

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 8. RATES
28 TAC §5.4701

1. INTRODUCTION. The Texas Department of Insurance (Department) proposes new §5.4701 to implement amendments to §2210.352 and §2210.354 of the Insurance Code, under HB 4409, 81st Legislature, 2009, Regular Session concerning making written requests for additional supporting information related to the Texas Windstorm Insurance Association's (Association) annual rate filing under §2210.352, except a filing under §2210.352(a-1), and the means and time periods for interested persons to review and provide written comments and information related to such annual rate filings. With respect to the Association's 2009 annual filing, the Department adopted §5.4901 of this subchapter on an emergency basis. The emergency rule §5.4901 has since expired.

The proposal is necessary to establish procedures and time periods to implement the Insurance Code §2210.352(b) requirement that, except as provided by the Insurance Code §2210.352(a-1), interested persons must be provided with a reasonable opportunity to review the Association's annual rate filing, obtain copies of the filing, and to submit to the Commissioner written comments or information related to the filing. The proposal is also necessary to specify the time period for interested persons to request additional supporting information related to the annual rate filing under the Insurance Code §2210.354.

The basic requirement for requesting and providing additional supporting information has existed in the Insurance Code §2210.354 for a number of years prior to the HB 4409 amendments. The Department is not aware that this requirement has

generated significant questions as to what constitutes a valid additional supporting information. For this reason the proposal does not define what constitutes a valid request for additional supporting information beyond the requirement in proposed §5.4701(c) that “[A] written request for additional supporting information must meet the requirements of the Insurance Code §2210.354 and be submitted as required in the Insurance Code §2210.354 and this section.”

The Insurance Code §2210.352 was significantly modified by the adoption of HB 4409, 81st Legislature, 2009 Regular Session. The section no longer sets forth requirements for a public hearing after notice of the rate filing. Further, the time period for Commissioner’s review and decision to approve or disapprove the rate filing has been reduced from November 15 to October 15 of the year in which the filing is made. The section still, however, provides that, except for a filing under the Insurance Code §2210.352(a-1), the Commissioner shall provide all interested persons with a reasonable opportunity to review the filing, obtain a copy of the filing, and submit written comments and information related to the filing. To fulfill that legislative intent, this proposal establishes a procedure for providing interested persons with reasonable notice of the rate filing, information on how to obtain a copy of the proposal, and a time frame for submitting comments on the proposal.

The Insurance Code §2210.354 was also changed by HB 4409. The Legislature directed the Commissioner to adopt by rule the time period for an interested person to request additional supporting information related to the Association’s annual rate filing, other than a rate filing made under the Insurance Code §2210.352(a-1). This time period is constrained by a new requirement in the Insurance Code §2210.354(c) that the

Commissioner must submit these requests for additional supporting information to the Association not later than the 21st day after the date the Department receives the Association's annual rate filing. This proposal establishes a time period for interested persons to submit a written request for additional supporting information within the time period required for the Department to compile and timely submit the requests to the Association. The procedures and time lines proposed in new §5.4701 are set forth in the following paragraphs.

Proposed new §5.4701(a) establishes that the Department shall provide notice of the Association's annual rate filing. The notice shall be posted on the Department's website and with the Secretary of State. The proposed notice shall provide interested persons information on how to obtain a copy of the filing. Additionally, the notice will provide specific dates by which written requests for additional supporting information and written comments or information related to the filing must be submitted. The parameters for determining these submission dates are addressed in proposed new subsections (c) and (d). Further, the notice shall provide the mail, delivery, and electronic addresses to which these requests, comments, and information may be delivered.

Proposed new subsection (b) establishes that the written requests for additional supporting information and written comments or information related to the filing must be delivered to the Office of the Chief Clerk no later than 5:00 p.m. on the dates specified in the notice issued pursuant to subsection (a) of the proposed section.

Proposed new subsection (c) provides that a written request for additional supporting information must meet the requirements of the Insurance Code §2210.354

and be submitted as required in the Insurance Code §2210.354 and the proposed section. Proposed subsection (c) further establishes the time period for submitting a written request for additional information as required by the Insurance Code §2210.354(a)(2). The subsection establishes that the date shall not be later than September 1 of the year in which the filing is made or 16 days after the date that the filing is received. The specific submission date, which may need to be extended if it falls on a weekend or holiday, will be specified in the notice issued pursuant to proposed subsection (a). This date is necessary to allow the Department sufficient time to compile the requests and submit them to the Association within the 21 day period required by the Insurance Code §2210.354(c). The 16-day period is selected because September 1 is 16 days after August 15. Because the Association may make its annual rate filing before August 15, reliance only on the September 1st date might create a problem concerning compliance with the Insurance Code §2210.354(c) if the Association made the annual rate filing prior to August 15. Thus, the subsection allows for calculation of an alternative date for submission of requests for additional supporting information, but maintains the 16-day period reflected in the September 1 date.

Proposed new subsection (d) establishes the requirement that all comments related to the annual rate filing must be submitted no later than October 1 of the year in which the filing is made. The specific submission date, which may need to be extended if it falls on a weekend or holiday, will be specified in the notice issued pursuant to proposed subsection (a). The Insurance Code §2210.352(c) requires the Commissioner to approve or disapprove the Association's annual rate filing not later than October 15 of the year in which the filing is made. Thus, the Commissioner will

have approximately 14 days to complete the review of the annual rate filing and all submitted written comments and information and prepare an order approving or disapproving the Association's annual rate filing.

