

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
28 TAC §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4160 - 5.4162, 5.4164,
5.4167, and 5.4171.

INTRODUCTION. The Commissioner of Insurance adopts amendments to §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4161, 5.4162, 5.4164, 5.4167, and 5.4171 and adopts new §5.4160. The amendments and new section relate to Texas Windstorm Insurance Association (association) loss funding. This adoption implements provisions in House Bill 1900, 86th Legislature, 2019 (HB 1900).

The Texas Department of Insurance (TDI) adopts §§5.4114, 5.4134, 5.4141, 5.4142, 5.4164, and 5.4171 without changes to the proposed text published in the June 19, 2020, issue of the Texas Register (45 TexReg 4138). Sections 5.4102, 5.4133, 5.4160, 5.4161, 5.4162, and 5.4167 are adopted with changes to the proposed text; these changes are described in the Reasoned Justification.

REASONED JUSTIFICATION. The association is the insurer of last resort for windstorm and hail insurance in a Commissioner-designated area along the Texas coast. The association provides windstorm and hail insurance coverage to those who are unable to get that coverage in the private market.

By statute, the association must pay its losses (policyholder claims) and operating expenses from net premium and other revenue. If net premium and other revenue are not enough, the association must pay losses and operating expenses from the catastrophe reserve trust fund (CRTF), which is an account maintained by the Texas Comptroller. The CRTF is funded mainly from the association's yearly profits. Losses and operating expenses for a catastrophe year that are greater than the association's net premium and other

revenue for that year and amounts in the CRTF must be paid with proceeds of alternating classes of public securities and member insurer assessments.

Amendments to §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4161, 5.4162, 5.4164, 5.4167, and 5.4171 and the adoption of new §5.4160 are necessary to implement the loss funding provisions in HB 1900. HB 1900 amended Insurance Code §2210.453 (which addresses the association's reinsurance funding) and Insurance Code §2210.071 and §2210.0715 (which address excess loss payment and payment from reserves and the CRTF).

The amendments to Insurance Code §2210.453 require that the association, with Commissioner approval, assess its member insurers to pay for any reinsurance it purchases in excess of the association's statutory minimum funding level. By statute, the association must maintain total available loss funding in an amount not less than the association's probable maximum loss for a catastrophe year with a one-in-100-year probability. Member assessments to pay for reinsurance under HB 1900 are distinct from member assessments to pay losses and would not affect the association's ability to make loss assessments.

Former §5.4114(e) allowed a CRTF disbursement to allow the association to buy reinsurance in an amount that enables the association to exceed its statutory minimum funding level. Because Insurance Code §2210.453 now requires members to pay this amount, TDI has deleted this provision.

Adopted §5.4160 requires the association to discuss determining its one-in-100-year probable maximum loss for the year at the association's first regular board meeting each year. Following the discussion at this meeting, the association must determine its one-in-100-year probable maximum loss for the year and disclose it to the Commissioner

not later than April 1. The association must disclose its method for determining its one-in-100-year probable maximum loss at the same time.

HB 1900 does not specify how the association must determine its one-in-100-year probable maximum loss or how transparent its method must be. Adopted §5.4160 requires the association to have a public discussion at its board meeting and to disclose information about its method so that anyone interested can see how the association determined its one-in-100-year probable maximum loss. The determination and information must be disclosed each year, regardless of whether the association requests a reinsurance assessment.

Under adopted §5.4160, if the association decides to buy reinsurance that exceeds its one-in-100-year probable maximum loss, it must get a quote for reinsurance that equals the one-in-100-year probable maximum loss. The association must disclose this quote to the board along with the total deposit premiums for all reinsurance for the year. The quote and the total deposit premiums must be disclosed not later than the board's second regular meeting of the year, which is usually in early May.

Members will be able to estimate the amount of reinsurance premium applicable to coverage that exceeds the one-in-100-year probable maximum loss and for which they will be assessed. Typically, the association begins to negotiate for reinsurance in April, with contracts running from June 1 to May 31 of the following year. The deadlines for the association to provide its one-in-100-year probable maximum loss, as well as the quote and the total deposit premiums, have been adopted based on this schedule.

Under adopted §5.4162, the association notifies each member of the amounts of net direct premiums the member wrote in Texas during the preceding calendar year and of net direct premiums of wind and hail insurance the member voluntarily wrote in the

catastrophe area during the preceding calendar year. The association typically sends this notice to members in the late summer. Members have 30 days to appeal the amounts in the notice.

The association also notifies each member what its percentage of participation in an assessment will be, if there is an assessment during the current calendar year. The association typically sends the percentage of participation notice to members in the fall. Members have 30 days to appeal the percentage of participation in the notice.

Adopted §5.4162 requires that the notice of net direct premiums and voluntary wind and hail premiums and the notice of participation percentage inform members that the participation percentage will be used for reinsurance assessments, if there are any during the current calendar year.

Adopted §5.4160 requires the association to issue any reinsurance assessment by the later of either 120 days after the date the association receives the data that TDI provides under §5.4162(f) of this title for that year, or December 1 of that year. Under §5.4162(f), TDI gives the association each member company's net direct premiums and the aggregate net direct premiums of all member companies written during the preceding calendar year, as reported by member companies to TDI. Statute exempts some companies from reporting premium to TDI. The association obtains data for the exempted companies from other sources, such as the Surplus Lines Stamping Office of Texas. The 120-day alternate deadline in adopted §5.4160 falls on the 120th day after the date the association receives the data TDI provides, not the date the association receives data from other sources.

There are three considerations in setting the deadline by which the association must issue any reinsurance assessment.

The first consideration is the risk that the association will need to adjust the assessment or issue refunds to members. The association pays an initial deposit premium in periodic installments. The deposit premium is based on the association's estimated exposure for that year's hurricane season. The association's final premium, based on its actual exposure during hurricane season, is not known until the end of October. Issuing a reinsurance assessment only after the final premium is known avoids the risk that the association will need to adjust the assessment or issue refunds to members.

Second, because the association must disclose its one-in-100-year probable maximum loss for the year by April 1, issuing a reinsurance assessment by the later of December 1 or 120 days after the date the association receives the data TDI provides under §5.4162(f) allows time for any appeal of the association's determination of its one-in-100-year probable maximum loss.

Third, under §5.4111 and Insurance Code §2210.452, the association must deposit its net gain from operations for each calendar year in the CRTF. Net gain from operations includes reinsurance premiums not paid or payable from member assessments. Each of the two possible deadlines in the adopted rule require the association to determine the reinsurance premiums not paid or payable from member assessments early enough to include that amount in the net gain from operations from the same year.

As proposed, §5.4160 required the association to issue any reinsurance assessment for the year not later than December 1. Adopted §5.4160 contains two possible deadlines because of comments on the proposed rule.

The adopted rules also implement HB 1900's amendments to Insurance Code §2210.071, on payment of excess losses, and §2210.0715, on payment from reserves and the CRTF.

To ensure that it is clear that net premium earned in one catastrophe year can be pledged to repay public securities issued in prior catastrophe years, this adoption amends the rules on the class 1 public security trust fund and the class 2 and class 3 public security trust funds, in §5.4141 and §5.4142, respectively. More specifically, amended Insurance Code §2210.071 prohibits the association from paying one catastrophe year's losses with premium earned in a later year. The amendments clarify that net premium can be pledged to repay class 1, class 2, and class 3 payment obligations, even if those obligations are for public securities issued or disbursed to pay for losses resulting from an event that occurred in a prior year.

To harmonize the amendments to Insurance Code §2210.0715 with §2210.608, on use of public security proceeds, this adoption amends the rules on public security proceeds.

Finally, in this adoption TDI removes the requirement that each member insurer give the association a copy of its Exhibit of Premiums and Losses ("Statutory Page 14") from its Texas Property and Casualty Annual Statement. The information on Statutory Page 14 is accessible through the National Association of Insurance Commissioners (NAIC) and is published annually on TDI's website.

Adopted §§5.4102, 5.4160, and 5.4167 contain nonsubstantive revisions from the proposed text for style or nomenclature purposes.

Section 5.4102. Definitions. Section 5.4102 is the definition section for Division 3. Adopted §5.4102(39), defining "other revenue," differs from the proposed text. In response to comments, new text is added at the end of the definition to clarify what investment income the association may count as other revenue when determining excess

losses and when determining whether net premium and other revenue are sufficient to pay for public securities.

An amendment to §5.4102(4), defining "association surcharge percentage," corrects a reference to the Administrative Code, changing §5.4127 to §5.4126.

An amendment to §5.4102(10), defining "catastrophic event," conforms the rule with definitions in Insurance Code §2210.602(1-b). The amendment adds the qualifier "during a calendar year" to the definition.

An amendment to §5.4102(32), defining "net gain from operations," implements amendments to Insurance Code §2210.071 and §2210.453. The amendments clarify that the association cannot include losses incurred in prior catastrophe years in its calculation of net gain from operations. Additionally, the amendments conform the rule to Insurance Code §2210.453, requiring members to pay reinsurance premiums applicable to the reinsurance coverage that exceeds the association's one-in-100-year probable maximum loss.

An amendment to §5.4102(34), defining "net premium," implements amendments to Insurance Code §2210.071. The amendment to §5.4102(34) works in conjunction with the amendments to §5.4141 and §5.4142, which contain the rules on the class 1 public security trust fund and the class 2 and class 3 public security trust funds. The sentence "Following the issuance of public securities, net premium may be pledged for the payment of class 1, class 2, and class 3 payment obligations" is removed from the definition and an equivalent sentence is added to §5.4141 and §5.4142. Because it is a substantive rule, the sentence is more appropriate in those sections than in a definition and is more visible there.

