

Subchapter T. FAIR Plan
Division 1. Plan of Operation
28 TAC §§5.9910, 5.9911, 5.9913 - 5.9917, and 5.9930 - 5.9933

INTRODUCTION. The Texas Department of Insurance (TDI) proposes amendments to 28 TAC §§5.9910, 5.9911, 5.9913 - 5.9917, and new §§5.9930 - 5.9933 concerning residual market coverage for property owners' associations. The proposed new and amended sections implement House Bill 998, 88th Legislature, 2023.

EXPLANATION. Amended §§5.9910, 5.9911, and 5.9913 - 5.9917 and new §§5.9930 - 5.9933 implement HB 998. HB 998 authorizes the Fair Access to Insurance Requirements Plan (FAIR Plan) to provide property owners' association insurance for condominium owners' and homeowners' associations.

Under HB 998, the commissioner must, by rule, set a designated area for FAIR Plan property owners' association insurance for condominium owners' and homeowners' associations. According to Insurance Code §2211.1515(a), in determining the designated area, the commissioner must "to the extent practicable, ensure the designated area is not more than 10 miles beyond the Texas Windstorm Insurance Association catastrophe area designated under §2210.005; and follow geographical features."

After determining the designated area, Insurance Code §2211.051(b) authorizes the commissioner to set underserved areas within that designated area, if the commissioner determines that "property owners' association insurance is not reasonably available in the voluntary market to a substantial number of insurable risks."

The proposed amendments incorporate references to property owners' association insurance in various sections of FAIR Plan's plan of operation where residential property insurance is referenced and remove the term "residential" before "property" where those

terms appear, to reflect the expanded property types authorized under Insurance Code Chapter 2211.

In addition, the proposed amendments enhance clarity and consistency with agency style guidelines by deleting "shall" or replacing "shall" with "will" or another context-appropriate word. Amendments also replace "Association" with "FAIR Plan," "Commissioner" with "commissioner," and "pursuant to" with "under," where appropriate. The proposal makes changes to (1) update statutory references to reflect Insurance Code recodification; (2) add or amend Insurance Code section titles and citations for consistency; and (3) correct and revise punctuation, capitalization, and grammar to reflect current agency drafting style and plain language preferences, as appropriate. These amendments are not noted in the descriptions of amendments that follow unless it is necessary or appropriate to provide additional context or explanation.

The proposed new and amended sections are described in the following paragraphs.

Section 5.9910. Purpose. The proposed amendments incorporate property owners' association insurance into the purpose of FAIR Plan and change "qualified citizens of Texas" to "insurable risks" to better align with statutory language and recognize that FAIR Plan may insure entities as well as individuals.

Section 5.9911. Definitions. The proposed amendments add and clarify definitions within the section to align with the broader scope of Insurance Code Chapter 2211, introducing definitions for "property owners' association," "property owners' association insurance," "TDI," and "TWIA." The proposal adds "FAIR Plan" to the current definition of "Association" and replaces "Association" with "FAIR Plan" in the proposed rule text. With this change, both "Association" and "FAIR Plan" have the same meaning in these rules. Using "FAIR Plan" adds clarity because there are many associations. "Association" will be replaced with "FAIR Plan" in future amendments to other FAIR Plan rules.

An amendment adds property owners' association insurance to the definition of "inspector" to clarify that an inspector may determine the condition of properties for which property owners' association insurance coverage under FAIR Plan is sought.

Amendments update the Insurance Code citations in the definition of "residential property insurance" and expand the definition of "underserved area" to include both residential property insurance and property owners' association insurance.

An amendment adds property owners' association insurance to the definition of "underwriting rules" to clarify that the underwriting rules include those for property owners' association insurance.

Section 5.9913. Authority of Agents and Commissions. The proposed amendments add "property owners' association" as a type of applicant. The proposal also increases readability of §5.9913(b) by rephrasing it to state that agents may not hold themselves out as agents of FAIR Plan.

Section 5.9914. Maximum Limits of Liability and Limitations. The proposed amendments set the maximum liability limit for property owners' association insurance at \$3,000,000 for commercial structures and authorize FAIR Plan to reinsure some or all risks that are within or at the proposed limit.

In a request for information posted on TDI's website on January 8, 2024, TDI asked for input on maximum limits of liability for property owners' association insurance. No comments were received addressing those limits.

When drafting this proposal, TDI looked at residual market limits for other states and considered the purpose and funding of FAIR Plan when setting the limit. The proposed maximum liability limit of \$3,000,000 acknowledges that property owners' association insurance presents different risks than FAIR Plan's residential coverage.

