SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST FUND, FINANCING ARRANGEMENTS AND PUBLIC SECURITIES
28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 – 5.4125, 5.4134 – 5.4136, 5.4141, 5.4144, 5.4161, 5.4171 5.4172 – 5.4173, 5.4181, 5.4182, 5.4184 - 5.4190,
5.4126, 5.4127, 5.4142, 5.4143, 5.4145,
5.4128, 5.4146 – 5.4149, and
5.4912

INTRODUCTION. The Texas Department of Insurance proposes amending 28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 – 5.4125, 5.4134 – 5.4136, 5.4141, 5.4144, 5.4161, 5.4171 – 5.4173, 5.4181, 5.4182, 5.4184 – 5.4190, and repealing and replacing 28 TAC §§5.4126, 5.4127, 5.4142, 5.4143, and 5.4145, and proposes repealing 28 TAC §§5.4128, 5.4146 – 5.4149, and adding new 28 TAC §5.4912. These sections concern funding for losses and operating expenses in excess of the Texas Windstorm Insurance Association's net premium and other revenue and amounts available in the catastrophe reserve trust fund. These sections also concern procedures for ordering premium surcharges and assessments of association member insurers under Insurance Code Chapter 2210, Subchapters B-1 and M. These amendments, repeals, and new sections are necessary to implement the funding portions of SB 900, 84th Legislature (2015).

EXPLANATION. The association is the residual insurer of last resort for windstorm and hail insurance in the designated catastrophe area along the Texas coast. The association provides windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market.

Since 2009, the Insurance Code has provided that the association must pay for losses that exceed its premium and other revenue and amounts available in the catastrophe reserve trust fund with the proceeds of three classes of public securities, issued on the association's behalf by the Texas Public Finance Authority. Statute provided for the payment of the public securities from the association's net premium and other revenue, assessments on association member insurers, premium surcharges on certain property and casualty insurance policies in the catastrophe area, or a combination thereof, depending on the class of public security. TDI adopted rules in 2011 to implement the statutes and adopted new and amended rules in 2014 to implement statutory changes, including changes in the lines of insurance subject to a premium surcharge and the creation of an alternative source of payment for certain public securities.

SB 900 changed the association's funding structure. Instead of being paid from the proceeds of three classes of public securities, losses that are greater than the association's net premium and other revenue and amounts in the catastrophe reserve trust fund must be paid with proceeds of alternating classes of public securities and member insurer assessments, beginning with class 1 public securities and ending with class 3 assessments. All three classes of public securities are to be paid for with the association's net premium and other revenue, and, if that is insufficient, with a premium surcharge on association policies. If issuing class 2 or class 3 public securities payable from these sources is not possible or the commissioner of insurance determines that issuance is financially unreasonable, TPFA may issue class 2 or class 3 public securities paid for from a contingent source: a premium surcharge on certain property and casualty and all association and Texas FAIR Plan Association policies in the catastrophe area.

The proposed amendments, repeals, and new sections conform TDI rules to current law. TDI proposes repealing sections implementing Insurance Code §2210.6136, which provided for an alternative source of payment for certain class 2 public securities and which SB 900 repealed. TDI proposes amended, replacement, and new sections that establish procedures for the approval and determination of premium surcharges on association policies and procedures for the issuance of class 2 or class 3 public securities paid from the contingent source. The proposed amendments also contain conforming changes for clarity and agency style.

TDI posted to its website a draft of these rules on July 31, 2015, with a comment period that ended on August 14, 2015. Based on comments, TDI revised the draft and makes this proposal. A thorough discussion of the proposed amended, replacement, and new sections follows.

§5.4101. Applicability. Section 5.4101(a) has been amended to reflect the proposed addition or deletion of sections. Sections listed here will be part of the association's plan of operation and will control over any conflicting provision in §5.4001 of Division 3.

§5.4102. Definitions. This section has been amended to delete definitions relating to the implementation of Insurance Code §2210.6136, which SB 900 repealed and to add new definitions related to implementation of the new funding structure under SB 900. Existing definitions have also been changed to conform to the new funding structure and certain definitions have been moved from §5.4172 of Division 3 to this section.

§5.4121. Financing Arrangements. Conforming changes are made to this section to reflect that under SB 900, net premium and other revenue of the association is pledged for the payment of class 1, class 2, and class 3 public securities issued under Insurance Code §§2210.612, 2210.613, and 2210.6131, respectively. The section is also changed to reflect that, due to the repeal of Insurance Code §2210.6136, the association will not have premium surcharge or member assessment repayment obligations.

§5.4123. Public Security Request, Approval, and Issuance. This section is amended to delete references to existing §5.4126 (relating to Alternative for Issuing Class 2 and Class 3 Public Securities) of Division 3. Existing §5.4126 implements Insurance Code §2210.6136, which SB 900 repealed. TDI proposes repealing and replacing §5.4126. This section is also amended to remove reinsurance proceeds from the list of information the commissioner may rely on in considering the association's request for the issuance of public securities. Reinsurance proceeds are no longer applicable in this determination because SB 900 amended Insurance Code §2210.453 to require that reinsurance attach at a point that is not less than the aggregate amount of all funding available to the association under Subchapter B-1.

§5.4124. Issuance of Class 1 Public Securities before a Catastrophic Event. Conforming changes are made to this section to reflect that under SB 900, the maximum amount of pre-event class 1 public securities that TPFA may issue is changed from $1 billion to $500 million. The section is also amended to make clear that, for the purposes of determining the amount of pre-event public securities that can be issued, the Series 2014 Pre-Event Class 1 Public Securities that TPFA issued under the previous law are pre-event class 1 public securities under the new law.

Proposed §5.4124(d) also clarifies what public security proceeds are considered depleted. Except as provided in §5.4161, the maximum amount of class 1 public securities that may be outstanding must be issued and the proceeds spent before class 1 assessments may be accessed for the same catastrophe year. Under the proposal, public security proceeds used to pay issuance costs, establish a reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year the remaining principal is depleted to pay for a catastrophe or used to retire the public securities. The amounts of those proceeds that are considered depleted would then need to be counted in determining the amount of class 1 public securities that must be issued to reach the maximum authorized amount of outstanding class 1 public securities.

§5.4125. Issuance of Public Securities after a Catastrophic Event. Conforming changes are made to this section to reflect that under SB 900, the Series 2014 Pre-Event Class 1 Public Securities that TPFA issued under the previous law are considered pre-event class 1 public securities when determining the amount of post-event class 1 public securities that may be issued. Conforming changes are also made to reflect the new funding structure under SB 900, which provides six layers of alternating public securities and assessments on association members, instead of three layers of public securities. The section is also amended to clarify that for the issuance of class 2 or class 3 public securities under Insurance Code §2210.6132, the association must make a separate request under §5.4127 of Division 3.

Proposed §5.4124(d) also clarifies what public security proceeds are considered depleted. Except as provided in §5.4161, the maximum amount of class 1 public securities that may be outstanding must be issued and the proceeds spent before class 1 assessments may be accessed for the same catastrophe year. Under the proposal, public security proceeds used to pay issuance costs, establish a reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year the remaining principal is depleted to pay for a catastrophe or used to retire the public securities. The amounts of those proceeds that are considered depleted would then need to be counted in determining the amount of class 1 public securities that must be issued to reach the maximum amount of outstanding class 1 public securities.

§5.4126. Determination of the Association Surcharge Percentage. This proposal contemplates the repeal and replacement of existing §5.4126 (Alternative for Issuing Class 2 and Class 3 Public Securities). This section implements Insurance Code §2210.6136, which SB 900 repealed.

The proposed replacement section implements provisions in Insurance Code §§2210.612, 2210.613, and 2210.6131, which provide that class 1, class 2, and class 3 public securities may be payable from premium surcharges on association policies ("association surcharges"). While public securities are outstanding, the association is required to quarterly determine if its net premium and other revenue are sufficient for payment of its payment obligations for any outstanding class 1, class 2, and class 3 public securities. If the association determines its net premium and other revenue are not sufficient, it must promptly request the commissioner to approve association surcharges. The proposed section also requires the association to request an association surcharge any time, including before the public securities have been issued, if it determines its premium and revenue is not sufficient.

The proposed replacement §5.4126 specifies the information that the association must provide to the commissioner in a request to implement an association surcharge and allows the commissioner to independently determine that an association surcharge is necessary. The commissioner must make a surcharge determination within 10 business days. The proposed section contemplates that the association will surcharge all association policies effective on a specified surcharge date, and not monthly as the policies renew.

§5.4127. Contingent Sources of Payment for Class 2 and Class 3 Public Securities. This proposal contemplates the repeal and replacement of existing §5.4127 (Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharge and Member Assessments). This section implements Insurance Code §2210.6136, which SB 900 repealed.

The proposed replacement section implements new Insurance Code §2210.6132, which was added by SB 900. Insurance Code §2210.6132 provides that if the commissioner, after consultation with the TPFA, determines that class 2 or class 3 public securities payable from the association's premium and association surcharges cannot be issued or it is "financially unreasonable to do so," then the commissioner must order that class 2 and class 3 public securities are payable from premium surcharges on coastal property and automobile policies ("contingent surcharges"). The replacement §5.4127 specifies the information the association must provide to the commissioner in order to obtain approval for the repayment of public securities from contingent surcharges.

§5.4134. Excess Public Security Proceeds. This section is amended with minor conforming changes and stylistic changes.

§5.4135. Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis. The section is amended to add the effect of depopulation under Insurance Code Chapter 2210, Subchapter O, which SB 900 added, to the list of items the association must consider when determining the amount of class 1 public securities that cannot be issued. The section is also amended to reflect TDI's current writing style guidelines and to delete references to the association's premium surcharge and member assessment repayment obligations because these relate to the implementation of Insurance Code §2210.6136, which SB 900 repealed. The section also deletes references to reinsurance or alternative risk financing as alternatives to funding through public securities because SB 900 requires that reinsurance and alternative risk financing be used to provide funding only after all funding provided for under Subchapter B-1 of Chapter 2210 has been accessed.

§5.4136. Association Rate Filing. Conforming changes are made to this section to reflect changes SB 900 made to the association's funding structure. Under the new funding structure class 1, class 2, or class 3 public securities may be paid from the association's net premium and other revenue. Under the pre-SB 900 funding structure, only class 1 public securities could be paid from the association's net premium and other revenue. The section is also amended to make clear that the section's requirements apply to the Series 2014 Pre-Event Class 1 Public Securities issued before the enactment of SB 900.

§5.4141. Class 1 Public Security Trust Fund. This section is amended to conform it to changes made by SB 900 regarding the fund where TWIA deposits revenues pledged for payment of class 1 public securities. SB 900 eliminated the "Obligation Revenue Fund" where the association deposited net premium and other revenue for the payment of class 1 public securities, and created the "Class 1 Public Security Trust Fund" where the association must deposit new premium, other revenue, and association surcharges for the payment of class 1 public securities. The section is also amended to state that the association may not use or encumber association surcharges used to pay for class 1 public securities.

§5.4142. Class 2 and Class 3 Public Security Trust Funds. This proposal contemplates the repeal and replacement of §5.4142 (Excess Obligation Revenue Fund Amounts). Excess funds are addressed in amended §5.4144 and proposed replacement §5.4145 ("Excess Premium Surcharge Revenue," and "Excess Net Premium and Other Revenue," respectively). The proposed replacement §5.4142 implements SB 900's amendments to Insurance Code §2210.609, which create the class 2 and class 3 public security trust funds for the deposit of the association's net premium, other revenue, and association surcharges.

§5.4143. Premium Surcharge Trust Fund. This proposal contemplates the repeal and replacement of existing §5.4143 (Trust Fund for the Payment of Class 2 Public Securities). Existing §5.4143 addresses the deposit of premium surcharges collected under Insurance Code §2210.613, which SB 900 amended. The proposed replacement section provides for the trust fund, or funds, where the association and other insurers must deposit contingent surcharges, which may be required to pay for class 2 or class 3 public securities. This replacement section incorporates large sections of existing §5.4143, as both address the deposit of surcharges on non-association, coastal policies by insurers.

§5.4144. Excess Premium Surcharge Revenue. Conforming changes are made to this section to reflect that under SB 900, the association may impose association surcharges to help pay for class 1, class 2, or class 3 public securities, and the commissioner may order contingent surcharges to pay for class 2 or class 3 public securities.

§5.4145. Excess Net Premium and Other Revenue. This proposal contemplates the repeal and replacement of existing §5.4145 (Excess Class 2 Member Assessment Revenue). Existing §5.4145 is no longer necessary because SB 900 amended Insurance Code Chapter 2210, Subchapter M so that insurer member assessments are used to pay for association losses directly, rather than being used to pay for public securities. Proposed replacement §5.4145 addresses what may be done with excess net premium and other revenue because the statute does not address this directly. The proposed section largely follows existing §5.4142 (Excess Obligation Revenue Fund Amounts), which addresses what happens to excess net premium and other revenue used to pay for class 1 public securities under pre-SB 900 law.

