

**SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST FUND,
FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES
28 TAC §§5.4171 - 5.4173, 5.4182, 5.4184 - 5.4187, 5.4189 - 5.4192**

1. INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 TAC §§5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4187, 5.4189 - 5.4192 to implement House Bill (HB) 3, 82nd Legislature, 1st Called Session, effective September 28, 2011. These sections concern procedures for making and assessing premium surcharges under Insurance Code Chapter 2210, Subchapter M. Premium surcharges are required to repay class 2 public securities that are issued in the event of a catastrophe that results in losses that exceed the Texas Windstorm Insurance Association's premium, revenue, available reserves, and amounts available in the catastrophe reserve trust fund. In conjunction with this proposal, the department is also proposing the repeal of existing 28 TAC §5.4183 in a separate proposal also published in this issue of the *Texas Register*. This rule proposal also relates to a separate rule proposal concerning loss funding, which is also published in this issue of the *Texas Register*. In that proposal, the department proposes to add new 28 TAC §§5.4123 - 5.4128, 5.4135, 5.4136, 5.4148, and 5.4149, and amend 28 TAC §§5.4101, 5.4102, 5.4121, 5.4133, 5.4141 - 5.4147, and 5.4164 to implement HB 3.

The association is the insurer of last resort for windstorm and hail insurance coverage in the catastrophe area along the coast. The association provides insurance coverage to those who are unable to obtain wind and hail insurance in the private market. The catastrophe area includes the 14 first tier coastal counties and parts of Harris County. The association functions similar to other insurers in that it sells policies, collects

premiums, and pays claims. The association's largest risk exposure is catastrophic losses from hurricanes.

In 2009, the Texas Legislature enacted HB 4409, 81st Legislature, Regular Session, which substantially changed how the association paid for losses that exceeded its premium, other revenue, and amounts available in the catastrophe reserve trust fund. HB 4409 amended Insurance Code Chapter 2210 to provide for three classes of public securities to pay for excess losses in the event of a catastrophe. In 2011, the Texas Legislature amended the association's loss funding provisions again to authorize the association to request the issuance of class 1 public securities prior to a catastrophic event, and to permit the association to request the issuance of class 2 and class 3 public securities if the Texas Public Finance Authority is unable to issue all or any portion of the class 1 public securities. Class 1 public securities must be issued when losses in a catastrophe year exceed the association's premium, available revenue, and amounts in the catastrophe reserve trust fund. Class 1 public securities are to be paid with the association's net premium and other revenue. Losses not paid by class 1 public securities are to be paid by the proceeds of class 2 and class 3 public securities.

Insurance Code §2210.613 describes how the association must pay class 2 public securities. HB 4409 required that class 2 public securities be paid with member insurer assessments and a premium surcharge on coastal policyholders. Thirty percent of the cost of class 2 public securities is to be paid by member insurer assessments. Seventy percent of the cost of class 2 public securities was to be paid by premium surcharges assessed on all policyholders who reside or have operations in, or whose insured property is located in the catastrophe area. HB 3 amended Insurance Code §2210.613 so that 70

percent of the cost of class 2 public securities is to be paid by premium surcharges assessed on all policyholders of policies that cover insured property that is located in the catastrophe area, including automobiles principally garaged in a catastrophe area. HB 3 also amended Insurance Code §2210.613 to specify the lines of insurance to which the premium surcharge applies. Before the enactment of HB 3, the premium surcharge in Insurance Code §2210.613 applied to “all property and casualty lines of insurance, other than federal flood insurance, workers’ compensation insurance, accident and health insurance, and medical malpractice insurance.” After HB 3, Insurance Code §2210.613 states that the premium surcharge applies to “all policies of insurance written under the following lines of insurance: fire and allied lines, farm and ranch owners, residential property insurance, private passenger automobile liability and physical damage insurance, and commercial automobile liability and physical damage insurance.” The current rules that implement the premium surcharge required by Insurance Code §2210.613 do not reflect the current law as amended by HB 3. It is necessary to amend these rules to conform them with current law.

In the event of a hurricane that results in excess losses, the rules implementing the loss funding and premium surcharges required by the statute must be up-to-date for the orderly issuance of public securities and the repayment of those securities. The department has made substantive changes to these rules in addition to conforming changes for clarity and agency style. The proposed amendments do not impose any requirement that is not already required by the statute. The proposed amendments do not directly affect rates.

The department posted to its website an informal draft of these rules on October

14, 2013, with a comment period that ended on October 28, 2013. Based on comments, the department revised the informal draft rule and proposes these amendments. A thorough discussion of the proposed amendments to the rules follows.

§5.4171. Premium Surcharge Requirement. This section concerns the premium surcharge that insurers must assess if the association issues class 2 public securities under Insurance Code §2210.613. The department proposes amending this section to conform it to other proposed rule amendments and to changes HB 3 made to Insurance Code §2210.613. Subsection (a) is amended for agency style and to clarify that the premium surcharge applies to covered insured property including automobiles principally garaged in the catastrophe area. Subsection (b) is amended to specify the lines of insurance that are subject to the premium surcharge consistent with Insurance Code §2210.613.

§5.4172. Premium Surcharge Definitions. The department proposes amending the definition of insured property to clarify that it includes motorcycles, recreational vehicles, and all other vehicles eligible for coverage under a private passenger automobile or commercial automobile policy. The department proposes adding residential property insurance as a defined term for clarity and removing the definitions for operations and premises consistent with HB 3.

§5.4173. Determination of the Surcharge Percentage. The department proposes amending this section for agency style and to conform it with other proposed amendments. To conform the section to Insurance Code §2210.613, the department also proposes amending the section to require that the premium surcharge date specified by the commissioner be at least 180 days after the commissioner approves issuance of class

2 public securities.

§5.4181. Premiums to be Surcharged. The department proposes amending this section to clarify that the premium surcharge applies to premium subject to surplus lines premium tax and premium subject to independently procured premium tax.

§5.4182. Method for Determining the Premium Surcharge. The department proposes amending this section so that it applies to policies written in the lines of insurance specified in HB 3. The department also proposes amending this section to allow insurers to determine the premium surcharge for certain composite-rated policies on the basis of the insured address. For these policies, if the insured address is not within a designated catastrophe area, no premium surcharge applies to that policy.

§5.4184. Application of the Surcharges. The department proposes amending this section to provide for refunding premium surcharges to policyholders if a policy subject to a premium surcharge is canceled or a midterm change results in a premium decrease. The proposal requires that insurers credit or refund the excess surcharge within 20 days of the date of the transaction. These changes are consistent with the fact that the surcharges may be refunded under Insurance Code §2210.613. The department also proposes deleting references to §5.4183 (relating to Allocation Method for Other Lines of Insurance), which is being repealed in a separate rule proposal.

