page 14) for the State of Texas that is filed annually with the department as part of the insurer's Texas Property and Casualty Annual Statement.

**§5.4163. Notice of Assessment.**

(a) Notice of assessment shall be sent to each member, within 30 days after the Association levies the assessment, 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 §5.4165 of this division (relating to Failure to Pay Assessment) for the failure to pay such assessment within the time prescribed by this section.

(b) 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 §5.4162 of this division (relating to Amount of Assessment).

(c) 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.

**§5.4164. Payment of Assessment.** Each member shall remit to the Association payment in full of its assessed amount of any assessment levied by the Association within 30 days of receipt of notice of assessment.

**§5.4165. Failure to Pay Assessment.**

(a) 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.

(b) 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.

(c) In addition to any other remedy provided herein, the Association may offset assessments due from a member against any amounts in any account of such delinquent member.

**§5.4166. Contest After Payment of Assessment.**

(a) A member does not waive any right it may have to contest the computation of its allocated assessment amount by mailing or otherwise delivering payment of its allocated assessment amount to the Association, as provided herein.

(b) Such contest shall not, however, toll the time within which assessments must 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 §5.4165 of this division (relating to Failure to Pay Assessment).

**§5.4167. 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.

**§5.4171. Premium Surcharge Requirement .**

(a) Following a catastrophic event, insurers may be required to assess a premium surcharge under the Insurance Code §2210.613(b) and §2210.613(c) on all policyholders with property and casualty insurance policies that provide coverage on

premises, operations, or insured property located in a catastrophe area. This requirement applies to admitted insurers, the Association, the Texas FAIR Plan Association, Texas Automobile Insurance Plan Association policies, affiliated surplus lines insurers, and includes policies independently procured from affiliated insurers.

(b) Sections 5.4171 - 5.4173 and 5.4181 – 5.4192 of this division (relating to Premium Surcharge Requirement , Premium Surcharge Definitions, Determination of the Surcharge, Premiums to be Surcharged, Allocation Method for Specified Lines of Insurance, Allocation Method for Other Lines of Insurance, Application of the Surcharges, Premium Surcharges are Mandatory, Remittance of Premium Surcharges, Offsets, Surcharges not Subject to Commissions or Premium Taxes, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) do not apply to policies written and reported under the following annual statement lines of business: federal flood; medical malpractice; group accident and health; all other accident and health; workers' compensation; and excess workers' compensation.

(c) Sections 5.4181 – 5.4192 of this division do not apply to:

(1) a farm mutual insurance company operating under the Insurance Code Chapter 911;

(2) a nonaffiliated county mutual fire insurance company described by the Insurance Code §912.310 that is writing exclusively industrial fire insurance policies as described by the Insurance Code §912.310(a)(2); or

(3) a mutual insurance company or a statewide mutual assessment company engaged in business under Chapter 12 or 13, Title 78, Revised Statutes, respectively, before those chapters' repeal by §18, Chapter 40, Acts of the 41st Legislature, 1st Called Session, 1929, as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, that retains the rights and privileges under the repealed law to the extent provided by those sections.

**§5.4172. Premium Surcharge Definitions.** The following words and terms when used in §§5.4171 - 5.4173 and 5.4181 - 5.4192 of this division (relating to Premium Surcharge Requirement , Premium Surcharge Definitions, Premiums to be Surcharged, Allocation Method for Specified Lines of Insurance, Allocation Method for Other Lines of Insurance, Application of the Surcharges, Premium Surcharges are Mandatory, Remittance of Premium Surcharges, Offsets, Surcharges not Subject to Commissions or Premium Taxes, Determination of the Surcharge, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) shall have the following meanings unless the context clearly indicates otherwise:

(1) Affiliated insurer--An insurer that is an affiliate, as described by the Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas. Affiliated insurer includes an insurer not authorized to engage in the business of property or casualty insurance in the State of Texas.

(2) Affiliated surplus lines insurer--An eligible surplus lines insurer that is an affiliate, as described by the Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas.

(3) Exposure--The basic unit of risk that is used by an insurer to determine the insured's premium.

(4) Insured property--Real property, or tangible or intangible personal property, including automobiles, covered under an insurance policy issued by an insurer.