An amendment adds new §5.4102(37) to define "one-in-100-year probable maximum loss" as the minimum funding level required by Insurance Code §2210.453(b). Defining the term implements the amendments to Insurance Code §2210.453. Subsequent paragraphs in §5.4102 are renumbered as appropriate to reflect the new paragraph.

The amendments to the definition of "other revenue" (currently §5.4102(38), renumbered as §5.4102(39)) implement the amendments to Insurance Code §2210.453 by excluding reinsurance assessments from other revenue. The amendments implement the amendments to Insurance Code §2210.071 by excluding income on funds held by the Texas Treasury Safekeeping Trust Company from other revenue. The amendments also clarify what income may be counted as other revenue when determining whether net premium and other revenue are sufficient to pay for public securities under Insurance Code §§2210.612, 2210.613, and 2210.6131. These amendments clarify which funds the association can pledge to repay public securities.

Section 5.4114. Disbursements from the Catastrophe Reserve Trust Fund. Section 5.4114 describes the procedures for disbursing funds from the CRTF. Current §5.4114(e) allows a CRTF disbursement to buy reinsurance in an amount that enables the association to exceed its one-in-100-year probable maximum loss. Because Insurance Code §2210.453 now requires members to pay for reinsurance coverage that exceeds this amount, TDI has removed subsection (e). The subsections that follow subsection (e) are redesignated as appropriate to reflect this change, and a reference to current subsection (g) in subsection (a)(4) is changed to reference redesignated subsection (f).

Section 5.4133. Public Security Proceeds. Amendments to §5.4133 clarify how HB 1900's amendments to Insurance Code §2210.0715 harmonize with Insurance Code §2210.608(b). The amendments to §2210.0715 prohibit including the proceeds of public

securities issued for one catastrophe year with reserves available for a subsequent catastrophe year. Section 2210.608(b) allows "proceeds remaining after the purposes for which the public securities were issued are satisfied" to be used to pay for outstanding public securities or administrative expenses. Then, any remaining proceeds must be put in the CRTF.

The amendments to §5.4133 add new subsections (e) and (f). These subsections describe how public security proceeds may be used during the catastrophe year for which they are issued or disbursed and during subsequent years. The amendments ensure that the proceeds put in the CRTF (which may be used to pay for losses in later catastrophe years) are not confused with the reserves referenced in Insurance Code §2210.0715 (which may not be used to pay for losses in later catastrophe years).

As a result of comments, adopted §5.4133(e) and (f) contain nonsubstantive revisions to clarify when and for what purpose the association can use public security proceeds.

Section 5.4134. Excess Public Security Proceeds. Amendments to §5.4134 clarify that Insurance Code §2210.608(b) describes the permissive uses of excess public security proceeds remaining after the purposes for which the public securities were issued or disbursed are satisfied. The amendments add subsection (b) to the Insurance Code citation and insert the words "or disbursed."

Section 5.4141. Class 1 Public Security Trust Fund. The amendment to §5.4141 implements amendments to Insurance Code §2210.071(b). This amendment works in conjunction with the amendment to §5.4102(34), which defines "net premium." The sentence "Following the issuance of public securities, net premium may be pledged for the payment of class 1, class 2, and class 3 payment obligations" is removed from the

definition and an equivalent sentence is added to §5.4141 as new subsection (e). It clarifies that net premium can be pledged to repay class 1 payment obligations, even if those obligations are for public securities issued to pay for losses from a catastrophic event that occurred in a prior year.

Section 5.4142. Class 2 and Class 3 Public Security Trust Funds. The amendment to §5.4142 implements amendments to Insurance Code §2210.071(b). This amendment works in conjunction with the amendment to §5.4102(34), which defines "net premium." The sentence "Following the issuance of public securities, net premium may be pledged for the payment of class 1, class 2, and class 3 payment obligations" is removed from the definition and an equivalent sentence is added to §5.4142 as new subsection (e). It clarifies that net premium can be pledged to repay class 2 and class 3 payment obligations, even if those obligations are for public securities issued to pay for losses from a catastrophic event that occurred in a prior year.

Section 5.4160. Member Assessments to Pay for Reinsurance in Excess of the Association's Statutory Minimum Funding Level. New §5.4160 describes the procedures for assessing members for reinsurance or alternative risk financing mechanisms. New §5.4160 implements new subsections (d) and (e) in Insurance Code §2210.453, requiring members to pay for any reinsurance coverage that exceeds the association's one-in-100-year probable maximum loss. This section also describes the deadlines the association must meet during each year.

Adopted §5.4160(c) differs from the proposed text. The association must disclose its one-in-100-year probable maximum loss for the calendar year and the method for determining that loss after the first regular board meeting of the calendar year, but not later than April 1 of each year. The proposed text required this disclosure "on the day after

the effective date of this section, and not later than April 1 of each subsequent year." Because the section will go into effect in early January 2021, requiring the disclosure the day after the effective date may not give the association enough time to determine its one-in-100-year probable maximum loss for 2021.

Adopted §5.4160 contains other changes from the proposed text, which are the result of comments. The adopted text contains two possible deadlines for the association to issue any assessment to pay for excess reinsurance coverage. The adopted text also contains a corrected citation to Insurance Code §2210.453(c)--instead of to §2251.453(c). Conforming changes reflect changes to the title of §5.4161. Finally, language emphasizing that member assessments for reinsurance are only for reinsurance coverage in excess of the statutory minimum funding level is added to the adopted text. A citation to Insurance Code §2210.453(d)--instead of simply to §2210.453--is added for the same reason.

The association must discuss with the board its methodology for determining its one-in-100-year probable maximum loss for the calendar year at the first regular board meeting in the calendar year, but before April 1. The association must also disclose to the Commissioner its one-in-100-year probable maximum loss for the calendar year and the method for determining that loss after the first regular board meeting of the calendar year, but not later than April 1 of each year

If the association elects to purchase reinsurance or alternative risk financing mechanisms that provide coverage in excess of its one-in-100-year probable maximum loss, then the association must also get a quote for reinsurance that equals the one-in-100-year probable maximum loss.

The association must provide the quote to the board by the second regular board meeting in the calendar year, typically in early May. At the same time, the association must also provide the total deposit premiums for all reinsurance for the year. These requirements allow members to estimate the amount of reinsurance premium for coverage that exceeds the association's one-in-100-year probable maximum loss and that they will be assessed for.

The association must issue any assessment by the later of either 120 days after the date the association receives the data that TDI provides under §5.4162(f) of this title for that year, or December 1 of that year.

Adopted §5.4160 also requires that the association include, in any request to the Commissioner to approve an assessment, the portion of the reinsurance premium that provides coverage above its one-in-100-year probable maximum loss. In other words, the association's request must provide the amount of the reinsurance assessment it wants to make. The association must also provide the methodology it used to calculate that amount.

Adopted §5.4160 requires the association to make the request within a reasonable time after its reinsurance costs for the year are known. This requirement is intended to ensure that the request can be approved in time for the association to issue the assessment by the deadline.

Additionally, adopted §5.4160 uses the term "alternative risk financing mechanisms" as used in Insurance Code §2210.453(a) and §2210.453(d) rather than "other financial arrangements" as used in Insurance Code §2210.612(e) and §2210.072(d), because alternative risk financing mechanisms are used in the context of reinsurance and are alternative ways for the association to transfer risk out of the association. Conversely,

other financial arrangements include other types of borrowing--including public securities--which do not transfer risk out of the association.

Section 5.4161. Member Assessments Other than Assessments for Reinsurance in Excess of the Association's Statutory Minimum Funding Level. In response to comments, the title of adopted §5.4161 is changed from "Member Assessments to Pay Claims," the title in the proposed text.

The amendment to §5.4161 deletes the current text of subsection (j). A provision similar to current subsection (j) is incorporated in new §5.4160 as subsection (f). Current subsection (j) lists sections on member assessments that are part of the association's plan of operation and that control over any conflicting provisions in §5.4001. Because new §5.4160 is now the first section on member assessments, the provision included in current subsection 5.4161(j) is more appropriate in §5.4160.

Section 5.4161's heading, "Member Assessments," is also amended to add the words "to Pay Claims." This amendment clarifies that §5.4161 specifies the requirements for assessments for claims, while §5.4160 specifies requirements for assessments to pay for reinsurance coverage.

In addition, current subsections (f) - (i) are redesignated as (e) - (h) to correct an error in the previous rule text; before this amendment the rule text did not contain a subsection (e).

Finally, new subsection (i) is added, stating that "[t]he association may use the proceeds from assessments only for losses and expenses resulting from the catastrophe year for which the assessments were made." This provision conforms the rule to HB 1900's amendments to Insurance Code §2210.0715.

Section 5.4162. Amount of Assessment. Section 5.4162 addresses the procedure for determining the amount a member is required to pay when participating in an assessment. Adopted 5.4162 differs from the proposed text in that subsection (a) references the revised titles of §5.4160 and §5.4161. Paragraph (a)(2) is revised from the proposed version by removing the words "class of" from the phrase "gave rise to the class of assessments." The words "class of" were appropriate when the paragraph discussed public securities but are unnecessary now that the paragraph discusses assessments. Finally, as a result of comments, language emphasizing that member assessments for reinsurance are only for reinsurance coverage in excess of the statutory minimum funding level is added to subsection (i).

