

**SUBCHAPTER E. Texas Windstorm Insurance Association  
28 TAC §§5.4111, 5.4113, and 5.4114**

**INTRODUCTION.** The Commissioner of Insurance adopts amendments to 28 TAC §§5.4111, 5.4113, and 5.4114, relating to the Texas Windstorm Insurance Association's (association's) catastrophe reserve trust fund (CRTF). The amendments are adopted without changes to the proposed text published in the December 7, 2018, issue of the *Texas Register* (43 TexReg 7875).

**REASONED JUSTIFICATION.** Amendments to §§5.4111, 5.4113, and 5.4114 are necessary to implement Senate Bill 900, 84th Legislature, Regular Session (2015).

The CRTF is an account administered by the Texas Comptroller dedicated to the payment of future association catastrophe losses. SB 900 requires the Commissioner to adopt rules for the release of money from the CRTF to pay the association's operating expenses, including reinsurance and alternative risk financing mechanisms, when premium and other revenue is insufficient. It is necessary to amend §§5.4111, 5.4113, and 5.4114 to implement SB 900, so that when the association does not have enough premium and other revenue to pay operating expenses, it can pay them with money from the CRTF.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Commenters:** The department received one written comment, from the Coastal Windstorm Insurance Coalition. The comment was in support of the proposal with changes.

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**Comment on §5.4114(c).** The commenter requests adding a fourth item to the written request that the association must send to the Commissioner when the association requests a disbursement to pay for operating expenses. The fourth item would apply to a disbursement request "for reinsurance or alternative risk financing mechanisms based upon a hurricane model." The association would have to provide "all user-selected hurricane model input assumptions" and "sufficiently detailed model outputs such that the outputs can be validated against actual Texas historical hurricane experience."

In addition to adding this fourth item to the association's written request, the commenter seeks a requirement that disbursements for reinsurance or alternative risk financing based on a hurricane model be authorized only after a public hearing and public disclosure of "all such hurricane model inputs and outputs no less than 30 days prior to the public hearing."

The commenter states that by providing transparency as to hurricane model inputs and outputs, the requested changes to §5.4114(c) limit the risk that reinsurers will recommend the association buy an inflated amount of reinsurance with CRTF funds. The commenter states that the requested changes also enable the Commissioner to hear from all parties that may be affected by a CRTF disbursement and not only "parties vested in the outcome."

**Agency Response to Comment on §5.4114(c).** The department declines to make the suggested changes to §5.4114(c) because doing so would not address the commenter's transparency concerns, and fully addressing those concerns would require additional changes outside the scope of these rules.

The association negotiates its reinsurance contracts in the spring and then pays premium in quarterly installments. Requiring notice and hearing could delay the

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association from making the installment payment. While the association could, with some modification, make available the model inputs and outputs, it would better address the commenter's transparency concerns if the association made the information available before contracting for reinsurance. However, requiring this is outside the scope of these rules.

Though the requested revisions to the rule are outside the scope of this adoption order, the department notes that the association's management has the opportunity to expand its transparency in response to a Sunset Advisory Commission recommendation. The association recently underwent Sunset review, and the Sunset Advisory Commission adopted a recommendation for association management to make public the assumptions used and the results of anticipated loss modeling before considering any rate changes or purchasing reinsurance. Doing this would increase transparency more effectively than disclosing this information only when the association is requesting a CRTF disbursement to pay for operating expenses.

**Comment on §5.4114(e).** The commenter suggests that subsection (e) of §5.4114 should be removed.

Section 5.4114(e) allows the Commissioner to authorize a disbursement for reinsurance or alternative risk financing that would enable the association to buy more reinsurance than it would have to buy to comply with Insurance Code §2210.453. Section 2210.453 requires the association's total available loss funding to be not less than the association's probable maximum loss for a year of losses that has a one-in-100 chance of occurring.

The commenter states that implementing SB 900 does not require §5.4114(e). The commenter also states that subsection (e) should be removed because the association

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has never had a catastrophe year in which its losses were so great that it had to use reinsurance. The commenter adds that each year the association already must spend millions of dollars—which could go into the CRTF—on reinsurance that it has never had to use. The association should not be given the option of using funds from the CRTF to buy more reinsurance than statute requires.

**Agency Response to Comment on §5.4114(e).** The department declines to make the suggested change. Removing subsection (e) could limit the association's reinsurance choices or add to the cost of reinsurance. The association might find that the best deal for reinsurance would provide more than its minimum funding level, but the association would need CRTF funds to purchase the reinsurance.

