

SUBCHAPTER F. INLAND MARINE INSURANCE AND MULTI-PERIL INSURANCE
28 TAC §5.5002

INTRODUCTION. The Commissioner of Insurance adopts amended 28 TAC §5.5002, concerning inland marine insurance. The amendment is adopted without changes to the proposed text published in the January 29, 2021, issue of the *Texas Register* (46 TexReg 762).

REASONED JUSTIFICATION. The amendment to §5.5002 classifies pet insurance as inland marine insurance and gives insurers more flexibility in how they offer it. The amended language specifically allows pet insurance to be sold as individual or group insurance policies.

Pet insurance covers veterinary expenses arising from pet injury or illness. Although pet insurance represents a small fraction of the property and casualty insurance market, pet insurance is growing and becoming popular as an employer-offered benefit. It is commonly considered a type of inland marine insurance, but Texas has treated it as a miscellaneous kind of property and casualty insurance. Before this amendment insurers could not offer pet insurance through group policies.

Under its former treatment as a miscellaneous kind of property and casualty insurance, pet insurance rates had to be filed and forms had to be approved by the Texas Department of Insurance (TDI) before they were used. In contrast, inland marine products are designated as either "filed" or "non-regulated" in §5.5002. The amended rule adds subparagraph (QQ) to designate pet insurance as a "non-regulated" inland marine product, meaning rules, rates, and forms no longer need to be filed or approved.

Designating pet insurance as a non-filed type of inland marine, rather than a filed type, helps maintain a level playing field among insurers, because Lloyd's plans, reciprocals, and interinsurance exchanges are not required to file inland marine rates or forms.

In addition, the adopted amendment includes nonsubstantive editorial and formatting changes that conform the text of §5.5002 to the agency's current style and improve the rule's clarity. These changes include changing "shall" to "must" or other clearer language and removing unnecessary wording. The amendment also corrects a past typographical mistake in a reference to Property Code §59.001.

TDI posted an informal draft on its website on October 8, 2020. TDI received comments on the informal draft and considered them when drafting the proposed rule. TDI received one comment on the proposed rule published in the *Texas Register* on January 29, 2021.

SUMMARY OF COMMENT AND AGENCY RESPONSE.

Commenter: American Family Life Assurance Company of Columbus commented in support of the proposal with changes.

Comment on license type required to sell pet insurance.

Comment. The commenter recommends that agents who hold a specialty license or are qualified to hold a specialty license be allowed to sell pet insurance. The commenter states that many of its agents hold a life, accident, and health insurance license, which qualifies them to hold a specialty license. The commenter states that pet insurance is similar to health insurance.

Agency Response. TDI declines to amend the proposed rule. Specialty insurance licenses are regulated under Insurance Code Chapter 4055, which establishes the scope of what kinds of insurance can be sold under those licenses. Changing the scope of specialty licenses to include pet insurance would require a legislative change and is beyond the scope of this rulemaking.

STATUTORY AUTHORITY. The Commissioner adopts amended §5.5002 under Insurance Code §§2251.004, 2301.005, and 36.001.

Insurance Code §2251.004 provides that the Commissioner may adopt rules governing how rates are regulated for the various classifications of risks insured under inland marine insurance, as determined by the Commissioner.

Insurance Code §2301.005 provides that the Commissioner may adopt rules governing how forms are regulated for the various classifications of risks insured under inland marine insurance, as determined by the Commissioner.

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

TEXT.

§5.5002. Texas Definition of Inland Marine Insurance.

Inland marine insurance is defined and classified as follows.

(1) Imports (non-regulated). Imports may be insured under inland marine policies, when such property is not subject to import risk under marine (ocean) policies, as follows.

(A) Imports on consignment may be covered wherever the property may be and without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation. A shipment on consignment means property consigned and entrusted to a factor or agent to be held in his or her care, or under his or her control for sale, for account of another, or for exhibit or trial or approval or auction, and if not disposed of, to be returned.