§5.4146. Member Assessment Trust Fund for the Repayment of Class 3 Public Securities. This proposal contemplates the repeal, without replacement, of existing §5.4146. This section is no longer necessary because SB 900 amended Insurance Code Chapter 2210, Subchapter M so that insurer member assessments are used to pay for association losses directly, rather than being used to pay for public securities.

§5.4147. Excess Class 3 Member Assessment Revenue. This proposal contemplates the repeal, without replacement, of existing §5.4147. This section is no longer necessary because SB 900 amended Insurance Code Chapter 2210, Subchapter M so that insurer member assessments are used to pay for association losses directly, rather than being used to pay for public securities.

§5.4148. Repayment Obligation Trust Fund for the Payment of Amounts Owed Under §5.4127. This proposal contemplates the repeal, without replacement, of existing §5.4148. This section is no longer necessary because it relates to the implementation of Insurance Code §2210.6136, which SB 900 repealed.

§5.4149. Excess Repayment Obligation Trust Fund Amounts. This proposal contemplates the repeal, without replacement, of existing §5.4149. This section is no longer necessary because it relates to the implementation of Insurance Code §2210.6136, which SB 900 repealed.

§5.4161. Member Assessments. Conforming changes are made to this section to reflect changes SB 900 made to the association's funding structure. SB 900 amended the association's funding provisions to provide loss funding through six alternating layers of public securities and assessments on association member insurers. The proposed amendments specify the information the association must provide when requesting the commissioner approve a member insurer assessment.

Proposed §5.4161(c) provides that if TPFA cannot issue all or any portion of the authorized amount of class 1 public securities, the association may request and the commissioner may approve the imposition of a class 1 assessment on the association's member insurance companies under §2210.0725. This addresses what happens if, for a catastrophe year, TPFA cannot issue all of the class 1 public securities authorized by Insurance Code §2210.072. The amendments also make clear that if the commissioner approves a class 1 assessment under subsection (c), subsequent layers of public securities and assessments must be issued and ordered as provided for in statute.

§5.4171. Premium Surcharge Requirements. Conforming changes are made to this section to reflect the fact that SB 900 created two distinct types of premium surcharges. One type, association surcharges, may be assessed on association policies under Insurance Code §§2210.612, 2210.613, or 2210.6131. The other type, contingent surcharges, may be assessed under Insurance Code §2210.6132 on all policyholders of policies that cover insured property that is located in the catastrophe area, including automobiles principally garaged in the catastrophe area. The proposed amendments distinguish between the two types of premium surcharges.

§5.4172. Premium Surcharge Definitions. Proposed amendments to this section include new definitions to distinguish between the two distinct types of premium surcharge created by SB 900. Some definitions for terms that are used in §§5.4121 – 5.4167 of Division 3 are also moved from §5.4172 to §5.4102.

§5.4173. Determination of the Contingent Surcharge Percentage. This proposal amends this section to address the determination of only the contingent surcharge percentage, which may be required under Insurance Code §2210.6132. Proposed replacement §5.4126 addresses the determination of the association surcharge percentage.

§5.4181. Premiums to be Surcharged. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges.

§5.4182. Method for Determining the Premium Surcharges. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges.

§5.4184. Application of the Premium Surcharges. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges. Proposed amendments also describe how association surcharges must be applied to association policies depending on whether the policies have been updated as required by proposed new 28 TAC §5.4912. Association surcharges must apply to all association policies meeting the requirements of 28 TAC §5.4912 and that are in effect on the surcharge date identified in proposed replacement §5.4126. Association surcharges must apply to association policies not meeting the requirements of §5.4912 on the surcharge date and that are issued or renewed with effective dates in the surcharge period determined under proposed replacement §5.4126. The section is also amended to state that only contingent surcharges are refundable; association surcharges are nonrefundable.

§5.4185. Mandatory Premium Surcharge Collection. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges and to remove references to existing §5.4127 which TDI proposes repealing and replacing. Proposed amendments also describe how the association must collect association surcharges depending on whether association policies have been updated as required by proposed new 28 TAC §5.4912. The association must collect association surcharges in full when due for policies compliant with 28 TAC §5.4912. For policies not yet compliant with §5.4912, the association must collect association surcharges in full no later than the effective date of the policy.

The section is also amended to state that failure to pay an association surcharge constitutes failure to pay premium for purposes of policy cancellation. Insurers must apply all policyholder payments to contingent surcharges before applying the payments to premium.

§5.4186. Remittance of Contingent Surcharges. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges and to remove the title of existing §5.4143, which TDI proposes repealing, and replace it with the title of the proposed replacement section.

§5.4187. Offsets. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges.

§5.4188. Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges Not Subject to Commissions. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges. Proposed amendments state that the association may not increase association surcharges to pay for premium taxes or agent commissions, but that insurers may increase contingent surcharges in an amount equal to any premium or maintenance tax attributable to the contingent surcharge and owed to the comptroller.

§5.4189. Notification Requirements. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges. Proposed amendments require the association to provide a notice to policyholders receiving an association surcharge. The notice is similar to the one insurers must provide to policyholders receiving a contingent surcharge, but states that an association surcharge will not be refunded in the event of policy cancellation.

§5.4190. Annual Premium Surcharge Report. Conforming changes are made to this section to reflect that SB 900 created two distinct types of premium surcharges. A proposed amendment requires the association to provide TDI with an annual premium surcharge report following the end of a calendar year in which an association surcharge was in effect. This requirement is the same as the existing requirement for other insurers.

§5.4912. Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131. This proposed new section would appear in Division 10 of Subchapter E of Chapter 5, Title 28, Texas Administrative Code. The section requires the association to file new policy forms that provide that the policy is immediately subject to any surcharge the commissioner may determine under §5.4126 of Division 3 and the deadline by which policyholders must pay the surcharge. The declarations page must notify the policyholder of the possibility of surcharge and that failure to pay any surcharge will result in policy cancellation.

FISCAL NOTE AND LOCAL EMPLOYMENTS IMPACT STATEMENT. Brian Ryder, actuary, Property and Casualty Actuarial Office, has determined that for each year of the first five years the proposed amendments and new and replacement sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. If adopted, the proposal would impose no additional requirements that affect state and local governments. This proposal implements changes based on the passage of SB 900, which altered the association's funding structure and created six layers of alternating public securities and assessments on association members. Premium surcharges on association policyholders only apply if TPFA has issued class 1, class 2, or class 3 public securities under Insurance Code §§2210.612, 2210.613, or 2210.6131, respectively, and the association's net premium and other revenue are not sufficient to pay the securities. Premium surcharges on coastal property and automobile policies only apply if TPFA has issued class 2 or class 3 public securities under Insurance Code §2210.6132. Mr. Ryder does not anticipate any measurable effect on local employment or the local economy as a result of the proposal. Under this proposal, premium surcharges on association policies (association surcharges) under Insurance Code §§2210.612, 2210.613, and 2210.6131 are non refundable. Under the proposal, the association must file with TDI new policies that may be subject to immediate surcharges. Once approved, the new policies will be issued to new association policyholders and to existing ones at renewal. During the period in which not all issued policies provide for immediate surcharges, the association must collect any surcharges assessed on policies which do not provide for immediate surcharges in full no later than the effective date of the policy. One year after the first new policy is issued, all policies will be subject to immediate surcharge. Immediate surcharges, in contrast to surcharges collected over a surcharge period, are easy to implement and allow for quick collection of surcharges. However, immediate surcharges, based on the premium in effect on a particular date, make refunds for canceled policies and adjustments for mid-term policy changes that occur after the surcharge date much more difficult to administer. For this reason, refunds that would be available if TDI proposed a surcharge period for association surcharges are not available under this proposal. No measurable effect on local employment or the local economy is anticipated, however, because surcharges or portions of surcharges that would otherwise have been refunded will go into the catastrophe reserve trust fund. After a catastrophic event, the surcharges will eventually return to the local economy from the CRTF.

PUBLIC BENEFIT AND COST NOTE. Mr. Ryder has also determined that for each year of the first five years the proposed amendments and new and replacement sections are in effect, there will be public benefits resulting from the proposal and there will be costs to persons required to comply with the proposal.

Anticipated public benefits. TDI anticipates that a primary public benefit resulting from the proposal will be the implementation of SB 900. The proposal conforms TDI rules to the new funding structure, which provides six layers of alternating public securities and assessments on association members, instead of three layers of public securities.

The proposal provides procedures for the approval and determination of the two types of premium surcharges established in SB 900, premium surcharges on policyholders of association policies (association surcharges) and premium surcharges on policyholders of policies that cover insured property that is located in a catastrophe area (contingent surcharges). Both or either of these premium surcharges may be necessary to fund the debt obligation associated with the issuance of public securities. The proposal sets out the information the association must provide to the commissioner along with a request for an approval of an association surcharge and permits the commissioner to independently determine the necessity of an association surcharge. The proposal also sets out the information the association must provide to the commissioner along with a request for the issuance of class 2 or class 3 public securities paid from contingent surcharges. The anticipated public benefit will be an orderly process of determining the necessity and amount of premium surcharges, which will facilitate the issuance of public securities, the proceeds of which the association will use to pay insured losses should losses reach the relevant funding layers.

The proposal provides a “drop-down” procedure whereby the association may request approval to implement a class 1 assessment on member insurers when the statutorily authorized principal amount of class 1 public securities cannot be issued. Under SB 900, class 1 public securities may be paid only from the association’s net premium and other revenue, and, if that is insufficient, association surcharges. The anticipated public benefit of this is the ability of the association to pay insured losses even when public securities paid from these sources cannot be issued, while still maintaining the requirement that any subsequent class 2 or class 3 public securities must still be issued as provided by Chapter 2210.

Another anticipated public benefit of the proposal is its clarification of a question regarding the existing Series 2014 Pre-Event Class 1 Public Securities that TPFA issued under the previous law. Except as provided in §5.4161, the maximum amount of class 1 public securities that may be outstanding must be issued and the proceeds spent before class 1 assessments may be accessed for the same catastrophe year. If class 1 public security proceeds that have been used to pay issuance costs and put in a reserve account are considered depleted, then under Insurance Code §2210.072(f), the amounts of those proceeds must be counted in determining the amount of class 1 public securities that must be issued to reach the maximum amount of outstanding class 1 public securities. Public securities in the amounts used to pay issuance costs and to use as reserve funds, and any others needed to reach the maximum would need to be issued before class 1 assessments could be ordered in the same catastrophe year. Under the proposal, class 1 public security proceeds used to pay issuance costs, establish a reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year as, and in proportion to, the proceeds used to pay for losses or operating expenses, or used to pay principal on the public securities. The public benefit is that the association will be able to avoid the delay and expense of having to issue small amounts of public securities before being able to access the next layer of funding during the same catastrophe year.

A final public benefit of the proposal is that it provides for immediate surcharges for association policies. Although there are costs to this arrangement, as described below, immediate surcharges, in contrast to surcharges collected from policies with an effective date during a surcharge period, are easy to implement and allow for quick collection of surcharges. Once all association policies in effect are written on new policy forms that provide for immediate association surcharges, any surcharge will be based on the premium in force at the date the surcharge is due. Because the premium in force at that date is known, the amount of surcharge required may be determined more accurately than a surcharge based on policies that become effective during a surcharge period, during which the number and size of policies that will become effective will need to be estimated.

Estimated costs for persons required to comply with the proposal. The association and member insurers will incur costs to comply with the proposal.

The association.

§5.4126. Under proposed §5.4126, while class 1, 2, or 3 public securities payable under Insurance Code §§2210.612, 2210.613, and 2210.6131, respectively, are outstanding, the association must, at least quarterly, determine if its net premium and other revenue is sufficient to pay the securities. If the association determines its net premium and other revenue is insufficient, the association must request that the commissioner approve an association surcharge and provide the commissioner the information in proposed §5.4126(b). The association estimates that the vast majority of the work necessary to make the quarterly suffiency determination and to provide the information required in a surcharge request would be done by existing staff at an approximate cost of $3,000 per quarter.

§5.4127. Under proposed new §5.4127, the association must provide information to the commissioner in a request for approval of the issuance of class 2 or class 3 public securities paid from contingent surcharges under Insurance Code §2210.6132. The association must provide its estimated net revenues and its best estimate of the terms and conditions necessary to issue marketable class 2 or class 3 public securities paid from association surcharges under Insurance Code §2210.613 or §2210.6131. The association must also provide its best estimate of the association surcharges needed to pay the debt service required to issue marketable public securities paid under Insurance Code §2210.613 and §2210.6131. The association estimates that it would cost approximately $50,000 to comply with proposed §5.4127, with the majority of the costs incurred being necessary to pay for TPFA's advisors. The association would need to work closely with TFPA and its advisors should the association ever need to request for approval of the issuance of class 2 or class 3 public securities paid from contingent surcharges.

