

**37SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION  
DIVISION 4. CONSUMER ASSISTANCE; CLAIM PROCESSES  
28 TAC §5.4200 and §5.4202**

**1. INTRODUCTION.** The Texas Department of Insurance adopts amendments to 28 TAC §5.4200, Definitions, and new §5.4202, Good Cause Extensions under Insurance Code §2210.205. The new rules define “good cause” and explain how an insured asks the commissioner to extend the one-year claim-filing deadline for Texas Windstorm Insurance Association (TWIA) policyholders. The rules are adopted without change to the proposal published in the July 4, 2014, issue of the *Texas Register* (39 TexReg 5079).

**2. REASONED JUSTIFICATION.** The rules implement HB 3, 82nd Legislature, First Called Session, 2011, which added Insurance Code §2210.205 and §2210.573 to establish a one-year claim-filing deadline for TWIA policyholders. Insurance Code §2210.205(b) authorizes the commissioner to extend the claim-filing deadline for up to 180 days on a showing of good cause.

The rules amend §5.4200, Definitions, by adding new §5.4200(5), which refers to new §5.4202(a) for the definition of “good cause” and limits applicability of the definition to extensions under Insurance Code §2210.205(b). To make the deadline extension process easier to understand, the actual definition is included with the extension request filing procedures in §5.4202(a). The rule is renumbered to reflect the addition of new §5.4200(5).

New §5.4202(a), Good Cause Extensions under Insurance Code §2210.205, defines “good cause” as those objective facts beyond the insured’s control that reasonably caused the insured to fail to file a claim under the policy within the one-year claim-filing deadline. The definition is the standard the commissioner will use to determine whether an insured’s claim-filing deadline should be extended.

New §5.4202(b) clarifies that any extension of a claim-filing deadline is effective on the date an insured’s one-year filing period expires, whether the commissioner grants the extension before or after the expiration date. Under Insurance Code §2210.205(b), §5.4202(b) limits an extension to no more than 180 days. An extension is a discretionary act by the commissioner, and may be for any period of time up to 180 days. Section 5.4202(b) also limits extensions to the claims for which they were granted.

New §5.4202(c) details the procedures for an insured to request an extension.

**3. SUMMARY OF COMMENTS AND RESPONSES.** TDI accepted written comments from July 4, 2014, through September 3, 2014. During the comment period, TDI received two written comments. TDI held a public hearing on September 3, 2014, but received no additional comments at the hearing. This order summarizes all of the comments TDI received on the proposed rules.

### **General Comments**

# 3715

**Comment on applicability of “good cause” standard:** A commenter notes that “good cause” is used multiple times in Insurance Code Chapter 2210 and TWIA policies, and questions why the rule standard applies only to claim-filing extension requests. The commenter expresses concern that limiting the standard to claim-filing extension requests will further frustrate an already complicated and unique claim process, and suggests applying the good cause standard to all instances where the Code and TWIA policies use the term.

**Agency Response:** TDI did not amend the rule as suggested because the rule proposal was limited to requests for claim-filing extensions under Insurance Code §2210.205. Applying the “good cause” standard as recommended in the comment would significantly exceed the proposal’s scope. TDI will consider developing “good cause” standards for other rules in future proposals.

**Comment on applicability of “good cause” standard:** Another commenter expresses concern that if the causal chain is elongated enough at TWIA’s behest, it is hard to imagine many circumstances that are not technically within an insured’s control. The commenter presents hypothetical examples, such as the choice of a profession, or someone falling into a diabetic coma after a stroke, as instances where TWIA might argue that the objective facts underlying a claim-filing extension request were within the control of the particular insured. The commenter does not propose alternative language.

# 3715

**Agency Response:** TDI did not make any changes based on the comment. TDI disagrees that the good cause standard is overly inclusive of matters within an insured's control. The change the commenter requests is not clear. No alternative wording was suggested. TDI's good cause standard is similar to that used in benefit review conferences. 28 TAC §141.2 (b)(1)(A) and §141.3(b)(1).

**Comment on additional disclosures:** A commenter states the proposed rules do not explain how policyholders will be made aware of the new rules and procedures, and recommends amending the rule to require TWIA to provide a disclosure form explaining the new definition and procedures with all new and renewal policies. The commenter states this would be the best way to inform policyholders of their right to request a claim-filing deadline extension.

**Agency Response:** TDI declines to make the recommended changes. TWIA policies already include a one-year claim-filing deadline, required by Insurance Code §2210.205(a)(1). Policyholders whose claims are denied because they missed the deadline are notified by TWIA that they may ask the commissioner to extend the deadline. Rather than add to the volume of information distributed to all policyholders, an affected policyholder is informed how to request an extension when the claim is denied, when the need for this information is most important. TDI understands the importance of informing affected policyholders about the new rules and procedures, and will work with TWIA to provide these policyholders with copies of the rules and an explanation of how to request deadline extensions. TDI's Coastal Outreach and

Assistance Services Team also works with communities to make policyholders aware of the importance of timely filing claims after a storm has occurred.