(B) Imports not on consignment in such places of storage as are usually employed by importers, provided the coverage of the issuing companies includes hazards of transportation. Such policies may also include the same coverage in respect to property purchased on cost-insurance-freight terms or spot purchases for inclusion with or in substitution for bona fide importations. An import, as a proper subject for inland marine insurance, is deemed to maintain its character as such so long as the property remains segregated in the original form or package in such a way that it can be identified and has not become incorporated and mixed with the general mass of property in the United States, and will be deemed to have been completed when such property has been:

(i) sold and delivered by the importer, factor, or consignee; or
(ii) removed from place of storage as described in this subparagraph and placed on sale as part of importer's stock in trade at a point of sales distribution; or

(iii) delivered and accepted for manufacture, processing, or change in form to premises of the importer or of another used for any such purposes.

(2) Exports (non-regulated). Inland marine policies may cover property for export, when such property is not subject to export risk under marine (ocean) policies, as follows.

(A) Export property may be covered wherever the property may be without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

(B) Export property is deemed to acquire its character as such when designated as such or while being prepared for export and retains that character unless diverted for domestic trade, and when so diverted, the provisions of these sections respecting domestic shipment apply; provided, however, these provisions do not apply to long-established methods of insuring certain commodities, e.g., cotton.

(3) Domestic shipments (non-regulated).

(A) Domestic shipments on consignment for consignor and/or consignee may be written as follows, provided that in all events the policy covers while in transit:

(i) on consignment for sale or distribution for account of consignor, with no restriction as to time in storage or deposit, while in the custody of others and including return shipments, provided that in no event will the policy cover on premises owned, leased, or controlled by the consignor;

(ii) on consignment for sale or distribution for account of consignee while in the custody of others and including return shipments, provided that in no event may coverage be granted in excess of 120 days at premises owned, leased, or controlled by consignee; further provided that if coverage be issued jointly to consignee and consignor the same limitation of 120 days for coverage at premises owned, leased, or controlled by consignee will be applicable only with respect to the interest of the consignee; and

(iii) on consignment for account of consignor and/or consignee for exhibition, trial, approval, or auction, without restriction as to time in storage or deposit or on exhibition and while in the custody of others and including return shipments.

(B) Domestic shipments not on consignment may be written as follows, provided that in all events the policy covers while in transit:

(i) at premises of transportation companies or freight forwarders pending transportation without restriction as to time in storage or deposit. For purposes of insurance under this clause, a "freight forwarder" is defined as a warehouse or transportation concern who takes custody of the property of others for storage and transport either by schedule or upon call;

(ii) furniture shipment policies without restriction as to time in storage or deposit to cover only used household furniture and used furniture and fixtures in course of transit while awaiting determination or availability of final destination. Such policies may not cover after delivery to final destination and may not include merchandise held for sale; and

(iii) in all other situations provided the coverage may not exceed 120 days at any place of storage or deposit operated by the assured except coverage at points of sales distribution or at manufacturing premises of the assured which may be written without regard to such restriction of time in storage; provided, however, that in no event will any policy cover the perils of fire and extended coverage at such points of sales distribution or such manufacturing premises.

(4) Bridges, tunnels and other instrumentalities of transportation and communication (non-regulated). No policy may be issued under this paragraph where the

perils of fire and extended coverage are the only hazards to be covered; provided further that in all cases policies must exclude buildings, office furniture, and supplies held in storage therein. Policies covering piers, wharves, docks, and slips must exclude the hazards of fire and extended coverage. Other aids to navigation and transportation, including dry docks and marine railways, may be covered against any risks. Property insured under this paragraph may include, but is not limited to:

(A) pipelines, including on-line propulsion, regulating, and other equipment appurtenant to such pipelines, but excluding all property at manufacturing, producing, refining, converting, treating, or conditioning plants;

(B) power transmission and telephone and telegraph lines, excluding all property at generating, converting, or transforming stations, substations, and exchanges;

(C) radio and television communication equipment in commercial use as such, including towers and antennae, auxiliary equipment, electrical operating and control apparatus, and other property directly used for transmitting and/or receiving; and

(D) outdoor cranes, loading bridges, and similar equipment used to load, unload, and transport.

(5) Other inland marine risks.

(A) Accounts receivable (filed).

(B) Agricultural machinery and equipment (excluding dealers) (filed).

(C) Bailee customers policies (non-regulated). Covering property in the custody of bleacheries, throwsters, fumigatories, dyers, cleaners, laundries, needle workers, and other bailees for the purpose of storage or performing work thereon. Such

policies may include coverage while in transit but may not cover bailee's property at his or her premises.