§5.4161. Under the proposed amendments to §5.4161(b), the association must request that the commissioner approve a class 1, class 2, or class 3 assessment. The association must provide information in §5.4161(b) in aggregate for the catastrophe year to the commissioner. The association estimates that the vast majority of the work necessary to gather this information would be done by current staff at an approximate cost of $2,000.

Under the proposed amendments to §5.4161(c), the association may request that the commissioner approve the imposition of a class 1 assessment in situations where all or any portion of the authorized amount of class 1 public securities cannot be issued. The association would need to include in its request the information in §5.4161(d) and estimates that it would cost approximately $20,000 to comply with §5.4161(d), with the majority of the costs incurred being necessary to pay for TPFA's advisors. The association would need to work closely with TFPA and its advisors should the association ever need to request a drop-down of class 1 assessments.

§5.4173. If the commissioner orders issuance of public securities to be paid under Insurance Code §2210.6132, the association must submit a request for the commissioner to approve a contingent surcharge, with the information listed §5.4173(a), on an annual basis. The association estimates that it would cost approximately $20,000 to comply with §5.4173(a), with the majority of the costs incurred being necessary to pay for TPFA's advisors.

§5.4189. Under the proposed amendments to §5.4189, the association must send policyholders notice of association surcharges. The association estimates that current staff would accomplish this at a cost of approximately $15,000.

§5.4190. Under proposed amendments to §5.4190, if an association surcharge is in effect during a calendar year, the association must give TDI an annual premium surcharge report for that year. The association estimates that most of the work necessary to provide the annual premium surcharge report would be done by current staff at a cost of approximately $25,000 the first year and $10,000 in subsequent years.

§5.4912. Under proposed new §5.4912, the association will have to file new policy forms, which inform policyholders that the policy may be subject to immediate surcharges. The association estimates that this requirement will cost approximately $5,000. Under the same section, the association must also provide a simple but conspicuous notice that provides the same information on each policy declarations page. The association estimates that this requirement will cost approximately $10,000.

Non-association insurers. Under proposed §5.4185(e), insurers must apply all policyholder payments received to contingent surcharges before applying the payment to premium. This requires insurers to program their accounting systems to apply funds from partial payments first to the contingent surcharges that are due, and then remaining funds to premiums that are due. In the absence of this requirement, insurers will still have to program their accounting systems to apportion payments that are less than the required payment ("short payments") between surcharges and premiums. For example, in the absence of this requirement, insurers may decide to program their accounting systems to apply funds from "short payments" first to premium, and then to surcharges; or apportion "short payments" pro-rata to surcharges and premiums. In the absence of the rule, insurers will have to program *some methodology* to address this. However, the proposed rule requires that insurers use the particular methodology of first apportioning funds from "short payments" to contingent surcharges, and then to premium. TDI estimates that the expected additional cost of programming this particular methodology will require between 1,500 and 2,000 hours of additional programming time, depending on the complexity of the company's accounting systems. The median and average hourly wage for a computer programmer in Texas are $36.32 and $38.85, respectively. Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics, May 2014 State Occupational and Wage Estimates Texas*, accessed September 16, 2015. http://www.bls.gov/oes/current/oes_tx.htm#15-0000. Nationwide, the median and average hourly wage for a computer programmer in the insurance industry are $38.36 and $38.49, respectively. Nationwide, also in the insurance industry, the tenth and ninetieth hourly percentile ranges are $24.15 and $46.32, respectively. Using the nationwide percentile ranges, the additional programming time could result in an additional cost of $36,225 to $92,640. Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Employment Statistics Query System*, accessed September 4, 2015. http://data.bls.gov/oes/.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Section 2006.002(c) of the Government Code requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on these businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees.

As specified in the Public Benefit and Cost Note section of this proposal, the proposal has an economic impact on the association and insurers that write lines of insurance that are subject to the premium surcharge.

The association. The association does not meet the definition of a small business under Government Code §2006.001(2). The association is a statutorily created association of property insurers, not a corporation, partnership, nor sole proprietorship. It is not formed for the purpose of making a profit. The association is not independently owned and operated. Further, the association has approximately 150 employees (including employees who are providing services by contract to the Texas Fair Access to Insurance Requirements Plan Association (FAIR Plan)) and net receipts well over $6 million. Based on these factors, the association does not meet the definition of a small or micro business under Government Code §2006.001(1) and (2), and an analysis of the economic impact of this proposal on the association under Government Code §2006.002(c) is not required.

Insurers. As discussed in the Public Benefit and Cost Note section of this proposal, it is anticipated that insurers subject to proposed amended §5.4185 will also be subject to additional costs from the adoption and enforcement of those proposed amendments. The costs will arise from the requirement that insurers apply all policyholder payments received to contingent surcharges before applying the payment to premiums.

The term "insurer" has the same meaning as defined in §5.4172 of this title. Insurer refers to each property and casualty insurer authorized to engage in the business of property and casualty insurance in the State of Texas and an affiliate of the insurer, as described by Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property and casualty insurance in the State of Texas, the association, and the FAIR Plan. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange. This includes a maximum of 26 insurers that qualify as small and micro businesses.

The department has determined that the proposed amendments to §5.4185 may have an adverse economic effect on insurers operating as small or micro businesses. The department, in compliance with Government Code §2006.002(c-1), considered the following alternative method of achieving the purpose of the proposed rule, while reducing costs to insurers operating as small and micro businesses: exempting such insurers from §5.4185(e). However, this is not feasible, as the absence of this requirement would provide policyholders of small and micro businesses with little or no incentive to pay contingent surcharges. This would undermine the purpose of Insurance Code §2210.6132, which is to provide a contingent source for the payment of class 2 and class 3 public securities.

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

REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal you must do so in writing no later than 5 p.m. on November 9, 2015, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comment to Brian Ryder, actuary, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or at Brian.Ryder@tdi.texas.gov.

The commissioner will consider the adoption of the proposed amendments, repeals and new sections in a public hearing under Docket No. 2781 scheduled for October 28, 2015, at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. TDI proposes amending 28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 – 5.4125, 5.4134 – 5.4136, 5.4141, 5.4144, 5.4161, 5.4171 – 5.4173, 5.4181, 5.4182, 5.4184 – 5.4190, and replacement 28 TAC §§5.4126, 5.4127, 5.4142, 5.4143, and 5.4145. The amended and replacement sections are proposed under Insurance Code §§ 2210.008, 2210.056, 2210.071, 2210.0715, 2210.072, 2210.0725, 2210.073, 2210.074, 2210.0741, 2210.0742, 2210.151, 2210.152, 2210.602, 2210.604, 2210.608, 2210.609, 2210.610, 2210.611, 2210.612, 2210.613, 2210.6131, 2210.6132, and 36.001.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

Section 2210.056 establishes allowable uses for the association's assets.

Section 2210.071 provides that if an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating expenses must be paid as provided by Insurance Code Chapter 2210, Subchapter B-1. Section 2210.0715(a) requires the association to pay losses in excess of premium and other revenue from available reserves and available amounts in the catastrophe reserve trust fund. Section 2210.0715(b) provides that the proceeds of class 1 public securities issued before the date of any occurrence or series of occurrences resulting in insured losses may not be included in available reserves for the purposes of §2210.0715.

Section 2210.072 authorizes the association to use the proceeds of class 1 public securities before, on, or after an occurrence or series of occurrences and establishes $500 million as the maximum principal amount of class 1 public securities that may be issued before, on, or after an occurrence or series of occurrences to pay losses not paid under Insurance Code §2210.0715. Section 2210.072 requires that the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, shall be depleted before the proceeds of any securities issued after an occurrence or series of occurrences may be used, and that those proceeds shall count against the limit on class 1 public securities in the catastrophe year in which the proceeds must be depleted. Section 2210.0725 authorizes the association, with the approval of the commissioner, to pay for losses in a catastrophe year not paid under §2210.0715 and §2210.072 from class 1 member assessments, establishes $500 million as the maximum amount of class 1 member assessments for a catastrophe year, and provides the manner by which each member's assessment is determined.

Section 2210.073 authorizes the association to use the proceeds of class 2 public securities issued on or after the date of an occurrence or series of occurrences to pay for losses not paid under §§2210.0715, 2210.072, and 2210.0725, and establishes $250 million as the maximum principal amount of class 2 public securities. Section 2210.074 authorizes the association, with the approval of the commissioner, to pay for losses in a catastrophe year not paid under §§2210.0715, 2210.072, 2210.0725, and 2210.073 from class 2 member assessments, establishes $250 million as the maximum amount of class 2 member assessments for a catastrophe year, and provides the manner by which each member's assessment is determined.

Section 2210.0741 authorizes the association to use the proceeds of class 3 public securities issued on or after the date of an occurrence or series of occurrences to pay for losses not paid under §§2210.0715, 2210.072, 2210.0725, 2210.073, and 2210.074, and establishes $250 million as the maximum principal amount of class 3 public securities. Section 2210.0742 authorizes the association, with the approval of the commissioner, to pay for losses in a catastrophe year not paid under §§2210.0715, 2210.072, 2210.0725, 2210.073, 2210.074, and 2210.0741 from class 3 member assessments, establishes $250 million as the maximum amount of class 3 member assessments for a catastrophe year, and provides the manner by which each member's assessment is determined.

Section 2210.151 authorizes the commissioner to adopt the association's plan of operation by rule to provide windstorm and hail insurance coverage in the catastrophe area. Section 2210.152 requires that the association's plan of operation provide for the efficient, economical, fair, and nondiscriminatory administration of the association and include both underwriting standards and other provisions that TDI considers necessary to implement the purposes of Insurance Code Chapter 2210.

Section 2210.602 provides the TPFA board shall establish, with the Texas Treasury Safekeeping Trust Company, dedicated public security trust funds into which premium surcharges collected under §§2210.612, 2210.613, and 2210.6131, for the purpose of paying class 1, class 2, and class 3 public securities, respectively, shall be deposited.

Section 2210.604 requires commissioner approval of the association's request to TPFA to issue class 1, class 2, or class 3 public securities prior to issuance. The association must submit a cost-benefit analysis of various financing methods and funding structures with its request.

Section 2210.608 provides for how the association may use public security proceeds and excess public security proceeds.

Section 2210.609 provides that the association must pay all public security obligations from available funds and, if the association determines the funds are insufficient, it must pay these obligations and expenses in accordance with Insurance Code §§2210.612, 2210.613, and 2210.6131, as applicable. Section 2210.609 further provides that the association must deposit all premium surcharge revenues collected under §§2210.612, 2210.613, and 2210.6131 for the purpose of paying class 1, class 2, and class 3 public securities, into the respective public security trust funds dedicated for this purpose. Section 2210.609 requires the association to provide for payment of public security obligations and public security administrative expenses by irrevocably pledging revenues received from premiums, premium surcharges, and amounts on deposit in the dedicated public security trust funds and any public security reserve funds.

Section 2210.610 provides that revenues received by the association from premium surcharges collected under §§2210.612, 2210.613, and 2210.6131 may be applied only as provided by Insurance Code Chapter 2210, Subchapter M.

Section 2210.611 authorizes the association to use premium surcharges collected under §§2210.612, 2210.613, and 2210.6131, for the purpose of paying class 1, class 2, and class 3 public securities, respectively. Section 2210.611 provides that if, in any calendar year, the premium surcharge revenue collected for class 1, class 2, or class 3 public securities exceeds the amount of the public security obligations and public security administrative expenses payable in that calendar year and interest earned on those funds for each respective class, the association may use the excess to: (i) pay the applicable public security obligations for the class payable in the subsequent year; (ii) redeem or purchase outstanding public securities of the class; or (iii) make a deposit in the CRTF.

Section 2210.612 provides that the association shall pay class 1 public securities issued under §2210.072 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a premium surcharge on each association policy issued under Insurance Code Chapter 2210.

Section 2210.613 provides that the association shall pay class 2 public securities issued under §2210.073 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a premium surcharge on each association policy issued under Insurance Code Chapter 2210.

Section 2210.6131 provides that the association shall pay class 3 public securities issued under §2210.0741 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a catastrophe area premium surcharge to each policyholder on each association policy issued under Insurance Code Chapter 2210.

Section 2210.6132 provides that the commissioner, in consultation with the board and TPFA, may determine that the authority is unable to issue class 2 or class 3 public securities, to be payable under §2210.613 or §2210.6131, as applicable, or may determine that the issuance of class 2 or class 3 public securities is financially unreasonable. Following either determination, the commissioner shall order the issuance of class 2 or class 3 public securities to be paid by a premium surcharge assessed on certain property and casualty policies, and all association and FAIR Plan policies in the catastrophe area.

Section 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 the state.