Section 5.9915. Inspections. Proposed amendments make changes throughout the section to add a reference to property owners' association insurance and revise or remove use of the word "residential" in addressing property insurance, for consistency with HB 998 and other proposed amendments and new text.

Section 5.9916. Application Forms, Underwriting Rules, Rates, Policy Forms, and Endorsements. The proposed amendments (1) remove the term "residential" in "residential property" to denote that property under the section includes commercial property in property owners' association, and (2) replace "association policies" with "residential property insurance" in §5.9916(d) to clarify that the prohibition against covering businesses or commercial risks applies only to residential property insurance, not property owners' association insurance.

Section 5.9917. Application, Binder, Policy Issuance, Renewal, and Cancellation. The proposed amendments expand the scope of the section by adding "or property owners' association insurance" after each instance of "residential property insurance." This addition reflects the expanded scope of Insurance Code Chapter 2211 to include property owners' association insurance, as authorized under HB 998.

The proposal also amends the grammar and punctuation of §5.9917(a) by replacing "that" with "all of the following" and changing the colon to a period; removing "and" at the end of §5.9917(a)(1) and (2); and replacing the semicolons with a period so each subsection is a full sentence.

An amendment updates an incorrectly titled citation to the "Property Tax Code" by removing "Property," so the citation correctly reads "§33.06 of the Tax Code." Amendments also add the title of Tax Code §33.06 so it is consistent with other code citations throughout the proposal.

Section 5.9930. Designated Area for Property Owners' Association Policies.

Proposed new §5.9930 designates the area where FAIR Plan could write property owners' association insurance under Insurance Code §2211.1515. As proposed, the commissioner designates the region extending 10 miles inland from the geographical features that form the border of the TWIA catastrophe area as the designated area.

Insurance Code §2211.1515 sets an inland boundary for the designated area--10 miles from the catastrophe area. Setting the coastal side boundary as the catastrophe area boundary and proposing a 10-mile strip as the designated area aligns with information from legislative hearings and comments received on the informal draft.

Section 5.9931. Petition Requirements for Underserved Area for Property Owners' Association Insurance. Proposed new §5.9931 specifies the requirements for property owners' associations to petition for an area to be classified as underserved for property owners' association insurance. The proposed new rule allows property owners' associations to petition the commissioner to decide that an area is underserved. The section requires the petitioner to provide information that will help the commissioner determine whether an area is underserved.

Section 5.9932. Petition Procedures for Underserved Area for Property Owners' Association Insurance. Proposed new §5.9932 outlines TDI's procedures for assessing petitions from property owners' associations seeking classification of areas as underserved for property owners' association insurance.

New subsection (a) states that TDI will review petitions for compliance with §5.9931. TDI may also gather additional information to determine if the proposed area qualifies as underserved.

New subsection (b) states that TDI may schedule a public hearing and provide notice as required under Insurance Code §2211.051.

New subsection (c) provides that the commissioner may determine that some, all, or none of the proposed area is underserved.

Section 5.9933. Setting Underserved Areas for Property Owners' Association Insurance. Proposed new §5.9933 recognizes the commissioner's statutory authority under Insurance Code §2211.051(b) to issue an order, either in response to a petition or on the commissioner's own initiative, determining that all or part of the designated area is underserved.

TDI received comments from one commenter on a request for information posted on TDI's website on January 8, 2024. TDI considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director of Property and Casualty Lines, has determined that during each year of the first five years the proposed new and amended sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering them other than that imposed by the statute. Ms. Baker made this determination because the proposed new and amended sections do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new and amended sections.

Ms. Baker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new and amended sections are in effect, Ms. Baker expects that administering the proposed new and amended sections will have the public benefit of ensuring that TDI's rules conform to Insurance Code Chapter 2211, as amended by House Bill 998.

Ms. Baker expects that the new and amended sections will not increase the cost of compliance with Insurance Code Chapter 2211 because they do not impose requirements beyond those in the statute and those necessary to implement the statute. There could be a cost for property owners' associations to submit a petition. However, property owners' associations are not required to submit petitions. The rule provides a pathway for property owners' associations to ask the commissioner to classify an area as underserved. Insurance Code §2211.1515, as added by HB 998, authorizes a property owners' association in an underserved area of the area designated by the commissioner to apply to the FAIR Plan for property owners' association insurance. As a result, the cost associated with the new and amended sections does not result from the enforcement or administration of the proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new and amended sections will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045. In addition, the proposal is necessary to implement legislation. The proposed rule implements Insurance Code Chapter 2211, as amended by HB 998.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new and amended sections are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will increase the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on July 29, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2864 at 2:00 p.m., central time, on July 16, 2024, in Room 2.035 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701.