Section 5.4162(a) is amended to add a citation to new §5.4160.

Section 5.4162(a)(1) is amended to conform with HB 3496, 85th Legislature, 2017. The amendment removes the paragraph's last sentence, which states that the anniversary date of an insurer's membership in the association is the date the insurer became an authorized property insurer in Texas.

Section 5.4162(b) is amended to include nonsubstantive stylistic edits, and the citation to 28 TAC §5.4001 is amended to be more specific by revising it to include a reference to "(a)(2)(N)."

Subsection (c) is amended to separate it into subsection (c) and a new subsection (d), to aid in readability. The subsections that follow are redesignated as appropriate.

Subsection (d) is redesignated as subsection (e) and is subdivided into paragraphs to aid in readability.

Subsection (e) is broken into three new subsections, which are designated as subsections (f), (g), and (h). Additionally, new subsection (g) is divided into paragraphs with nonsubstantive rewording.

Subsection (h) specifies that the association must take action under the subsection "[w]ithin a reasonable period of time after sending the notice described in subsection (g)."

An amendment adds new subsection (i), which requires that the association's notice of net direct premiums and voluntary wind and hail premiums and notice of participation percentage must inform members that the participation percentage will be used for reinsurance assessments, if there are any during the current calendar year. The association typically sends the notice of net direct premiums and voluntary wind and hail premiums in late summer. The notice of participation percentage is typically sent in the fall.

The amendment removes subsection (f) of the previous text, which required that each member insurer give the association a copy of its Exhibit of Premiums and Losses (Statutory Page 14) from its Texas Property and Casualty Annual Statement. This requirement is no longer necessary, as members already file their annual statements electronically with the NAIC. TDI has access to the information through the NAIC and in practice already provides it to the association and publishes it annually on TDI's website. Removing this requirement reduces the burden on the association and its members.

Section 5.4164. Payment of Assessment. Section 5.4164 requires members to pay their share of any assessment not later than the 30th day after receiving their notice of assessment. Section 5.4164 is amended to remove exceptions to the requirement, because they are no longer relevant. The exceptions cite other association rules that were

repealed to implement Senate Bill 900, 84th Legislature, 2015, which changed the association's funding structure.

Section 5.4167. Inability to Pay Assessment by Reason of Insolvency.

Amendments to §5.4167 conform the section to the amendments to Insurance Code §2210.071 and §2210.0715. The language "in the event it is necessary to obtain additional funds to provide for operating expenses and losses in the year the insurer is declared impaired" is replaced with "in the event an assessment is necessary in the year the insurer is declared impaired." An assessment may be necessary to cover operating expenses and losses from a year other than the year the assessment was made.

Section 5.4171. Premium Surcharge Requirements. Amendments to §5.4171 conform the rule to Insurance Code §221.001(c), in accordance with HB 3496. The amendment revises subsection (e) to clarify that §5.4171 and other sections apply to farm mutual insurance companies that are acting as fronting insurers.

In addition to the specific amendments previously noted, the adopted amendments include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and to improve the rules' clarity. These changes include the following: Punctuation is revised in places for clarity and grammatical accuracy. The word "Commissioner" is capitalized whenever it appears lowercase, and the word "association" is made lowercase where it is capitalized, unless it begins a sentence. The word "division" is changed to "title" where the word appears in citations to Texas Administrative Code sections. The word "shall" is replaced with "must" or "will" as appropriate to fit the context of the provision and to add clarity.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: the American Property and Casualty Insurance Association; counsel for the Allstate Group, ASI Lloyds Insurance Company, the United Fire Group, and Acuity, A Mutual Insurance Company; the Coastal Windstorm Insurance Coalition; the Insurance Council of Texas; the National Association of Mutual Insurance Companies; and the association submitted comments in support of the proposal with changes.

Comment on §5.4102

Comment: A commenter suggests adding the definition of "catastrophe year" found in Insurance Code §2210.003(3-b) to proposed §5.4102.

Agency Response: All the definitions in Insurance Code §2210.003, including the definition of "catastrophe year," apply to the rules adopted under Chapter 2210, which is the association's governing statute. To avoid redundancy, TDI rules generally do not repeat statutes unless doing so improves clarity or is necessary to provide context.

Comment on §5.4102(34)

Comment: A commenter cautions against deleting the sentence "Following the issuance of public securities, net premium may be pledged for the payment of class 1, class 2, and class 3 payment obligations" from the definition of "net premium" in §5.4102(34). The commenter expresses concern that removing the sentence will make it more difficult to issue public securities.

Agency Response: TDI did not propose removing the language from the rules. The language allowing net premium to be pledged for the payment of public security obligations appears in the proposed and adopted amendments to §5.4141 and §5.4142.

As discussed in the proposal's explanation section and in the summaries of the proposed amendments to §§5.4102, 5.4141, and 5.4142, the language was moved from the definitions to the sections on the public security trust funds. As a substantive rule, the language is more appropriate in the sections on public security trust funds than in a definition.

Comment on §5.4102(39)

Comment: A commenter asks that the proposed new sentence in the definition of "other revenue" be clarified to avoid confusion as to whether the association can pledge future investment income to repay public securities. The proposed sentence states that other revenue does not include income on funds held by the Texas Treasury Safekeeping Trust Company (trust company).

Agency Response: TDI agrees to make a revision in response to this comment. As adopted, §5.4102(39) has been changed to include the following text at the end of the definition:

"For the purpose of Insurance Code Section 2210.071, other revenue does not include investment income on any trust company account. For the purpose of Insurance Code §2210.612, other revenue does not include investment income on the CRTF, the class 2 trust fund, or the class 3 trust fund. For the purpose of Insurance Code §2210.613, other revenue does not include investment income on the CRTF, the class 1 trust fund, or the class 3 trust fund. For the purpose of Insurance Code §2210.6131, other revenue does not include investment income on the CRTF, the class 1 trust fund, or the class 2 trust fund."

The additional text referencing §2210.071 clarifies that no investment income from any of the association's trust company-held accounts may be counted as "other revenue" when determining whether the association has sustained excess losses in a particular catastrophe year. The additional text referencing §§2210.612, 2210.613, and 2210.6131 clarifies which account's investment income may be counted as "other revenue" when determining whether net premium and other revenue are sufficient to pay each section's class of public securities.

Comments on §5.4133(f)

Comment: A commenter asks whether proposed §5.4133(f) permits the association to use the proceeds of public securities issued before a catastrophic event only during the calendar year for which the proceeds are disbursed.

Agency Response: No. The association may use the proceeds of pre-event public securities during years other than the catastrophe year the proceeds are disbursed for. But the purposes for which the association may use those proceeds are limited by Insurance Code §2210.0715 and §2210.608. Proposed and adopted §5.4133(f) state what those limits are during the catastrophe year for which the proceeds of pre-event public securities are disbursed and during subsequent years.

Section §5.4133(f)(1) states the purposes for which, during the catastrophe year for which the proceeds are disbursed, the association may use the proceeds of pre-event public securities.

Section 5.4133(f)(2) states the purposes for which, during subsequent years, the association may use the proceeds of pre-event public securities.

Section 5.4133(f)(3) states the purposes for which the association may use excess proceeds, which remain after all losses and expenses from the catastrophe year for which the proceeds are disbursed are paid.

Section 5.4133(e) sets the same use requirements as §5.4133(f), but subsection (e) addresses the proceeds of public securities that are issued after a catastrophic event.

Comment: A commenter states that the proceeds of public securities issued before a catastrophic event may end up being disbursed in years after the catastrophic event.

Agency Response: TDI agrees. This is why §5.4133(f) refers to the catastrophe year *for which* proceeds of pre-event public securities are disbursed, rather than the year in which they are disbursed.

Comment: A commenter states that the proceeds of public securities issued before a catastrophic event may be used to pay for the items listed in Insurance Code §2210.608(a) and (c), regardless of whether the items result from a catastrophic event.

Agency Response: TDI disagrees with the comment. Insurance Code §2210.608 must be read in context with Insurance Code §2210.0715. Section 2210.0715(a) requires the association to pay losses for a catastrophe year that exceed premium and other revenue for that year from the association's reserves and from the CRTF. Section 2210.0715(b) prohibits the proceeds of public securities issued before or as a result of a catastrophe year from "being included in the reserves available for a subsequent catastrophe year for purposes of this section."

The three paragraphs in §5.4133(f) harmonize Insurance Code §2210.0715 and §2210.608.

When pre-event public security proceeds are disbursed for a catastrophe year, it is because the association's losses and expenses exceed its premium and other revenue for that catastrophe year and CRTF funds available before that catastrophe year. So, during the catastrophe year for which the proceeds are disbursed, there are no restrictions on how the association may use the proceeds.

After that catastrophe year, however, unrestricted use of the proceeds for any of the purposes listed in §2210.608(a) and (c) would conflict with §2210.0715(b). For example, using proceeds disbursed for catastrophe year 2017 to pay for losses from events that occurred in 2018 would bring §2210.608(a)(1) into conflict with §2210.0715(b). So, during the years after 2017, proceeds disbursed for catastrophe year 2017 may only be used to pay for losses and expenses resulting from catastrophe year 2017.