(D) Block policies. Block policies presently approved under this section are:

(i) camera dealers (filed);

(ii) equipment dealers (filed);

(iii) furrier's block (non-regulated);

(iv) jeweler's block:

(I) retailers with average inventories of less than \$250,000 (filed); and

(II) all other classes (non-regulated);

(v) musical instrument dealers (filed).

(E) Cold storage locker plant policies (non-regulated). Covering merchandise of customers such as meats, game, fish, poultry, fruit, vegetables, and property of a similar nature.

(F) Cotton buyers transit policies (filed).

(G) Domestic bulk liquids policies (non-regulated). Covering domestic bulk liquids stored in tanks, provided the risks of fire and extended coverage are excluded therefrom.

(H) Exhibition policies covering property while on exhibition and in transit to or from such exhibition (non-regulated).

(I) Film floaters, including builders' risk during the production and coverage on completed negatives and positives and sound records (filed).

(J) Fine arts policies covering objects of art such as pictures, bronzes, and antiques, rare manuscripts and books, articles of virtu, etc.:

- (i) private collections (filed);
- (ii) dealers (non-regulated); and
- (iii) all other commercial risks (filed).

(K) Floor plan policies (filed). Covering property for sale while in possession of dealers under a floor plan or any similar plan under which the dealer borrows money from a bank or lending institution with which to pay the manufacturer, provided:

- (i) such merchandise is specifically identifiable as encumbered to the bank or lending institution;
- (ii) the dealer's right to sell or otherwise dispose of such merchandise is conditioned upon its being released from encumbrance by the bank or lending institution; and
- (iii) that such policies cover the merchandise in transit and do not extend beyond the termination of the dealer's interest and may not cover merchandise for which the dealer's collateral is the stock or inventory as distinguished from merchandise specifically identifiable as encumbered to the lending institution.

(L) Furriers' customers policies (non-regulated). Policies under which certificates or receipts are issued by furriers or fur storers covering specified articles, the property of customers.

- (M) Garment contractors floaters (non-regulated).
- (N) Government service floaters (non-regulated).

(O) Home freezers and contents against loss resulting from power failure and/or mechanical breakdown (non-regulated).

(P) Installation risks or builders' risks (non-regulated). Covering loss to owner, seller, or contractor on account of physical damage to machinery, equipment, building materials, or building supplies being used with and during the course of installation, testing, building, renovating, or repairing of dwelling, commercial, or industrial construction. Such policies may cover at points or places where work is being performed, while in transit, and during temporary storage or deposit of property designated for and awaiting specific installation, building renovating, or repairing. In no event may any policy cover such properties while contained in stock of merchandise held for sale to the public by dealers and such coverage must be limited to installation risks or builders' risks where perils in addition to fire and extended coverage are to be insured. If written for account of owner, the coverage must cease upon completion and acceptance thereof or if written for account of a seller or contractor, the coverage must terminate when the interest of the seller or contractor ceases.

(Q) Inland marine insurance classes of coverage, commonly referred to as consumer credit property insurance and commercial credit property insurance, set out in clauses (i) and (ii), respectively, as follows:

(i) Coverage resulting from an open- or closed-end consumer credit transaction that is a retail installment transaction (filed). For purposes of this subparagraph, "retail installment transaction" has the meaning assigned in Finance Code, §345.001. The credit property insurance addressed in this clause must comply with provisions in subclauses (I) through (VIII) of this clause.

(I) Policies offering coverage addressed in this clause must include coverage while in transit and may be extended to include the interest of a vendee, mortgagor, or lessee, but in no event may the policy cover the vendor's, mortgagee's, or lessor's interest beyond the termination of that interest.

(II) All policies or certificates issued under this clause must include a clear statement to the insured about the method of payment allocation to all outstanding purchase obligations by reference to the applicable lending documents to determine how the coverage will be applied.

(III) Premium calculations for coverage addressed in this clause involving a closed-end consumer transaction may not be based on amounts paid for services, meals, entertainment, finance or service fees, loan interest, delivery charges, or other insurance premiums (e.g., credit life, credit disability, credit property, or credit involuntary unemployment insurance coverage).