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STATUTORY AUTHORITY. TDI proposes amendments to §§5.9910, 5.9911, 5.9913 - 5.9917, and new §§5.9930 - 5.9933 under Insurance Code §§2211.051, 2211.053(b), 2211.1515(a), and 36.001.

Insurance Code §2211.051 authorizes the commissioner to include in FAIR Plan the delivery of property owners' association insurance in underserved areas as provided in Insurance Code §2211.1515 if the commissioner determines, after notice and a hearing, that property owners' association insurance is not reasonably available in the voluntary market to a substantial number of insurable risks.

Insurance Code §2211.053(b) requires amendments to FAIR Plan's plan of operation to be adopted by the commissioner by rule.

Insurance Code §2211.1515(a) provides that the commissioner must, when determining the area to be designated by rule, ensure the area is not more than 10 miles

beyond the Texas Windstorm Insurance Association catastrophe area designated under §2210.005; and follow geographical features when making this decision.

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

CROSS-REFERENCE TO STATUTE. Sections 5.9910, 5.9911, 5.9913 - 5.9917, and 5.9930 - 5.9933 implement Insurance Code §§2211.051, 2211.054, 2211.055, and 2211.1515 and HB 998.

TEXT.

§5.9910. Purpose.

The Texas FAIR Plan Association was established by Insurance Code Chapter 2211, concerning FAIR Plan, [~~Article 21.49A~~] for the purpose of delivering residential property insurance, and later, property owners' association insurance, to insurable risks [~~qualified citizens of Texas~~] in areas determined by the commissioner [~~Commissioner of Insurance~~] to be underserved areas. The purpose of this plan of operation is to set forth and establish the structure, function, procedures, and powers of the Texas FAIR Plan Association.

§5.9911. Definitions.

The following words and terms, when used in this subchapter, [~~shall~~] have the following meanings [~~, unless the context clearly indicates otherwise~~].

(1) Agent--Any person licensed by the commissioner [~~Commissioner~~] as a general lines property and casualty agent under [~~pursuant to~~] Insurance Code §4051.051, concerning License Required. [~~Article 21.14. sec. 2.~~]

(2) Applicant--Any person applying for insurance from FAIR Plan, [~~the Association~~] including any person designated by the applicant to be the applicant's representative at an inspection.

(3) Association or FAIR Plan--The Fair Access to Insurance Requirements (FAIR) Plan Association created under Insurance Code Chapter 2211, concerning FAIR Plan. [~~Article 21.49A.~~]

(4) Commissioner--The Texas commissioner of insurance [~~Commissioner of Insurance of the State of Texas~~].

(5) Governing Committee--The Governing Committee of FAIR Plan [~~the Association~~] authorized under [~~pursuant to~~] Insurance Code §2211.052, concerning Administration of FAIR Plan; Composition of Governing Committee. [~~Article 21.49A, sec. 3.~~]

(6) Inspector--The individual(s) or organization(s) designated by FAIR Plan [~~the Association~~] to make inspections to determine the condition of the properties for which residential property insurance and property owners' association insurance is sought and to perform such other duties as may be authorized by FAIR Plan [~~the Association~~] or the commissioner [~~Commissioner~~].

(7) Insurable risk--Property that meets the underwriting rules of FAIR Plan [~~the Association~~] for determining the insurability of the risk.

(8) Member insurer or member--An insurer licensed to write property and casualty insurance in Texas and writing residential property insurance in Texas, including reciprocal exchanges and Lloyds plan insurers.

(9) Property owners' association--Homeowners' or condominium owners' association.

(10) Property owners' association insurance--Has the meaning assigned by Insurance Code §2211.011(6-a), concerning Definitions.

(11) ~~[(9)]~~ Residential property insurance--Coverage as defined in Insurance Code §2211.001 ~~[Article 21.49A §2(3)]~~, concerning Definitions, with the exception of farm and ranch owners and farm and ranch insurance as set forth in Insurance Code §2301.003, concerning Applicability of Subchapter. ~~[Article 5.13-2 sec. 1.]~~

(12) ~~[(10)]~~ Residential property insurance premiums--Net direct written premiums for residential property insurance for a calendar year as determined by the Texas residential property statistical plan.

(13) TDI--The Texas Department of Insurance.

(14) ~~[(11)]~~ Underserved area--

(A) For residential property insurance, the ~~[The]~~ areas ~~[of the State of Texas so]~~ designated by the commissioner ~~[Commissioner]~~ in §5.3701 of this chapter (relating to Designation of Underserved Areas for Residential Property Insurance for Purposes of the Insurance Code Article 21.49A).

(B) For property owners' association insurance, the areas determined by the commissioner under §5.9933 of this chapter (relating to Determining Underserved Areas for Property Owners' Association Insurance).