Any excess proceeds that remain after losses and expenses for the catastrophe year for which they were disbursed are paid may be used in accordance with Insurance Code §2210.608(b).

Harmonizing §2210.0715 and §2210.608 ensures that public security proceeds are spent according to the funding structure in Insurance Code Chapter 2210.

Comment: A commenter asks whether the statutory maximum of \$500 million in public securities issued before a catastrophic event will always be available and asks what will happen if the association needs part but not all of the proceeds.

Agency Response: Insurance Code §2210.072 provides that not more than \$500 million in class one public securities may be issued, in the aggregate, at any one time. Regardless of the amount issued, an amount less than that may be disbursed if necessary.

Comment on §5.4133(e) and (f)

Comment: A commenter states that proposed §5.4133(e) and (f) could be misread to prohibit the association from using public security proceeds during the catastrophe year for which the proceeds were disbursed or issued and allow the association to use only public security proceeds after that catastrophe year has ended. The commenter suggests revising the section to prevent this misreading.

Agency Response: TDI appreciates the suggestion. In response to this comment, subsections (e) and (f) of §5.4133 have been adopted with nonsubstantive changes from the proposed text to clarify when and for what purpose the association may use public security proceeds.

Comments on §5.4160

Comment: A commenter suggests changing the title and subsection (a) of proposed §5.4160 to say that Insurance Code §2210.453 requires that the association assess its member insurers to pay for any reinsurance it purchases in excess of the association's statutory minimum funding level. The commenter expresses concern that without this change, §5.4160 could be misconstrued to require that member insurers be assessed for all reinsurance the association purchases.

Agency Response: TDI agrees with the comment. As proposed, §5.4160 referenced Insurance Code §2210.453. However, the title of adopted §5.4160 and subsection (a) of the section restate §2210.453's provision that the association must assess its members to pay the cost of reinsurance or alternative risk transfer mechanisms in excess of the association's statutory minimum funding level. As adopted, subsections (a) and (i) of

§5.4160 are also modified from the proposed text to reference subsection (d) of Insurance Code §2210.453.

Comment: A commenter writes that the proposed rules allow the association to select an excessive one-in-100-year probable maximum loss.

The commenter recommends requiring the association to determine its one-in-100-year probable maximum loss through the year 2021 by using one model, the long-term model developed by hurricane modeling firm Risk Management Solutions, Inc. (RMS), provided that the Florida Commission on Hurricane Loss Projection Methodology (FCHLPM) approves the model for Florida rate filings.

The commenter states that the interests of the association's reinsurance broker and the association's member insurers are aligned, because both want the association to set the highest possible probable maximum loss.

The commenter states that the uncertainty of hurricane modeling enables the association and its reinsurance broker to make assumptions that benefit member insurers at the expense of policyholders.

The commenter expects that requiring the association to use the single RMS model will lower the association's probable maximum loss, thus keeping the association's rates affordable, which is especially important during difficult economic times. The commenter states that, unlike the association's reinsurance broker, RMS has no financial interest in how much reinsurance the association buys.

Agency Response: TDI disagrees with the recommendation.

Having the association, after public discussion, determine its one-in-100-year probable maximum loss provides more transparency and flexibility than setting a model via rules.

The adopted rules require the association to discuss determining its one-in-100-year probable maximum loss for the year at the year's first regular board meeting. Information on hurricane models, policy data inputs, user-selected assumptions, each model's one-in-100-year probable maximum loss, any blending or averaging of hurricane models, and any adjustments to the model outputs must be made public.

Adopted §5.4160(c) and (d) state that the association must determine the one-in-100-year probable maximum loss for the year after the board meeting and public discussion. The goal of the public discussion and information requirements is to produce the best estimate of the association's one-in-100-year probable maximum loss. In contrast, the commenter urges that the association be required to use the single RMS model to produce a lower probable maximum loss. Selecting a model because it is expected to produce a preferred probable maximum loss defeats the legislature's intent in setting the one-in-100-year probable maximum loss as the association's minimum funding level.

The commenter states that the association's reinsurance broker has a financial interest in the amount of reinsurance the association purchases. This is correct in that the broker receives a flat fee for gross ceded premium up to a certain amount and then a percentage for gross ceded premium above that amount. However, the association can go directly to one or more companies that provide hurricane modeling rather than seeking those services through its reinsurance broker. The association can do this regardless of whether the rules compel it to use one particular model.

Comment: A commenter writes that allowing the association to count loss adjustment expenses in calculating its one-in-100-year probable maximum loss may violate Texas law and recommends that the rules prohibit the association from doing so. The commenter recommends that the association assess its member insurers to pay its loss adjustment expenses.

To support the argument that including loss adjustment expenses in the association's one-in-100-year probable maximum loss may violate Texas law, the commenter points out that the association's statute refers to the minimum amount the association must have in "total available loss funding," and that loss adjustment expenses are not insured losses under the association policies.

Agency Response: TDI disagrees with the recommendation. Statutes, rules, and actuarial considerations point toward including loss adjustment expenses in the one-in-100-year probable maximum loss calculation.

Although Insurance Code Chapter 2210 does not define "loss," the definition of "losses," in §5.4102, relating to Definitions, includes "adjustment expenses, litigation expenses, and other claims expenses." These three items have been included in the definition since TDI adopted §5.4102 in 2011. In 2015, SB 900 amended Insurance Code §2210.453(b) to specify the amount the association must have in "total available loss funding" without defining "loss" or "losses." The fact that the legislature did not define loss or losses in SB 900 is noteworthy.

The commenter is correct that association policies do not identify loss adjustment expenses as insured losses. But the policies do not place the association's loss adjustment expenses on the policyholder either. The policies do not reference loss adjustment

expenses, except to repeat the requirement under Insurance Code §2210.574 that a claimant and the association are responsible in equal shares for paying any costs of an appraisal.

From an actuarial perspective, it is appropriate to include loss adjustment expenses in the one-in-100-year probable maximum loss calculation for the purpose of making reinsurance purchasing decisions because the association's reinsurance contracts provide coverage for loss adjustment expenses.

Comment: Under Insurance Code §2210.3511, the association must make its rate adequacy analysis publicly available before the board of directors votes on whether to file with TDI the proposed rates based on that analysis. Among other requirements, the analysis must include all hurricane model output data "in a searchable electronic format that allows for efficient analysis and is sufficiently detailed to allow the historical experience in this state to be compared to results produced by the model."

To comply with this requirement, a commenter makes two recommendations.

First, that "TWIA's hurricane modelers" be required to provide a table with frequency, intensity, and landfall data for modeled storms so that the modeled storms can be compared with actual Texas hurricane experience.

Second, the commenter recommends requiring the hurricane modelers to estimate losses for recent hurricanes that landed on the Texas coast, so that the modelers' estimates can be compared with actual losses from the same hurricanes.

Agency Response: TDI disagrees with the recommendations.

The recommendations are outside the scope of the rule proposal because they address Insurance Code §2210.3511, concerning public access to rate adequacy analysis,

rather than implementing §2210.071, concerning payment of excess losses; §2210.0715, concerning payment from reserves and trust fund; or §2210.453, concerning reinsurance and alternative risk financing mechanisms.

Additionally, Insurance Code Chapter 2210 does not give TDI authority to impose the suggested requirements on hurricane modeling firms.

Comment: A commenter suggests that proposed §5.4160 be changed to either eliminate or extend the deadline for any assessment under Insurance Code §2210.453. As proposed, §5.4160(a)(2) required the association, if assessing its members for the cost of excess reinsurance, to make the assessment not later than December 1 of the year the assessment is issued.

The commenter states that the time between October 31, when the association knows its final reinsurance premium for the year, and December 1 is insufficient for the association to compute each member's participation percentage. The commenter suggests that if the association's deadline to make an excess reinsurance assessment is not eliminated, it be not later than 180 days after TDI provides the data needed to calculate participation percentages.

Agency Response: TDI agrees with the comment and has adopted the text with changes to the proposed text to address the concern raised by the commenter.

TDI typically sends the association data necessary to calculate participation percentages for the preceding calendar year in late summer. The association obtains the remainder of the necessary data from the Surplus Lines Stamping Office of Texas. The association typically sends the notice of participation percentage to members in the fall.

However, delays in data reporting may prevent the association from being able to calculate participation percentages and assess by December 1.

To ensure the association has enough time to calculate each member's percentage of participation, adopted §5.4160(a)(2) is changed from the proposed version to require the association to issue any assessment the later of either 120 days after the date the association receives the data that TDI provides under §5.4162(f) of this title for that year, or December 1 of that year. A deadline for the assessment is necessary to ensure that the association will be able to determine the reinsurance premiums not paid or payable from member assessments early enough to include that amount in the net gain from operations for the same year.

Comments on §5.4160(f)

Comment: A commenter writes that proposed new §5.4160(f) should not refer to Insurance Code §2251.453(c) but should instead refer to Insurance Code §2210.453(c).

Agency Response: TDI agrees and has changed the text as proposed. As adopted, §5.4160(f) is corrected to refer to Insurance Code §2210.453(c).

Comment: A commenter suggests changing proposed new §5.4160(f) to require the association to get multiple premium quotes, "if available," for the amount of reinsurance coverage that is necessary to enable the association to fund to its statutorily required minimum and for any amount of reinsurance coverage the association chooses to purchase that will provide funding above that minimum. The commenter states that this will provide transparency and ensure that the association tries to get the best possible price on coverage.