§5.4185. Mandatory Premium Surcharge Collection. This section concerns how insurers collect premium surcharges. The department proposes amending the section to give insurers two possible methods of collecting premium surcharges. An insurer must either collect the premium surcharge when the insurance policy is issued and effective, or collect the premium surcharge proportionately as it collects premiums from the

policyholder. This means that the insurer can collect the surcharge that is due in a calendar year with the initial payment of premium or can collect the same surcharge over the course of the premium installments that are paid by the policyholder. The department provided these two options because it recognizes that policyholders may pay their premiums in installments, especially for personal automobile and residential property policies. If an insurer collects the premium surcharge under the second option, this may relieve policyholders from having to pay the premium surcharge all at once. The proposed amendment requires insurers to choose one collection method to apply to all of the policies issued by that insurer.

§5.4186. Remittance of Premium Surcharges. This section provides the procedures for how insurers are to remit the premium surcharges to the association. The department proposes amending this section to conform it with the proposed amendments to §5.4143 (relating to Trust Funds for the Payment of Class 2 Public Securities) and §5.4185 (relating to Mandatory Premium Surcharge Collection). The department also proposes amending this section to allow the association to impose reporting requirements on surplus lines agents so that the association may fulfill its duties under §5.4190 (relating to Annual Premium Surcharge Report). Section 5.4190 requires insurers to submit reports to the association, which the association must then review to determine that the premium surcharges reported as collected match those actually remitted to the association or deposited directly into the premium surcharge trust fund and that the premiums reported for the catastrophe area are consistent with the premium surcharges reported as collected by the insurer. Surplus lines agents collect premium from the policyholders on behalf of surplus lines insurers and so are permitted to collect premium surcharges from

policyholders. Because surplus lines agents may be remitting premium surcharges on behalf of more than one surplus lines insurer, the association will need additional information from surplus lines agents to ensure the association can fulfill its duties under §5.4190.

§5.4187. Offsets. The department proposes amending this section to make it consistent with the proposed amendments to §5.4185 (relating to Mandatory Premium Surcharge Collection) that require insurers to refund premium surcharges to policyholders in certain cases and to conform the section with the proposed amendments to §5.4143 (relating to Trust Funds for the Payment of Class 2 Public Securities).

§5.4189. Notification Requirements. The department proposes amending this section to make the premium surcharge notice that insurers must give policyholders consistent with the proposed amendments to §5.4185 (relating to Mandatory Premium Surcharge Collection) that require insurers to refund premium surcharges to policyholders in certain cases.

§5.4190. Annual Premium Surcharge Report. This section concerns the annual premium surcharge report that insurers must submit to the association. The department proposes amending this section based on changes to Insurance Code §2210.613 as a result of HB 3. The department also proposes amending subsection (e) to require insurers to report the method they used to collect premium surcharges under §5.4185 (relating to Mandatory Premium Surcharge Collection) and to conform the section with the proposed amendments to §5.4143 (relating to Trust Funds for the Payment of Class 2 Public Securities).

§5.4191. Premium Surcharge Reconciliation Report. The department proposes

amending this section so that it applies to policies written in the lines of insurance specified in HB 3. The department also proposes amending this section to make it consistent with the proposed amendments to §5.4185 (relating to Mandatory Premium Surcharge Collection) that require insurers to refund premium surcharges to policyholders in certain cases.

§5.4192. Data Collection. This section concerns data that the department may collect from insurers to determine the applicable premium surcharge percentage. The department proposes amending this section to conform with other proposed amendments relating to the lines of insurance specified in HB 3. The department also proposes deleting references to §5.4183 (relating to Allocation Method for Other Lines of Insurance), which is being repealed in a separate rule proposal.

2. FISCAL NOTE. C. H. Mah, associate commissioner of the Property and Casualty Section, has determined that for each year of the first five years the proposed amended 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. The amendments to the rules impose no additional requirements that affect state or local governments in the enforcement and administration of this proposal. This rule proposal implements changes based on the passage of HB 3, which amended the lines of insurance that are subject to a premium surcharge. The premium surcharge only applies if the association has issued class 2 public securities under Insurance Code §2210.613 or §2210.6136. Mr. Mah does not anticipate any measurable effect on local employment or the local economy as a result of the proposal. This rule proposal implements the requirements in the statute. Any

impact on local employment or the local economy resulting from the premium surcharges required by Insurance Code §2210.613 are as a result of the statute and not as a result of this proposal.

3. PUBLIC BENEFIT and COST NOTE. Mr. Mah also has determined that for each year of the first five years the proposed amended 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. As discussed in the Introduction, this rule proposal is necessary to implement changes to the statute as a result of HB 3, which changed the lines of insurance that are subject to the premium surcharge. By amending the sections to reflect the current law and to provide clarity, the anticipated public benefit will be the ability of the association to collect premium surcharges to fund the debt obligations associated with the issuance of class 2 public securities. By providing clarity with regard to the lines of insurance that the surcharge applies to and clarity with regard to assessing, collecting, and remitting premium surcharges, the anticipated public benefit will be an orderly process of assessing, collecting, and remitting premium surcharges. The premium surcharges will enable the association to pay insured losses if a hurricane or other events result in losses that exceed the association's premium, revenue, and amounts available in the catastrophe reserve trust fund. Without these proposed amendments, the association's ability to collect the premium surcharge and pay class 2 public securities in the event they are issued may be impaired. Anticipated public benefits and costs stemming from specific amendments follow.

A. Anticipated Public Benefits.

Determining the Premium Surcharge. A proposed amendment to §5.4182 (relating to

Method for Determining the Premium Surcharge) would require an insurer to determine the premium surcharge based on the insured address in cases where a policy is composite rated and the premium attributable to insured property located in the catastrophe area cannot reasonably be determined. Under current §5.4182, in cases where a policy is not rated based on the insured property's geographic location, insurers must determine the premium surcharge based on what proportion of the total exposure for a policy is located in the catastrophe area. In composite rating, insurers rate premiums using a single rate that applies to all coverages using a single exposure base and they may not know the geographic location of the insured exposure. Composite rating is used infrequently and only in commercial lines of insurance, usually only for large risks. The anticipated public benefit of this change is that it would spare insurers, in the limited cases described in the amended §5.4182, the expense of determining what proportion of the total exposure in a policy is located in the catastrophe area. This lowering of expenses should lower the cost of insurance for the public.

Premium Surcharge Collection and Reporting. Proposed amendments to §5.4185 (relating to Mandatory Premium Surcharge Collection) would enable insurers to collect surcharges either when a premium transaction is effective, or proportionately as the insurer collects premium. A proposed amendment to §5.4190 (relating to Annual Premium Surcharge Report) would require that insurers report the method they use to collect premium surcharges under §5.4185. An anticipated public benefit for insurers under §5.4185 is that choosing the option of collecting surcharges over an installment plan would simplify the billing process and reduce costs. For example, collecting surcharges over an installment plan would spare an insurer the time and expense

necessary to refund surcharges on canceled policies. An anticipated public benefit for policyholders is that this option reduces the amount policyholders must pay at the start of the policy period. Permitting policyholders to pay the surcharge in installments makes insurance more affordable. The amendment to §5.4190 would update the information gathered in the premium surcharge reports to match the new option for collecting surcharges under §5.4185. Information on the method an insurer uses to collect premium surcharges provides the benefit of aiding the association in ensuring that insurers are correctly collecting the surcharges.