(15) TWIA--The Texas Windstorm Insurance Association established under Insurance Code Chapter 2210.

(16) ~~[(12)]~~ Underwriting rules--The underwriting rules for residential property insurance and property owners' association insurance as developed by FAIR Plan ~~that [the Association and which]~~ have been filed with and approved by the commissioner ~~[Commissioner]~~.

§5.9913. Authority of Agents and Commissions.

(a) Upon request, an agent~~[,]~~ may assist any property owners' association or owner of residential property in the completion and submission of an application for insurance on forms prescribed by FAIR Plan ~~[the Association]~~.

(b) Agents may not hold themselves out as agents of FAIR Plan. ~~[No agent, even if licensed to represent one or more member insurers of the Association with respect to policies not underwritten by the Association, shall hold himself out as an agent of the Association.]~~

(c) A commission must ~~[shall]~~ be paid on the basis of ~~[pursuant to]~~ a commission schedule set by the Governing Committee and approved by the commissioner ~~[Commissioner]~~. The commission must ~~[shall]~~ be based on paid gross written premiums and subject to adjustment based on policy changes and cancellations. The agent must ~~[shall]~~ remit the gross premium collected on a FAIR Plan ~~[an Association]~~ policy to FAIR Plan ~~[the Association]~~, and FAIR Plan ~~[the Association]~~ will pay the commission.

(d) FAIR Plan must ~~[The Association shall]~~ establish minimum requirements and performance standards for agents who submit applications to FAIR Plan ~~[the Association]~~ or renew business in FAIR Plan ~~[the Association]~~. These requirements and standards must ~~[shall]~~ be designed to ensure the efficient transmission of applications, forms, notices, and money from the agent to FAIR Plan ~~[the Association]~~ and vice ~~[visa]~~ versa; and ~~[,]~~ ensure the efficient operation of FAIR Plan ~~[the Association]~~, and the efficient and convenient servicing of applicants and policyholders. FAIR Plan ~~[The Association]~~ may require that agents demonstrate and certify compliance with these requirements and standards. FAIR Plan has ~~[The Association shall have]~~ the power to bar an agent from submitting new applications to or renewing business in FAIR Plan ~~[the Association]~~ if the agent refuses to demonstrate and certify compliance with these requirements and standards or the agent violates any of these requirements or standards. Such minimum requirements and

performance standards are ~~[shall be]~~ binding upon any agent as a condition of the ~~[such]~~ agent's request for an inspection, submission of an application, receipt of commissions from FAIR Plan ~~[the Association]~~, or other act in connection with FAIR Plan ~~[the Association]~~. FAIR Plan ~~[The Association]~~ may contract with agents who meet FAIR Plan's ~~[the Association's]~~ standards and may limit applications to FAIR Plan ~~[the Association]~~ to those agents. FAIR Plan is ~~[The Association shall]~~ not ~~[be]~~ required to appoint agents.

(e) FAIR Plan ~~[The Association]~~ may limit communications with agents to website communications only.

(f) An applicant may ~~[only]~~ apply to FAIR Plan only ~~[the Association]~~ through an agent.

§5.9914. Maximum Limits of Liability and Limitations.

(a) The maximum limits of liability for residential property insurance per location through FAIR Plan ~~are~~ ~~[the Association shall be]~~ \$1,000,000 dwelling and ~~[-]~~ \$500,000 contents. FAIR Plan ~~[The Association]~~ is authorized to reinsure some or all risks that are within or at these maximum limits.

(b) The maximum limit of liability for property owners' association insurance per location through FAIR Plan is \$3,000,000 per structure, including business personal property. FAIR Plan is authorized to reinsure some or all risks that are within or at the maximum limit.

(c) FAIR Plan ~~[(b) The Association]~~ may not provide windstorm and hail insurance coverage for a risk eligible for that coverage under Insurance Code Chapter 2210, concerning Texas Windstorm Insurance Association. ~~[Article 21.49.]~~

(d) FAIR Plan ~~[(c) The Association]~~ may issue a policy that includes coverage for an amount in excess of a liability limit set forth in subsection (a) of this section, if FAIR Plan ~~[the Association]~~ first obtains, from a reinsurer approved by the commissioner

[~~Commissioner~~], reinsurance for the full amount of policy exposure above the limits for any given type of risk.

(e) [~~(d)~~] The premium charged by FAIR Plan [~~the Association~~] for the excess coverage must [~~shall~~] be equal to the amount of the reinsurance premium charged to FAIR Plan [~~the Association~~] by the reinsurer, plus any payment to FAIR Plan [~~the Association~~] that is approved by the commissioner [~~Commissioner~~].

§5.9915. Inspections.