TDI proposes repealing 28 TAC §§5.4126-5.4128, 5.4142-5.4143, and 5.4145-5.4149. The repeals are proposed under Insurance Code §§2210.612, 2210.613, 2210.6131, 2210.6132, and 36.001. The sections proposed for repeal were previously adopted to implement HB 3, 82nd Legislature, 2011, 1st Called Session. Under HB 3 and its predecessor, HB 4409, 81st Legislature, 2009, Regular Session, losses in excess of the association's net premium and other revenue were paid from the proceeds of three classes of public securities. HB 3 amended Insurance Code Chapter 2210 to include §2210.6136, which allowed the commissioner to authorize the issuance of certain class 2 public securities in the event the association's class 1 public securities were not marketable.

TDI adopted §§5.4126-5.4128 and 5.4148-5.4149 to establish processes for the issuance and repayment of class 2 public securities under Insurance Code §2210.6136. Because SB 900, in addition to changing the association's funding structure, repealed Insurance Code §2210.6136, §§5.4126-5.4128 and 5.4148-5.4149 are obsolete. SB 900 amended Insurance Code §2210.613 to change the payment source for class 2 public securities paid under that section from a combination of premium surcharges on certain property and casualty policies in the catastrophe area and member assessments to premium surcharges on association policies. TDI adopted §5.4143 and §§5.4145-5.4147 to address the deposit of amounts collected from member assessments and the handling of excess member assessment revenue. Because member assessments are no longer used to pay for public securities, these sections are obsolete. TDI proposes the repeal of §5.4142, which addressed excess obligation revenue fund amounts, because SB 900 amended Insurance Code §2210.609 to remove the obligation revenue fund. Excess funds are addressed in amended §5.4144 and proposed replacement §5.4145.

CROSS REFERENCE TO STATUTE. The proposal affects the following statutes:

Rule	Statute
§5.4101	Insurance Code §2210.151 and §2210.152
§5.4102	Insurance Code §§2210.003, 2210.056, 2210.071, 2210.072, 2210.0725 2210.073, 2210.074, 2210.0741, 2210.0742, 2210.151, 2210.152, 2210.355, 2210.452, 2210.453, 2210.608, 2210.609, 2210.611, 2210.612, 2210.613, 2210.6131, 2210.6132, 2210.6135, and 2210.616
§5.4121	Insurance Code §§2210.056, 2210.072, 2210.608, 2210.612, 2210.613, and 2210.6135
§5.4123	Insurance Code §§2210.072, 2210.073, 2210.0741, and 2210.604
§5.4124	Insurance Code §§2210.072, 2210.604, and 2210.609
§5.4125	Insurance Code §§2210.072, 2210.0725, 2210.074 2210.604, and 2210.609
§5.4126	Insurance Code §§2210.612, 2210.613, and 2210.6131
§5.4127	Insurance Code §2210.6132
§5.4134	Insurance Code §2210.072, 2210.073, 2210.0741, and 2210.608
§5.4135	Insurance Code §2210.604
§5.4136	Insurance Code §§2210.355, 2210.612, 2210.613, and 2210.6131
§5.4141	Insurance Code §§2210.072, 2210.604, 2210.608, 2210.609, and 2210.612

§5.4142	Insurance Code §§2210.073, 2210.0741, 2210.602, 2210.608, 2210.609, 2210.613, 2210.6131
§5.4143	Insurance Code §§2210.073, 2210.0741 , 2210.608, 2210.609, and 2210.6132
§5.4144 – 5.4145	Insurance Code §§2210.056, 2210.604, 2210.611, 2210.612, 2210.613, 2210.6131, and 2210.6132
§5.4161	Insurance Code §§2210.0725, 2210.074, and 2210.0742
§§5.4171-5.4172	Insurance Code §§2210.612, 2210.613, 2210.6131, and 2210.6132
§5.4173	Insurance Code §2210.6132
§§5.4181-5.4182, §§5.4184-5.4185	Insurance Code §§2210.612, 2210.613, 2210.6131, and 2210.6132
§5.4186	Insurance Code §2210.6132
§5.4187	Insurance Code §§2210.072, 2210.073, 2210.0741 2210.612, 2210.613, 2210.6131, and 2210.6132
§5.4188	Insurance Code §§2210.612, 2210.613, and 2210.6131
§§5.4189-5.4190	Insurance Code §§2210.612, 2210.613, 2210.6131, and 2210.6132
§5.4912	Insurance Code §§2210.003, 2210.612, 2210.613, and 2210.6131

TEXT.

DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST FUND, FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES

§5.4101. Applicability.

(a) This section and [~~Sections 5.4101,~~] §§5.4102, 5.4111 - 5.4114, 5.4121, 5.4123 - 5.4127 [~~5.4128~~], 5.4133 - 5.4136, and 5.4141 - 5.4145 (relating to Definitions, Operation of the Catastrophe

Reserve Trust Fund, Termination of the Catastrophe Reserve Trust Fund, Investments of Catastrophe Reserve Trust Fund, Duties and Responsibilities, Financing Arrangements, Public Securities Request, Approval, and Issuance, Issuance of Class 1 Public Securities before a Catastrophic Event, Issuance of Public Securities after a Catastrophic Event, Contingent Sources of Payment for Class 2 and Class 3 Public Securities, Excess Public Security Proceeds; Marketable Public Securities, Amount of Class 1 Public Securities that Cannot be Issued, Market Conditions and Requirements and Cost-Benefit Analysis, Association Rate Filings, Class 1 Public Securities Trust Fund, Class 2 and Class 3 Public Securities Trust Funds, Premium Surcharge Trust Fund, Excess Premium Surcharge Revenue, and Excess Net Premium and Other Revenue) [~~5.4149~~] of this division are a part of the Texas Windstorm Insurance Association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation). If a court of competent jurisdiction holds that any provision of this division is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of the sections in this division will remain in effect.

(b) Notwithstanding any provision in this subchapter, the department retains regulatory oversight of the association as required by Insurance Code Chapter 2210, including periodic examinations of the accounts, books, and records of the association, and no provision in this subchapter should be interpreted as negating or limiting the department's regulatory oversight of the association.

§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 §5.4127(c) or (d) of this division (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) [~~(4)~~] 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) [~~(5)~~] 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) [~~(6)~~] 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) [~~(7)~~] CRTF--Catastrophe Reserve Trust Fund. A statutorily created [~~statutorily-created~~] trust fund established with the trust company under Insurance Code Chapter 2210, Subchapter J.

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

(11) [~~(9)~~] Catastrophic losses--Losses resulting from a catastrophic event.

(12) [~~(10)~~] 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 [~~obligation revenue 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) [~~(11)~~] 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) [~~(12)~~] 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) [~~(13)~~] Class 3 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.0741 [~~§2210.074~~] and Insurance Code Chapter 2210, Subchapter M.

(18) [~~(14)~~] 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) [~~(15)~~] Commissioner--The Commissioner of Insurance of the State of Texas.

(20) [~~(16)~~] Comptroller--The Comptroller of the State of Texas.

(21) [~~(17)~~] Contingent surcharge--Premium surcharges on policyholders of policies that cover insured property that is located in a catastrophe area and which 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 [~~obligation revenue~~] fund or [~~,~~] premium surcharge trust fund, [~~or member assessment 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) [~~(18)~~] 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) [~~(19)~~] Department--The Texas Department of Insurance.

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

(26) [~~(21)~~] 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) [~~(22)~~] 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) [~~(23)~~] Investment income--Income from the investment of funds.

(30) [~~(24)~~] 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) [~~(25)~~] 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.

[~~(26) Member assessment trust fund--A dedicated trust fund established by TPFA and held by the trust company in which the association or assessed insurers must deposit member assessments collected under Insurance Code §2210.613 and §2210.6135. The member assessment trust~~

~~fund may be segregated into separate funds, accounts, or subaccounts, including for the purpose of segregating class 2 and class 3 public security member assessments.~~]

(32) [~~(27)~~] 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 [~~revenues~~] from the class 1, class 2, and class 3 public security trust funds [~~obligation revenue fund and the repayment obligation trust fund~~] that are in excess of: incurred losses;[~~,~~] operating expenses;[~~,~~] reinsurance premium;[~~,~~] current year financial arrangement obligations;[~~,~~] current year [~~class 1~~] net premium payment obligations;[~~,~~] and current year public security administrative expenses [~~, and premium surcharge and member assessment repayment obligations~~].

(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) [~~(28)~~] Net premium--Gross premium less unearned premium. Following the issuance of public securities, net premium may be [~~is~~] pledged for the payment of class 1, class 2, and class 3 payment obligations [~~obligation~~].

(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)[~~(29)~~] Net revenues--Net premium plus other revenue, less scheduled policy claims, less budgeted operating expenses, less net premium [~~class 1~~] payment obligations [~~obligation~~] for that calendar year, [~~less premium surcharge and member assessment repayment obligation for that calendar~~

~~year, and~~] less amounts necessary to fund or replenish any [~~operating~~] reserve fund required by a public security agreement.

[~~(30) Obligation revenue fund--The dedicated trust fund established by TPFA and held by the trust company in which the association must deposit net premium and other revenue for the payment of class 1 payment obligation.~~]

(37) [~~(31)~~] Operating reserve fund--Association or trust company held fund for the payment of budgeted scheduled policy claims and budgeted operating expenses.

(38) [~~(32)~~] 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 [~~and member assessments~~] collected under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, or 2210.6132 [~~2210.6135 and 2210.6136~~] or member assessments collected under Insurance Code §§2210.0725, 2210.074, or 2210.0742, and interest income on those amounts.

(39) [~~(33)~~] Plan of operation--The association's plan of operation as adopted by the commissioner under Insurance Code §2210.151 and §2210.152.

(40) [~~(34)~~] 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, and 2210.6132[~~2210.6136~~].

[~~(35) Premium surcharge and member assessment repayment obligation--The amount of premium surcharge and member assessment that the commissioner has ordered the association to repay over a specified number of years under §5.4126 of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities). This may involve varying periodic payments equaling the total required repayment amount.~~]

(41) [~~(36)~~] 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 [~~premium~~] surcharges [~~collected under Insurance Code §2210.613~~]. TPFA may establish separate trust funds or separate accounts for class 2 and class 3 contingent surcharges.

(42) [~~(37)~~] Public securities--Collective reference to class 1 public securities, class 2 public securities, and class 3 public securities.

(43) [~~(38)~~] 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.

(44) [~~(39)~~] 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.

[~~(40) Repayment obligation trust fund--The dedicated trust fund into which the association deposits, in amounts necessary to comply with the commissioner's order under §5.4126 of this division for payment of the premium surcharge and member assessment repayment obligation, net premium and other revenue that is not contractually required for the class 1 payment obligation.~~]

(45) [~~(41)~~] 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.

(46) [~~(42)~~] Trust company--The Texas Treasury Safekeeping Trust Company managed by the comptroller under Government Code §404.101, et seq.

(47) [~~(43)~~] 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.

(48) [~~(44)~~] TPFA—The Texas Public Finance Authority.

(49) [~~(45)~~] 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.

§5.4121. Financing Arrangements.

(a) The association may enter into financing arrangements. The financing arrangement must:

(1) enable the association to:

(A) pay losses under Insurance Code §2210.072, or

(B) obtain public securities under Insurance Code §2210.072; and

(2) be approved by the association's board of directors before the association enters into the financing arrangement.

(b) The association may pay a financing arrangement with any or all:

(1) net premium and other revenue of the association that is not required for payment of class 1, class 2, or class 3 payment obligations [~~or premium surcharge and member assessment repayment obligations~~];

(2) reinsurance proceeds;

(3) the proceeds of any financing arrangement;

(4) the proceeds of any class of public security issued under Insurance Code Chapter 2210; or

(5) any other association asset.

(c) As collateral security for such financial arrangements, including interest-bearing [~~interest bearing~~] loans or other financial instruments, the association may grant in favor of the applicable market source a collateral assignment and security interest in and to all or any portion of the association's assets, including without limitation, all or any portion of the association's right, title, and interest in and to all proceeds of any class of public security issued under Insurance Code Chapter 2210.

§5.4123. Public Securities Request, Approval, and Issuance.

(a) The association's board of directors must request the issuance of public securities as prescribed in §5.4124 and §5.4125 [~~§§5.4124 - 5.4126~~] of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event and [~~;~~] Issuance of Public Securities after a Catastrophic Event [~~; and Alternative for Issuing Class 2 and Class 3 Public Securities~~]).

(1) The request must be submitted to the commissioner for approval with all required supporting documentation prescribed in §5.4124 and §5.4125 [~~§§5.4124 - 5.4126~~] of this division.

(2) The association's board of directors may request public securities as often as necessary.

(3) If multiple classes of public securities are combined into a single request, the request must separately identify and provide supporting documentation for the issuance of each class of public securities.

(4) The association's board of directors may at any time submit a request for issuance of public securities to be issued after a catastrophic event [~~at any time~~]. If the request for the issuance of public securities after a catastrophic event is submitted before a catastrophic event, the association's request must specify that the requested public securities may only be issued after a catastrophic event.

(b) The commissioner must approve the request before TPFA may issue the requested public securities.

(1) If the supporting documentation is incomplete, the commissioner or the department may request additional documentation without rejecting the request.