Premium Surcharge Refunding. Proposed amendments to §5.4184 (relating to Application of the Surcharges) would make premium surcharges refundable for policies that are canceled or that undergo a decrease in premium due to a midterm policy change. This benefits policyholders because it reduces the amount of premium surcharges the policyholders must otherwise pay, and makes the premium surcharges policyholders pay commensurate with the premium they actually pay. Surcharge refundability benefits insurers by reducing the cost of complying with the premium surcharge requirement. Insurers would no longer need to distinguish between policies in which premiums change after policy expiration, and to which surcharge refunds currently apply, from policies not currently subject to surcharge refunds. Proposed amendments to §5.4191 (relating to Premium Surcharge Reconciliation Report) would require insurers to provide to the department on request a reconciliation report, a report on the unearned premiums returned due to midterm cancellations, and information on the amount of premium surcharges refunded or credited to the policyholder. These amendments conform the information required in the reconciliation report to the amendment to §5.4184 enabling

premium surcharges to be refundable. Information on the amount of unearned premium refunded would allow the department to determine whether an insurer is collecting and remitting the correct amount of premium surcharges to the association, or depositing them directly into the premium surcharge trust fund.

Reporting Requirements for Surplus Lines Agents. Under the amendments to §5.4186 (relating to Remittance of Premium Surcharges) the association could impose reporting requirements on surplus lines agents as part of the procedures it establishes for surplus lines agents remitting premium surcharges to the association. The reporting requirements would be established so that the association can reconcile the annual premium surcharge reports submitted by surplus lines insurers under §5.4190 with premium surcharges remitted or deposited by surplus lines agents. An anticipated public benefit is that, if imposed on surplus lines agents, reporting requirements would enable the association to reconcile amounts reported by affiliated surplus lines insurers with amounts remitted by surplus lines agents. This reconciliation will enable the association to determine whether each surplus lines insurer is surcharging the correct amount, thus helping to ensure that the public securities are paid for.

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

Premium Surcharge Collection and Reporting.

Insurers. As discussed above, the proposed amendments to §5.4185 (relating to Mandatory Premium Surcharge Collection) would enable insurers to collect surcharges either when a premium transaction is effective or proportionately as the insurer collects premium. There is no significant cost to insurers that elect to collect and remit the

premium surcharges when the premium transaction becomes effective. This is substantially similar to the current requirement that insurers apply money from the policyholder's first payment to the premium surcharge. Collecting and remitting the premium surcharges when the premium transaction becomes effective is more closely aligned with how premiums are booked for accounting purposes than is collecting the premium surcharge from the policyholder's first payment. This may yield a small reduction in costs compared with the current requirement due to simplified bookkeeping. Insurers that elect to collect the premium surcharges in proportion to how the premium is collected may have lost opportunity costs associated with the premium surcharges, which may have to be remitted before the insurer collects them. Because proposed amendments to §5.4187 permit insurers to offset unpaid surcharges from amounts the insurer would otherwise have to remit to the association, or deposit in the premium surcharge trust fund, remitting premium surcharges in proportion to how the premium is collected poses little or no credit risk to insurers. Because policy terms for the lines of insurance subject to premium surcharges are almost always one year or less, the period between when the insurer remits the surcharge and when the insurer collects the surcharge is expected to be approximately six months or less, on average. According to the Federal Reserve, the yield on six-month U.S. Treasury bills for the week ending December 20, 2013, was approximately 0.09 percent per year. This equates to a lost opportunity cost of 4.5 hundredths of a penny for each dollar of premium surcharge collected. The proposed amendments do not impose this cost on insurers because the proposed amendments permit insurers to choose to collect the premium surcharge when the surcharges must be remitted. As discussed above, a proposed amendment to

§5.4190 (relating to Annual Premium Surcharge Report) would require that insurers report the method they use to collect premium surcharges under §5.4185 in addition to the information the annual premium surcharge report currently requires. The department expects this additional requirement to consume 10 minutes of time per year for both a junior accountant and a compliance analyst. The Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics* indicates that the hourly mean wage for accountants and compliance officers in Texas is \$34.54 and \$31.20, respectively. Therefore, this amendment to §5.4190 would result in a total cost of approximately \$11 per year.

Premium Surcharge Refunding.

Insurers. As discussed above, proposed amendments to §5.4191 would require insurers to provide the unearned premiums returned due to midterm cancellations in a premium surcharge reconciliation report. The department anticipates that to add the amount of unearned premium to the report, an insurer would incur a one-time cost of approximately 20 to 40 hours of computer programming time. The Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics* indicates that the hourly mean wage for computer programmers in Texas is \$37.78. Assuming a qualified computer programmer earns between \$35 and \$40 per hour, the total cost would be between \$700 and \$1,600. The department expects this cost would be small in comparison to the reduction in costs insurers would experience as a result of allowing premium surcharges to be refundable.

Reporting Requirements for Surplus Lines Agents.

Surplus Lines Agents. The amendments to §5.4186 (relating to Remittance of Premium

Surcharges) allow, but do not require, the association to impose reporting requirements on surplus lines agents as part of the procedures the association establishes for surplus lines agents remitting surcharges to the association. Neither the current or amended §5.4186 require surplus lines agents to remit premium surcharges on behalf of the surplus lines insurers they represent. A surplus lines agent can avoid any reporting requirement the association may establish by deciding not to remit premium surcharges on the surplus lines insurers' behalf. Surplus lines agents currently determine the amount of premium they must remit to each surplus lines insurer they represent. The department anticipates that any reporting requirements the association would impose would require surplus lines agents to make this determination for premium surcharges as well as premiums. Surplus lines agents would need to program their accounting and billing systems to capture the amount of premium surcharges applicable to each surplus lines insurer and program reports into the agents' computer systems. In addition, surplus lines agents would need to generate reports and review the reports for errors before submitting them to the association. The department does not anticipate that the association will require surplus lines agents to generate reports more than once a month. If the association does impose reporting requirements and a surplus lines agent decides to remit premium surcharges, the cost to the agent will depend on the number of surplus lines insurers the agent represents and the number of policies issued. The Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics* indicates that the hourly mean wage for computer programmers in Texas is \$37.78.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. Section 2006.002(c) of the Government Code requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on these businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. 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. Government Code §2006.001(1) defines “micro business” similarly to “small business” but specifies that such a business may not have more than 20 employees. Under Government Code §2006.002(f), a state agency must adopt provisions concerning micro businesses that are uniform with the provisions outlined in Government Code §2006.002(b)-(d) for small businesses.