(a) The underwriting rules must [~~shall~~] determine the inspection criteria for risks to be written by FAIR Plan [~~the Association~~]. FAIR Plan [~~The Association~~] may issue a policy of residential property insurance or property owners' association insurance on certain types of risks without an inspection in accordance with the underwriting rules.

(b) An inspection must [~~shall~~] be made only of property requiring an inspection to determine eligibility for FAIR Plan [~~Association~~] coverage in accordance with the underwriting rules. The inspection must [~~shall~~] be free of charge to the applicant. An inspection request may be made by the owner, their [~~his/her~~] representative, or an agent.

(c) All inspection reports must [~~shall~~] be in writing and must [~~shall~~] contain the information necessary to determine eligibility for coverage under FAIR Plan's [~~pursuant to the Association's~~] underwriting rules. After the inspection report has been completed, a copy of the completed inspection report and any photograph indicating the pertinent features of the building construction, maintenance, and occupancy must [~~shall~~] be sent within 10 [~~ten~~] days to FAIR Plan [~~the Association~~].

(d) The inspection report must [~~shall~~] contain information describing:

- (1) occupancy;[.]
- (2) information necessary for underwriting and rating;[.]
- (3) construction; and

(4) physical deficiencies.

(e) If an interior inspection is necessary to determine eligibility of property described in an application submitted to FAIR Plan [~~the Association~~], the inspector must [~~shall~~] contact the applicant and arrange for the applicant to be present during the inspection. The inspector may [~~shall~~] not recommend correction of physical deficiencies or advise the applicant on whether FAIR Plan [~~the Association~~] will provide coverage.

(f) FAIR Plan must [~~The Association shall~~], as soon as practical but not to exceed 30 [~~thirty~~] days after receipt of the inspection report, advise the applicant and agent of the following.[:]

(1) If the inspector finds that the [~~residential~~] property meets the underwriting rules, FAIR Plan must [~~the Association shall~~] notify the applicant in writing and issue a policy or binder.

(2) FAIR Plan must [~~The Association shall~~] indicate to the applicant any condition charges that have been applied by FAIR Plan [~~the Association~~] in accordance with §5.9917(h) of this subchapter (relating to Application, Binder, Policy Issuance, Renewal, and Cancellation[:]).

(3) If the [~~residential~~] property is not insurable based on the underwriting rules, FAIR Plan must [~~the Association shall~~] notify the applicant in writing why the [~~residential~~] property is not insurable.

(g) If, at any time, the applicant makes improvements in the [~~residential~~] property or its condition that the applicant believes are sufficient to make the [~~residential~~] property insurable, an inspector must [~~shall~~] reinspect the [~~residential~~] property upon request. The applicant is [~~for residential property insurance shall be~~] eligible for one reinspection any time within 60 days after the initial inspection. If, upon reinspection, the [~~residential~~] property meets FAIR Plan's [~~the Association's~~] underwriting rules, FAIR Plan must [~~the Association shall~~] notify the applicant in writing and issue a policy or binder.

(h) If an inspection report shows that a property has unrepaired damages or is in violation of any building, housing, air pollution, sanitation, health, fire, or safety code, ordinance, or rule, or if an applicant otherwise has received written notice of any violation of a code, ordinance, or rule, the applicant must ~~[shall]~~ submit to FAIR Plan ~~[the Association]~~ a detailed plan that indicates the manner and estimated period of time in which the violation will be corrected or the damage repaired. FAIR Plan may ~~[The Association shall]~~ not provide coverage unless the necessary corrections are completed to the satisfaction of FAIR Plan ~~[the Association]~~.

(i) FAIR Plan ~~[The Association]~~ may, for cause upon information or well-founded belief, without notice to the insured at any time during the policy term, inspect an insured property to determine ~~[for the purpose of determining]~~ whether the property meets the underwriting rules. FAIR Plan ~~[The Association]~~ need not afford an insured the opportunity to be present during a reinspection nor furnish the insured with a copy of a reinspection report, unless requested. Reinspections may also occur:

- (1) upon change in type of occupancy; ~~[r]~~ or
- (2) on ~~[upon]~~ a reasonable periodic schedule.

(j) FAIR Plan ~~[The Association]~~ may cancel or refuse to renew a policy on ~~[upon]~~ the basis of the reinspection report, according to the ~~[in accordance with]~~ policy terms and this plan of operation.

§5.9916. Application Forms, Underwriting Rules, Rates, Policy Forms, and Endorsements.