Agency Response: TDI disagrees with the comment.

The purpose of §5.4160(f) is to enable member insurers to estimate the amount of an excess reinsurance assessment by subtracting the quote for coverage at the one-in-100-year probable maximum loss level from the total deposit premiums for coverage at the level the association has decided to purchase. Subsection (f) enables only an estimate because the quote is not the same as a firm order term and because the amount of the total deposit premiums will be adjusted according to the association's actual coverage during hurricane season. However, having an estimate in May will enable members to plan for a reinsurance assessment in the last quarter of the year.

The commenter's requested change does not appear to be necessary. Under the HB 1900 amendments, the association is still responsible for paying for reinsurance coverage up to and including its one-in-100-year probable maximum loss. The association still has an incentive to obtain the best price possible on reinsurance. An independent review of the association's overall rate level and rate structure by Willis Towers Watson, an actuarial consulting firm, has provided guidance on how the association can lower the amount it spends on reinsurance by adding secondary risk characteristics on its insured properties to the modeling data.

Comment on §5.4161

Comment: A commenter suggests changing the title of proposed §5.4161 from "Member Assessments to Pay Claims" to "Member Assessments Other than Assessments for Excess Reinsurance" to better describe the purposes of the assessments. The commenter also recommends conforming changes to subsection (a) of proposed §5.4162

Agency Response: TDI agrees with the comment. The title of §5.4161 as adopted has been changed from the proposed text to be "Member Assessments Other than Assessments for Reinsurance in Excess of the Association's Statutory Minimum Funding Level." Conforming changes are made to §5.4160(j) and §5.4162(a).

Comment on §5.4161(i)

Comment: A commenter states that new subsection (i) in §5.4161 is unnecessary. New §5.4161(i) states that the association "may use the proceeds from assessments only for losses and expenses resulting from the catastrophe year for which the assessments were made." The commenter states that the new language is not necessary to conform the rule to HB 1900's amendments to Insurance Code §2210.0715. The commenter states that §2210.0715 does not refer to how assessments can be used.

Agency Response: TDI disagrees with the comment. HB 1900 amended Insurance Code §2210.0715 by adding "or assessments made" to subsection (b) of the section. This amendment prohibits assessment proceeds obtained to pay for a prior catastrophe year's losses from being counted as part of the reserves with which the association may pay losses resulting from subsequent catastrophe years. In other words, the amendment ties assessment proceeds, like public security proceeds, to the catastrophe year for which they were obtained.

TDI proposed new §5.4161(i) after reviewing and agreeing with a comment the National Association of Mutual Insurance Companies (NAMIC) made on the informal working draft of §5.4161 and the other loss funding rules. NAMIC pointed out that HB 1900 placed limitations on the use of both public security proceeds and member

assessments and suggested amending rule provisions relating to assessments accordingly.

Comment on §5.4162(b)

Comment: Section 5.4162 provides that a member insurer's percentage of participation in an assessment is based on the insurer's net direct premium and other data from the calendar year before the year the assessment is made, regardless of when the catastrophe that necessitated the assessment took place.

Three commenters suggest changing §5.4162(b) to provide that a member insurer's percentage of participation should be determined based on the insurer's data during the calendar year that precedes the catastrophe year for which the assessments are made.

The commenters offer legal and policy arguments for changing the year on which the assessment is based.

The legal arguments are that §5.4162(b) is inconsistent with and has been superseded by current Insurance Code provisions and conflicts with the association's plan of operation. In particular, the commenters discuss:

- Insurance Code §2210.003(3-b), which defines "catastrophe year" as a calendar year in which insured losses occur, regardless of when paid,

- Insurance Code §2210.052(a), under which each member participates in the association's losses according to the proportion the member's net direct premiums during the preceding calendar year bear to all members' aggregate net direct premiums, and

- Insurance Code §2210.0725, concerning when losses in a catastrophe year can be paid with assessments, and requiring that each insurer's share of the assessment be

determined "in the manner used to determine each insurer's participation in the association for the year under Section 2210.052."

The policy arguments are that basing participation on data from the year preceding the catastrophe year that necessitated the assessment is fair and predictable, because for all assessments arising from a particular catastrophe year, a member's percentage of participation will be the same. The commenters argue that changing §5.4162(b) will benefit consumers by removing members' incentive to limit assessment exposure by lowering or not growing their market share in Texas after a catastrophic year; members' exposure will already be set. Similarly, potential entrants to the Texas market will not be deterred from offering insurance to Texas consumers after a catastrophic year. Finally, basing the percentage of participation on data from the preceding calendar year is consistent with property insurance practice. The commenters argue that, in contrast, basing the percentage of participation on data from the calendar year before the year in which the assessment is made treats member insurers as though they were offering claims-made coverage for liability losses.

Agency Response: The proposal for the adopted rules did not address the provisions that prescribe the base year for assessment participation, so amending the rules as commenters would like would require a new rule proposal. In referring to §5.4162(b), one of the commenters requesting the change states that the "notice of proposed changes only proposes stylistic and non-substantive changes to this subsection." Without the necessary notice, interested parties do not have the opportunity to participate in the rulemaking in the meaningful and informed manner the law requires. TDI does not believe it advisable to delay implementation of the changes made in this rulemaking in order to make the changes suggested by the commenter. Because these issues are beyond the

scope of this rule proposal and adoption, TDI declines to address the commenters' legal arguments or policy considerations in this adoption order.

While TDI cannot make the suggested changes here, TDI intends to address this issue in a future rulemaking.

Comment on §5.4162(g) and (h)

Comment: A commenter suggests defining the "reasonable time" within which the association must notify member insurers about net direct premiums, voluntary writing in the catastrophe area, and percentage of participation. The commenter also suggests removing the requirement that the association send the notifications by certified mail.

Agency Response: TDI declines the suggestion. The length of a "reasonable time" may vary somewhat between subsections (g) and (h), depending on circumstances. For example, errors in the data the association has received may affect the time it takes the association to determine the percentage of participation. Defining "reasonable time" runs the risk of replacing one necessarily flexible standard with another standard that is equally flexible but more verbose. At this time, there is no evidence that a definition would bring any benefits.

Requiring the association to send the notifications by certified mail creates a record that can be used to determine whether the association complied with subsections (g) and (h).

SUBCHAPTER E.

28 TAC §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4160 - 5.4162, 5.4164, 5.4167, and 5.4171.

STATUTORY AUTHORITY. The Commissioner adopts new §5.4160 and amended §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4161, 5.4162, 5.4164, 5.4167, and 5.4171 under Insurance Code §§2210.008, 2210.151, 2210.152, 2210.452, and 36.001.

Insurance Code §2210.008 provides that the Commissioner may adopt rules as reasonable and necessary to implement Chapter 2210.

Insurance Code §2210.151 provides that the Commissioner adopt the association's plan of operation by rule.

Insurance Code §2210.152 provides that the plan of operation must include a plan for the equitable assessment of association members, procedures for obtaining and repaying amounts under any financial instruments authorized under Chapter 2210, and other provisions considered necessary by TDI to implement the purposes of Chapter 2210.

Insurance Code §2210.452 requires the Commissioner to adopt rules governing association payments to the CRTF and disbursements from the CRTF.

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.

TEXT.**§5.4102. Definitions.**

The following words and terms when used in this division will have the following meanings unless the context clearly indicates otherwise:

- (1) Association--Texas Windstorm Insurance Association.

(2) Association program--The funding of any or all of the purposes authorized to be funded with the public securities under Insurance Code Chapter 2210, Subchapter M.

(3) Association surcharge--Premium surcharges on policyholders of association policies under Insurance Code §§2210.612, 2210.613, or 2210.6131.

(4) Association surcharge percentage--The percentage amount determined by the Commissioner under §5.4126(c) or (d) of this title (relating to Determination of the Association Surcharge Percentage).

(5) Authorized representative of the department--Any officer or employee of the department empowered to execute instructions and take other necessary actions on behalf of the department as designated in writing by the Commissioner.

(6) Authorized representative of the trust company--Any officer or employee of the comptroller or the trust company who is designated in writing by the comptroller as an authorized representative.

(7) Budgeted operating expenses--All operating expenses as budgeted for and approved by the association's board of directors, excluding expenses related to catastrophic losses.

(8) Catastrophe area--A municipality, a part of a municipality, a county, or a part of a county designated by the Commissioner under Insurance Code §2210.005.

(9) CRTF--Catastrophe Reserve Trust Fund. A statutorily created trust fund established with the trust company under Insurance Code Chapter 2210, Subchapter J.

(10) Catastrophic event--An occurrence or a series of occurrences in a catastrophe area during a calendar year resulting in insured losses and operating expenses of the association in excess of premium and other revenue of the association.

(11) Catastrophic losses--Losses resulting from a catastrophic event.

(12) Class 1 payment obligation--The contractual amount of net premium and other revenue and association surcharges that the association must deposit in the class 1 public security trust fund at specified periods for the payment of class 1 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 1 public security agreements.

(13) Class 2 payment obligation--The contractual amount of net premium and other revenue and either association surcharges or contingent surcharges that the association must deposit in the class 2 public security trust fund, or in the case of contingent surcharges, the premium surcharge trust fund, at specified periods for the payment of class 2 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 2 public security agreements.

(14) Class 3 payment obligation--The contractual amount of net premium and other revenue and either association surcharges or contingent surcharges that the association must deposit in the class 3 public security trust fund, or in the case of contingent surcharges, the premium surcharge trust fund, at specified periods for the payment of class 3 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 3 public security agreements.

