

**SUBCHAPTER 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 proposes to amend 28 TAC §5.4200, Definitions, and add new §5.4202, to define “good cause” and to provide procedures for an insured to submit a request for the commissioner to extend the one-year claim-filing deadline for Texas Windstorm Insurance Association (TWIA) policyholders.

The proposed amendment and new rule implement HB 3, 82nd Legislature, 1st 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 up to 180 days on a showing of good cause.

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

Proposed new §5.4202(a) defines “good cause” as 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.

Section 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), proposed §5.4202(b) limits any 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.

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

**2. FISCAL NOTE.** Marilyn Hamilton, director of the Personal and Commercial Lines Office for the Property and Casualty Section, has determined that for each year of the first five years the proposed amended and new sections will be in effect, there will be minimal fiscal impact to state and local governments as a result of enforcement or administration of this proposal. Insurance Code §2210.205 allows the commissioner to grant extension requests. New §5.4202 simply sets guidelines for submitting extension requests and explains the basis on which the commissioner will determine whether to grant the requests.

Some local governments are TWIA policyholders. If a local government wishes to submit a claim to TWIA after the one-year claim-filing deadline, it may ask the commissioner for a deadline extension. The local government will be required to submit a written extension request by mail or email to comply with the rule. The monetary value of the time needed to write and submit the request cannot be quantified because

circumstances will determine the cost of each request on a case-by-case basis. The cost of emailing an extension request is minimal, and a request made by regular mail would not exceed \$1.00. A local government requesting an extension would experience a positive economic effect if the commissioner grants the request and TWIA pays the claim after the claim deadline expired.

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

**3. PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amended and new sections are in effect, Ms. Hamilton expects that administering or enforcing these rules will have the public benefit of increasing public awareness and understanding of the extension request submission process, and the basis on which the requests will be determined. Ms. Hamilton cannot evaluate the cost of drafting extension requests because those costs vary according to circumstance. She expects the costs of submitting requests by email or mail to be minimal; any given transaction should not exceed \$1.00.

**4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** TDI has determined that the proposed new rule and amendment to add the definition of “good cause” will have a negligible impact on small and micro businesses in the state. Insurance Code §2210.205(b) authorizes the commissioner to extend the claim-filing deadline; this rule simply clarifies the procedures for making a request and the standard for reviewing them. As a result, and

in compliance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**5. TAKINGS IMPACT ASSESSMENT.** The department has determined that this proposal does not affect any private real property interests and 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.

**6. REQUEST FOR PUBLIC COMMENT.** If you wish to comment on the proposal, you must submit written comments no later than 5 p.m., Central time, on September 3, 2014. TDI requires two copies of your comments. Send one copy to the chief clerk by email to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov), or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy by email to [marilyn.hamilton@tdi.texas.gov](mailto:marilyn.hamilton@tdi.texas.gov), or by mail to Marilyn Hamilton, Personal and Commercial Lines Office, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. TDI will hold a public hearing to receive testimony and written comments on this proposal at 9 a.m., September 3, 2014, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The commissioner will consider all testimony and written comments presented in response to this proposal.

**7. 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.

**8. CROSS REFERENCE TO STATUTE.** The proposal implements the following statutes:

| <u>Rule</u> | <u>Statute</u>                         |
|-------------|--|
| §5.4200     | Insurance Code §2210.008 and §2210.205 |
| §5.4202     | Insurance Code §2210.008 and §2210.205 |

**9. TEXT OF RULE.**

**§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 (relating to Good Cause Extensions Under Insurance Code §2210.205) defines good cause for purposes of Insurance Code §2210.205.

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

(7) [(6)] Mediator roster--The roster of mediators maintained by the department.

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

(9) [(8)] Party--The association or the claimant. "Party" includes employees and other representatives of a party.

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

(11) [(10)] Umpire roster--The roster of umpires maintained by the department.

(12) [~~(11)~~] Umpire selection panel--A short list of potential umpires from the umpire roster from which the department 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 the department, under §5.4251 of this title (relating to Requests and Submissions to the Department);

(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.

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

Issued at Austin, Texas, on June 20, 2014.



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Sara Waitt  
General Counsel  
Texas Department of Insurance