As provided in the Public Benefit and Cost Note section of this proposal, the term “insurer” has the same meaning as defined in §5.4172 (relating to Premium Surcharge Definitions). The term insurer 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 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 Plan Association. The term specifically includes a county mutual insurance company, a Lloyd’s plan, and a reciprocal or interinsurance exchange. This includes some insurers that qualify as small and micro

businesses.

Premium Surcharge Collection and Reporting.

Insurers. As discussed in the Public Benefit and Cost Note section of this proposal, the department anticipates that insurers subject to §5.4185 (relating to Mandatory Premium Surcharge Collection) would encounter some costs, in the form of lost opportunity costs, if they chose to collect premium surcharges proportionately as they collect premium. The department has determined that even though the proposed amendment to §5.4185 may have an adverse economic effect on insurers operating as small or micro businesses, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002(c)(2) because insurers operating as small or micro businesses are not required by statute or the proposed amendment to collect premium surcharges proportionately as they collect premium. Those small and micro businesses that sell insurance coverage in the catastrophe area and collect premiums in installments choose to bear the costs of doing so. The costs outlined in the Public Benefit and Cost section of this proposal provide cost information so that insurers operating as small or micro businesses in the catastrophe area may make an informed decision on the method of collecting premium surcharges.

As discussed in the Public Benefit and Cost Note section of this proposal, the department anticipates that insurers subject to §5.4190 (relating to Annual Premium Surcharge Report) would encounter some costs in reporting the method the insurers used to collect premium surcharges. Some of these insurers would qualify as small and micro businesses. In compliance with Government Code §2006.002(c-1), the department considered waiving the method reporting requirement for small and micro businesses and

requiring that all insurers use the same method of collecting premium surcharges, eliminating the need for reporting the method, as an alternative means of achieving the purpose of §5.4190. The department determined that waiving the method reporting requirement would impede the purpose of §5.4190, and of Insurance Code §2210.613, because it would limit the association's ability to determine whether surcharges from policyholders with insurers operating as small or micro businesses were collected correctly. This could result in policyholders with small or micro businesses being charged inappropriately high or low premium surcharges. The department also determined that requiring all insurers to use the same method of collecting premium surcharges would either negate the proposed amendments to §5.4185 or force all insurers to adopt the costs associated with collecting premium surcharges proportionately as they collect premium, depending on which method the department mandated. The latter might also have an adverse economic impact on insurers operating as small and micro businesses, and those insurers would not have the option of avoiding the cost by collecting premium surcharges when the written premium transaction is effective. The department concluded that both alternatives are impractical and rejected them.

Premium Surcharge Refunding.

Insurers. As discussed in the Public Benefit and Cost Note section of this proposal, the department anticipates that insurers would encounter some costs in complying with the proposed amendment to §5.4191 (relating to Premium Surcharge Reconciliation Report), which requires insurers to report the unearned premiums returned due to midterm cancellations. Some of the affected insurers would qualify as small or micro businesses. In compliance with Government Code §2006.002(c-1), the department considered waiving

this reporting requirement for insurers operating as small and micro businesses and waiving the requirement while attributing to those insurers an estimated amount of unearned premium surcharges returned as alternative means of achieving the purpose of §5.4191. The department concluded that both of these alternatives would impede the functioning of Insurance Code §2210.613. Insurance Code §2210.613 cannot function if insurers' determination of the premium base to be surcharged and the amount to be collected are not subject to later verification. Because HB 3 eliminated the requirement that premium surcharges be nonrefundable, the amount of unearned premiums that an insurer has refunded is information necessary to verify that the insurer has collected the correct amount of premium surcharges and refunded the correct amounts to policyholders.

Reporting Requirements for Surplus Lines Agents.

Insurers. As discussed in the Public Benefit and Cost Note section of this proposal, the department anticipates that surplus lines agents might encounter some costs as a result of a proposed amendment to §5.4186 (relating to Remittance of Premium Surcharges). This proposed amendment allows the association to impose reporting requirements on surplus lines agents as part of the procedures the association establishes for surplus lines agents remitting surcharges to the association. Some of the affected surplus lines agents would qualify as small or micro businesses. The department has determined that even though the proposed amendment to §5.4186 may have an adverse economic effect on surplus lines agents operating as small or micro businesses, the department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002(c)(2) because surplus lines agents are not required by statute or the proposed

amendment to remit premium surcharges on behalf of the surplus lines insurers they represent. A surplus lines agent can avoid any reporting requirement the association may establish by deciding not to remit premium surcharges on the surplus lines insurers' behalf. Surplus lines agents that operate as small and micro businesses that sell coverage in the catastrophe area and remit premium surcharges on the surplus lines insurers' behalf choose to bear the cost of doing so. The costs outlined in the Public Benefit and Cost section of this proposal provide cost information so that surplus lines agents operating as small or micro businesses in the catastrophe area may make an informed decision on whether to remit premium surcharges on behalf of the surplus lines insurers they represent.

5. TAKINGS IMPACT ASSESSMENT. The department has determined that this proposal affects no private real property interests 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 so does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To have your comments considered, you must submit written comments on the proposal no later than 5 p.m., Central time on March 10, 2014. You may send your comments electronically to the Chief Clerk by email at chiefclerk@tdi.texas.gov, or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of your comments to Brian Ryder, Property and Casualty Actuarial Office, electronically at

Brian.Ryder@tdi.texas.gov, or by mail to Brian Ryder, Mail Code 105-5F, Texas
Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of the proposed amendments in a public hearing under Docket No. 2763 scheduled for 9 a.m. on March 3, 2014, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The hearing will reconvene under the same docket number on March 5, 2014, at 9 a.m. in Ballrooms B and C at Texas A&M University – Corpus Christi, 6300 Ocean Drive, Corpus Christi, Texas. The commissioner will consider written and oral comments presented at the hearing.

7. STATUTORY AUTHORITY. The department proposes the amended sections under Insurance Code §§2210.008, 2210.071, 2210.073, 2210.609, 2210.613, 2210.6136, and 36.001. Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

Section 2210.071 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 must be paid as provided in Insurance Code Chapter 2210, Subchapter B-1, which includes the issuance of public securities. Section 2210.073 authorizes the association to use the proceeds of class 2 public securities issued after an occurrence or series of occurrences to pay for losses not paid under §2210.072, and establishes that class 2 public securities must be repaid in the manner prescribed by Insurance Code Chapter 2210, Subchapter M.

Section 2210.609 provides that the association must repay all public security obligations from available funds, and if those funds are insufficient, then revenue collected under Insurance Code §§2210.612, 2210.613, 2210.6135, and 2210.6136.

Section 2210.611 establishes that for class 2 public securities, the association may use premium surcharge revenue and member assessment revenue collected under Insurance Code §2210.613 in any calendar year that exceeds the amount of the class 2 security obligations and public security administrative expenses payable in that calendar year, and the interest earned on those funds to: (i) pay the applicable public security obligations payable in the subsequent year; (ii) redeem or purchase outstanding public securities; or (iii) make a deposit in the catastrophe reserve trust fund.