(15) Class 1 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.072 and Insurance Code Chapter 2210, Subchapter M.

(16) Class 2 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.073 and Insurance Code Chapter 2210, Subchapter M.

(17) Class 3 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.0741 and Insurance Code Chapter 2210, Subchapter M.

(18) Commercial paper notes--A debt instrument that the association may issue as a financing arrangement or that TPFA may issue as any class of public security.

(19) Commissioner--The Commissioner of Insurance.

(20) Comptroller--The Comptroller of the State of Texas.

(21) Contingent surcharge--Premium surcharges on policyholders of policies that cover insured property that is located in a catastrophe area and that may be necessary as provided under Insurance Code §2210.6132.

(22) Contractual coverage amount--Minimum amount over scheduled debt service that the association is required to deposit in the applicable public security trust fund or premium surcharge trust fund, as security for the payment of debt service on the public securities, administrative expenses on public securities, or other payments the association must pay in connection with public securities.

(23) Credit agreement--An agreement described by Government Code Chapter 1371 that TPFA may enter into as authorized under Insurance Code Chapter 2210, Subchapter M.

(24) Department--The Texas Department of Insurance.

(25) Earned premium--That portion of gross premium that the association has earned because of the portion of time during which the insurance policy has been in effect.

(26) Financing arrangement--An agreement between the association and any market source under which the market source makes interest-bearing loans or

provides other financial instruments to the association to enable the association to pay losses or obtain public securities under Insurance Code §2210.072.

(27) Gross premium--The amount of premium the association receives, less premium returned to policyholders for canceled or reduced policies.

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

(29) Investment income--Income from the investment of funds.

(30) Letter of instruction--The Commissioner's or authorized department representative's signed written authorization and direction to an authorized representative of the trust company.

(31) Losses--Amounts paid or expected to be paid on association insurance policy claims, including adjustment expenses, litigation expenses, other claims expenses, and other amounts that are incurred in resolving a claim for indemnification under an association insurance policy.

(32) Net gain from operations--Net income reported during a calendar year equal to the amount of all earned premium, other revenue of the association, and distributions of excess net premium and other revenue from the class 1, class 2, and class 3 public security trust funds that are in excess of: current catastrophe year incurred losses; operating expenses; reinsurance premium not paid or payable from member assessments; current year financial arrangement obligations; current year net premium payment obligations; and current year public security administrative expenses.

(33) Net investment income--Investment income less associated fees and expenses charged by the trust company, or others, for managing or investing the assets.

(34) Net premium--Gross premium less unearned premium.

(35) Net premium payment obligations--Public security obligations that are paid in whole or in part from net premium and other revenue for public securities repayable under Insurance Code §§2210.612, 2210.613, and 2210.6131. The term does not include public security obligations or the portion of public security obligations that are paid from association surcharges.

(36) Net revenues--Net premium plus other revenue, less scheduled policy claims, less budgeted operating expenses, less net premium payment obligations for that calendar year, less amounts necessary to fund or replenish any reserve fund required by a public security agreement.

(37) One-in-100-year probable maximum loss--The minimum funding level required by Insurance Code §2210.453(b).

(38) Operating reserve fund--Association or trust company held fund for the payment of budgeted scheduled policy claims and budgeted operating expenses.

(39) Other revenue--Revenue of the association from any source other than premium. Other revenue includes net investment income on association assets. Other revenue does not include premium surcharges collected under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, or 2210.6132 or member assessments collected under Insurance Code §§2210.0725, 2210.074, 2210.0742, or 2210.453 and interest income on those amounts. For the purpose of Insurance Code Section 2210.071, other revenue does not include investment income on any trust company account. For the purpose of Insurance Code §2210.612, other revenue does not include investment

income on the CRTF, the class 2 trust fund, or the class 3 trust fund. For the purpose of Insurance Code §2210.613, other revenue does not include investment income on the CRTF, the class 1 trust fund, or the class 3 trust fund. For the purpose of Insurance Code §2210.6131, other revenue does not include investment income on the CRTF, the class 1 trust fund, or the class 2 trust fund.

(40) Plan of operation--The association's plan of operation as adopted by the Commissioner under Insurance Code §2210.151 and §2210.152.

(41) Premium--Amounts received in consideration for the issuance of association insurance coverage. The term does not include premium surcharges collected by the association under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, or 2210.6132.

(42) Premium surcharge trust fund(s)--The dedicated trust fund or funds established by TPFA and held by the trust company in which the association or insurers must deposit contingent surcharges. TPFA may establish separate trust funds or separate accounts for class 2 and class 3 contingent surcharges.

(43) Public securities--Collective reference to class 1 public securities, class 2 public securities, and class 3 public securities.

(44) Public security administrative expenses--Expenses incurred by the association, TPFA, or TPFA consultants to administer public securities issued under Insurance Code Chapter 2210, including fees for credit enhancement, paying agents, trustees, attorneys, and other professional services.

(45) Public security obligations--The principal of a public security and any premium and interest on a public security issued under Insurance Code Chapter 2210, Subchapter M, together with any amount owed under a related credit agreement.

(46) Scheduled policy claims--That portion of the association's earned premium and other revenue expected to be paid in connection with the disposition of losses that do not result from a catastrophic event.

(47) Trust company--The Texas Treasury Safekeeping Trust Company managed by the comptroller under Government Code §404.101, et seq.

(48) Trust company representative--Any individual employed by the trust company who is designated by the trust company as its authorized representative for purposes of any agreement related to the CRTF or the public securities.

(49) TPFA--The Texas Public Finance Authority.

(50) Unearned premium--That portion of gross premium that has been collected in advance for insurance that the association has not yet earned because of the unexpired portion of the time for which the insurance policy has been in effect.

§5.4114. Disbursements from the Catastrophe Reserve Trust Fund.

(a) Disbursements in response to a catastrophic event require the following:

(1) In the event that the association reasonably estimates that a catastrophic event has occurred, the general manager of the association must provide the Commissioner and the comptroller a definitive written statement containing the total amount of the estimated catastrophic losses, potential reinsurance recoveries related to those losses, and the estimated portion of the catastrophic losses that exceeds the catastrophe year's premium and other revenue of the association;

(2) The Commissioner or an authorized representative of the department, on receiving the statement described in paragraph (1) of this subsection, must have determined that a catastrophic event has occurred;

(3) The Commissioner or an authorized representative of the department must provide the trust company with a letter of instruction to pay the association or any third-party payee an amount from the CRTF that is equal to the lesser of either:

(A) the portion of the catastrophic loss that exceeds the catastrophe year's premium and other revenue of the association, or

(B) the balance of the CRTF; and

(4) The association must report to the Commissioner and the comptroller any subsequent change in the amount of catastrophic losses. If the change results in an increase in the amount of catastrophic losses, the association may request additional disbursements under this subsection. If the change results in a decrease in the amount of catastrophic losses, subsection (f) of this section applies.

(b) To disburse funds to pay for costs associated with maintaining or managing the CRTF, the Commissioner or an authorized representative of the department must issue a letter of instruction to the trust company specifying the amount of money to be paid and specifying any third-party payee.

(c) To request a disbursement to pay for operating expenses, including reinsurance or alternative risk financing mechanisms under Insurance Code §2210.453, the association must submit a written request to the Commissioner, copied to the comptroller, that includes:

(1) an itemized list of operating expenses;

(2) the total amount of funds the association is requesting under this subsection; and

(3) a description of the event or events that caused the association to lack sufficient premium and other revenue to pay for the listed operating expenses.

(d) With the exception of disbursements to pay for reinsurance or alternative risk financing mechanisms under Insurance Code §2210.453, the Commissioner may only authorize the release of funds under subsection (c) of this section for operating expenses the Commissioner deems essential on a short-term basis.

(e) In authorizing the release of CRTF funds, the Commissioner may rely on any statements or notifications of definitive or estimated losses, association revenue, reinsurance proceeds, or any other related or supporting information, from any source, including the general manager of the association.

(f) The association must remit to the CRTF any funds remaining after the purpose for which the funds were disbursed from the CRTF has been met.

§5.4133. Public Security Proceeds.

(a) As necessary, the association must make written requests to TPFA for the disbursement of public security proceeds for the association program, including

(1) for the payment of incurred claims and operating expenses of the association, or

(2) other amounts as authorized in Insurance Code §2210.608.

(b) The association's written request must specify:

(1) the amount of the request; and

(2) the purpose of the request.

(c) To facilitate timely payment of losses, the association may request funds to be disbursed to the association before the settlement of incurred claims.

(d) The association must account for the receipt and use of public security proceeds separately from all other sources of funds. The association may hold public security proceeds in the manner authorized by the association's plan of operation or as required by agreement with TPFA.

(e) The proceeds of public securities issued after a catastrophic event may be used:

(1) for any purpose authorized in Insurance Code §2210.608(a), during the catastrophe year for which the public securities were issued;

(2) only to pay for losses and expenses resulting from the catastrophe year for which the public securities were issued, during subsequent years; and

(3) after all losses and expenses resulting from the catastrophe year for which the public securities were issued are paid, only in accordance with Insurance Code §2210.608(b) and §5.4134 of this title (relating to Excess Public Security Proceeds).