(2) In considering the association's request, the commissioner may rely on any statements or notifications of definitive or estimated losses, association revenue, [~~reinsurance proceeds,~~] and any other related or supporting information from any source, including from the general manager of the association and from TPFA and its consultants and legal counsel.

(3) If the commissioner disapproves the request, the association's board of directors may reconsider the matter and submit another request under subsection (a) of this section.

(4) The department must provide the commissioner's written approval of the request to the association and TPFA.

(c) Following the commissioner's written approval of the request, TPFA may issue public securities and credit agreements on behalf of the association, as authorized in Insurance Code Chapter 2210 and <u>§5.4124 and §5.4125</u> [~~§§5.4124 - 5.4126~~] of this division, for the issuance, reissuance, refinancing, and payment of public security obligations and public security administrative expenses.

(d) The association must provide to the department and the commissioner any requested information concerning public securities or the pending issuance of public securities, including information TPFA, a TPFA consultant, or TPFA legal counsel provides to the association.

(e) A request for issuance of public securities under subsection (a) of this section includes a request for the reissuance and refinancing of public security obligations.

§5.4124. Issuance of Class 1 Public Securities before a Catastrophic Event.

(a) The association's board of directors may request that TPFA issue class 1 public securities before a catastrophic event, if the association's board of directors determines that class 1 public security proceeds may become necessary and the commissioner approves the request.

(b) The association must submit its board of directors' written request under subsection (a) of this section to the commissioner. The request must include the following information:

(1) the reason why the requested class 1 public securities may become necessary;

(2) the amount of premium and other revenue that the association expects will be available to pay loss claims in the current calendar year;

(3) reinsurance coverage that the association expects will be available to pay claims in the current calendar year;

(4) the amount in the CRTF that the association expects will be available to pay loss claims in the current calendar year;

(5) the principal amount of class 1 public securities that are authorized and available to be issued before a catastrophic event, and that are requested;

(6) the estimated amount of debt service for the public securities, including any contractual coverage amount and public security administrative expenses;

(7) the structure and terms of the public securities, including any terms that may change as a result of a catastrophic event or the use of any proceeds of class 1 public securities issued before a catastrophic event;

(8) market conditions and requirements necessary to sell marketable public securities;

(9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis);

(10) a three-year pro forma financial statement consisting of a balance sheet, income statement, and a statement of cash flows, reflecting the financial impact of issuing class 1 public securities before a catastrophic event that assumes the proceeds will be used in the event of a catastrophe; and

(11) any other relevant information requested by the commissioner.

(c) The association may make one or more requests under this section.

(d) The association may request class 1 public securities up to an aggregate principal amount not to exceed $500 million [~~$1 billion~~] outstanding at any one time, regardless of the calendar year or years in which the securities are issued, except that class 1 public securities that are issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, and that have been depleted [~~used~~] to pay for the association program [~~insured losses or expenses~~] will not continue to count against the combined $500 million [~~$1 billion~~] aggregate limit described in this subsection. This section does not authorize the association to request class 1 public securities in an amount in excess of the catastrophe year limit prescribed in §5.4125(c) of this division (relating to Issuance of Public Securities after a Catastrophic Event).

(e) For the purposes of determining the authorized amount of class 1 public securities, public security proceeds used to pay for public security issuance costs, establish a public security reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year as, and in proportion to, the proceeds used to pay for losses or operating expenses, or used to pay principal on the public securities.

§5.4125. Issuance of Public Securities after a Catastrophic Event.

(a) As provided in §5.4123 of this division (relating to Public Securities Request, Approval, and Issuance) and subject to the commissioner's approval, the association's board of directors may request that TPFA issue public securities after a catastrophic event has occurred. The association's board of directors may make the request:

(1) after the catastrophic event if the association's board of directors determines that actual catastrophic losses are estimated to exceed <u>currently available net premium, other revenue, and</u> [~~available~~] money in the CRTF [~~and available reinsurance proceeds, and that the public security proceeds are necessary to fund the catastrophic losses~~]; or

(2) before the catastrophic event if the association's board of directors determines that public security proceeds may become necessary to fund potential catastrophic losses. This paragraph does not affect the requirements for issuing public securities that are issued after a catastrophic event or the use of proceeds from public securities issued after a catastrophic event.

(b) The association must submit its board of directors' written request under subsection (a) of this section to the commissioner. The request must include the following information:

(1) an estimate of the actual or potential losses and expenses from the catastrophic event;

(2) the association's current premium and other revenue;

(3) the association's current net revenues;

(4) the sources and amount of loss funding other than public securities, including:

(A) the amount of the loss paid from premium and other revenue;

(B) the amount requested from the CRTF; <u>and</u>

(C) amounts available from other financing arrangements and the association's obligations for other financing arrangements, including whether the amounts must be repaid from public security proceeds or from other means; [~~and~~]

[~~(D) available reinsurance proceeds;~~]

(5) the principal amount of each requested class of public securities that is authorized and available to be issued and that is requested;

(6) the estimated costs associated with each requested amount and class of public securities under this section, including any contractual coverage requirement and public security administrative expenses;

(7) the structure and terms of the public securities;

(8) market conditions and requirements necessary to sell marketable public securities;

(9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis); and

(10) any other relevant information requested by the commissioner.

(c) For each class of public securities requested under this section, the association must determine and submit as part of its request the authorized amount of public securities. This amount must be the lesser of:

(1) the statutorily authorized principal amount for that class, less any principal amount of that class of public security that was issued in the catastrophe year, less, in the case of class 1 public securities, the proceeds of class 1 public securities issued under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event), including the proceeds of any outstanding Class 1 public securities issued on or before June 1, 2015, that were not depleted to pay for

the association program as of [~~available for a catastrophic event at~~] the beginning of the catastrophe year for which the class 1 public securities are requested under this section; or

(2) the amount of the estimated loss payable from proceeds of that particular class, and estimated costs including the costs associated with the issuance of that class of public security.

(d) For the purposes of determining the amount of proceeds of class 1 public securities that were not depleted as described in subsection (c)(1) of this section, public security proceeds used to pay for public security issuance costs, establish a public security reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year as, and in proportion to, the proceeds used to pay for losses or operating expenses, or used to pay principal on the public securities.

(e) [~~(d)~~] The association must [~~request~~], in aggregate for each catastrophe year:

(1) impose an assessment of the statutorily authorized [~~principal~~] amount of class 1 assessments under Insurance Code §2210.0725 and §5.4161 of this division (relating to Member Assessments) [~~public securities~~] before class 2 public securities may be issued [~~requested~~]; and

(2) impose an assessment of the statutorily authorized amount of class 2 assessments under Insurance Code §2210.074 and §5.4161 of this division before class 3 public securities may be issued [~~the statutorily authorized principal amount of class 2 public securities before class 3 public securities may be requested~~].

(f) [~~(e)~~] The association:

(1) may make one or more requests under this section;

(2) may, following a catastrophic event, request the issuance of class 1 public securities under this section, before the exhaustion of any remaining proceeds from class 1 public securities issued

before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015;

(3) must deplete the proceeds of any outstanding class 1 public securities issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, before using the proceeds of class 1 public securities requested under this section; and

(4) may request the issuance of class 2 and class 3 public securities under this section, before the exhaustion of all class 1 or class 2 assessments, respectively [~~public security proceeds~~].

(g) For the issuance of class 2 or class 3 public securities payable under Insurance Code §2210.6132, the association must make a separate request under §5.4127 of this division.

§5.4126. Determination of the Association Surcharge Percentage.

(a) If, at any time, the association, after consultation with TPFA, determines that net premium and other revenue are not sufficient to pay class 1, class 2, or class 3 public securities payable under Insurance Code §§2210.612, 2210.613, and 2210.6131, respectively, the association must promptly submit a request to the commissioner to approve an association surcharge. While the public securities are outstanding, at least quarterly, the association must determine if its net premium and other revenue is sufficient to pay for securities payable under Insurance Code §§2210.612, 2210.613, and 2210.6131.

(b) A request described by subsection (a) of this section must include the following information for each class of public securities for which an association surcharge is required:

(1) the proposed association surcharge percentage;

(2) the amount the association has determined, after consultation with TPFA, is the debt service and all related expenses on the public securities for the applicable period;

(3) the amount that the association has determined is the debt service not already covered by available funds and all related expenses on the public securities for the applicable period;

(4) for policies that comply with the requirements of §5.4912 of Division 10 of this subchapter (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131), the association's best estimate of its anticipated gross premium for policies in effect on the date described by paragraph (8) of this subsection;

(5) for policies that do not yet comply with the requirements of §5.4912 of Division 10 of this subchapter, the association's best estimate of its anticipated gross premium for the period described by paragraphs (9) and (10) of this subsection;

(6) all relevant data the association relied upon when determining the amounts in paragraphs (2) - (5) of this subsection;

(7) an explanation of the methodology, including all material assumptions, the association used to determine the amounts in paragraphs (2) - (5) of this subsection;

(8) the date, which must be no more than 90 days after the date the request is received by the commissioner, on which the association surcharge applies to policies that are in force and compliant with §5.4912 of Division 10 of this subchapter;

(9) the date on which the association surcharge begins to apply to policies not compliant with §5.4912 of Division 10 of this subchapter, which must be the same date as the date in paragraph (8) of this subsection; and

(10) the date on which the association surcharge ceases to apply to policies not compliant with §5.4912 of Division 10 of this subchapter, which must be the day after the date the last noncompliant policy expires.

(c) The commissioner will, within 10 business days of receipt of the request in subsection (b), notify the association and TPFA of the commissioner's determination on the sufficiency of the association surcharge percentage requested. The association must implement the surcharge percentage the commissioner determines is sufficient.

(d) If the commissioner independently determines that net premium and other revenue are not sufficient to pay for securities payable under Insurance Code §§2210.612, 2210.613, and 2210.6131, the commissioner may order the association to assess an association surcharge. The order must specify the date on which the surcharge applies. The surcharge may not apply earlier than the 20th day following the date of the order.

[~~§5.4126. Alternative for Issuing Class 2 and Class 3 Public Securities.~~]

[~~(a) If all or any portion of the authorized principal amount of class 1 public securities requested under §5.4125 of this division (relating to Issuance of Public Securities after a Catastrophic Event) cannot be issued based on the factors described in §5.4135 of this division (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 commissioner may order the issuance of class 2 and class 3 public securities as provided in this section.~~]

[~~(b) In its request to the commissioner to order issuance of public securities under this section, the association must submit the following information:~~]

[~~(1) the information required by §5.4125(b) of this division; and~~]

[~~(2) information based on the analyses described in §5.4135 of this division;~~]

[~~(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.~~]

[~~(c) The association must request that TPFA issue the authorized principal amount of class 1 public securities that can be issued under §5.4125(c) of this division before class 2 public securities may be issued under this section.~~]

[~~(d) The commissioner may rely on information provided to the commissioner under this section, §5.4125 of this division, and from any other source, including information and advice provided by the association, TPFA, TPFA consultants, and TPFA legal counsel. If the commissioner finds that all or any portion of the authorized amount of class 1 public securities cannot be issued, the commissioner may order the issuance of class 2 public securities in an amount that does not exceed the authorized principal amount of class 2 public securities as determined in §5.4125(c) of this division.~~]

[~~(e) An order of the commissioner issued under subsection (d) of this section must specify:~~]

~~(1) the maximum principal amount of class 2 public securities that are to be issued;~~]

~~(2) the information and amount required under §5.4127(b) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments);~~]

[~~(3) the maximum term of the class 2 public securities;~~]

[~~(4) when the association is to begin collecting funds under this section for deposit in the repayment obligation trust fund;~~]

[~~(5) the premium surcharge and member assessment repayment obligation; and~~]

[~~(6) the year repayment begins under §5.4128 of this division (relating to Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers).~~]

[~~(f) The commissioner may revise an order issued under this section as necessary if the association prepays amounts due or to maintain the association's ability to fund the class 1 payment obligations or other association obligations, including losses.~~]

[~~(g) TPFA may issue the class 2 public securities authorized by the commissioner's order under this section. TPFA may issue the class 2 public securities that are subject to §5.4127(b) of this division as a separate series from other class 2 public securities.~~]

[~~(h) If class 2 public securities are issued in the manner authorized under this section, class 3 public securities may be issued only after class 2 public securities have been issued in the statutorily-authorized principal amount of $1 billion for that catastrophe year. Despite the restriction on issuing class 3 public securities in this subsection, the association may request, the commissioner may approve, and TPFA may prepare for the issuance of class 3 public securities before the issuance of all class 2 public securities. Class 3 public securities must be requested as provided in §5.4123 of this division (relating to Public Securities Request, Approval, and Issuance) and §5.4125 of this division.~~]

§5.4127. Contingent Sources of Payment for Class 2 and Class 3 Public Securities.

(a) To obtain approval for the issuance of class 2 or class 3 public securities paid from contingent surcharges, the association must first submit a written request to the commissioner.