(5) Insurer--Each property and casualty insurer authorized to engage in the business of property or casualty insurance in the State of Texas and an affiliate of such an insurer, as described by the Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property or casualty insurance in the State of Texas, the Association, and the Texas Fair Access to Insurance Requirements Plan Association. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

(6) Operations--A person's interest in property, or activities, that may result in, or give rise to, a loss that is insurable under a property or casualty insurance policy, including the use of a motor vehicle; ownership, lease, or occupancy of a residence or other real property; and activities performed by a person in connection with the manufacture, distribution, or sale of goods or services. A person is considered to have operations in the catastrophe area if the person resides in or maintains a physical

location in the catastrophe area, regardless of whether that location is owned, leased, rented, or occupied by the person.

(7) Premises--A physical location where a person resides, or owns, leases, rents, or occupies real property, or has operations.

(8) Premium surcharge percentage--The percentage amount determined by the commissioner under §5.4173 of this division (relating to the Determination of the Surcharge).

**§5.4173. Determination of the Surcharge.**

(a) The Association shall review information provided by the Texas Public Finance Authority concerning the amount of the class 2 public security obligations and estimated amount of the class 2 public security administrative expenses, including any required contractual coverage amount, to determine whether the Association has sufficient available funds to pay the public security obligations and public security administrative expenses, if any, including any contractual coverage amount, or whether a premium surcharge under the Insurance Code §2210.613 is required. The Association may consider all of the Association's outstanding obligations and sources of funds to pay those obligations.

(b) If the Association determines that it is necessary to collect revenue specified in the Insurance Code §2210.613, the Association shall submit a written request to the commissioner to approve a premium surcharge on policyholders with premises,

operations, or insured property in the catastrophe area as authorized under the Insurance Code §2210.613. The Association's request must specify:

(1) the total amount of the class 2 public security obligations and estimated amount of the class 2 public security administrative expenses, including any required contractual coverage amount, provided in the TPFA notice;

(2) the amount to be collected from insurers through a member assessment, which may not exceed 30 percent of the amount specified in the TPFA notice;

(3) the amount to be collected from catastrophe area policyholders through premium surcharges, which may not exceed 70 percent of the amount specified in the TPFA notice; and

(4) the date upon which the premium surcharge is to commence and the date the premium surcharge for the noticed amount is to end.

(c) On approval by the commissioner each insurer shall assess a premium surcharge in a percentage amount set by the commissioner to the insurer's policyholders. The premium surcharge percentage shall be applied to the premium attributable to premises, operations, and insured property located in the catastrophe area on policies that become effective, or on multi-year policies that become effective or have an anniversary date, during the premium surcharge period when the premium surcharge percentage will be in effect, as specified in §§5.4181 - 5.4188 of this division (relating to Premiums to be Surcharged, Allocation Method for Specified Lines of Insurance, Allocation Method for Other Lines of Insurance, Application of the

Surcharges, Premium Surcharges are Mandatory, Remittance of Premium Surcharges, Offsets, and Surcharges not Subject to Commissions or Premium Taxes, respectively).

(d) This section is part of the Texas Windstorm Insurance Association's plan of operation and shall control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).

**§5.4181. Premiums to be Surcharged.**

(a) The premium surcharge percentage shall be applied to:

(1) amounts reported as premium for the purposes of reporting under the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas; and

(2) if not reported as described in paragraph (1) of this subsection, those additional amounts collected that are subject to premium taxation by the comptroller, including policy fees not reported as premium, surplus lines premium taxes, and independently procured premium tax.

(b) Premium surcharges do not apply to fees that are neither reported as premium in the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas, nor subject to premium taxation by the comptroller.

**§5.4182. Allocation Method for Specified Lines of Insurance.**

(a) The methods addressed in subsections (b) and (c) of this section shall apply to all:

(1) policies written and reported under the following annual statement lines of business: fire; allied lines; multi-peril crop; farmowners; homeowners; commercial multi-peril (property); commercial multi-peril (liability); private passenger liability, personal injury protection (PIP), and physical damage; and commercial auto liability, PIP, and physical damage for policies where the premium is determined based on the geographic location of the exposures, or where the vehicles are principally garaged;

(2) personal and residential policies, including boat owners, personal liability, personal umbrella, and personal inland marine policies; and

(3) personal and commercial risks assigned by the Texas Automobile Insurance Plan Association (TAIPA) pursuant to the Insurance Code Chapter 2151.

(b) If the policy is rated based on the geographic location of the insured's premises, operations, or insured property, the premium surcharge shall be determined by applying the premium surcharge percentage to the policy premium determined in §5.4181 of this division (relating to Premiums to be Surcharged), attributable to premises, operations, or insured property located in the catastrophe area.