(a) FAIR Plan must ~~[The Association shall]~~ adopt application forms. The forms must ~~[shall]~~ be designed to obtain all of the information necessary for underwriting and rating the risk. The ~~[Such]~~ forms may also elicit additional information that FAIR Plan ~~[the Association]~~ may use to revise its rates, underwriting rules, policy forms, and

endorsements. An application is considered complete when every question on the application form is answered fully, ~~and~~ is signed by a proposed named insured, and is submitted by the agent. FAIR Plan ~~[The Association]~~ may independently verify the information in an application or request additional information from the applicant or other sources.

(b) FAIR Plan must ~~[The Association shall]~~ file with the commissioner ~~[Commissioner]~~ for approval the underwriting rules for FAIR Plan ~~[Association]~~ policies before ~~[prior to]~~ use. The ~~[Such]~~ underwriting rules must ~~[shall]~~ determine whether a ~~[residential]~~ property is an insurable risk eligible for FAIR Plan ~~[Association]~~ coverage, and if eligible, what coverages, policy forms, and endorsements can be offered for that risk. The underwriting rules are ~~[shall be]~~ subject to the underwriting standards set forth in §§5.9914, 5.9915, and 5.9917 of this subchapter (relating to Maximum Limits of Liability and Limitations; Inspections; and Application, Binder, Policy Issuance, Renewal, and Cancellation) and any other requirements set forth in the underwriting rules. The ~~[Such]~~ rules must ~~[shall]~~ include under what circumstances FAIR Plan ~~[the Association]~~ may grant an agent permission to bind coverage.

(c) FAIR Plan must ~~[The Association shall]~~ file with the commissioner ~~[Commissioner]~~ for approval the proposed rates and supplemental rate information, including a manual of rating rules, to be used in connection with the issuance of FAIR Plan ~~[Association]~~ policies or endorsements. No policies or endorsements may ~~[shall]~~ be issued unless the commissioner ~~[Commissioner]~~ has approved the rates to be applied to the policy or endorsement.^[:]

(1) FAIR Plan ~~[The Association]~~ rates must be set in an amount sufficient to carry all claims to maturity and to meet all expenses incurred in the writing and servicing of the business.

(2) The rate filing must also ~~[shall additionally]~~ provide for:

(A) premium installment payment plans, including a servicing fee for those policyholders electing to use such a plan; and

(B) deductible options, such as different dollar amounts or [;] different percentages of property coverage limits[;] that may vary by coverage or peril insured against.

(d) FAIR Plan must [~~The Association shall~~] file with the commissioner [~~Commissioner~~] for approval policy forms and endorsements before [~~prior to~~] use. The policy forms and endorsements that FAIR Plan [~~the Association~~] will offer to applicants are [~~will be~~] governed by its underwriting rules. FAIR Plan [~~The Association~~] may offer its policy forms on either an actual cash value or a replacement cost value basis, based on its underwriting rules. Residential property insurance [~~Association~~] policies may [~~shall~~] not cover businesses or commercial risks, even if they are operated in or from a residence. FAIR Plan [~~Association~~] policies may [~~shall~~] not cover motor vehicles.

§5.9917. Application, Binder, Policy Issuance, Renewal, and Cancellation.

(a) An agent must [~~shall~~] maintain and submit, at the request of FAIR Plan [~~the Association~~], written documentation that indicates all of the following. [~~that:~~]

(1) At least two insurance companies, not in the same holding company as defined in Insurance Code Chapter 823, concerning Insurance Holding Company Systems [~~Article 21.49-1~~], licensed to write and actually writing residential property insurance or property owners' association insurance, as applicable, in Texas have declined to provide residential property insurance or property owners' association insurance (the names of the two insurance companies must [~~shall~~] be identified), and the applicant has not received a valid offer of comparable residential property insurance or property owners' association insurance from an insurance company licensed in Texas, not including any surplus lines insurers. [~~and~~]

(2) There are no outstanding taxes, assessments, penalties, or charges with respect to the property to be insured, except those covered under a properly filed deferral affidavit in compliance with §33.06 of the [Property] Tax Code, concerning Deferred Collection of Taxes on Residence Homestead of Elderly or Disabled Person or Disabled Veteran.~~[- and]~~

(3) The applicant has not received written notice from an authorized public entity stating that the property is in violation of any building, housing, air pollution, sanitation, health, fire, or safety code, ordinance, or rule.

(b) FAIR Plan ~~[The Association]~~ may specify what documentation would fulfill the requirements of subsection (a)(1) - (3) of this section.

(c) FAIR Plan ~~[The Association]~~ is under no obligation to issue residential property insurance or property owners' association insurance unless the property constitutes ~~[would constitute]~~ an insurable risk in accordance with FAIR Plan's ~~[the Association's]~~ underwriting rules. FAIR Plan ~~[The Association]~~, in determining whether the property is insurable, may not consider ~~[shall give no consideration to]~~ the condition of surrounding property or properties, where such condition is not within the control of the applicant.