Section 2210.613 provides that the association must collect premium surcharges and member assessments to pay class 2 public securities issued under §2210.073.

Section 2210.613(c) establishes the lines of insurance to which the premium surcharge applies. Section 2210.6136 provides that the commissioner may order the issuance of class 2 public securities if all or any part of the class 1 public securities cannot be issued. Section 2210.6136 further provides that the commissioner shall order the association to repay the premium surcharges and member assessments used to pay the cost of a portion of the class 2 public securities issued under this section.

Section 36.001 provides that the commissioner 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 proposal affects the following statutes:

<u>Rule</u>	<u>Statute</u>
§5.4171	Insurance Code §2210.613 and §2210.6136
§5.4172	Insurance Code §2210.613 and §2210.6136
§5.4173	Insurance Code §§2210.071, 2210.073, 2210.609, 2210.613, and 2210.6136
§5.4181	Insurance Code §2210.613 and §2210.6136
§5.4182	Insurance Code §2210.613 and §2210.6136
§5.4184	Insurance Code §2210.613 and §2210.6136
§5.4185	Insurance Code §2210.613 and §2210.6136
§5.4186	Insurance Code §§2210.071, 2210.073, 2210.609, 2210.613, and 2210.6136
§5.4187	Insurance Code §§2210.071, 2210.073, 2210.609, 2210.613, and 2210.6136
§5.4189	Insurance Code §2210.613 and §2210.6136
§5.4190	Insurance Code §2210.613 and §2210.6136
§5.4191	Insurance Code §2210.613 and §2210.6136
§5.4192	Insurance Code §2210.613 and §2210.6136

9. TEXT.

§5.4171. Premium Surcharge Requirement.

(a) Following a Catastrophic Event [~~catastrophic event~~], Insurers [~~insurers~~] may be required to assess a premium surcharge under [~~the~~] Insurance Code §2210.613(b) and [~~§2210.613~~](c) on all policyholders of policies that cover Insured Property that is located in a Catastrophe Area, including automobiles principally garaged in the Catastrophe Area [~~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]~~ property and casualty Insurers ~~[insurers]~~, the Association, the Texas FAIR Plan Association, Texas Automobile Insurance Plan Association policies, Affiliated Surplus Lines Insurers ~~[affiliated surplus lines insurers]~~, and includes property and casualty policies independently procured from Affiliated Insurers ~~[affiliated insurers]~~.

(b) This section and §§5.4172, 5.4173, ~~[and]~~ 5.4181, 5.4182, and 5.4184 - 5.4192 of this division (relating to Premium Surcharge Definitions, Determination of the Surcharge Percentage, Premiums to be Surcharged, ~~[Allocation]~~ Method for Determining the Premium Surcharge, ~~[Specified Lines of Insurance, Allocation Method for Other Lines of Insurance,]~~ Application of the Surcharges, Mandatory Premium Surcharge Collection ~~[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) only ~~[do not]~~ apply to policies written for the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; Residential Property Insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; and commercial automobile physical damage. ~~[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; excess workers' compensation, and surety]~~

(c) This section and §§5.4172, 5.4173, ~~[and]~~ 5.4181, 5.4182, and 5.4184 - 5.4192 of this division do not apply to:

(1) a farm mutual insurance company operating under 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);

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

(4) premium and policies issued by an Affiliated Surplus Lines Insurer ~~[affiliated surplus lines insurer]~~ that a federal agency or court of competent jurisdiction determines to be exempt from a premium surcharge under ~~the~~ Insurance Code Chapter 2210.

(d) For all lines of insurance subject to ~~§5.4182 of~~ this division, ~~[(relating to Allocation Method for Specified Lines of Insurance)]~~ this section and~~;~~ §§5.4172, 5.4173, ~~[and] 5.4181, 5.4182, and 5.4184 - 5.4192~~ of this division are effective June 1, 2011.

~~[(e) For all other lines, this section, §§5.4172, 5.4173 and 5.4181 - 5.4192 of this division are effective October 1, 2011.]~~

§5.4172. Premium Surcharge Definitions. The following words and terms when used in §§5.4171, 5.4173, ~~[and] 5.4181, 5.4182, and 5.4184 - 5.4192~~ of this division (relating to

Premium Surcharge Requirement, Determination of the Surcharge Percentage, Premiums to be Surcharged, [~~Allocation~~] Method for Determining the Premium Surcharge, [~~Specified Lines of Insurance, Allocation Method for Other Lines of Insurance,~~] Application of the Surcharges, Mandatory Premium Surcharge Collection [~~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) will [~~shall~~] have the following meanings unless the context clearly indicates otherwise:

(1) Affiliated Insurer [~~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 [~~insurer~~] includes an Insurer [~~insurer~~] not authorized to engage in the business of property or casualty insurance in the State of Texas.

(2) Affiliated Surplus Lines Insurer [~~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) (No change.)

(4) Insured Property [~~property~~]--Real property, or tangible or intangible personal property including automobiles, covered under an insurance policy issued by an Insurer [~~insurer~~]. Insured Property includes motorcycles, recreational vehicles, and all other vehicles eligible for coverage under a private passenger automobile or commercial

automobile policy.

(5) Insurer--Each property and casualty Insurer [~~insurer~~] authorized to engage in the business of property or casualty insurance in the State of Texas and an affiliate of the [~~such an~~] Insurer [~~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 FAIR Plan [~~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 automobile; 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 maintains an automobile or 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.]~~

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

(7) Residential Property Insurance--Insurance against loss to real or tangible

personal property at a fixed location, including through a homeowners insurance policy, a tenants insurance policy, a condominium owners insurance policy, or a residential fire and allied lines insurance policy.

§5.4173. Determination of the Surcharge Percentage.

(a) The Association must ~~shall~~ review information provided by TPFA ~~[the]~~ ~~[Texas Public Finance Authority]~~ concerning the amount of the Class 2 Public Security Obligations ~~[class 2 public security obligations]~~ and estimated amount of the Class 2 Public Security Administrative Expenses ~~[class 2 public security administrative expenses]~~, including any required Contractual Coverage Amount ~~[contractual coverage amount]~~, to determine whether the Association has sufficient available funds to pay the Public Security Obligations ~~[public security obligations]~~ and Public Security Administrative Expenses ~~[public security administrative expenses]~~, if any, including any Contractual Coverage Amount ~~[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 unable to satisfy the estimated amount of Class 2 Public Securities obligations and administrative expenses with available funds ~~[necessary to collect revenue specified in the Insurance Code §2210.613]~~, the Association must ~~shall~~ submit a written request to the Commissioner ~~[commissioner]~~ to approve a premium surcharge on policyholders with ~~[premises, operations, or]~~ insured property in the Catastrophe Area ~~[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 [~~class 2 public security obligations~~] and estimated amount of the Class 2 Public Security Administrative Expenses [~~class 2 public security administrative expenses~~], including any required Contractual Coverage Amount [~~contractual coverage amount~~], provided in the TPFA notice;