(b) In its request to the commissioner under subsection (a) of this section, the association must include:

(1) a determination from TPFA that TPFA is unable to issue class 2 or class 3 public securities paid as provided by Insurance Code §2210.613 or §2210.6131, as applicable; or

(2) the following information:

(A) the association's estimated net premium and other revenues;

(B) the association's best estimate of the terms and conditions necessary to issue marketable class 2 or class 3 public securities payable under Insurance Code §2210.613 or §2210.6131, as applicable, including:

(i) the estimated annual payments for principal and interest;

(ii) the estimated contractual coverage amount;

(iii) estimated reserve requirements;

(iv) the estimated amount of any other required payments for debt service;

(v) the estimated public security administrative expenses; and

(vi) any other conditions likely necessary to issue marketable public securities payable under Insurance Code §2210.613 or §2210.6131, as applicable, that the association determines will impact its operations; and

(C) the association's best estimate of the association surcharges needed to pay the debt service required to issue marketable public securities payable under Insurance Code §2210.613 or §2210.6131.

(c) When providing information required under subsection (b)(2) of this section, 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.

(d) The commissioner, after consultation with TPFA, may order that class 2 or class 3 public securities be paid as provided by Insurance Code §2210.6132 if either:

(1) TPFA is unable to issue public securities payable under Insurance Code §2210.613 or §2210.6131, as applicable; or

(2) the issuance of public securities payable under Insurance Code §2210.613 or §2210.6131, as applicable, is financially unreasonable for the association.

[~~§5.4127. Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments.~~]

[~~(a) All public security obligations and public security administrative expenses for class 2 public securities issued under §5.4126 of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities) must be paid 30 percent from member assessments and 70 percent from premium surcharges on those catastrophe area insurance policies subject to premium surcharge under Insurance Code §2210.613.~~]

[~~(1) For purposes of the premium surcharge, in this section and §5.4128 of this division (relating to Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers), the term "insurer" has the meaning that is defined in §5.4172 of this division (relating to Premium Surcharge Definitions).~~]

[~~(2) The association must collect and deposit the member assessments and premium surcharges as directed in §§5.4143 - 5.4146 of this division (relating to Trust Funds for the Payment of Class 2 Public Securities; Excess Class 2 Premium Surcharge Revenue; Excess Class 2 Member Assessment Revenue; and Member Assessment Trust Fund for the Payment of Class 3 Public Securities).~~]

[~~(b) The commissioner's order described in §5.4126(d) and (e) of this division must require the association to repay the cost of the class 2 public securities issued under subsection (a) of this section in an amount equal to the lesser of:~~]

[~~(1) $500 million total principal amount, plus any costs associated with that amount; or~~]

[~~(2) that portion of the total principal amount of class 1 public securities authorized to be issued as described in §5.4125 of this division (relating to Issuance of Public Securities after a Catastrophic Event) that cannot be issued, plus any costs associated with that portion.~~]

[~~(c) The association must repay the costs under subsection (b) of this section by repaying the amount of premium surcharges and member assessments that are paid, or payable, on the total principal amount, plus any costs and contractual coverage amount associated with that amount.~~]

[~~(d) The sources of funds for the repayment required under subsection (b) of this section include:~~]

[~~(1) the association's net premium and other revenue that is not contractually pledged to class 1 payment obligations; and]~~

[~~(2) excess amounts released from the obligation revenue fund that are released as described in §5.4142 of this division (relating to Excess Obligation Revenue Fund Amounts).~~]

[~~(e) In addition to premium and other revenue amounts that the association must collect to pay for outstanding class 1 payment obligations, the association must collect premium and other revenue in an amount sufficient to repay the premium surcharge and member assessment repayment obligation owed under the commissioner's order in subsection (b) of this section.~~]

[~~(f) Using either or both of the following methods, the association must repay the amounts required under the commissioner's order in subsection (b) of this section.]~~

[~~(1) To reduce the need for collecting premium surcharges and member assessments, the association may deposit funds described in subsection (d) of this section in the premium surcharge~~

~~trust fund, member assessment trust fund, or both funds, before the collection of any premium surcharges or member assessments.~~]

[~~(2) The association may deposit funds described in subsection (d) of this section in the repayment obligation trust fund for repayment of class 2 premium surcharges and member assessments already collected.~~]

[~~(g) For each year in which the association owes funds to repay member assessments or premium surcharges used to pay debt service for public securities described under subsection (b) of this section, the association must record the following information:~~]

[~~(1) the amount of premium surcharges the association owes to each insurer for that year; and~~]

[~~(2) the amount of member assessments the association owes to each insurer for that year.~~]

[~~(h) Despite any other requirement in this division, an insurer may pay on behalf of its policyholder all or any part of a premium surcharge that is subject to repayment under this section. If the insurer makes the payment under this subsection, the insurer is entitled to repayment of that amount when the association repays it. The insurer:~~]

[~~(1) may only pay the premium surcharge to pay the amounts owed for the payment of class 2 public security obligations and public security administrative expenses associated with the amount to be repaid under the commissioner's order in subsection (b) of this section;~~]

[~~(2) must pay the premium surcharges equally for all policyholders of that insurer who are subject to the premium surcharge; and~~]

[~~(3) must maintain records that track the amount of premium surcharges paid to their policyholders and the amount not paid.~~]

[~~§5.4128. Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers.~~]

[~~(a) When providing a repayment to insurers for amounts paid for class 2 premium surcharges and member assessments, the association must specify the surcharge and assessment period being repaid.~~]

[~~(b) Beginning with the year designated in the commissioner's order described in §5.4126 of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities), not later than March 1 of each year, the association must direct payment of the funds held in the repayment obligation trust fund to the insurer or insurance group to which the funds are owed for repayment of premium surcharges or member assessments.~~]

[~~(c) Within 90 days of receipt of a premium surcharge repayment from the association, insurers must repay to the policyholders who made the payments all amounts received from the association. Premium surcharge repayments must be proportional to the amount of premium surcharge each policyholder paid in the period the association specified in its repayment. To the extent that the insurer paid all or any portion of the premium surcharge for its policyholders as provided under §5.4127 of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), the insurer may recoup the amount it paid for the period refunded from the association repayment as if the insurer were the policyholder to whom the repayment was owed.~~]

§5.4134. Excess Public Security Proceeds.

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

(b) As specified in [~~the~~] Insurance Code §§2210.072(a), 2210.073(a), and 2210.0741(a) [~~2210.074(a)~~] public securities may be repaid before their full term if the association's [~~Association's~~] board of directors elects to do so and the commissioner approves.

§5.4135. Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis.

(a) Marketable public securities under this division are public securities that the association in consultation with TPFA determines:

(1) are consistent with state debt issuance policy requirements; and

(2) achieve the goals of the association.

(b) In determining the amount of class 1 public securities that can or cannot be issued, the association must consider:

(1) the association's current premium and net revenue;

(2) the effect of depopulation under Insurance Code Chapter 2210, Subchapter O on anticipated net premium and other revenue and anticipated revenue from association surcharges;

(3) the estimated amount of debt service for the public securities, including any contractual coverage amount;

(4) [~~(3)~~] the association's obligations for outstanding [~~class 1~~] public securities, including contractual coverage requirements and public security administrative expenses;

[~~(4) the estimated premium surcharge and member assessment repayment obligations;~~]

[~~(5) the association's outstanding premium surcharge and member assessment repayment obligations;~~]

(5) [~~(6)~~] the association's obligations for other financing arrangements;

(6) [~~(7)~~] any conditions precedent to issuing class 1 public security obligations contained in any applicable public security financing documents;

(7) [~~(8)~~] TPFA administrative rules;

(8) [~~(9)~~] applicable State of Texas debt issuance policies;

(9) [~~(10)~~] administrative rules of the Office of the Attorney General of Texas that require evidence of debt service and other obligation coverage; and

(10) [~~(11)~~] market conditions and requirements necessary to sell marketable public securities, including issuing classes in installments.

(c) The association may rely on the advice and analysis of TPFA, TPFA consultants, TPFA legal counsel, and third parties the association has retained for this purpose in determining "market conditions and requirements" under subsection (b) of this section. The association's determination may include consideration of the following factors:

(1) interest rate spreads;

(2) municipal bond ratings of the public securities;

(3) prior issuances of catastrophe-related [~~catastrophe related~~] public securities in Texas or any other state;

(4) similar financings in the market within the preceding 12 months;

(5) news or other publications relating to the association or the issuance of catastrophe-related public securities;

(6) a nationally recognized [~~nationally-recognized~~]investment banking firm's confidence memorandum;

(7) legal and regulatory conditions; and

(8) any other market conditions and requirements that the association deems necessary and appropriate.

(d) As part of each request for public securities, the association must submit to the commissioner a cost-benefit analysis of the various financing methods and funding structures that are available to the association. The [~~A~~] cost-benefit analysis must include:

(1) for public securities requested under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event):

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities, liquidity position, and other benefits associated with issuing public securities before a catastrophic event; and

(C) estimates of the monetary costs, benefits associated with, and the availability of funding alternatives, such as[~~:~~]

[~~(i) purchasing additional reinsurance for similar funding at a similar level;~~]

[~~(ii)~~] providing financing arrangements, or additional financing arrangements, that provide similar funding and at a similar layer; [~~or~~]

[~~(iii) other alternative risk transfer arrangements, such as catastrophe bonds, that provide similar funding and at a similar layer;~~]

(2) for public securities requested under this division following a catastrophic event:

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities and other benefits associated with issuing public securities; and

(C) the availability of alternative funding arrangements, if any, including the monetary costs and benefits associated with any available alternative funding arrangements.

§5.4136. Association Rate Filings.

While there are outstanding [~~class 1~~] public securities payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, or outstanding class 1 public securities issued before June 1, 2015, [~~or there are repayment obligations under §5.4127(b) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments),~~] the association:

(1) must consider its obligations for the payment of [~~class 1~~] public securities payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, and class 1 public securities issued before June 1, 2015 [~~and the repayment of class 2 public securities~~], including the additional amount of any debt service coverage that the association determines is required for the issuance of marketable public securities in developing its rates;

(2) must include in a rate filing submitted to the department an analysis that demonstrates that the filed rates produce premium sufficient to provide for at least:

(A) the expected operating costs of the association, including expected nonhurricane wind and hail losses and loss adjustment expenses; and

(B) the expected payment of [~~class 1~~] public security obligations payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, and class 1 public securities issued before June 1, 2015 [~~and the expected repayment of class 2 public securities~~], including any contractual coverage amount the association determines is required for the issuance of marketable public securities, during the period in which the rates will be in effect; and

(3) must include a cost component in the rates sufficient to at least provide for the expected payment of public security [~~class 1 payment~~] obligations for public securities payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, and class 1 public securities issued before June 1, 2015, [~~and the expected repayment of premium surcharge and member assessment repayment obligations~~] during the period in which the rates will be in effect.

§5.4141. Class 1 Public Security Trust Fund [~~Obligation Revenue Fund for the Payment of Class 1 Public Security Obligations and Operating Reserve 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 [~~obligation revenue~~] 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 [~~securities~~] trust [~~obligation revenue~~] 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 [~~association held~~] funds to the class 1 public security trust [~~obligation revenue~~] 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.

§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.

[~~§5.4142. Excess Obligation Revenue Fund Amounts~~]

[~~(a) Excess revenue collected in the obligation revenue fund that is disbursed to the association is an asset of the association and may be used for any purpose authorized in Insurance Code §2210.056, including as provided in §5.4127 of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), or deposited in the CRTF.~~]

[~~(b) As specified in Insurance Code §2210.072(a), class 1 public securities may be repaid before their full term if the association's board of directors elects to do so and the commissioner approves it.~~]

§5.4143. Premium Surcharge Trust Fund.

(a) As required by any agreements between the association, TPFA, and the trust company, if public securities payable under Insurance Code §2210.6132 are outstanding, insurers may be required to deposit contingent surcharges directly into the premium surcharge trust fund or funds.

(b) If insurers are required to direct deposit under subsection (a) of this section, then the association must provide notice to the commissioner and insurers no later than 60 days before the insurers must implement the contingent surcharge.

(c) The notice under subsection (b) of this section must include all applicable deposit instructions, including any required routing information and account numbers.

(d) Insurers must deposit the funds into the appropriate accounts on the date the funds must otherwise be remitted to the association under §5.4186 of this division (relating to Remittance of Contingent Surcharges).

(e) If insurers are not required to direct deposit under subsection (a) of this section, then the association must deposit the collected contingent surcharges on receipt into the premium surcharge trust fund or funds.

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

(g) The trust company must deposit any net investment income earned on the contingent surcharges into the appropriate trust fund accounts while these amounts are on deposit.