(d) FAIR Plan must ~~[The Association shall]~~ deliver a policy or binder to the agent upon acceptance of the risk. FAIR Plan must ~~[The Association shall]~~ pay the authorized commission to the agent.

(e) The effective date of coverage may ~~[shall]~~ be no earlier than the date and time that FAIR Plan ~~[the Association]~~ both accepts and binds the risk. The policy must ~~[shall]~~ be issued in the name of FAIR Plan ~~[the Association]~~, as insurer.

(f) FAIR Plan ~~[The Association]~~ may suspend acceptance ~~[the taking]~~ of applications in the state when issuance of binders and/or policies has been suspended by TWIA ~~[the Texas Windstorm Insurance Association]~~. FAIR Plan ~~[The Association]~~ may also suspend

acceptance ~~[the taking]~~ of applications when and in the part of the state it finds that an ongoing event threatens to create an imminent danger of catastrophic losses.

(g) The policy must ~~[shall]~~ be issued for a term of one year.

(h) If the property is found to be an insurable risk but the inspection reveals that there are one or more physical deficiencies, surcharges will be imposed according to ~~[in conformity with]~~ the rates and underwriting rules. If the physical deficiencies are corrected and verified, the surcharges must ~~[shall]~~ be revised.

(i) In accordance with the underwriting rules of FAIR Plan ~~[the Association]~~ except for subsection (k) of this section, at least 30 days before ~~[prior to]~~ the expiration of a [an] FAIR Plan ~~[Association]~~ policy, FAIR Plan must ~~[the Association shall]~~ do one of the following:

(1) send an offer to the policyholder with a copy to the agent to renew the FAIR Plan ~~[Association]~~ policy for a term of one year at the FAIR Plan ~~[Association]~~ rates that will be in force on the effective date of the renewal;

(2) send an offer to the policyholder with a copy to the agent to renew the FAIR Plan ~~[Association]~~ policy conditioned on ~~[upon]~~ a change in coverage, limits, and/or terms or conditions; or

(3) send a notice to the policyholder with a copy to the agent of nonrenewal of FAIR Plan ~~[the Association]~~ policy.

(j) If a payment for an estimated premium, annual premium, or any installment payment is refused or dishonored by the bank upon which it is drawn for any reason, coverage under FAIR Plan ~~[the Association]~~ policy must ~~[shall]~~ be cancelled for nonpayment of premium, and FAIR Plan ~~[the Association]~~ must ~~[shall]~~ send a notice of cancellation.

(k) Every two years starting with the second renewal, the policyholder must ~~[shall]~~ reapply for residential property insurance or property owners' association insurance, as

applicable, in the voluntary market. If a diligent effort has been made and the policyholder is unable to obtain residential property insurance or property owners' association insurance, as evidenced by two current declinations from insurers licensed to write property insurance and actually writing residential property insurance or property owners' association insurance, as applicable, in Texas [~~the state~~], the policyholder will be eligible for renewal of FAIR Plan [~~Association~~] coverage. If a FAIR Plan [~~an Association~~] policyholder receives a valid offer of comparable residential property insurance or property owners' association insurance from an insurance company licensed by [~~the State of~~] Texas, other than a surplus lines carrier, then the policyholder is no longer eligible for coverage and FAIR Plan [~~the Association~~] may nonrenew the policy.

(l) FAIR Plan may [~~The Association shall~~] not issue a policy to an applicant if the applicant or any proposed named insured is indebted to FAIR Plan [~~the Association~~] on a prior FAIR Plan [~~Association~~] policy. If the new FAIR Plan [~~Association~~] policy has already been bound or issued, then FAIR Plan must [~~the Association shall~~] cancel that binder or policy and deduct from any return premium the amount that FAIR Plan [~~the Association~~] is owed from the prior FAIR Plan [~~Association~~] policy.

(m) Binders must [~~shall~~] be issued for a definite period, not to exceed 90 [~~ninety~~] days.

(n) Policies issued are not subject to flat cancellation and are subject to a minimum earned premium as stated in the underwriting rules.

(o) If an insurance policy will not be issued, the full earned premium must be charged.

(p) A binder terminates [~~shall terminate~~] upon the acceptance of a risk by FAIR Plan [~~the Association~~] and the payment of any premium due; or upon the cancellation of a risk and notice of reasons for the cancellation given to the applicant and agent.