**Comment on §5.4202(c)(1):** A commenter expresses concern that policyholders may not be familiar with the Texas Administrative Code and may be confused by the rules as written. The commenter recommends repeating the §5.4251 filing requirements in §5.4202, and amending TWIA policies and rules to specify where requests must be sent, the acceptable methods for submitting requests, who must receive the requests, the date requests are considered received by TDI, and a statement about who is a “party.”

**Agency Response:** TDI declines to require TWIA to incorporate the notice and filing requirements of §5.4251 into TWIA policies or new §5.4202. The suggested amendments to TWIA policies and rules would not change the requirement of §5.4251 that requests and submissions be sent to TDI. New §5.4202(c)(1) provides that a “request for an extension under this section must be sent in writing to TDI, under §5.4251 of this title.” Section 5.4251 explains how and where to send an item to TDI, and when the item is considered received. “Party” is defined in new §5.4200(9) as “the association or claimant,” and includes “employees and other representatives of a party.” New §5.4202(c)(1) does not change §5.4251. Restating §5.4251 in the new rule would unnecessarily lengthen it and create confusion about how to request an extension.

# 3715

**Comment on §5.4202(c)(2).** A commenter states the requirement of §5.4202(c)(2) that an insured describe the “good cause” that caused the insured to miss the claim-filing deadline does not clearly explain the standard for supporting a good cause extension. The commenter suggests amending §5.4202(c)(2) to state “(2) describe the good cause and include the objective facts along with any supporting documentation that caused the insured to miss the one-year claim-filing deadline.”

**Agency Response:** TDI declines to require policyholders to submit supporting documentation with extension requests. In determining whether to grant extension requests, TDI accepts the assertions in each request as true. The review process is not an evidentiary hearing. Documents may be included with the request, but are not required.

## 4. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

**For:** Office of Public Insurance Counsel (with suggested changes); Texas Watch (with suggested changes)

**Against:** No Comments

**5. STATUTORY AUTHORITY.** TDI proposes the new and amended sections under Insurance Code §§2210.008, 2210.205, 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. Insurance Code §2210.205 authorizes the commissioner to grant an extension to the one-year claim-filing deadline if the

policyholder shows good cause. 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.

**6. TEXT. §5.4200. Definitions.** The following definitions apply to this division:

(1) Appraiser--A person who is qualified to be an appraiser under §5.4212 of this title (relating to Appraisal Process – Appraiser Qualifications and Conflicts of Interest) and is selected by the association or a claimant to participate in the appraisal process.

(2) Association--Texas Windstorm Insurance Association. “Association” includes any authorized representative of the Texas Windstorm Insurance Association.

(3) Claimant--A person who makes a claim under an association policy.

(4) Department or TDI--The Texas Department of Insurance.

(5) Good cause--Section 5.4202 of this title defines good cause for purposes of Insurance Code §2210.205.

(6) Mediator--A person who is qualified to be a mediator under §5.4232 of this title (Mediation Process – Mediator Qualifications and Conflicts of Interest).

(7) Mediator roster--The roster of mediators maintained by TDI.

(8) Mediator selection panel--A short list of potential mediators from the mediator roster from which TDI will select a mediator.

(9) Party--The association or the claimant. “Party” includes employees and other representatives of a party.

(10) **Umpire**--A person who is qualified to be an appraisal umpire under §5.4214 of this title (Appraisal Process – Umpire Qualifications and Conflicts of Interest) and is selected by the appraisers or TDI to participate in the appraisal process.

(11) **Umpire roster**--The roster of umpires maintained by TDI.

(12) **Umpire selection panel**--A short list of potential umpires from the umpire roster from which TDI will select an umpire.

**§5.4202. Good Cause Extensions under Insurance Code §2210.205.**

(a) For purposes of Insurance Code §2210.205 and this section, good cause means objective facts beyond the insured's control that reasonably caused the insured to fail to file a claim under the policy within the one-year claim-filing deadline.

(b) If an insured shows good cause, the commissioner may extend the one-year claim-filing period set by Insurance Code §2210.205(b). An extension granted under this section is effective on the date the one-year claim-filing period expires and may not exceed 180 days. The extension is limited to the claim for which it is granted.

(c) A request for an extension under this section must:

- (1) be sent in writing to TDI, under §5.4251 of this title;
- (2) describe the good cause that caused the insured to miss the one-year claim-filing deadline; and
- (3) be signed by the insured or the insured's legal representative.

**7. 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.

# 3715

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

Adopted Sections  
Page 9 of 9

Issued at Austin, Texas, on December 15, 2014.



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Sara Waitt  
General Counsel  
Texas Department of Insurance

The commissioner adopts amendments to 28 TAC §5.4200 and new §5.4202.



Julia Rathgeber  
Commissioner of Insurance

COMMISSIONER'S ORDER NO. **3715**