(IV) An offer to extend coverage for a closed-end consumer transaction addressed in this clause must include, at the time of the invitation to contract, the following prominent written disclosure in no smaller than 10-point boldface type: "This coverage might duplicate existing coverage if you have a residential property insurance policy. This coverage ceases when you have fully paid the debt. This coverage is primary, so it is the first source to be used in the event of a loss on property it covers. You may cancel this coverage at any time by calling the insurer at the toll-free telephone number provided to you, or by writing to the insurer. This coverage costs (set out the total identifiable credit property insurance charge)."

(V) An offer to extend coverage for an open-end consumer transaction addressed in this clause must include, at the time of the invitation

to contract, the following prominent written disclosure in no smaller than 10-point boldface type: "This coverage might duplicate existing coverage if you have a residential property insurance policy. It applies to any item of covered property on which you owe a debt. This coverage is primary, so it is the first source to be used in the event of a loss on property it covers. You may cancel this coverage at any time by calling the insurer at the toll-free telephone number provided to you, or by writing to the insurer. This coverage costs \$(enter amount) per \$100 of outstanding balance on your account. The premium charged for this coverage is based on your entire outstanding balance, but the coverage only applies to tangible personal property purchased on an open-end credit account. Services, meals or other consumables, entertainment, finance or service fees, loan interest, delivery charges, or other insurance premiums, which may be part of your outstanding balance, are not covered."

(VI) Policies or certificates extending the coverage addressed in this clause must be provided to the insured at the time coverage is accepted by the insurer, along with written instructions on filing claims under the coverage. The instructions must include the insurer's toll-free telephone number, as well as a list of essential elements for inclusion by the insured to perfect a claim. All such policies or certificates provided to insureds must include the disclosure set out in subclause (IV) of this clause, or subclause (V) of this clause, as applicable, subject to the same type face and size requirements.

(VII) Policies and certificates of insurance issued to cover open-end consumer transactions must provide that the policyholder or certificate holder will be furnished the following disclosure notice on the face of the account statement or through a statement insert not less than semi-annually in no smaller than 6-

point boldface type if on the face of that statement or in no smaller than 10-point boldface type if on a statement insert: "If you are paying a credit property insurance premium, that premium is based on the entire outstanding balance of this account. You may cancel this coverage at any time by calling the insurer at the toll-free telephone number it has provided to you, or by writing to the insurer. Any premium charged for credit property insurance coverage is based on your entire outstanding balance, but the coverage only applies to tangible personal property purchased on an open-end credit account. Services, meals or other consumables, entertainment, finance or service fees, loan interest, delivery charges, or other insurance premiums, which may be part of your outstanding balance, are not covered."

(VII) Policies and certificates of insurance offering coverage for an open-end consumer transaction must provide that the policyholder or certificate holder will be furnished a statement each billing cycle, but not less frequently than quarterly, which indicates:

(-a-) the amount of the credit property insurance charge, shown separately from any total insurance charge;

(-b-) the amount of the insured's indebtedness to which the insurance charge rate was applied;

(-c-) the date the rate was applied; and

(-d-) the period covered by such monthly charge.

(ii) Coverage resulting from commercial credit transactions involving installment sales, leased property, and deferred payment contracts (non-regulated). For purposes of this subparagraph, a commercial credit transaction is one

which does not fall within the meaning of an open- or closed-end or consumer credit transaction that is a retail installment transaction under clause (i) of this subparagraph. The credit property insurance coverage addressed in this clause covers the interest of a vendor or mortgagee in property sold in a commercial transaction under an installment sales contract, or a partial or deferred payment contract, and the interest of a lessor in property leased. Credit property insurance policies subject to this clause must include coverage while in transit and may be extended to include the interest of the vendee, mortgagor, or lessee, but in no event may the policy cover beyond termination of the vendor's, mortgagee's, or lessor's interest.

(R) Live animal floaters as follows:

(i) cattle kept for feeding, dairy, breeding, or show purposes, sheep, swine, horses, and mules, except horses and mules used exclusively for racing or show including breeding therefor (filed); and

(ii) range cattle and range sheep while on ranges; horses or mules used exclusively for racing or show, including breeding therefor; livestock while being transported to or from or while at stockyards; policies issued to assureds conducting sales or auction, covering livestock of others for public sale; livestock insured under mortality policies covering, among other perils, against death or destruction due to natural causes; livestock of circus, carnival, or theatrical enterprises; policies issued to veterinarians and humane societies to cover livestock of others in their custody or control for professional purposes (non-regulated).