[~~§5.4143. Trust Funds for the Payment of Class 2 Public Securities~~]

[~~(a) As required by any agreements between the association, TPFA, and the trust company, insurers may be required to deposit premium surcharges and member assessments directly into the premium surcharge trust fund and member assessment trust fund, respectively.~~]

[~~(b) If insurers are required to direct deposit under subsection (a) of this section, then the association must provide notice to the commissioner and insurers:~~]

[~~(1) for premium surcharges, no later than 60 days before the insurers must implement the surcharge; and~~]

[~~(2) for member assessments, with the notice required under §5.4163 of this division (relating to Notice of Assessments).~~]

[~~(c) The notice under subsection (b) of this section must include all applicable deposit instructions, including any required routing information and account numbers.~~]

[~~(d) Insurers must deposit the funds into the appropriate accounts on the date the funds must otherwise be remitted to the association under §5.4164 of this division (relating to Payment of Assessment) and §5.4186 of this division (relating to Remittance of Premium Surcharges).~~]

[~~(e) If insurers are not required to direct deposit under subsection (a) of this section, then the association must deposit the collected premium surcharges and association member assessments on receipt into the appropriate accounts as required under agreements with TPFA and the trust company. The association may not directly or indirectly use, borrow, or in any manner pledge or encumber premium surcharges and association member assessments collected, or to be collected, by the association under Insurance Code §2210.613, except for the payment of class 2 public security obligations and as otherwise authorized in this title.~~]

[~~(f) The trust company must deposit any investment income earned on the premium surcharges or member assessments into the appropriate trust fund accounts while these amounts are on deposit.~~]

§5.4144. Excess [~~Class 2~~] Premium Surcharge Revenue.

[~~(a)~~] Revenue collected in any calendar year from premium surcharges under Insurance Code §§2210.612, 2210.613, 2210.6131, and 2210.6132 [~~§2210.613~~] that exceeds the amount of class 1, class 2, or class 3 public security obligations and class 1, class 2, or class 3 public security administrative expenses payable in that calendar year from premium surcharges and interest earned on the premium surcharge trust fund deposits may, at the discretion of the association, be:

(1) used to pay class 1, class 2, or class 3 public security obligations payable in the following calendar year, respectively, offsetting the amount of the premium surcharge that would otherwise be required to be levied for the year under Insurance Code Chapter 2210, Subchapter M;

(2) used to redeem or purchase outstanding class 1, class 2, or class 3 public securities, respectively; or

(3) deposited in the CRTF.

[~~(b) As specified in Insurance Code §2210.073(a), class 2 public securities may be repaid before their full term if the association's board of directors elects to do so and the commissioner approves it.~~]

§5.4145. Excess Net Premium and Other Revenue. Excess net premium and other revenue collected in the class 1, class 2, and class 3 public security trust funds that is disbursed to the association is an asset of the association and may be used for any purpose authorized in Insurance Code §2210.056, or deposited in the CRTF.

[**~~§5.4145. Excess Class 2 Member Assessment Revenue~~**].

[~~(a) Revenue collected in any calendar year from a member assessment under Insurance Code §2210.613 that exceeds the amount of class 2 public security obligations and class 2 public security administrative expenses payable in that calendar year from member assessments and interest earned~~

~~on the member assessment trust fund created for class 2 public securities deposits may, at the discretion of the association, be:~~]

[~~(1) used to pay class 2 public security obligations payable in the following calendar year, offsetting the amount of the member assessment that would otherwise be required to be levied for the year under Insurance Code Chapter 2210, Subchapter M;~~]

[~~(2) used to redeem or purchase outstanding class 2 public securities; or~~]

[~~(3) deposited in the CRTF.~~]

[~~(b) As specified in Insurance Code §2210.073(a), class 2 public securities may be repaid before their full term if the association's board of directors elects to do so and the commissioner approves it.~~]

[~~§5.4146. Member Assessment Trust Fund for the Payment of Class 3 Public Securities~~].

[~~(a) As required by any agreement between the association, TPFA, or the trust company, insurers may be required to direct deposit member assessments into the member assessment trust fund.~~]

[~~(b) If insurers are required to direct deposit under subsection (a) of this section, then the association must provide notice of the direct deposit requirement to the commissioner and insurers with the notice required under §5.4163 of this division (relating to Notice of Assessments).~~]

[~~(c) If insurers are not required to direct deposit under subsection (a) of this section, then the association must deposit the collected member assessments on receipt in the member assessment trust fund. The deposits must be made as required under agreements with TPFA and the trust company.~~]

[~~(d) The trust company must deposit in that member assessment trust fund any investment income earned on the member assessments while these amounts are held on deposit in the member assessment trust fund. The association may not directly or indirectly use, borrow, or in any manner~~

~~pledge or encumber association member assessments collected, or to be collected, by the association under Insurance Code §2210.6135, except for the payment of class 3 public security obligations and as otherwise authorized by this title.~~]

[~~§5.4147. Excess Class 3 Member Assessment Revenue~~]

[~~(a) Revenue collected in any calendar year from a member assessment under Insurance Code §2210.6135 that exceeds the amount of class 3 public security obligations and class 3 public security administrative expenses payable in that calendar year from member assessments and interest earned on the member assessment trust fund created for class 3 public securities deposits may, in the discretion of the association, be:~~]

[~~(1) used to pay class 3 public security obligations payable in the following calendar year, offsetting the amount of the member assessments that would otherwise be required to be levied for the year under Insurance Code Chapter 2210, Subchapter M;~~]

[~~(2) used to redeem or purchase outstanding class 3 public securities; or~~]

[~~(3) deposited in the CRTF.~~]

[~~(b) As specified in Insurance Code §2210.074(a), class 3 public securities may be repaid before their full term if the association's board of directors elects to do so and the commissioner approves it.~~]

[~~§5.4148. Repayment Obligation Trust Fund for the Payment of Amounts Owed under §5.4127~~].

[~~(a) As required by the commissioner's order under §5.4126(d) of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities), the association must deposit funds collected under §5.4127(d)(2) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments) in the repayment obligation~~

~~trust fund. The association must enter into trust agreements with the trust company or with a trustee selected by the association and approved by the commissioner. The trust agreements between the association and a trustee other than the trust company are subject to prior approval by the commissioner. Any investment income earned on funds in the repayment obligation trust fund become repayment obligation trust funds.~~]

[~~(b) The association may not directly or indirectly use, borrow, or in any manner pledge or encumber repayment obligation trust funds held by the repayment obligation trust fund trustee except as authorized under Insurance Code Chapter 2210 and this division.~~]

[~~§5.4149. Excess Repayment Obligation Trust Fund Amounts.~~]

[~~Following the payment of all class 2 public securities subject to repayment under §5.4127(b) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments) and the repayment of all amounts owed under §5.4127(b) of this division, any funds remaining in the repayment obligation trust fund must be disbursed to the association as an asset of the association and may be used for any purpose authorized in Insurance Code §2210.056.~~]

§5.4161. Member Assessments.

(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, and 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 catastrophe reserve trust fund;

(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 division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event or Issuance of Public Securities after a Catastrophic Event, respectively) cannot be issued based on the factors described in §5.4135 of this division (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 division;

(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.

(f) 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.

(g) 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.

(h) 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.

(i) 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 Chapter 2210 and these rules.

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

[~~(b) Pursuant to Insurance Code Chapter 2210 and the Association's plan of operation, if the Association determines that a member assessment is required to fulfill the Association's required obligations the Association shall assess the members of the Association in an amount the Association determines to be reasonable and necessary to fully provide for the Association's required obligations.~~]

(j) [~~(c)~~] This section and §§5.4162 - 5.4167 of this division (relating to Amount of Assessment; Notice of Assessment; Payment of Assessment; Failure to Pay Assessment; Contest After [~~after~~] Payment of Assessment; and Inability to Pay Assessment by Reason of Insolvency, respectively) are a part of the association's [~~Texas Windstorm Insurance Association's~~] plan of operation and will [~~shall~~] control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).

§5.4171. Premium Surcharge Requirements [~~Requirement~~].

(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 [~~§2210.613(b) and (c)~~] on all policyholders of policies that cover insured property that is located in a catastrophe area, including automobiles principally garaged in the catastrophe area. This requirement applies to property and casualty insurers, the association, the Texas FAIR Plan Association, Texas Automobile Insurance Plan Association (TAIPA) policies, affiliated surplus lines insurers, and includes property and casualty policies independently procured from affiliated insurers.

(c) For premium surcharges described in subsection (a), this section and §§5.4172, 5.4173, 5.4181, 5.4182, 5.4184 - 5.4192 of this division (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, Premium Surcharge Reconciliation Report, and Data Collection, respectively) apply to all policies written by the association.

(d) [~~(b)~~] For contingent surcharges described in subsection (b), this [~~This~~] section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division [~~(relating to Premium Surcharge Definitions, Determination of the Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of the Surcharges, Mandatory Premium Surcharge Collection, Remittance of Premium Surcharges, Offsets, Surcharges Not Subject to Commissions or Premium Taxes, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively)~~] only 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) [~~(c)~~] This section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division do not apply to:

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

(2) a nonaffiliated county mutual fire insurance company described by 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.

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

§5.4172. Premium Surcharge Definitions.

The following words and terms when used in §§5.4171, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division (relating to Premium Surcharge Requirements [~~Requirement~~], Determination of the Contingent Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium

Surcharge, Application of Premium [~~the~~] Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent [~~Premium~~] 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) will have the following meanings unless the context clearly indicates otherwise:

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

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

(3) Association-insured property--Real property, or tangible or intangible personal property covered under an insurance policy issued by the Texas Windstorm Insurance Association.

(4) Contingent surcharge percentage--The percentage amount set by the commissioner under §5.4173(c) of this division.

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

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

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

[~~(6) Premium surcharge percentage--The percentage amount determined by the commissioner under §5.4173 of this division.~~]

(7) Residential property insurance--Insurance against loss to real or tangible personal property at a fixed location, including through a homeowners insurance policy, a tenants insurance policy, a condominium owners insurance policy, or a residential fire and allied lines insurance policy.

§5.4173. Determination of the Contingent Surcharge Percentage.

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

[~~(b)~~] If the commissioner orders public securities to be paid under Insurance Code §2210.6132 [~~association determines that it is unable to satisfy the estimated amount of class 2 public security obligations and administrative expenses with available funds~~], the association must submit a written request to the commissioner to approve a contingent [~~premium~~] surcharge on policyholders with insured property in the catastrophe area as authorized under Insurance Code §2210.6132 [~~§2210.613~~]. The association's request must specify, for each applicable class of public securities:

(1) the total amount of the class 2 and class 3 public security obligations and estimated amount of the class 2 and class 3 public security administrative expenses, including any required contractual coverage amount, provided in the TPFA notice;

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

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

(2) [~~(4)~~] the date on which the contingent [~~premium~~] surcharge is to commence and the date the contingent [~~premium~~] surcharge for the noticed amount is to end.

(b) While public securities repayable under Insurance Code §2210.6132 are outstanding, the association must submit a written request described under subsection (a) of this section on an annual basis. The commissioner must receive a request described by this subsection no later than 195 days before the date the association requests the contingent surcharge to commence.

(c) On approval by the commissioner, each insurer must assess a contingent [~~premium~~] surcharge in a percentage amount set by the commissioner to the insurer's policyholders. The contingent [~~premium~~] surcharge percentage must be applied to the premium attributable to insured property located in the catastrophe area on policies that become effective, or on multiyear policies that become effective or have an anniversary date, during the premium surcharge period when the contingent [~~premium~~] surcharge percentage will be in effect, as specified in §§5.4181, 5.4182, and 5.4184 - 5.4188 of this division (relating to Premiums to be Surcharged, Method for Determining the

Premium Surcharge, Application of Premium [~~the~~] Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent [~~Premium~~] Surcharges, Offsets, and Association Surcharges not Subject to Commissions or Premium Taxes, and Contingent Surcharges not Subject to Commissions, respectively). The premium surcharge date specified by the commissioner must be at least 180 days after the date the commissioner issues the order under Insurance Code §2210.6132(b) [~~notice of approval of the public securities~~].

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

§5.4181. Premiums to be Surcharged.

(a) The association [~~premium~~] surcharge percentage and the contingent surcharge percentage must be applied to:

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

(2) if not reported as described in paragraph (1) of this subsection, those additional amounts collected by insurers that are subject to premium taxation by the comptroller, including policy fees not reported as premium; and

(3) premium subject to surplus lines premium tax, and premium subject to independently procured premium tax.

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

§5.4182. Method for Determining the Premium Surcharges.

(a) The methods addressed in this section relating to contingent surcharges will apply to all:

(1) policies written and reported under the following annual statement lines of business: fire; allied lines; farm and ranch owners; homeowners; commercial multiple peril (nonliability portion); private passenger auto no fault (personal injury protection (PIP)), other private passenger auto liability, and private passenger auto physical damage; and commercial auto no fault (PIP), other commercial auto liability, and commercial auto physical damage; and

(2) personal and commercial risks assigned by TAIPA under Insurance Code Chapter 2151.

(b) The methods addressed in this section relating to association surcharges will apply to all association policies.