(c) In cases where the policy is not rated based on the geographic location of the insured's premises, operations, or insured property, the insurer shall allocate premium to the catastrophe area based on the proportion the exposure in the catastrophe area bears to the total exposure on the policy. The premium surcharge percentage shall apply to that portion of the policy premium allocated to the catastrophe area.

**§5.4183. Allocation Method for Other Lines of Insurance.**

(a) For lines of insurance not specified in §5.4182 of this division (relating to Allocation Method for Specified Lines of Insurance) the insurer must determine if the insured has:

(1) no premises, operations, or insured property in the catastrophe area and is thus not subject to premium surcharge;

(2) all premises, operations, or insured property in the catastrophe area;

or

(3) premises, operations, or insured property located both in and outside of the catastrophe area.

(b) For policies only covering premises, operations, or insured property within the catastrophe area, the premium surcharge amount is determined by applying the premium surcharge percentage to the policy premium described in §5.4181 of this division (relating to Premiums to be Surcharged).

(c) For policies covering premises, operations, or insured property located both in and outside of the catastrophe area, where, as part of its normal underwriting, rating, or data collection processes, the insurer has sufficient information to determine the premium or exposure for each location, or can otherwise reasonably allocate premium to the catastrophe area, the insurer shall use the direct allocation methods set forth in §5.4182 of this division, and determine the premium surcharge amount by applying the premium surcharge percentage to the premium attributable or allocated to the catastrophe area.

(d) For policies covering premises, operations, or insured property located both in and outside of the catastrophe area, where, as part of its normal underwriting, rating, or data collection processes, the insurer does not have premium or exposure data by location, or cannot otherwise reasonably allocate premium to the catastrophe area, insurers shall determine the premium surcharge by applying the premium surcharge percentage and the allocation percentage to the premium determined under §5.4181 of this division. The allocation percentage shall be determined as follows:

(1) Initial phase. For policies subject to a premium surcharge percentage that have an effective date in the first year the commissioner orders a premium surcharge following the effective date of these rules, and that cover both catastrophe area and non-catastrophe area premises, operations, or insured property, insurers shall use a default allocation percentage of 15 percent of the premium to determine the premium attributable to the catastrophe area.

(2) Subsequent phases. The default allocation percentage shall be increased by three percentage points each year for the five years following the year a surcharge is first ordered by the commissioner until the default allocation percentage equals 30 percent.

(3) Subsequent percentages. The default allocation percentage for policies subject to a surcharge percentage that are first effective after the calendar year a surcharge first becomes effective shall be as follows:

(A) all policies subject to a surcharge percentage first effective in the second year, 18 percent;

(B) all policies subject to a surcharge percentage first effective in the third year, 21 percent;

(C) all policies subject to a surcharge percentage first effective in the fourth year, 24 percent;

(D) all policies subject to a surcharge percentage first effective in the fifth year, 27 percent; and

(E) all policies subject to a surcharge percentage first effective in the sixth year and thereafter, 30 percent.

(4) Use of Other Allocation Percentages.

(A) The insurer shall provide the insured or applicant a period of not less than 30 days after receiving a notice required under §5.4189 of this division (relating to Notification Requirements) in which to provide additional information to the insurer indicating that the insured's actual percentage of catastrophe area exposure is less than the default allocation percentage.

(B) Insurers are not required to audit the additional information provided by the insured pursuant to subparagraph (A) of this paragraph; however, insurers shall review the information provided to determine if the information is reasonably consistent with other information the insurer has in its files and records used for underwriting or rating, if the insurer collects such comparable information as part of its normal underwriting or rating processes.

(C) Within 20 days of the date the insurer receives information submitted pursuant to subparagraph (A) of this paragraph, the insurer shall either:

(i) recalculate the insured's or applicant's premium surcharge to reflect the allocation percentage supported by the information provided by the insured, and refund to the insured any excess surcharge paid, and such revised premium surcharge shall be effective as of the inception date of the policy; or

(ii) provide the insured with a written statement indicating the reasons why the additional information provided by the insured does not reasonably support a lesser allocation percentage.

(e) For the purposes of this section, for determining and applying the default allocation percentage applicable, the anniversary date of a multi-year policy shall be considered to be an effective date.