(S) Mobile equipment and miscellaneous movable property (non-regulated). For example, this includes contractors' equipment, industrial and other special equipment not primarily designed for highway use, mechanical sales devices, storage

batteries, stevedores, divers' equipment, undertakers' equipment, outboard boats and motors, parachutes, balloons, scientific and surveyors' instruments, articles for sport and recreation, musical scores and orchestrations, and all other similar movable and identified property not on sale or consignment, or in the course of manufacture, which has come into the custody and/or control of parties who intend to use such property for the purpose for which it was manufactured or created. Such policies may not include coverage of storage risks at premises of the assured, except where incidental to the regular use of the equipment or property away from the premises.

(T) Musical instrument floaters (radios, televisions, record players, and combinations thereof are not deemed musical instruments) (filed).

(U) Nuclear insurance (non-regulated). Insurance against loss resulting from physical damage (including risks in course of construction) to:

(i) designated nuclear facilities, including property associated therewith and subject to radiation damage therefrom;

(ii) other property directly related to such nuclear facilities; and

(iii) other facilities involving substantial quantities of radiation.

(V) Oil and gas lease property (filed).

(W) Pattern and die floaters, excluding coverage on the owner's premises (non-regulated).

(X) Personal effects floaters (filed).

(Y) Personal fur floaters (filed).

(Z) Personal jewelry floaters (filed).

(AA) Personal property floaters (filed).

(BB) Physicians' and surgeons' equipment floaters (excluding dealers) (filed).

(CC) Radium floaters (non-regulated).

(DD) Rolling stock covering locomotives and other rolling stock used on a railway system. Coverage may be provided on an all risk basis or named peril basis, subject to the inclusion of the perils of fire, collision, derailment, overturn, strikes, and riots (non-regulated).

(EE) Salespersons' samples floaters (non-regulated).

(FF) Sign and street clock policies, covering neon signs, automatic or mechanical signs, street clocks, while in use as such (filed).

(GG) Silverware floaters (filed).

(HH) Stamp and coin floaters:

(i) private collection (filed); and

(ii) commercial risks (non-regulated).

(II) Self-service storage customer floater policies (filed for policy forms and endorsements; non-regulated for rates) may be issued to a tenant of a self-storage facility and covering property stored at such facility. Coverage is limited to property in storage for the perils set forth in the policies, which must include coverage for property while in transit. Coverage may not be provided for any motor vehicles subject to motor vehicle registration and inspection. It is not intended that this coverage definition will allow coverage of property stored in any facility where the lessor issues a warehouse receipt, bill of lading, or other document of title relating to the stored property, or in facilities other than storage facilities that have multiple storage units. Accordingly, the terms "self-service storage facility" and "tenant" have the meaning prescribed by Texas

Property Code, §59.001, i.e., "self-service storage facility" means real property that is rented to be used exclusively for storage of property and is cared for and controlled by the tenant. "Tenant" means a person entitled under a rental agreement to the exclusive use of storage space at a self-service storage facility.

(JJ) Theatrical floaters, excluding buildings and their improvements and betterments and furniture and fixtures that do not travel about with theatrical troupes (filed).

(KK) Tourists' floaters (filed).

(LL) Travel baggage (non-regulated).

(MM) Valuable papers and records (filed).

(NN) Wedding present floaters (non-regulated).

(OO) Wool growers and wool buyers floater policies, covering property usual to the conduct of the assured's business while in transit and all other situations customary and incidental thereto (non-regulated).

(PP) Electronic Equipment Protection Policy (filed). Coverage may be provided for electronic equipment, including data processing equipment and components, connections, extensions, and systems; electronic media including converted data; and extra expense incurred in order to continue normal operations which are interrupted as a result of an insured loss. The policy must provide coverage on such property while in transit.

(QQ) Pet insurance (non-regulated). Individual or group insurance policies covering veterinary expenses for pet illness or injury.

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

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

Issued at Austin, Texas, on April 7, 2021.

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The Commissioner adopts amended 28 TAC §5.5002.

Commissioner of Insurance

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Doug Slape
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By: _____
Doug Slape
Chief Deputy Commissioner
Tex. Gov't Code §601.002
Commissioner's Order No. 2018-5528