(c) The association [~~premium~~] surcharge will be determined by applying the association [~~premium~~] surcharge percentage to the policy premium determined in §5.4181 of this division (relating to Premiums to be Surcharged), attributable to association-insured property located in the catastrophe area.

(d) The contingent surcharge will be determined by applying the contingent surcharge percentage to the policy premium determined in §5.4181 of this division (relating to Premiums to be Surcharged), attributable to insured property located in the catastrophe area, including automobiles principally garaged in the catastrophe area.

(e) [~~(c)~~] In cases where the policy is composite rated and the premium attributable to insured property located in the catastrophe area cannot be reasonably determined, the insurer must determine the contingent [~~premium~~] surcharge based on the insured address. If the insured address is within a designated catastrophe area, then the insurer must determine the contingent [~~premium~~] surcharge by applying the contingent [~~premium~~] surcharge percentage to the full policy premium determined in §5.4181 of this division. If the insured address is not within a designated catastrophe area, then no premium surcharge applies to the policy.

§5.4184. Application of Premium [~~the~~] Surcharges.

(a) When assessed under Insurance Code §2210.6132 [~~§2210.613~~], the contingent [~~premium~~] surcharges must apply to all policies with insured property in the catastrophe area that are issued or renewed with effective dates in the surcharge [~~assessment~~] period specified in the commissioner's order.

(b) For association policies that meet the requirements of §5.4912 of Division 10 of this subchapter (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131), association surcharges must apply to all association policies that are in effect on the surcharge date. For association policies that do not yet meet the requirements of §5.4912 of Division 10 of this subchapter, association surcharges must apply to all association policies that are issued or renewed with effective dates in the surcharge period determined under §5.4126 of this division (relating to Determination of the Association Surcharge Percentage).

(c) There are [~~, with~~] two exceptions to the requirements of subsections (a) and (b) of this section:

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

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

(d) [~~(b)~~] Premium surcharges collected [~~are refundable~~] under Insurance Code §2210.6132 [~~§2210.613~~] are refundable.

(1) If the policy is canceled, an amount of the contingent surcharge that is proportionate to the returned premium must be refunded to the policyholder; however,

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

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

(e) [~~(c)~~] If a midterm policy change increases the premium on the policy, the policyholder must pay an additional contingent surcharge for the increased premium attributable to insured property located in the catastrophe area, which will be determined by applying the applicable contingent [~~premium~~] surcharge percentage to that portion of the additional premium attributable to insured property located in the catastrophe area.

(f) [~~(d)~~] If a midterm policy change decreases the premium, the policyholder is due a refund of the contingent surcharge for the decreased premium attributable to insured property located in the catastrophe area, which must be determined by applying the applicable contingent [~~premium~~] surcharge percentage to that portion of the return premium attributable to insured property located in the catastrophe area. The insurer must credit or refund the excess contingent surcharge to the policyholder within 20 days of the date of the transaction, except as provided by subsection (g) of this section. The insurer, or surplus lines agent allowed by an affiliated surplus lines insurer to credit or refund excess surcharges, may credit any refund paid or credited to the policyholder to the association through the offset process described in §5.4187 of this division (relating to Offsets).

(g) [~~(e)~~] Surcharges or refunds must apply to all premium changes resulting from exposure or premium audits, retrospective rating adjustments, or other similar adjustments that occur after policy expiration. On inception of the policy, the contingent [~~premium~~] surcharge must be collected on the deposit premium paid. If, after exposure or premium audit, retrospective rating adjustment, or similar adjustment after policy expiration, an additional premium is required, an additional contingent surcharge must be paid. If, after exposure or premium audit, retrospective rating adjustment, or other similar adjustment after policy expiration, the deposit premium exceeds the actual premium, the excess contingent surcharge must be refunded to the policyholder, and the insurer, or surplus lines agent allowed by an affiliated surplus lines insurer to credit or refund excess surcharges, may credit any refund paid to the association through the offset process described in §5.4187 of this division. Additional contingent surcharges and refunds must be determined by applying the contingent [~~premium~~] surcharge percentage in effect on the inception date of the policy, or the anniversary date of the policy in the case of multiyear policies, to the additional premium (or return premium) attributable to insured property located in the catastrophe area.

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

(i)[~~(g)~~] An affiliated surplus lines insurer may allow a surplus lines agent to credit or refund contingent [~~premium~~] surcharges on its behalf. An affiliated surplus lines insurer, or surplus lines agent allowed to credit or refund contingent [~~premium~~] surcharges on its behalf, must credit or refund the excess surcharge to the policyholder under subsections (f) [~~(d)~~] and (g) [~~(e)~~] of this section not later than the last day of the month following the month in which the corresponding transaction was effective.

(j) [~~(h)~~] An affiliated surplus lines insurer that allows an agent to credit or refund contingent [~~premium~~] surcharges on its behalf under subsection (g) of this section may be held liable by the department for the failure of its agent to comply with this section.

§5.4185. Mandatory Premium Surcharge Collection.

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

(b) Insurers must collect the contingent [~~premium~~] surcharges proportionately as the insurer collects the premium.

(c) The association must collect the association surcharge in full when due for policies compliant with §5.4912 (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131) of Division 10 of this subchapter. For policies not yet compliant with §5.4912, the association must collect association surcharges in full no later than the effective date of the policy.

(d) Under Insurance Code §§2210.612(d), 2210.613(d), and 2210.6131(d) [~~§2210.613(d)~~], the failure of a policyholder to pay the association [~~premium~~] surcharge constitutes failure to pay premium for the purposes of policy cancellation.

(e) Insurers must apply all policyholder payments received to contingent surcharges before applying payments to premium.

§5.4186. Remittance of Contingent [~~Premium~~] Surcharges.

(a) Except as provided in §5.4143 of this division (relating to Premium Surcharge Trust Funds [~~Trust Funds for the Payment of Class 2 Public Securities~~]), insurers must remit to the association the aggregate amount of contingent surcharges as provided by this section. An affiliated surplus lines insurer may allow a surplus lines agent to remit contingent [~~premium~~] surcharges to the association on its behalf in compliance with any procedures established by the association relating to contingent [~~premium~~] surcharge remissions from surplus lines agents.

(b) Insurers, or surplus lines agents allowed by affiliated surplus lines insurers to remit contingent surcharges under subsection (a) of this section, must remit all surcharges not later than the last day of the month following the month in which the corresponding written premium transaction was effective.

(c) Insurers and agents may not allow or require policyholders to make separate payments for the surcharge amounts that are payable to the association or the premium surcharge trust fund or funds.

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

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

§5.4187. Offsets.

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

(1) the portion of the surcharge the insurer was not able to collect from the policyholder, if the policy was canceled or expired;

(2) the portion of the surcharge remitted to the association, or deposited directly in the premium surcharge trust fund, that was later refunded to the policyholder as a result of a midterm cancellation or midterm policy change, as described in §5.4184 of this division (relating to Application of Premium [~~the~~] Surcharges); or

(3) the portion of a surcharge remitted to the association, or deposited directly in the premium surcharge trust fund or funds, in excess of a deposit premium as described in §5.4184 of this division.

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

§5.4188. Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges Not Subject to Commissions.

(a) As provided by [~~the~~] Insurance Code §§2210.612(d), 2210.613(d) and 2210.6131(d) [~~§2210.613(d)~~], association [~~premium~~] surcharges are not subject to either premium taxes or agents' commissions.

(b) The association may not increase association surcharges for premium taxes or commissions, and agents may not collect or charge commissions for association surcharges.

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

(d) Insurers may increase contingent surcharges in an amount equal to any premium or maintenance tax attributable to the contingent surcharge and owed to the comptroller.

§5.4189. Notification Requirements.

(a) Insurers must provide written notice to policyholders receiving a contingent [~~premium~~] surcharge that their policy contains a surcharge and the dollar amount of the surcharge. The notice must read: "Texas Insurance Code Section 2210.6132 authorizes [~~Sections 2210.073 and 2210.613 require~~] a premium surcharge to be added to certain property and casualty insurance policies providing coverage in the catastrophe area to pay the debt service on public securities issued to pay Texas Windstorm Insurance Association claims resulting from a catastrophic event. A premium surcharge {in the amount of $_____} has been added to your premium. Should your policy be canceled by you or the insurer prior to its expiration date, a proportionate amount of the premium surcharge will be refunded to you. [~~Failure to pay the surcharge is grounds for cancellation of your policy.~~]"

(b) The association must provide written notice to policyholders receiving an association surcharge that their policy contains a surcharge and the dollar amount of the surcharge. The notice must read: "Texas Insurance Code Sections 2210.612, 2210.613, and 2210.6131 require a premium surcharge be added to Texas Windstorm Insurance Association policies to pay the debt service on public securities issued to pay association claims resulting from a catastrophic event. A premium surcharge {in the amount of $_____} has been added to your premium. Should your policy be canceled by you or the association prior to its expiration date, the premium surcharge will not be refunded to you. Failure to pay the surcharge is grounds for cancellation of your policy." [~~Insurers must provide written notice to policyholders of the dollar amount of the premium surcharge.~~]

(c) Except as provided in subsection (e) [~~(d)~~] of this section, notices required under subsection [~~subsections~~] (a) [~~and (b)~~] of this section must:

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

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

(3) be provided within 20 days of the date of the transaction for any midterm change in the premium surcharge; and

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

(d) Notices required under subsection (b) of this section must:

(1)no later than 14 days after the date described in §5.4126(b)(8) of this division (relating to Determination of the Association Surcharge Percentage), be provided to policyholders whose policies comply, as of the date described in §5.4126(b)(8), with §5.4912(a) of Division 10 of this subchapter (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131);

(2) be provided with the renewal notice to policyholders whose policies will renew during the period described by paragraphs (8) and (9) of §5.4126(b);

(3) be provided at the time a new policy is issued, for new policies that go into effect during the period described by paragraphs (8) and (9) of §5.4126(b), and;

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

(e) An affiliated surplus lines insurer, or surplus lines agent allowed to provide notices on its behalf, must provide the notice required under subsection (c)(3) of this section to the policyholder not later than the last day of the month following the month in which the transaction for any midterm change in the premium surcharge became effective.

(f) [~~(e)~~] An affiliated surplus lines insurer that allows an agent to provide notices required under this section may be held liable by the department for the failure of its agent to comply with this section.

§5.4190. Annual Premium Surcharge Report.

(a) This section applies to an insurer that, during the calendar year, wrote any of 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, or commercial automobile physical damage.

(b) No later than 90 days following the end of a calendar year in which an association surcharge was in effect, the association must provide the department with an annual premium surcharge report for the calendar year.

(c) No later than 90 days following the end of a calendar year in which a contingent [~~premium~~] surcharge was in effect, each insurer must provide the association with an annual premium surcharge report for the calendar year unless contingent [~~premium~~] surcharges were in effect for less than 45 days within the calendar year.

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

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

(f) [~~(e)~~] Annual premium surcharge reports must provide the following information:

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

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

(3) the name of the insurance company;

(4) for policies with effective dates, or multiyear policies with anniversary dates, within the calendar year, separately for each surcharge period in effect during the calendar year, and within each surcharge period in effect during the calendar year for all applicable lines of business:

(A) for all policies subject to a premium surcharge:

(i) the total written premium attributable to insured property located in the catastrophe area; and

(ii) the total written premium attributable to insured property located outside the catastrophe area; and

(B) the total written premium for policies not subject to a premium surcharge because the policyholder had no insured property located in the catastrophe area;

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

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

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

(g) [~~(f)~~] The association must:

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

(A) the consistency of contingent [~~premium~~] surcharges actually remitted to the association or deposited directly into the premium surcharge trust fund or funds, with contingent [~~premium~~] surcharges shown in the reports as collected and the contingent [~~premium~~] surcharges shown in the reports as remitted to the association or deposited directly into the premium surcharge trust fund or funds; and

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

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

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

DIVISION 10. ELIGIBILITY AND FORMS

28 TAC §5.4912

STATUTORY AUTHORITY. TDI proposes new 28 TAC §5.4912 under Insurance Code §§2210.003, 2210.008 and 36.001. Section 2210.003(13) defines association policies and forms as being approved by TDI. Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

Section 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 the state.

§5.4912. Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131.

(a) Not later than the 15th day after the effective date of this section, the association must file with the department policy forms that provide:

(1) the policy is immediately subject to any surcharge the commissioner may determine under §5.4126 (relating to Determination of the Association Surcharge Percentage) of Division 3 of this subchapter;

(2) the policyholder has 120 days from the date the policyholder receives the notice described in §5.4189(b) (relating to Notification Requirements) of Division 3 of this subchapter to pay the surcharge, and;

(3) on the declarations page, a conspicuous notice in at least 12-point bolded font that the policy may be subject to an immediate premium surcharge, and that failure to pay will result in cancellation.

(b) The association must issue only policies that comply with subsection (a) not later than 60 days after the department approves the policy forms filed under subsection (a).

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

Issued at Austin, Texas, on September 25, 2015.

Sara Waitt
General Counsel
Texas Department of Insurance