**§5.4184. Application of the Surcharges.**

(a) When assessed under the Insurance Code §2210.613, the premium surcharges shall apply to all policies with premises, operations, or insured property in the catastrophe area that are issued or renewed with effective dates in the assessment period specified in the commissioner's order, with two exceptions:

(1) insurers shall not surcharge policies, and are not responsible for collecting premium surcharges on policies, that did not go into effect or were cancelled as of the inception date of the policy; and

(2) for multi-year policies, the premium surcharge in effect on the effective date of the policy, or the anniversary date of the policy, shall be applied to the 12-month premium for the applicable policy period.

(b) Premium surcharges are non-refundable under the Insurance Code §2210.613. If the policy is cancelled, a pro-rata portion of the surcharge is not returned to the policyholder.

(c) A mid-term policy change consists of all transactions on a policy occurring within a seven day period that result in a change in the premium.

(d) If a mid-term policy change increases the premium on the policy, insureds must pay an additional surcharge for the increased premium attributable to premises, operations, or insured property in the catastrophe area which shall be determined as follows:

(1) For policies where the premium surcharge is determined under §5.4182 or §5.4183(b) of this division (relating to Allocation Method for Specified Lines of Insurance and Allocation Method for Other Lines of Insurance) where all premises, operations, or insured property are located within the catastrophe area, the additional premium surcharge is determined by applying the applicable premium surcharge percentage to that portion of the additional premium attributable to premises, operations or insured property located in the catastrophe area.

(2) For policies where the premium surcharge is determined under §5.4182 or §5.4183(c) of this division and covering premises, operations, or insured property located both in and outside of the catastrophe area, the additional premium surcharge is determined by applying the premium surcharge percentage to that portion of the additional premium attributable to premises, operations, or insured property within the catastrophe area.

(3) For policies where the premium surcharge is determined under §5.4183(d) of this division, the additional premium surcharge is determined by applying the premium surcharge percentage and the default allocation percentage, or the allocation percentage if a different percentage is used pursuant to §5.4183(d)(3), of this division to the additional premium.

(e) If a mid-term policy change decreases the premium, there shall be no corresponding decrease in the surcharge or refund of the surcharge.

(f) Surcharges or refunds shall apply to all premium changes due to exposure or premium audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration. Upon policy inception, the premium surcharge shall be collected on the deposit premium paid. If after exposure or premium audit, retrospective rating adjustment, or similar adjustment after policy expiration, an additional premium is required, an additional surcharge shall be paid. If after exposure or premium audit, retrospective rating adjustment, or other similar adjustment after policy expiration, the deposit premium exceeds the actual premium, the excess surcharge shall be refunded to the insured, and the insurer may credit any refund paid to the Association through the offset process described in §5.4187 of this division (relating to Offsets). Additional surcharges and refunds shall be determined as follows:

(1) For policies where the premium surcharge is determined under §5.4182 or §5.4183(b) of this division, where all premises, operations, or insured property are located within the catastrophe area, the additional premium surcharge (or refund) is determined by applying the premium surcharge percentage in effect on the

inception date of the policy, or the anniversary date of the policy in the case of multi-year policies, to the additional premium (or return premium).

(2) For policies where the premium surcharge is determined under §5.4182 or §5.4183(c) of this division, and covering premises, operations, or insured property located both in and outside of the catastrophe area, the additional premium surcharge (or refund) is determined by applying the premium surcharge percentage in effect on the inception date of the policy, or the anniversary date in the case of multi-year policies, to that portion of the additional premium (or return premium) attributable to the catastrophe area.

(3) For policies where the premium surcharge is determined under §5.4183(d) of this division, the additional premium surcharge (or refund) is determined by applying the premium surcharge percentage in effect on the inception date of the policy, or the anniversary date in the case of multi-year policies, and the default allocation percentage, or the allocation percentage if a different percentage is used pursuant to §5.4183(d)(4), to the additional premium (or return premium).

(g) Notwithstanding whether a surcharge was in effect on the inception date of the policy, or the anniversary date in the case of multi-year policies, no additional premium surcharges or refunds shall apply to premium changes resulting from exposure or premium audits, retrospective rating adjustments, or other similar adjustments that occur when there is no premium surcharge in effect.

**§5.4185. Premium Surcharges are Mandatory.**

(a) Insurers may not pay the surcharges in lieu of surcharging their policyholders; however, an insurer may remit a surcharge prior to collecting the surcharge from its policyholder.

(b) Insurers shall apply any money received from the insured to the premium surcharge prior to applying the funds to premium or any other obligation or debt owed to the insurer.