(f) The proceeds of public securities issued before a catastrophic event may be used:

(1) for any purpose authorized in Insurance Code §2210.608(a) and (c), during the catastrophe year for which the proceeds were disbursed;

(2) only to pay for losses and expenses resulting from the catastrophe year for which the proceeds were disbursed, during subsequent years; and

(3) after all losses and expenses resulting from the catastrophe year for which the proceeds were disbursed are paid, only in accordance with Insurance Code §2210.608(b) and §5.4134 of this title.

§5.4134. Excess Public Security Proceeds.

(a) The association may use any excess public security proceeds remaining after the purposes for which the public securities were issued or disbursed are satisfied in accordance with Insurance Code §2210.608(b).

(b) As specified in Insurance Code §§2210.072(a), 2210.073(a), and 2210.0741(a), public securities may be repaid before their full term if the association's board of directors elects to do so and the Commissioner approves.

§5.4141. Class 1 Public Security Trust Fund.

(a) While class 1 public securities are outstanding, the association must deposit net premium and other revenue in the class 1 public security trust fund at periods and in amounts as required by the class 1 public security agreements to fund the class 1 payment obligation. As required by Insurance Code §2210.609(c), the association must deposit association surcharges collected under Insurance Code §2210.612 in the class 1 public security trust fund.

(b) Without limiting other options, the class 1 public security agreements may include an operating reserve fund. If the class 1 public security trust fund does not contain sufficient money to pay debt service on the class 1 public securities, administrative expenses on the class 1 public securities, or other class 1 public security obligations, the association must transfer sufficient money from any operating reserve fund or other association-held funds to the class 1 public security trust fund to make the payment.

(c) The association may not directly or indirectly use, borrow, or in any manner pledge or encumber association surcharges collected or to be collected, except for the payment of class 1 public security obligations and as otherwise authorized in this title.

(d) The trust company must deposit any net investment income earned on net premium and other revenue and on the association surcharges into the class 1 public security trust fund while these amounts are on deposit.

(e) Following the issuance of public securities, net premium may be pledged for the payment of class 2 and class 3 payment obligations. Net premium earned in one catastrophe year may be pledged for the repayment of public securities issued in prior catastrophe years.

§5.4142. Class 2 and Class 3 Public Security Trust Funds.

(a) While class 2 or class 3 public securities payable under Insurance Code §2210.613 and §2210.6131, respectively, are outstanding, the association must deposit net premium and other revenue in the class 2 public security trust fund and the class 3 public security trust fund, respectively, at periods and in amounts as required by the class 2 and class 3 public security agreements to fund the class 2 and class 3 payment obligations. As required by Insurance Code §2210.609(c), the association must deposit association surcharges collected under Insurance Code §2210.613 and §2210.6131 in the class 2 public security trust fund and the class 3 public security trust fund, respectively.

(b) Without limiting other options, for public securities payable under Insurance Code §2210.613 and §2210.6131, the class 2 and class 3 public security agreements may include an operating reserve fund. If the class 2 or class 3 public security trust funds do not contain sufficient money to pay debt service on the class 2 or class 3 public securities, administrative expenses on the class 2 or class 3 public securities, or other class 2 or class 3 public security obligations, the association must transfer sufficient money from any

operating reserve fund or other association-held funds to the class 2 or class 3 public security trust fund, as applicable, to make the payment.

(c) The association may not directly or indirectly use, borrow, or in any manner pledge or encumber association surcharges collected or to be collected, except for the payment of the applicable public security obligations and as otherwise authorized in this title.

(d) The trust company must deposit any net investment income earned on net premium and other revenue and on the association surcharges into the appropriate trust fund accounts while these amounts are on deposit.

(e) Following the issuance of public securities, net premium may be pledged for the payment of class 2 and class 3 payment obligations. Net premium earned in one catastrophe year may be pledged for the repayment of public securities issued in prior catastrophe years.

§5.4160. Member Assessments to Pay for Reinsurance in Excess of the Association's Statutory Minimum Funding Level.

(a) The association, with the Commissioner's approval, must assess members as provided by Insurance Code §2210.453(d) to pay for the cost of any reinsurance coverage or alternative risk transfer mechanisms it purchases in excess of the statutory minimum funding level. If, in a calendar year, the association must assess its members under Insurance Code §2210.453(d),

(1) then the association must request the Commissioner's approval within a reasonable time after it knows its total reinsurance costs for that calendar year, and

(2) must issue the assessment by the later of either

(A) 120 days after the date the association receives the data that TDI provides under §5.4162(f) of this title for that year; or

(B) December 1 of that year.

(b) At the first regular board meeting in each calendar year, but before April 1, the association must discuss with the board its methodology for determining its one-in-100-year probable maximum loss for the calendar year. In discussing its methodology, the association must provide the information described in subsection (d) of this section and make that information available to its members and the public.

(c) After the board meeting described in subsection (b) of this section, but not later than April 1 of each year, the association must disclose to the Commissioner its one-in-100-year probable maximum loss for the calendar year and the association's method for determining that probable maximum loss.

(d) In disclosing its method for determining its one-in-100-year probable maximum loss, the association must include:

(1) the hurricane model or models it relied on, including the model vendors, the model names, and the versions of each model;

(2) the in-force date and the total amount of direct exposures in force for the policy data used as the input for each hurricane model the association relied on;

(3) all user-selected hurricane model input assumptions used with each hurricane model the association relied on;

(4) the one-in-100-year probable maximum loss model output produced by each hurricane model the association relied on;

(5) if the association relied on more than one hurricane model, the methodology the association used to blend or average the hurricane model outputs, including all weighting factors used; and

(6) any adjustments the association or another party made to the one-in-100-year probable maximum loss model outputs or the blended or averaged output, including any adjustments to include loss adjustment expenses.

(e) The department will post the information disclosed under subsections (c) and (d) of this section on its website.

(f) If, in a year, the association elects to purchase coverage for reinsurance or alternative risk transfer mechanisms in excess of the one-in-100-year probable maximum loss, then the association must also obtain a quote for coverage that provides funding equal to the one in 100-year probable maximum loss. The premium quote must assume the minimum required attachment point described in Insurance Code §2210.453(c).

(g) No later than the second regular board meeting of the calendar year, the association must provide each of the following to its board and make this information available to its members and the public:

(1) the reinsurance or alternative risk transfer mechanism premium quote required under subsection (f) of this section; and

(2) the total deposit premiums for all reinsurance or alternative risk transfer mechanism coverage for the year.

(h) If, at the time of the second regular board meeting of the calendar year, deposit premiums described in subsection (g) of this section are not known, then the association must provide its best estimate of those premiums to the board and make the estimate available to its members. As soon as the association knows the deposit premiums

described in subsection (g) of this section, the association must provide them to the board and make them available to its members.

(i) In its request to the Commissioner to approve an assessment under Insurance Code §2210.453(d), the association must submit the following information:

(1) the portion of the association's reinsurance premium that provides coverage for losses or loss adjustment expenses above the association's one-in-100-year probable maximum loss; and

(2) the methodology the association used to calculate the amount described in paragraph (1) of this subsection.

(j) This section and §§5.4161 - 5.4167 of this title (relating to Member Assessments Other than for Reinsurance in Excess of the Association's Statutory Minimum Funding Level; Amount of Assessment; Notice of Assessment; Payment of Assessment; Failure to Pay Assessment; Contest After Payment of Assessment; and Inability to Pay Assessment by Reason of Insolvency, respectively) are a part of the association's plan of operation and will control over any conflicting provision in §5.4001 of this title (relating to Plan of Operation).

(k) Sections 5.4162 - 5.4167 of this title apply both to member assessments under this section and under §5.4161 of this title.

§5.4161. Member Assessments Other than Assessments for Reinsurance in Excess of the Association's Statutory Minimum Funding Level.

(a) The association, with the approval of the Commissioner, must assess members as provided by Insurance Code Chapter 2210.

(b) The association must provide, in the aggregate for the catastrophe year, the following information when requesting the Commissioner to approve a class 1, class 2, or class 3 assessment under Insurance Code §§2210.0725, 2210.074, or 2210.0742, as applicable:

(1) the association's best estimate of the amount of losses expected to be paid as a result of the event, or series of events, that caused the need for the assessment requested;

(2) the amount of losses paid, or expected to be paid, from premium and other revenue of the association;

(3) the amount of losses paid, or expected to be paid, from available reserves of the association and available amounts in the CRTF;

(4) the amount of losses paid, or expected to be paid, from the proceeds of class 1 public securities issued, or expected to be issued;

(5) the amount of class 1 assessments previously approved and the amount of class 1 assessments now requested;

(6) in the case of a request to approve a class 2 or class 3 assessment, the amount of losses paid, or expected to be paid, from the proceeds of class 2 public securities issued, or expected to be issued;

(7) in the case of a request to approve a class 2 or class 3 assessment, the amount of class 2 assessments previously approved and the amount of class 2 assessments now requested;

(8) in the case of a request to approve a class 3 assessment, the amount of losses paid, or expected to be paid, from the proceeds of class 3 public securities issued, or expected to be issued;

(9) in the case of a request to approve a class 3 assessment, the amount of class 3 assessments previously approved and the amount of class 3 assessments now requested.

(c) If all or any portion of the authorized principal amount of class 1 public securities requested under §5.4124 or §5.4125 of this title (relating to Issuance of Class 1 Public Securities before a Catastrophic Event and Issuance of Public Securities after a Catastrophic Event) cannot be issued based on the factors described in §5.4135 of this title (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis), the association may request and the Commissioner may approve the imposition of class 1 assessments as provided in this section.