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

(4) the date on [~~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 [~~commissioner~~], each Insurer [~~insurer~~] must [~~shall~~] assess a premium surcharge in a percentage amount set by the Commissioner [~~commissioner~~] to the Insurer's [~~insurer's~~] policyholders. The Premium Surcharge Percentage [~~premium surcharge percentage~~] must [~~shall~~] be applied to the premium attributable to [~~premises, operations, and~~] Insured Property [~~insured property~~] located in the Catastrophe Area [~~catastrophe area~~] on policies that become effective, or on multiyear [~~multi-year~~] policies that become effective or have an anniversary date, during the premium surcharge period when the Premium Surcharge Percentage [~~premium surcharge percentage~~] will be in effect, as specified in §§5.4181, 5.4182, and 5.4184 - 5.4188 of this division (relating to Premiums to be Surcharged, [~~Allocation~~] Method for Determining the

Premium Surcharge, [~~Specified Lines of Insurance, Allocation Method for Other Lines of Insurance,~~] Application of the Surcharges, Mandatory Premium Surcharge Collection [~~Surcharges are Mandatory~~], Remittance of Premium Surcharges, Offsets, and Surcharges not Subject to Commissions or Premium Taxes, respectively). The premium surcharge date specified by the Commissioner must be at least 180 days after the date the Commissioner issues notice of approval of the Public Securities.

(d) This section is part of the Association's Plan of Operation [~~Texas Windstorm Insurance Association's plan of operation~~] and will [~~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 [~~premium surcharge percentage~~] must [~~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 by Insurers that are subject to premium taxation by the Comptroller [~~comptroller~~], including policy fees not reported as premium; and [~~surplus lines premium tax, and independently procured premium tax.~~]

(3) premium subject to surplus lines premium tax, and premium subject to 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 ~~[comptroller]~~.

§5.4182. ~~[Allocation]~~ Method for Determining the Premium Surcharge~~[Specified Lines of Insurance]~~.

(a) The methods addressed in this section will ~~[shall]~~ apply to all:

(1) policies written and reported under the following annual statement lines of business: fire; allied lines; farm and ranch owners ~~[multi-peril crop; farmowners]~~; homeowners; commercial multiple peril ~~[multi-peril] (nonliability portion [property])~~; ~~[commercial multi-peril policies written on an indivisible premium basis, regardless whether reported as commercial multi-peril (property) or commercial multi-peril (liability); earthquake;]~~ private passenger auto no fault (personal injury protection (PIP)), other private passenger auto liability, and private passenger auto physical damage; and commercial auto no fault (PIP) ~~[(personal injury protection(PIP))]~~, other commercial auto liability, and commercial auto physical damage ~~[for policies where the premium is determined based on the geographic location of the exposures, or where the automobiles are principally garaged; boiler and machinery; burglary and theft]; and~~

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

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

(b) The ~~[If the policy is rated based on the geographic location of the insured's premises, operations, or insured property, the]~~ premium surcharge will ~~[shall]~~ be

determined by applying the Premium Surcharge Percentage [~~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 [~~insured property~~] located in the Catastrophe Area [~~catastrophe area~~].

(c) In cases where the policy is composite rated and the premium attributable to Insured Property located in the Catastrophe Area cannot be reasonably determined, the Insurer must determine the premium surcharge based on the insured address. If the insured address is within a designated Catastrophe Area, then the Insurer must determine the premium surcharge by applying the Premium Surcharge Percentage to the full policy premium determined in §5.4181 of this division. If the insured address is not within a designated Catastrophe Area, then no premium surcharge applies to the policy [~~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~~].

§5.4184. Application of the Surcharges.

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

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

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

(b) Premium surcharges are refundable ~~[non-refundable]~~ under ~~[the]~~ Insurance Code §2210.613.

(1) If the policy is canceled ~~[cancelled]~~, an amount ~~[a pro-rata portion]~~ of the surcharge that is proportionate to the return premium must be refunded ~~[is not returned]~~ to the policyholder; however,

(2) instead of a refund of the premium surcharge, the insurer may credit the return premium surcharge against amounts due the Insurer but unpaid by the policyholder; and

(3) [(2)] an additional surcharge will ~~[shall]~~ not apply to a policy that was canceled after ~~[cancelled subsequent to]~~ the effective date of the policy, and is later reinstated, if the premium surcharge was paid in full. If the policyholder did not pay the premium surcharge in full, the policyholder must pay the premium surcharge that is due but unpaid before the Insurer may reinstate the policy. For purposes of this section a policy is reinstated if it covers the same period as the original policy without a lapse in coverage, except as provided in ~~[the]~~ Insurance Code §551.106.

~~[(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.]~~

(c) ~~(d)~~ If a midterm ~~mid-term~~ policy change increases the premium on the policy, the policyholder ~~insureds~~ must pay an additional surcharge for the increased premium attributable to ~~premises, operations, or~~ Insured Property ~~insured property~~ located in the Catastrophe Area ~~catastrophe area~~, which will ~~shall~~ be determined ~~[as follows:]~~

~~[(1) For policies where the premium surcharge is determined under 5.4182 or §5.4183(1) of this division (relating to Allocation Method for Specified Lines of Insurance and Allocation Method for Other Lines of Insurance), the additional premium surcharge is determined]~~ by applying the applicable Premium Surcharge Percentage ~~[premium surcharge percentage]~~ to that portion of the additional premium attributable to ~~premises, operations or~~ Insured Property ~~insured property~~ located in the Catastrophe Area ~~catastrophe area~~.

~~[(2) For policies where the premium surcharge is determined under §5.4183(1) and (2) of this division, the additional premium surcharge is determined by applying the premium surcharge percentage and the catastrophe area allocation percentage to the additional premium.]~~

(d) ~~(e)~~ If a midterm ~~mid-term~~ policy change decreases the premium, the policyholder is due a refund of the surcharge for the decreased premium attributable to Insured Property located in the Catastrophe Area, which must be determined by applying the applicable Premium Surcharge Percentage to that portion of the return premium attributable to Insured Property located in the Catastrophe Area ~~[there shall be no corresponding decrease in the surcharge or refund of the surcharge]~~. The insurer must credit or refund the excess surcharge to the policyholder within 20 days of the date of the transaction. The Insurer may credit any refund paid or credited to the policyholder to the

Association through the offset process described in §5.4187 of this division (relating to Offsets).

(e) [(f)] Surcharges or refunds must [shall] apply to all premium changes resulting from [due to] Exposure [exposure] or premium audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration. On inception of the policy [Upon policy inception], the premium surcharge must [shall] be collected on the deposit premium paid. If, after Exposure [exposure] or premium audit, retrospective rating adjustment, or similar adjustment after policy expiration, an additional premium is required, an additional surcharge must [shall] be paid. If, after Exposure [exposure] or premium audit, retrospective rating adjustment, or other similar adjustment after policy expiration, the deposit premium exceeds the actual premium, the excess surcharge must [shall] be refunded to the policyholder [insured], and the Insurer [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 must [shall] be determined [as follows:]

[(1) For policies where the premium surcharge is determined under §5.4182 or §5.4183(1) of this division, the additional premium surcharge (or refund) is determined] by applying the Premium Surcharge Percentage [premium surcharge percentage] in effect on the inception date of the policy, or the anniversary date of the policy in the case of multiyear [multi-year] policies, to the additional premium (or return premium) attributable to Insured Property located in the Catastrophe Area [catastrophe area].