(1) Premium surcharges may not be allocated pro-rata or otherwise mixed with premium over installment plan payments. All money received under an installment plan shall be applied first to the premium surcharge prior to applying the money to premium or any other obligation or debt owed to the insurer.

(2) Premium surcharges may not be refunded to a premium finance company.

(c) Pursuant to the Insurance Code §2210.613(d), the failure of a policyholder to pay the premium surcharge constitutes failure to pay premium for the purposes of policy cancellation.

**§5.4186. Remittance of Premium Surcharges.**

(a) Insurers shall remit to the Association the aggregate amount of surcharges paid by its policyholders; however, an affiliated surplus lines insurer may allow a surplus lines agent to remit premium surcharges to the Association on its behalf in accordance with any procedures established by the Association relating to premium surcharge remissions from surplus lines agents.

(b) Insurers, or surplus lines agents allowed by affiliated surplus lines insurers to remit surcharges pursuant to subsection (a) of this section, shall remit all surcharges paid by its insureds not later than the fifteenth day of the month following the month in which the surcharge was received;

(c) Insurers and agents may not allow, or require, policyholders to make separate payments for the surcharge amounts which are payable to the Association.

(d) Subsection (b) of this section applies to all insurers regardless of whether the insured paid the premium surcharge through an agent of the insurer or the insured paid the premium surcharge directly to the insurer.

(e) An affiliated surplus lines insurer who allows an agent to remit premium surcharges to the Association pursuant to subsection (a) of this section may be held liable by the department for the failure of its agent to remit the premium surcharges or timely remit the premium surcharges, pursuant to subsection (b) of this section.

**§5.4187. Offsets.**

(a) An insurer may credit a premium surcharge amount on its next remission to the Association if the insurer has already remitted the amount to the Association for:

(1) the portion of the surcharge the insurer was not able to collect from the insured prior to the collection of any funds for premium or any other obligation or debt owed to the insurer;

(2) the portion of a surcharge paid to the Association in excess of a deposit premium as described in §5.4184 of this division (relating to Application of the Surcharges).

(3) the portion of a surcharge paid to the Association in excess of a surcharge where the insurer granted the insured a lesser surcharge pursuant to §5.4183(d)(4) of this division (relating to Allocation Method for Other Lines of Insurance).

(b) An agent may not offset payment of a premium surcharge to the insurer for any reason. However, a surplus lines agent allowed by an affiliated surplus lines insurer to remit surcharges to the Association on its behalf under §5.4186(a) of this division (relating to Remittance of Premium Surcharges), may offset as provided in this section.

**§5.4188. Surcharges not Subject to Commissions or Premium Taxes.**

(a) As provided by the Insurance Code §2210.613(d), premium surcharges are not subject to either premium taxes or agents' commissions.

(b) Insurers may not increase the premium surcharges for premium taxes or commissions, and agents, including a surplus lines agent, may not collect or charge commissions for the premium surcharges.

**§5.4189. Notification Requirements.**

(a) Insurers shall provide written notice to policyholders receiving a premium surcharge that their policy contains a surcharge. The notice shall read:

“Your policy is subject to a non-refundable premium surcharge. Your surcharge was determined pursuant to 28 TAC §§5.4171 – 5.4173 and 5.4181 – 5.4192 and is authorized by Insurance Code §2210.073 and §2210.613. Your surcharge will be used by the Texas Windstorm Insurance Association to pay the debt service for public securities that were issued to pay catastrophe insurance claims of the Association. Insurance Code §2210.613(d) provides that the failure to pay the surcharge constitutes failure to pay premium for the purposes of policy cancellation.”

(b) Insurers shall provide written notice to applicants and policyholders of the dollar amount of the premium surcharge.

(c) In addition to the notices required in subsections (a) and (b) of this section, insurers that determine the premium surcharge in accordance with §5.4183(d) of this division (relating to Allocation Method for Other Lines of Insurance) shall provide each applicant or policyholder with the following additional information:

(1) the allocation percentage used to determine the premium surcharge;

(2) that the allocation percentage represents the percentage of the insured’s exposure assigned to coverage within the catastrophe area;

(3) a description of the catastrophe area;

(4) that, within 30 days of receipt of the notice, the applicant or policyholder may provide additional information to the insurer, as provided in §5.4183(d)(4) of this division, that the percentage of the insured's exposure within the catastrophe area is less than the allocation percentage used;

(5) a description of the information the insured would need to provide; and

(6) that upon receiving such information, the insurer will, within 20 days of the receipt of the information, either recalculate the premium surcharge accordingly, or provide the insured with a written explanation as to why the information provided did not support a lesser allocation percentage.