(d) In its request to the Commissioner to approve the imposition of assessments under subsection (c) of this section, the association must submit the following information:

- (1) the information required by subsection (b) of this section;
- (2) information based on the analyses described in §5.4135 of this title;
- (3) the amount of class 1 public securities that can be issued;
- (4) the amount of class 1 public securities that cannot be issued; and
- (5) the specific reasons, market conditions, and requirements that prevent TPFA from issuing all or any portion of the authorized principal amount of class 1 public securities. The association may rely on information and advice provided by TPFA, TPFA consultants, TPFA legal counsel, and third parties retained by the association for this purpose.

(e) The association must request the issuance of the statutorily authorized principal amount of class 1 public securities before the association may request the Commissioner approve a class 1 assessment under Insurance Code §2210.0725.

(f) The association must request the issuance of the statutorily authorized principal amount of class 2 public securities before the association may request the Commissioner approve a class 2 assessment under Insurance Code §2210.074.

(g) The association must request the issuance of the statutorily authorized principal amount of class 3 public securities before the association may request the Commissioner approve a class 3 assessment under Insurance Code §2210.0742.

(h) If the Commissioner approves the imposition of assessments under subsection (c) of this section, any class 2 and class 3 public securities must be issued as provided by Insurance Code Chapter 2210 and these rules.

(i) The association may use the proceeds from assessments only for losses and expenses resulting from the catastrophe year for which the assessments were made.

§5.4162. Amount of Assessment.

(a) The association must determine which members of the association must participate in any assessment under §5.4160 and §5.4161 of this title (relating to Member Assessments to Pay for Reinsurance In Excess of the Association's Statutory Minimum Funding Level and Member Assessments Other than Assessments for Reinsurance in Excess of the Association's Statutory Minimum Funding Level).

(1) The association may not include in the assessment an insurer that became a member of the association after September 1, 2009, and that had not previously

been a member of the association, until after the second anniversary of the date on which the insurer first becomes a member of the association.

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

(3) The association may not include in the assessment formula the net direct premium of an affiliate insurer engaged in the business of surplus lines insurance as described in the Insurance Code §2210.052(c) that a federal agency or court of competent jurisdiction determines to be exempt from the assessment formula under Insurance Code Chapter 2210.

(b) Each member company's percentage of participation must be computed on a calendar year basis for the year in which the assessment is made. The percentage of participation is not based on the year in which the catastrophic event occurred, except for an assessment made during that year. Net direct premiums must be determined as provided under §5.4001(a)(2)(N) of this title (relating to Plan of Operation).

(c) The participating members of the association must participate in insured losses and operating expenses of the association, in excess of premium and other revenue, in the proportions required by Insurance Code §2210.052 and as depicted in subsection (e) of this section. A participating member is entitled to receive credit for insurance voluntarily written in the catastrophe area, as provided in Insurance Code §2210.052.

(d) If at the time of an assessment the department has not furnished to the association information necessary to compute a member's participation during the

preceding calendar year, then each member's participation must be based upon information furnished to the association from the last calendar year for which such information is available. When the association receives the necessary information from the department, the association must reassess or refund to each participating member the amounts necessary to properly reflect the member's participation.

(e) The Figure: 28 TAC §5.4162(e) graphically depicts the Texas Windstorm Insurance Association Procedure For Calculating Member Assessment Percentages Including Credit For Voluntary Writings. All premiums are for the most recent preceding calendar year ending December 31, as furnished by the department.

Figure: 28 TAC §5.4162(e)

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

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

(1) Column 1(a): Statewide net direct premiums for extended coverage and other allied lines. Column 1(b): Statewide net direct premiums for extended coverage and other allied lines portion of the multiple peril line. Column 1(c): Statewide net direct premiums for homeowners and farm and ranch owners.

(2) Column 2: The sum of the statewide net direct premiums at 90% of the extended coverage and other allied lines, and 50% of the homeowners and farm and ranch owner's, or such percentage as may be determined in accordance with §5.4001(a)(2)(N)(i)(III) of this chapter (90% of Column 1(a) plus 90% of Column 1(b) plus 50% of Column 1(c)).

(3) Column 3: Each company's percentage of the net direct premiums as described in Column 2, which is the basis for indicating normal required participation in the association prior to credits for voluntary writings in the designated areas.

(4) Column 4: Total windstorm and hail premiums in the designated areas (association premiums plus voluntary premiums).

(5) Column 5: Normal company quota of total windstorm and hail premiums (Column 3 x Column 4).

(6) Column 6: Each company's voluntary writings in the designated areas multiplied by the same percentages as shown in Column 2. Note: Maximum credit must be limited to company's normal quota.

(7) Column 7: Each company's maximum possible allocation after applying credits for voluntary writings (Column 5 minus Column 6). Negative allocation to be shown as zero.

(8) Column 8: Percentage participation of each member company in the association, prior to application of offset. Note: The offset figure measures the excess premiums developed by the maximum credit in Column 6.

(9) Column 9: Percentage participation of each member company in the association.

(f) The department will furnish to the association the amount of net direct premiums of each member company written on property in this state and the aggregate net direct premiums written on property in this state by all member companies during the preceding calendar year as reported by member companies to the department.

(g) Within a reasonable time after receiving the information described in subsection (f) of this section from the department, the association must notify each member company, in writing, by certified mail, of the following:

(1) the amount of net direct premiums the member company wrote on property in this state during the preceding calendar year;

(2) the amount of net direct premiums of similar insurance the member company voluntarily wrote in the catastrophe area during the preceding calendar year;

and

(3) that the notice and contents are an act, ruling, or decision of the association and that the member company to whom the notice is given is entitled to appeal it not later than the 30th day after the date shown on the notice in accordance with Insurance Code §2210.551.

(h) Within a reasonable period of time after sending the notice described in subsection (g) of this section, the association must determine the percentage of participation for each member company in the manner provided in this section and must notify each member company of its percentage of participation, in writing, by certified mail. The notice must state that the notice and contents are an act, ruling, or decision of the association insofar as the mathematical determination of the percentage of participation is concerned and that the member company to whom the notice is given is entitled to appeal not later than the 30th day after the date shown on the notice in accordance with Insurance Code §2210.551.

(i) In the notices required under subsections (g) and (h) of this section, the association must disclose to its members that the resulting participation percentages will be used for any assessments for reinsurance in excess of the association's statutory minimum funding level for the calendar year that may be required under Insurance Code §2210.453(d).

§5.4164. Payment of Assessment.

Each member must remit to the association payment in full of its assessed amount of any assessment levied by the association within 30 days of receipt of notice of assessment.

§5.4167. Inability to Pay Assessment by Reason of Insolvency.

In the event a member of the association is placed in temporary or permanent receivership under order of a court of competent jurisdiction based on a finding of insolvency, and such member has been designated an impaired insurer by the Commissioner, and in the event an assessment is necessary in the year the insurer is declared impaired, the aggregate net amount not recovered from such insolvent insurer must be reallocated among the remaining members of the association in accordance with the method of determining participation as determined in the plan of operation.

§5.4171. Premium Surcharge Requirements.

(a) The association may be required to assess a premium surcharge under Insurance Code §§2210.612, 2210.613, or 2210.6131 on all policyholders of policies that cover association-insured property.

(b) Following a catastrophic event, insurers may be required to assess a premium surcharge under Insurance Code §2210.6132 on all policyholders of policies that cover insured property that is located in a catastrophe area, including automobiles principally garaged in the catastrophe area. This requirement applies to property and casualty insurers, the association, the Texas FAIR Plan Association, Texas Automobile Insurance Plan Association policies, affiliated surplus lines insurers, and includes property and casualty policies independently procured from affiliated insurers.

(c) For premium surcharges described in subsection (a) of this section, this section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this title (relating to Premium Surcharge Definitions, Determination of the Contingent Surcharge Percentage, Premiums

to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent Surcharges, Offsets, Association Surcharges Not Subject to Commissions or Premium Taxes; Contingent Surcharges not Subject to Commissions, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) apply to all policies written by the association.

(d) Contingent surcharges described in subsection (b) of this section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this title only 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.

(e) This section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this title do not apply to:

(1) a farm mutual insurance company operating under Insurance Code Chapter 911, unless the company is acting as a fronting insurer, as defined by Insurance Code §221.001(c);

(2) a nonaffiliated county mutual fire insurance company described by Insurance Code §912.310 that is writing exclusively industrial fire insurance policies as described by 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 Called Session (1929), as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, Second 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 that a federal agency or court of competent jurisdiction determines to be exempt from a premium surcharge under Insurance Code Chapter 2210.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on December 16, 2020.

DocuSigned by:

D03DCB0BCCB94B6...
Allison Eberhart, Deputy General Counsel
Texas Department of Insurance

The Commissioner adopts amendments to 28 TAC §§5.4102, 5.4114, 5.4133, 5.4134, 5.4141, 5.4142, 5.4161, 5.4162, 5.4164, 5.4167, and 5.4171 and adopts new 28 TAC §5.4160.

Commissioner of Insurance

By: 
C77A87C8C21B435...
Doug Slape

2020-6617

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

Adopted Sections
Page 62 of 63

Chief Deputy Commissioner
Tex. Gov't Code §601.002
Commissioner's Order No. 2018-5528

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

Adopted Sections
Page 63 of 63