2. FISCAL NOTE. J'ne Byckovski, Chief Actuary of the Property and Casualty Program, has determined that for each year of the first five years the proposed section will be in effect, the proposed section will require Department staff to prepare a notice and file the notice with the Secretary of State as well as post the notice to the Department's web site. Costs related to these functions will be absorbed within the Department's existing resources and will not require an additional appropriation for personnel or other operating resources. Thus, for each year of the first five years the proposed section will be in effect there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Ms. Byckovski also has determined that for each year of the first five years the proposed sections are in effect, there will be public benefits resulting from the proposal and that the proposal shall not result in any additional costs of compliance in addition to those arising from the applicable statutes. .

Anticipated Public Benefits. The Department anticipates that the primary public benefit resulting from the proposal will be the efficient and detailed procedure and time lines for interested persons to participate in the Association's annual rate filing

process as provided in the Insurance Code §2210.352 and §2210.354. The proposal establishes a procedure of public notice to interested persons that the rate filing is available for review, the means to obtain a copy of the rate filing, the time period for requesting additional supporting information related to the rate filing, and the time period for making comments on the rate filing. The proposal further establishes a specific procedure for the Association to request a different period for providing the requested additional supporting information and the Commissioner's options in reviewing the Association's request.

Estimated Costs for Persons Required to Comply with the Proposal. The proposal will apply to persons submitting written requests for additional supporting information, and submitting written comments and information related to the annual rate filing. The proposal does not require any person participating in these activities to incur costs in addition to those arising from the applicable statutes. The Insurance Code §2210.354 provides that interested persons may submit to the Commissioner requests for additional supporting information. Other than providing addresses to facilitate submitting such requests, the proposal does not alter or increase the means for complying with the requirement to submit a written request. The proposal does set a period in which the request must be submitted, but this period does not increase the labor it takes to prepare the request or otherwise create an additional cost of compliance. For the same reasons, the proposal does not result in additional costs concerning the Insurance Code §2210.352 authorization that interested persons may submit to the Commissioner comments and requests for additional supporting information.

Other costs associated with obtaining copies of the filing, making written requests for additional supporting information, providing additional supporting information, requesting a different period for providing additional supporting information, or submitting comments and information related to the proposal also result from the statutory authorizations and requirements of the Insurance Code §2210.352 and 2210.354, and not from this proposal.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Section 2006.002(c) of the Government Code requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on these businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(2) defines “small business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. The Government Code §2006.001(1) defines “micro business” similarly to “small business” but specifies that such a business may not have more than 20 employees. The Government Code §2006.001(1) does not specify a maximum level of gross receipts for a “micro business.”

The Department has determined that this proposal does not have an economic impact on small businesses, for reasons specified in the Public Benefit/Cost Note

section of this proposal. Therefore, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule is not required.

5. TAKINGS IMPACT ASSESSMENT. The Department 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 and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on August 16, 2010, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to J'ne Byckovski, Chief Actuary of the Property and Casualty Program, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The new section is proposed pursuant to the Insurance Code §§2210.008, 2210.352, 2210.354, and 36.001. Section 2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules in the manner prescribed in Subchapter A, Chapter 36, Insurance Code. Section 2210.352(b) requires the Commissioner to provide persons interested in the Association's annual rate filing, other than a rate filing under the Insurance Code §2210.352(a-1) to have an opportunity to review the rate filing, obtain a copy of the rate filing, and to provide the Commissioner with written comments and information related to the rate filing. Section 2210.354(a) requires the Commissioner to establish a time period for persons interested in the Association's annual rate filing, other than a rate filing under the Insurance Code §2210.352(a-1) to submit written requests for additional information related to the Association's rate filing. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

8. CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal:

Rule	Statute
§5.4701	Insurance Code Chapter 2210

9. TEXT.

§5.4701. Requests for Additional Supporting Information.

(a) The department shall post on the department's website and with the Texas Secretary of State notice of the Texas Windstorm Insurance Association's (Association) annual rate filing under the Insurance Code §2210.352, other than a filing under the Insurance Code §2210.352(a-1). The notice shall provide:

(1) notice of the filing;

(2) information on how to obtain a copy of the filing;

(3) the time period for submitting written requests for additional supporting information as provided in the Insurance Code §2210.354;

(4) the time period for submitting written comments or information related to the filing as provided in the Insurance Code §2210.352; and

(5) the applicable mail, delivery, and electronic addresses for submitting written requests for additional supporting information and written comments or information related to the filing.

(b) All written requests for additional supporting information and written comments or information related to the filing must be submitted to the Office of the Chief Clerk no later than 5:00 p.m. on the date specified in the notice issued pursuant to subsection (a) of this section.

(c) A written request for additional supporting information must meet the requirements of the Insurance Code §2210.354 and be submitted as required in the Insurance Code §2210.354 and this section. The period for submitting a written request for additional supporting information as provided in the Insurance Code §2210.354 and specified in the notice issued in subsection (a) of this section shall be no later than the earlier of:

(1) September 1 of the year in which the filing is made; or

(2) the 16th day after the day the filing is received by the department.

(d) All written comments or information related to the annual rate filing must be submitted as required under this section not later than October 1 of the year in which the filing is made.