[(2) For policies where the premium surcharge is determined under §5.4183(1) and (2) of this division, the additional premium surcharge (or refund) is

~~determined by applying the premium surcharge percentage and the catastrophe area allocation percentage to the additional premium (or return premium).]~~

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

§5.4185. Mandatory Premium Surcharge Collection ~~[Premium Surcharges Are Mandatory].~~

(a) Except as provided in §5.4127(h) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), Insurers may not pay the surcharges instead ~~[-in lieu]~~ of surcharging their policyholders.~~;~~ However ~~[however]~~, an Insurer ~~[insurer]~~ may remit a surcharge prior to collecting the surcharge from its policyholder.

(b) Insurers must collect the premium surcharges either:

(1) when the corresponding written premium transaction is effective; or

(2) proportionately as the Insurer collects the premium.

(c) Insurers may elect only one of the premium surcharge collection methods described in subsection (b)(1) and (2) of this section and this premium surcharge collection method must be used for all policies issued by the Insurer.

~~[(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.]~~

~~(d)[(e)]~~ Under ~~[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) Except as provided in §5.4143 of this division (relating to Trust Funds for the Payment of Class 2 Public Securities), Insurers must ~~[shall]~~ remit to the Association the aggregate amount of surcharges as provided by this section. ~~[paid by its policyholders; however, an]~~ An Affiliated Surplus Lines Insurer ~~[affiliated surplus lines insurer]~~ may allow a surplus lines agent to remit premium surcharges to the Association on its behalf in compliance with ~~[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 ~~[affiliated surplus lines insurers]~~ to remit surcharges under ~~[pursuant to]~~ subsection (a) of this section, must ~~[shall]~~ remit all surcharges ~~[paid by its insureds]~~ not later than the last day of the month following the month in which the corresponding written premium transaction ~~[surcharge]~~ was effective ~~[received]~~.

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

or the Premium Surcharge Trust Fund.

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

(e) An Affiliated Surplus Lines Insurer [~~affiliated surplus lines insurer~~] that [~~who~~] allows an agent to remit premium surcharges to the Association under [~~pursuant to~~] subsection (a) of this section may be held liable by the Department [~~department~~] for the failure of its agent to remit the premium surcharges or timely remit the premium surcharges, under [~~pursuant to~~] subsection (b) of this section.

(f) As part of the procedures established by the Association under subsection (a), of this section the Association may impose reporting requirements on surplus lines agents so that the Association can fulfill its duties under §5.4190(f) of this division (relating to Annual Premium Surcharge Report).

§5.4187. Offsets.

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

(1) the portion of the surcharge the Insurer [~~insurer~~] was not able to collect from the policyholder [~~insured~~], if the policy was canceled or expired; [prior to the
collection of any funds for premium or any other obligation or debt owed to the insurer; or]

(2) the portion of the surcharge remitted to the Association, or deposited

directly in the Premium Surcharge Trust Fund, that was later refunded to the policyholder as a result of a midterm cancellation or midterm policy change, as described in §5.4184 of this division (relating to Application of the Surcharges); or

(3) [(2)] the portion of a surcharge remitted [paid] to the Association, or deposited directly in the Premium Surcharge Trust Fund, in excess of a deposit premium as described in §5.4184 of this division [relating to Application of the Surcharges].

(b) An agent may not offset payment of a premium surcharge to the Insurer [insurer] for any reason. However, a surplus lines agent allowed by an Affiliated Surplus Lines Insurer [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.

§5.4189. Notification Requirements.

(a) Insurers must [shall] provide written notice to policyholders receiving a premium surcharge that their policy contains a surcharge. The notice must [shall] read: "Texas Insurance Code Sections 2210.073 and 2210.613 require a premium surcharge be added to certain property and casualty insurance policies providing coverage in the catastrophe area to pay the debt service on public securities issued to pay Texas Windstorm Insurance Association claims resulting from a catastrophe event. A premium surcharge {in the amount of \$_____} has been added to your premium. [This premium surcharge is non-refundable under Texas Insurance Code Section 2210.613.] Should your policy be canceled by you or the insurer prior to its expiration date, a proportionate amount of the premium surcharge will [not] be refunded to you. Failure to pay the surcharge is grounds

for cancellation of your policy."

(b) Insurers must [~~shall~~] provide written notice to policyholders of the dollar amount of the premium surcharge.

(c) Notices required under subsections (a) and (b) of this section must [~~shall~~]:

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

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

(3) be provided within 20 days of the date [~~end~~] of the transaction [~~period as specified in §5.4184(c) of this division (relating to Application of the Surcharges)] for any midterm [~~mid-term~~] change in the premium surcharge; and~~

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

§5.4190. Annual Premium Surcharge Report.

(a) This section applies [~~does not apply~~] to an Insurer [~~insurer~~] that, during the calendar year, [~~exclusively~~] wrote any [~~or all~~] of the following types of [~~lines of~~] insurance: commercial fire; commercial allied lines; farm and ranch owners; Residential Property Insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; or commercial automobile physical damage [~~federal flood insurance; medical malpractice insurance; accident and health insurance; workers' compensation insurance; or surety~~].

(b) No later than 90 days following the end of a calendar year in which a premium

surcharge was in effect, each Insurer [~~insurer~~] must [~~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~~] unless premium surcharges were in effect for less than 45 days within the calendar year.

(c) Annual premium surcharge reports must [~~shall~~] provide information for each insurance company writing property or casualty insurance in the State of Texas, including Affiliated Surplus Lines Insurers [~~affiliated surplus lines insurers~~], and Affiliated Insurers [~~affiliated insurers~~] not authorized to engage in the business of insurance that issued independently procured insurance policies covering Insured Property [~~premises, operations, or insured property~~] in the State of Texas.

(d) Annual premium surcharge reports must [~~shall~~] provide information for the following annual statement lines of business: fire; allied lines; farmowners multiple peril; homeowners multiple peril; commercial multiple peril (nonliability portion); private passenger automobile no fault (PIP); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; or commercial automobile physical damage [~~all applicable annual statement lines of business~~] for which the Insurer [~~insurer~~] reported premium for the applicable calendar year.

