

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE
SUBCHAPTER M. FILING REQUIREMENTS
28 TAC §5.9303

INTRODUCTION. The Texas Department of Insurance proposes amending 28 TAC §5.9303, relating to the definition of catastrophe. Section 5.9303 implements Insurance Code §542.059. The amendment updates the thresholds for extending claim-handling deadlines under Insurance Code §542.059(b).

EXPLANATION. Insurance Code Chapter 542, Subchapter B, requires insurers to meet specific deadlines when they process and pay insurance claims. Insurance Code §542.059 extends those deadlines by 15 days in the event of a weather-related catastrophe or major natural disaster, as defined by the commissioner of insurance. Under 28 TAC §5.9303(c)(2), a weather event constitutes a catastrophe or major natural disaster if, in a reasonably defined area in which the losses occur, it results in estimates of at least 3,000 claims in aggregate for all insurers and at least \$5 million in estimated losses in aggregate for all insurers. The proposed amendment modifies this criteria and adds alternative criteria for declaring a weather-related catastrophe or major natural disaster.

The proposed amendment divides §5.9303(c)(2) into two parts. First, §5.9303(c)(2)(A) updates the thresholds for a catastrophe or major natural disaster to at least 5,000 estimated claims and \$50 million in estimated losses.

Second, to ensure adequate time to process and pay claims when a weather event causes widespread but less costly damage, §5.9303(c)(2)(B) provides alternative criteria to establish a weather-related catastrophe or major natural disaster. Section 5.9303(c)(2)(B) adds a new threshold of at least 10,000 estimated claims in a reasonably defined area in which the losses occur, regardless of total losses.

In addition, the proposed text updates citations to the Insurance Code to reflect changes made by the nonsubstantive recodification of the Insurance Code by House Bill 2922, 78th Legislature, Regular Session (2003). The proposal also includes nonsubstantive editorial and formatting changes to conform the text of the section to TDI's current writing style and improve the rule's clarity.

TDI received no comments on an informal draft of this proposed amendment, which was posted on its website on December 8, 2016. With the exception of minor grammatical changes, the substantive text of this proposed amendment is the same as the text of the informal draft.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director of the Property and Casualty Lines Office of the Regulatory Policy Division, has determined that for each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of this proposal. Ms. Baker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Ms. Baker expects that administering the proposed amendment will have the public benefits of ensuring that TDI's rules conform to Insurance Code §542.059(b), and appropriately balancing the public interest in the prompt payment of insurance claims with the extra time insurers need to diligently process the higher volume of claims following an especially destructive weather event.

Ms. Baker expects that the proposed amendment will not increase the cost of compliance with Insurance Code Chapter 542, Subchapter B because it does not impose additional requirements on regulated persons or entities. The commissioner must define "weather-related catastrophe or major natural disaster" to implement Insurance Code §542.059(b), which extends claim-handling deadlines for insurers. As a result, the amendment will not increase the cost of compliance with TDI regulations.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that the proposed amendment will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses. Insurance Code §542.059 applies equally to all insurers authorized to engage in business as an insurance company or to provide insurance in Texas. Defining weather-related catastrophes and major natural disasters is necessary to implement Insurance Code §542.059, which extends claim-handling deadlines for insurers. Finally, the proposed amendment does not specify any additional requirements. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. TDI 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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5 p.m., Central time, on July 10, 2017. TDI requires two copies of your comments. Send one copy to ChiefClerk@tdi.texas.gov, or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to CommercialPC@tdi.texas.gov, or to Marianne Baker, Director, Property and Casualty Lines Office, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, separate from any comments, to ChiefClerk@tdi.texas.gov, or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

STATUTORY AUTHORITY. TDI proposes to amend §5.9303 under Insurance Code §542.059 and §36.001. Insurance Code §542.059 requires the commissioner to define "weather-related catastrophe or major natural disaster" to implement the statute. Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.9303 implements Insurance Code §542.059.

TEXT.

§5.9303. Definition of Catastrophe

(a) An individual insurer or a group of insurers may petition the Texas Department of Insurance for a determination that a weather-related event is a catastrophe or major natural disaster in accordance with ~~the~~ Insurance Code ~~§542.059~~, ~~Article 21.55, §5(d)~~. The Texas Department of Insurance will ~~shall~~ make a determination within three business days of receipt of a a ~~such~~ petition, and if the event ~~event(s)~~ is determined to be a catastrophe, it will ~~shall~~ notify all companies, by bulletin issued by the Texas Department of Insurance of the designated catastrophe.

(b) An insurer's petition as specified in subsection (a) of this section must ~~shall~~ include, but is not limited to, the following information:

(1) type of losses: wind, hail, tornado, hurricane, freeze, or other weather-related losses;

(2) specific lines of insurance affected: property, automobile, inland marine (any lines which may involve a first party claim);

(3) location of the loss: towns [~~town(s)~~], cities [~~city(ies)~~], or other specified areas;

(4) specific time period of the event [~~event(s)~~] which produced the catastrophe;

(5) the insurer's total estimated dollar losses for insured property, by line of business;

(6) the insurer's total estimated number of claims, by line of insurance;

(7) a statement of the reason [~~reason(s)~~] claims cannot be processed within the time periods specified under the conditions of the property and casualty policies and [~~the~~] Insurance Code §§542.055 – 542.057 [~~, Article 21.55, §§2-4~~].

(c) For [~~In order for~~] a weather-related event [~~event(s)~~] to be considered a catastrophe or major natural disaster by the Texas Department of Insurance [~~, all of the following conditions must be present~~];
[-]

(1) The area in which the losses occur must be defined by reasonable boundaries.

(2) For the designated area where the losses occur, [~~Estimated total dollar losses must be~~] either the:

(A) estimated total dollar losses must be \$50 million [~~\$5 million~~] or more in the aggregate for all insurers, and the estimated total number of claims must be 5,000 [~~3,000~~] or more in the aggregate for all insurers; [-] [~~for the designated area where the losses occur.~~] or

(B) estimated total number of claims must be 10,000 or more in the aggregate for all insurers.

(3) The estimated dollar losses and number of claims in paragraph (2) of this subsection may include all lines of insurance listed [~~outlined~~] in subsection (b)(2) of this section.

(d) If the Texas Department of Insurance determines a catastrophe exists, the provisions of [~~the~~] Insurance Code §542.059 [~~, Article 21.55, §5(d), shall~~] apply for all affected insurers.

(e) Claims processed in accordance with ~~[the]~~ Insurance Code ~~§542.059~~, ~~Article 21.55,~~ ~~§5(d),~~ must ~~shall~~ include all losses arising from the event or events identified in subsection (b)(4) of this section.

(f) In addition to subsections (a)-(c) of this section, the Texas Department of Insurance may use any other criteria it deems appropriate for determining if a catastrophe exists in connection with a weather-related event or natural disaster.

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

Issued in Austin, Texas, on May 25, 2017.



Norma Garcia
General Counsel
Texas Department of Insurance