(d) Notices required under subsections (a) and (b) of this section shall:

(1) be provided at the time the policy is quoted, in the case of new business;

(2) be provided with the renewal notice, in the case of renewal business;

(3) be provided within 10 days of the end of the transaction period as specified in §5.4184(c) of this division (relating to Application of the Surcharges) for any mid-term change in the premium surcharge; and

(4) use at least 12 point font and either be contained on a separate page or shown in a conspicuous location on the declarations page.

(e) Notices required under subsection (c) of this section:

(1) shall be provided at the time the policy is quoted, in the case of new business;

(2) shall be provided with the renewal notice, in the case of renewal business;

(3) shall be provided within 10 days of the end of the transaction period as specified in §5.4184(c) of this division for any mid-term change in the premium surcharge;

(4) shall be contained on separate page; and

(5) may be combined with notices required under subsection (a) and (b) of this section.

**§5.4190. Annual Premium Surcharge Report.**

(a) This section does not apply to an insurer that, during the calendar year, exclusively wrote any or all of the following lines of insurance: federal flood insurance; medical malpractice insurance; accident and health insurance; or workers' compensation insurance.

(b) No later than 60 days following the end of a calendar year in which a premium surcharge was in effect, each insurer shall provide the Association with an annual premium surcharge report for the calendar year. However, an annual premium surcharge report for a given year is not required if premium surcharges were in effect for less than 45 days within the calendar year.

(c) Annual premium surcharge reports shall provide information for each insurance company writing property or casualty insurance in the State of Texas, including affiliated surplus lines insurers, and affiliated insurers not authorized to

engage in the business of insurance that issued independently procured insurance policies covering premises, operations, or insured property in the State of Texas.

(d) Annual premium surcharge reports shall provide information for each annual statement line of business for which the insurer reported premium for the applicable calendar year.

(e) Annual premium surcharge reports shall provide the following information:

(1) the name and contact information of the individual responsible for submitting the report;

(2) the five-digit NAIC number of the insurance company;

(3) the name of the insurance company;

(4) for policies with effective dates, or multi-year policies with anniversary dates, within the calendar year, separately for each surcharge period in effect during the calendar year, and within each surcharge period in effect during the calendar year separately by the applicable line or lines of business, as shown in the Annual Statement, Exhibit of Premium and Losses (Statutory Page 14), Texas:

(A) For policies where the premium surcharge was determined under §§5.4182, 5.4183(b), or (c) of this division (relating to Allocation Method for Specified Lines of Insurance and Allocation Method for Other Lines of Insurance):

(i) the total written premium allocated to premises, operations, or insured property in the catastrophe area; and

(ii) the total written premium allocated to premises, operations, or insured property outside the catastrophe area;

(B) For policies where the premium surcharge was determined under §5.4183(d) of this division and the default allocation percentage was used to calculate the premium surcharge:

(i) the total written premium allocated to premises, operations, or insured property in the catastrophe area; and

(ii) the total written premium allocated to premises, operations, or insured property outside the catastrophe area;

(C) For policies where the premium surcharge was determined under §5.4183(d) of this division and an allocation percentage other than the default allocation percentage was used to calculate the premium surcharge:

(i) the total written premium allocated to premises, operations, or insured property in the catastrophe area; and

(ii) the total written premium allocated to premises, operations, or insured property outside the catastrophe area; and

(D) the total written premium for policies not subject to a premium surcharge because the insured had no premises, operations, or insured property in the catastrophe area;

(5) for policies effective in portions of the calendar year when no surcharge period was in effect, or in the case of multi-year policies with an anniversary date in portions of the calendar year when no surcharge was in effect, the total written premium separately by the applicable line or lines of business, as shown in the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas;

(6) the total amount of premium surcharges collected during the applicable calendar year; and

(7) the total amount of premium surcharges remitted to the Association during the applicable calendar year.

(f) The Association shall:

(1) review the reports submitted under this section as necessary to determine:

(A) the consistency of premium surcharges actually remitted to the Association with premium surcharges shown in the reports as collected and the premium surcharges shown in the reports as remitted to the Association; and

(B) the consistency of premiums shown in the reports as attributable to the catastrophe area with premium surcharges shown in the reports as collected by the insurer, given the requirements regarding the determination of premium surcharges in this division.