(e) Annual premium surcharge reports must [~~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) the method the Insurer uses to collect premium surcharges under §5.4185(b) of this division (relating to Mandatory Premium Surcharge Collection);

(5) [(4)] for policies with effective dates, or multiyear [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 for all applicable lines of business:

(A) for [~~For~~] all policies subject to a premium surcharge:

(i) the total written premium attributable [~~or allocated~~] to [~~premises, operations, or~~] Insured Property [~~insured property~~] located in the Catastrophe Area [~~catastrophe area~~]; and

(ii) the total written premium attributable [~~or allocated~~] to [~~premises, operations, or~~] Insured Property [~~insured property~~] located outside the Catastrophe Area [~~catastrophe area~~]; and

(B) the total written premium for policies not subject to a premium surcharge because the policyholder [~~insured~~] had no [~~premises, operations, or~~] insured property located in the Catastrophe Area [~~catastrophe area~~];

(6) [(5)] for policies effective in portions of the calendar year when no surcharge period was in effect, or in the case of multiyear [multi-year] policies with an anniversary date in portions of the calendar year when no surcharge was in effect, the total written premium;

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

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

(f) The Association must ~~[shall]~~:

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

(A) the consistency of premium surcharges actually remitted to the Association or deposited directly into the Premium Surcharge Trust Fund, with premium surcharges shown in the reports as collected and the premium surcharges shown in the reports as remitted to the Association or deposited directly into the Premium Surcharge Trust Fund ~~[Association]~~; and

(B) the consistency of premiums shown in the reports as attributable to the Catastrophe Area ~~[catastrophe-area]~~ with premium surcharges shown in the reports as collected by the Insurer ~~[insurer]~~, given the requirements regarding the determination of premium surcharges in this division;

(2) inform the Department ~~[department]~~ of any Insurer ~~[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 ~~[department]~~.

§5.4191. Premium Surcharge Reconciliation Report.

(a) This section applies ~~[does not apply]~~ to an Insurer ~~[insurer]~~ that, during an applicable calendar year, ~~[exclusively]~~ wrote any or all of the following types ~~[lines]~~ of

insurance: commercial fire; commercial allied lines; farm and ranch owners; Residential Property Insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)); other private passenger automobile liability; private passenger automobile physical damage; commercial automobile no fault (PIP); other commercial automobile liability; or commercial automobile physical damage [~~federal flood insurance; medical malpractice insurance; accident and health insurance; workers' compensation insurance, or surety~~].

(b) On a [~~Upon the~~] written request from [~~of~~] the Department [~~department~~], an Insurer [~~insurer~~] must [~~shall~~] provide the Department [~~department~~] with a premium surcharge reconciliation report for the year specified by the Department [~~department~~] in its request.

(c) Reconciliation reports must [~~shall~~] be provided to the Department [~~department~~] within 15 [~~10~~] working days after the date the request is received by the Insurer [~~insurer~~].

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

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

(A) premium on policies subject to a premium surcharge, including premium attributable [~~allocated~~] to Insured Property located [~~the catastrophe area on policies having premises, operations, or insured property~~] both in and outside of the

Catastrophe Area [~~catastrophe area~~]; and

(B) premium on policies not subject to a premium surcharge, including premium attributable [~~not allocated~~] to Insured Property located [~~the catastrophe area on policies having premises, operations, or insured property~~] both in and outside of the Catastrophe Area [~~catastrophe area~~];

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

(A) premium increases on policies subject to a premium surcharge, including premium attributable [~~allocated~~] Insured Property located to [~~the catastrophe area on policies having premises, operations, or insured property~~] both in and outside of the Catastrophe Area [~~catastrophe area~~]; [and]

(B) premium decreases on policies subject to a refund or credit of the premium surcharge, including premium attributable to Insured Property located both in and outside the Catastrophe Area; and

(C) [(B)] premium on policies not subject to a premium surcharge, including premium increases and decreases attributable [~~not allocated~~] to Insured Property located [~~the catastrophe area on policies having premises, operations, or insured property~~] both in and outside of the Catastrophe Area [~~catastrophe area~~] [~~and premium refunds, whether related to coverage within or without the catastrophe area~~]; [and]

(3) unearned premiums returned due to midterm cancellations occurring within the specified time period separately for:

(A) return premium on policies subject to a premium surcharge, including return premium attributable to Insured Property located both in and outside the

Catastrophe Area; and

(B) return premium on policies not subject to a premium surcharge,
including return premiums attributable to Insured Property located both in and outside the
Catastrophe Area;

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

(A) premium on policies subject to a premium surcharge, including
premium attributable [~~allocated~~] to Insured Property located [~~the catastrophe area on~~
~~policies having premises, operations, or insured property~~] both in and outside of the
Catastrophe Area [~~catastrophe area~~]; and

(B) premium on policies not subject to a premium surcharge,
including premium attributable [~~not allocated~~] to Insured Property located [~~the catastrophe~~
~~area on policies having premises, operations, or insured property~~] both in and outside of
the Catastrophe Area [~~catastrophe area~~];

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

(6) separately for paragraphs (2)(B), (3)(A), and (4)(A) of this subsection, the
amounts of premium surcharges refunded or credited to the policyholder;

(7) the total amount of premium surcharges claimed as offsets by the Insurer
under §5.4187 of this division (relating to Offsets); and

(8) [(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.

(e) Nothing in this section limits the Department's [~~department's~~] authority to obtain information from Insurers [~~insurers~~] under the Insurance Code.

(f) A report provided to the Department [~~department~~] under this section may be provided to the Association.

§5.4192. Data Collection.

(a) The Department [~~department~~] may request from each insurer the information necessary to enable the Department [~~department~~] to determine the Premium Surcharge Percentage [~~premium surcharge percentage~~] applicable to policyholders [~~insureds~~] with Insured Property [~~premises, operations, or insured property~~] located in the Catastrophe Area [~~catastrophe area~~].

(b) For lines of insurance subject to [~~§5.4182 of~~] this division [~~(relating to Allocation Method for Specified Lines of Insurance)~~] for policies in force on or after October 1, 2011, [~~and for lines of insurance subject to §5.4183 of this division (relating to Allocation Method for Other Lines of Insurance) for policies effective on or after October 1, 2011,~~] each Insurer [~~insurer~~] must [~~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 or §5.4183(1) of~~] this division, the total written premium attributable to Insured Property [~~the catastrophe area for policies with premises, operations, or insured property~~] located in the Catastrophe Area. [~~catastrophe area; and~~]

[~~(2) for policies where the premium surcharge was, or would be determined~~

~~under §5.4183(1) or (2) of this division, the total written premium allocated to the catastrophe area.]~~

(c) When possible, and practical, the Department ~~[department]~~ will obtain information from the Texas Surplus Lines Stamping Office prior to requesting information from Affiliated Surplus Lines Insurers ~~[affiliated surplus lines insurers]~~.

(d) Nothing in subsection (c) of this section should be read to mean that subsections (a) and (b) of this section do not apply to Affiliated Surplus Lines Insurers ~~[affiliated surplus lines insurers]~~.

(e) Nothing in this section limits the Department's ~~[department's]~~ authority to obtain information from Insurers ~~[insurers]~~ under the Insurance Code.

10. CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued at Austin, Texas, on January 28, 2014.



Sara Waitt
General Counsel
Texas Department of Insurance