**STATUTORY AUTHORITY.** The Commissioner adopts the amendments to 28 TAC §§5.4111, 5.4113, and 5.4114 under Insurance Code §§2210.008, 2210.452(f), and 36.001.

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

Insurance Code §2210.452(f) directs the Commissioner to adopt rules establishing the procedure for distributing funds from the CRTF to pay for operating expenses.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

### TEXT.

#### **§5.4111. Operation of the Catastrophe Reserve Trust Fund.**

(a) In general.

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(1) The comptroller must administer the CRTF in accordance with Insurance Code Chapter 2210 and this subchapter.

(2) The comptroller must ensure that all money received from the association under subsection (b) of this section is deposited with the trust company in the CRTF.

(3) The trust company must receive, disburse, invest, hold, and manage all money deposited in the CRTF.

(4) All money, including investment income, deposited in the CRTF constitutes state funds to be held by the comptroller outside the state treasury on behalf of, and with legal title in, the department until disbursed as provided by Insurance Code Chapter 2210 and this subchapter.

(b) Payment of funds to the CRTF.

(1) Except as provided by statute, on an annual basis, the association must pay the net gain from operations of the association directly to the comptroller for deposit with the trust company in the CRTF.

(2) In a period acceptable to the trust company and the comptroller, but not more frequently than monthly, the association must pay all premium surcharges collected under Insurance Code §2210.259 during the preceding period, and accumulated investment income on those premium surcharges, directly to the comptroller for deposit with the trust company in the CRTF. Premium surcharges the association collects under Insurance Code §2210.259 and investment income on those funds are not gross premium or other revenue of the association and must be accounted for separately from the association's gross premium and other revenue.

(3) As necessary, the association must pay directly to the comptroller for deposit with the trust company in the CRTF all:

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(A) excess public security proceeds resulting from Insurance Code §2210.608; and

(B) excess premium surcharges resulting from Insurance Code §2210.611 and §5.4144 of this title (relating to Excess Premium Surcharge Revenue).

(4) All deposits received by the trust company under this subsection must be deposited in the CRTF immediately on receipt.

(c) Maintenance of the CRTF.

(1) In maintaining and managing the CRTF, the trust company has the same duty of care that applies to the comptroller as trustee of funds in the treasury.

(2) The department will pay the trust company an amount sufficient to reimburse the trust company for the actual monthly costs of administering and maintaining the CRTF. The trust company must deduct the appropriate amount directly from the CRTF's earnings and advise the department monthly in writing of the amount of these costs.

(3) The trust company must submit to the department a report of all transactions relating to the CRTF promptly after the end of each month. The trust company must furnish other information relating to the CRTF as the department may reasonably request from time to time.

(4) The trust company must keep a book of records in which the complete and correct entries are made of all transactions relating to the receipts, disbursements, deposits, withdrawals, and transfers in the CRTF in accordance with generally accepted accounting principles. The records must be available for inspection by an authorized representative of the department at all reasonable hours of the business day and under reasonable conditions.

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### **§5.4113. Investments of Catastrophe Reserve Trust Fund.**

(a) Subject to Insurance Code §2210.4521, the money in the CRTF may only be invested in investments as authorized by Government Code §404.024 and §404.106, and as amended.

(b) The association does not have authority to direct investments or money in the CRTF.

(c) All earnings and losses from the investment of funds in the CRTF must be credited to or charged against the CRTF. Investment income on money in the CRTF must be maintained as part of the funds in the CRTF.

(d) CRTF funds may be intermingled with other funds held by the trust company for the purposes of common investment and operational efficiency.

### **§5.4114. Disbursements from the Catastrophe Reserve Trust Fund.**

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

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

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

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

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

(B) the balance of the CRTF; and

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

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

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

(1) an itemized list of operating expenses;

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

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

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

(e) The Commissioner may authorize a disbursement under subsection (c) in an amount that enables the association to exceed the minimum funding level required under Insurance Code §2210.453.

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

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

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

Issued at Austin, Texas, on April 24, 2019.

/s/ Norma Garcia  
Norma Garcia  
General Counsel  
Texas Department of Insurance

The Commissioner adopts amendments to of 28 TAC §§5.4111, 5.4113, and 5.4114.

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*/s/ Kent C. Sullivan*

Kent C. Sullivan

Commissioner of Insurance

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