(2) inform the department of any insurer the Association believes may not be in compliance with the rules established under this division; and

(3) before July 1 on each year reports are required to be submitted to the Association, provide an aggregate summary of the reports to the department.

**§5.4191. Premium Surcharge Reconciliation Report.**

(a) This section does not apply to an insurer that, during an applicable calendar year, exclusively wrote any or all of the following lines of insurance: federal flood

insurance; medical malpractice insurance; accident and health insurance; or workers' compensation insurance.

(b) Upon the written request of the department, an insurer shall provide the department with a premium surcharge reconciliation report for the year specified by the Association or the department in its request.

(c) Reconciliation reports shall be provided to the department within 10 working days after the date the request is received by the insurer.

(d) Reconciliation reports shall consist of the following information concerning premiums written and surcharges collected, separately for each line of business and applicable surcharge period, including periods in which no premium surcharges were in effect, within the specified year:

(1) premium written at policy issuance for policies effective within the year, including anniversary dates within the year on multi-year policies, separately for:

(A) premium subject to a premium surcharge, including premium allocated to the catastrophe area on policies having premises, operations, or insured property both in and outside of the catastrophe area; and

(B) premium not subject to a premium surcharge, including premium not allocated to the catastrophe area on policies having premises, operations, or insured property both in and outside of the catastrophe area; and

(2) premium written due to mid-term coverage changes occurring within the specified time period separately for:

(A) premium increases subject to a premium surcharge, including premium allocated to the catastrophe area on policies having premises, operations, or insured property both in and outside of the catastrophe area; and

(B) premium not subject to a premium surcharge, including premium increases not allocated to the catastrophe area on policies having premises, operations, or insured property both in and outside of the catastrophe area and premium refunds, whether related to coverage within or without the catastrophe area; and

(3) total premium due to post-term premium changes occurring within the specified time period, including adjustments due to premium or exposure audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration, separately for:

(A) premium subject to a premium surcharge, including premium allocated to the catastrophe area on policies having premises, operations, or insured property both in and outside of the catastrophe area; and

(B) premium not subject to a premium surcharge, including premium not allocated to the catastrophe area on policies having premises, operations, or insured property both in and outside of the catastrophe area, and

(4) separately for paragraphs (1)(A), (2)(A), and (3)(A) of this subsection, the amounts of premium surcharges collected; and

(5) the total amount of written premium for policies written in the State of Texas as reported in the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas, for each of the applicable lines of insurance.

(d) Nothing in this section limits the department's authority to obtain information from insurers under the Insurance Code.

(e) A report provided to the department under this section may be provided to the Association.

**§5.4192. Data Collection.**

(a) The department may request from each insurer the information necessary to enable the department to determine the premium surcharge percentage applicable to insureds with premises, operations, or insured property located in the catastrophe area.

(b) For policies with effective dates on or after October 1, 2010, each insurer shall maintain sufficient records to report the following information to the department:

(1) for policies where the premium surcharge was, or would be determined under §§5.4182, 5.4183(b), or (c) of this division (relating to Allocation Method for Specified Lines of Insurance and Allocation Method for Other Lines of Insurance), the total written premium attributable to the catastrophe area for policies with premises, operations, or insured property located in the catastrophe area;

(2) for policies where the premium surcharge was, or would be determined under §5.4183(d) of this division and the default allocation percentage was, or would be applied in order to determine the premium surcharge, the total written

premium for policies with any premises, operations, or insured property located in the catastrophe area; and

(3) for policies where the premium surcharge was determined under §5.4183(d) of this division and an allocation percentage other than the default allocation percentage was used to determine the premium surcharge, the total premium allocated to the catastrophe area based on the allocation percentage used to determine the premium surcharge.

(c) For periods of time when no surcharge is in effect, insurers may report all premium for policies where a premium surcharge would be determined under §5.4183(d) of this division as premium for policies where the default allocation percentage would be applied.

(d) When possible, and practical, the department will obtain information from the Texas Surplus Lines Stamping Office prior to requesting information from affiliated surplus lines insurers.

(e) Nothing in subsection (d) of this section should be read to mean that subsections (a) – (c) of this section do not apply to affiliated surplus lines insurers.

(f) Nothing in this section limits the department's authority to obtain information from insurers under the Insurance Code.