(q) FAIR Plan may ~~[The Association shall]~~ not cancel a policy or binder issued by it, except:

(1) for a condition that ~~[which]~~ would have been grounds for nonacceptance of the risk had such condition been known to FAIR Plan ~~[the Association]~~ at the time of acceptance;

(2) for property that does not meet the underwriting rules;

(3) for nonpayment of premium, including nonpayment of premium on a prior FAIR Plan ~~[Association]~~ policy;

(4) for fraud;

(5) for material misrepresentation;

(6) for evidence of incendiarism by the insured or another acting on the insured's behalf; or

(7) at the written request of the ~~[an]~~ insured.

(r) FAIR Plan must ~~[The Association shall]~~ send notice of cancellation, stating the reasons for cancellation to an insured and agent. The cancellation takes ~~[shall take]~~ effect according to ~~[in accordance with]~~ the policy provisions.

(s) Any cancellation notice to an insured, except for the cancellation set forth in subsection (q)(7) of this section, must ~~[shall]~~ be accompanied by a statement that the insured has a right to appeal as provided in §5.9919 of this subchapter (relating to Right to Appeal).

(t) If a property meets all underwriting requirements, FAIR Plan must ~~[the Association shall]~~ calculate the actual annual premium. FAIR Plan must ~~[The Association shall]~~ remit a return premium to the applicant if the provisional binder premium exceeds the actual annual premium. FAIR Plan must ~~[The Association shall]~~ bill the applicant for additional premium if the actual annual premium exceeds the provisional binder premium.

(u) FAIR Plan must ~~[The Association shall]~~ cancel a binder on a pro rata basis. If an applicant requests cancellation of a binder, FAIR Plan must ~~[the Association shall]~~ cancel the binder on a pro rata basis.

§5.9930. Designated Area for Property Owners' Association Policies.

For purposes of Insurance Code §2211.1515, concerning Mandatory Property Owners' Association Policies in Certain Areas, the commissioner sets the designated area as the region extending 10 miles inland from the border of the TWIA catastrophe area, which consists of the geographical features of:

(1) the county lines of the 14 first tier coastal counties as designated in Commissioner Order No. 16878;

(2) Highway 146 where it intersects the cities of Seabrook and La Porte, as designated in Commissioner Order No. 95-1200;

(3) the municipal boundary of the City of Morgan's Point as designated in Commissioner Order No. 96-0380; and

(4) Highway 146 where it intersects the cities of Shoreacres and Pasadena as designated in Commissioner Order No. 96-1468.

§5.9931. Petition Requirements for Underserved Area for Property Owners' Association Insurance.

(a) A property owners' association may submit a petition to classify an area as an underserved area.

(b) Underserved areas must be located within the area designated in §5.9930 of this title (relating to Designated Area for Property Owners' Association Policies).

(c) The petition must:

(1) be submitted in writing to the Office of the Chief Clerk;

(2) provide contact information for the petitioner;

(3) clearly specify the area proposed as underserved, in a written description, a map, or other method;

(4) explain why the petitioner thinks the area is underserved;

(5) state the names of the petitioner's current and former insurers;

(6) provide:

(A) the names of insurers that have declined to provide coverage in the proposed underserved area; and

(B) detailed information about the risks, coverages, and coverage amounts the insurers are unwilling to offer;

(7) state the names and addresses of all property owners' associations that are located within a 1-mile radius of the petitioner's property owners' association and that are within the designated area; and

(8) include, if known:

(A) the names of insurers that have or are actively writing property coverage in the proposed underserved area;

(B) the total number of property owners' associations within the proposed underserved area;

(C) the physical addresses of any property owners' associations in the proposed underserved area; and

(D) the number of property owners' associations within the proposed underserved area that have been unable to get coverage.

(d) TDI may request additional information from the petitioner to help complete the review under §5.9932 of this title (relating to Petition Procedures for Underserved Area for Property Owners' Association Insurance).

§5.9932. Petition Procedures for Underserved Area for Property Owners' Association

Insurance.

(a) TDI will review petitions for compliance with the specified requirements in §5.9931 of this title (relating to Petition Requirements for Underserved Area for Property Owners' Association Insurance). If compliant, TDI may gather additional information to determine whether to set the proposed area as underserved.

(b) TDI may schedule a public hearing and provide notice under Insurance Code §2211.051(b), concerning Establishment of FAIR Plan, to receive public input on the petition.

(c) The commissioner may determine that some, all, or none of the proposed area is underserved.

§5.9933. Determining Underserved Areas for Property Owners' Association

Insurance.

(a) At any time after notice and hearing under Insurance Code §2211.051(b), concerning Establishment of FAIR Plan, whether in response to a petition or on the commissioner's own initiative, the commissioner may issue an order determining that all or part of the designated area is underserved.

(b) The order may include a deadline by which FAIR Plan must begin offering property owners' association policies within the underserved area.

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 in Austin, Texas, on June 10, 2024.

DocuSigned by:
Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance