

**SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION**  
**28 TAC §§5.4203, 5.4204, 5.4211, 5.4222, AND 5.4241**

**INTRODUCTION.** The Texas Department of Insurance (TDI) proposes new 28 TAC §5.4204 and amendments to 28 TAC §§5.4203, 5.4211, 5.4222, and 5.4241. The proposed new section and amendments clarify the deadlines related to supplemental payments on Texas Windstorm Insurance Association (TWIA) claims. The amendments also reflect statutory changes for replacement cost payment requests and changes in how long the Commissioner can extend deadlines in the claims process. The new section and amendments are necessary to implement Senate Bill 615, House Bill 1900, and House Bill 1944, all enacted by the 86th Legislature, Regular Session (2019). The amendments also add a definition of “good cause” to clarify existing rules for extending deadlines related to appraisal and mediation.

**EXPLANATION.** SB 615 requires the Commissioner to adopt rules related to supplemental payments. The rules must:

- clarify deadlines related to supplemental payments; and
- ensure that a supplemental payment request will not impair a policyholder's right to appraisal.

SB 615 also requires TWIA to give notices that describe the supplemental payment process and related deadlines.

HB 1900 creates deadlines for claimants to request a replacement cost payment and demand appraisal of the replacement cost amount. It also requires TWIA to give notices about the deadlines when it accepts a claim and when it responds to a replacement cost payment request.

HB 1900 and HB 1944 also change the limit on how long the Commissioner can extend deadlines in the claims process.

**Section 5.4203. Good Cause Extensions for Insurance Code §2210.573(b) and (d) and §2210.5741(b).** Section 5.4203 is amended to include conforming references to new Insurance Code §2210.5741(b), enacted by HB 1900, which sets deadline and notice requirements for TWIA's response to a replacement-cost payment request.

The change to §5.4203(c)(3)(B) clarifies that extension requests must identify the period during which the event occurred. This will help ensure that TWIA submits requests that TDI can act on without needing to request additional information.

The text in §5.4203(e) is replaced to implement HB 1900's changes to the limits on deadline extensions. The 120-day limit now just applies to deadlines that apply only to TWIA. The limit also now applies to claims arising from the same occurrence, rather than from the same catastrophe year.

**Section 5.4204. Supplemental Payments.** Section 5.4204 is necessary to implement requirements in SB 615 to adopt rules that clarify deadlines related to supplemental payments and ensure that a request for supplemental payment will not impair the right to appraisal. The new section does so by:

--making the deadline to request supplemental payments the same as the appraisal deadline, but

--allowing a claimant who timely requests appraisal to request a supplemental payment at any time.

SB 615 contemplates that there are deadlines for supplemental payments. When claimants disagree with the amount TWIA will pay for the accepted part of a claim, TWIA's practice has been to notify claimants of their right to appraisal but also to encourage them to first try to resolve the disagreement informally by requesting a supplemental payment. If a claimant and TWIA agree on a supplemental payment, both sides can avoid the time and expense of appraisal.

It is reasonable to align the deadline to request supplemental payments with the statutory deadline to demand appraisal. Both appraisal and the supplemental payment process are ways to resolve a disagreement about the amount of loss on the accepted part of a claim. The appraisal deadline is the statutory deadline to raise a disagreement about that amount. The supplemental payment process gives the parties a chance to resolve the disagreement without using appraisal. Having a single deadline adds clarity to the process and will reduce potential claimant confusion that could occur with multiple deadlines.

New §5.4204 also helps ensure that a supplemental payment request will not impair the claimant's right to appraisal. Claimants who want to focus on requesting a supplemental payment to resolve a disagreement might accidentally miss the deadline to demand appraisal. To help prevent this, the new section clarifies that claimants can preserve their right to appraisal and still have the opportunity to resolve the disagreement through the supplemental payment process.

**Section 5.4211. Appraisal Process.** Section 5.4211 is amended to:

--ensure the appraisal process includes information about the opportunity to request a supplemental payment;

--ensure that the rules clarifying the supplemental payment process deadlines do not impair a claimant's right to appraisal; and

--reflect changes in HB 1900 regarding replacement cost payment requests.

For the reasons described in the explanation for new §5.4204, the deadline to request supplemental payments is aligned with the existing statutory deadline to demand appraisal. Section 5.4211(b) is amended to require TWIA to add information about supplemental payments to the appraisal information it already must give claimants under Insurance Code §2210.573(d) and HB 1900. The information about supplemental

payments is needed to implement SB 615 and will help ensure clear understanding of the deadlines related to those payments.

To help ensure that the rules clarifying the supplemental payment process deadlines do not impair claimants' right to appraisal, current subsection §5.4211(c) is redesignated as subsection (d), and a new subsection(c) is proposed to define what constitutes an appraisal demand and clarify that appraisal begins when the claimant hires an appraiser.

Specifically, §5.4211(c) provides that a claimant can demand appraisal by "telling TWIA that the claimant disagrees with the amount of loss TWIA will pay for the accepted portion of the claim." Any disagreement over the amount of loss, including asking for additional money, is an "appraisal demand." Defining an appraisal demand this way protects both the right to appraisal and the ability to pursue a supplemental payment.

To help ensure clear communication about the deadline for appraisal and supplemental payment requests, §5.4211(c) requires TWIA to acknowledge an appraisal demand within 10 days of receipt. This is already TWIA's practice. In the appraisal demand acknowledgment, TWIA must again explain the appraisal and supplemental payment request processes.

New §5.4211(i) requires TWIA to send an appraisal deadline reminder, which will help ensure that the right to appraisal is not impaired. More specifically, for claimants who have only actual cash value coverage on all or part of a damaged structure, TWIA must remind the claimant of appraisal and supplemental payment deadlines if the claimant has not demanded appraisal by a certain time before the deadline. The actual cash value coverage notice will also help reduce the potential for confusion about deadlines.

This requirement will apply beginning June 1, 2021. The additional time will allow TWIA to automate the reminder notice, which will help ensure compliance and not require TWIA to incur the time and expense of manually identifying applicable claims.

TDI does not propose requiring the reminder notice for claims with replacement cost coverage. Those claimants will have an opportunity to demand appraisal and receive similar information about the deadlines when they request a replacement cost payment under Insurance Code §2210.5741. Requiring a reminder notice for claims with replacement cost coverage would likely be of minimal benefit to the claimants.

Sections 5.4211(a) and 5.4211(b) are also amended, and new §5.4211(c) is added, to provide for appraisal process rules to apply when the claimant disputes the amount of loss TWIA will pay for replacement cost coverage on the accepted portion of a claim. Those changes are made to reflect provisions in HB 1900 concerning replacement cost payment requests, including the opportunity to demand appraisal under Insurance Code §2210.5741. New §5.4211(c) also clarifies that claimants have the flexibility to resolve a disagreement about the replacement cost loss amount before making repairs. Claimants who receive a contractor's estimate that is higher than TWIA's replacement cost estimate may want to resolve the disagreement before work begins.

Finally, for consistency, in §5.4211(d), the phrase "select an appraiser" is changed to "hire an appraiser." The word "hire" appears elsewhere in §5.4211.

**Section 5.4222. Appraisal Process – Extension of Deadlines.** Section 5.4222 is amended to provide that deadlines related to appraisal can be extended without limit. It also clarifies:

- what is considered good cause for granting an extension; and
- the Commissioner's ability to extend deadlines for multiple groups of claims or in the absence of a request.

Amending §5.4222 is necessary to implement HB 1900's changes to how long the Commissioner can extend deadlines in the claims process, including deadlines related to appraisal. HB 1900 removes the limit on how long the Commissioner can extend a deadline imposed on a claimant, or on both a claimant and TWIA. The appraisal process

does not have any deadlines that apply only to TWIA. Appraisal is a shared dispute-resolution process that requires coordination between the parties, their respective appraisers, and sometimes an umpire. As part of a shared process, deadlines should be considered applicable to both a claimant and TWIA for the purpose of allowing the Commissioner to grant deadline relief.

Amending §5.4222 also clarifies when there is good cause for an extension, whether an extension can apply to more than one claim, and whether the Commissioner can extend a deadline in the absence of a request. Adding a definition of "good cause" gives TWIA and claimants a clearer understanding of the requirements for an extension. The definition provides a reasonable, objective standard that is consistent with the good cause standard used for the extension of other deadlines in the claims process, including extensions under §5.4202 (for the claim-filing deadline) and §5.4203 (for TWIA's deadlines to request claim-related information or to accept or deny a claim).

Clarifying that the Commissioner can extend deadlines for groups of claims or in the absence of a request gives more efficiency and flexibility to grant deadline relief. When there is good cause to extend a deadline for many claims, the Commissioner will be able to grant relief without waiting for requests on a claim-by-claim basis.

**5.4241. Mediation Process – Deadlines and Extensions.** Section 5.4241 is amended to provide that most deadlines related to mediation can be extended without limit. Deadlines that apply only to TWIA—the deadlines to request mediation, give claimants a notice explaining the mediation process, and inform TDI when a mediator is selected from a panel—are subject to the 120-day aggregate limit on extensions for claims arising from the same occurrence. The amendments keep the restriction that the Commissioner may not extend a mediator's deadline to notify the parties that the mediator is insured by TWIA.

Amending §5.4241 is necessary to implement HB 1900's changes to how long the Commissioner can extend deadlines in the claims process, including deadlines related to mediation. HB 1900 removes the limit on how long the Commissioner can extend a deadline imposed on a claimant, or on both a claimant and TWIA. Mediation is a shared dispute-resolution process that requires coordination between both sides and a mediator. As part of a shared process, most deadlines should be considered applicable to both a claimant and TWIA for the purpose of allowing the Commissioner to grant deadline relief. To conform to HB 1900, the rule keeps a limit on the extension of deadlines that apply only to TWIA.

Section 5.4241 also clarifies what is considered good cause for granting an extension and the Commissioner's authority to extend deadlines for groups of claims.

Adding a definition of good cause gives TWIA and claimants a clearer understanding of the requirements for an extension. The definition provides a reasonable, objective standard that is consistent with the good cause standard used for the extension of other deadlines in the claims process, including extensions under §5.4202 (for the claim-filing deadline) and §5.4203 (for TWIA's deadlines to request claim-related information or to accept or deny a claim).

Clarifying the Commissioner's authority to extend deadlines for groups of claims will make TWIA and claimants aware that the Commissioner can grant relief without waiting for requests on a claim-by-claim basis.

In addition to the changes discussed above, the proposed amendments include nonsubstantive editorial and formatting changes to conform to the agency's current style and to improve the rule's clarity.

TDI posted an informal working draft of the rule text on TDI's website on July 18, 2019. At TDI's request, TWIA posted a link to the draft on TWIA's website and used social

media to publicize TDI's request for comments on the draft. TDI received public comments on the draft and considered those comments when drafting this proposal.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Marianne Baker, director of the Property and Casualty Lines Office, has determined that during each year of the first five years the proposed new section and amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statutes. The proposed amendments do not add to or decrease state revenues or expenditures, and local governments are not involved in enforcing or administering the proposed amendments.

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 section and amendments are in effect, Ms. Baker expects that enforcing and administering the proposed new section and amendments will have the public benefits of ensuring that the rules implement claim-related provisions in SB 615, HB 1900, and HB 1944.

The proposed rules clarify the deadlines related to supplemental payments by connecting the deadline for supplemental payment requests to the appraisal demand deadline, and by defining what constitutes an appraisal demand. The proposed rules require TWIA to acknowledge appraisal demands and provide claimants with information about supplemental payment and appraisal processes. Claimants will be able to dispute TWIA's estimates but will not need to immediately hire an appraiser. The proposed rules also state how provisions on claim-related deadlines will apply to appraisers, appraisal umpires, and mediators, which will reduce the risk of confusion on the issue later.

The proposed rules also incorporate and clarify:

--the Commissioner's added flexibility to grant extensions to claim-related deadlines under Insurance Code Chapter 2210, Subchapter L-1; and

--new deadlines and procedures in HB 1900 for requesting replacement cost payments.

Together, the statutes and the proposed rules will better enable policyholders to obtain all the benefits they are entitled to under their policies, without unnecessary confusion and costs.

The only costs imposed by the proposed new section and amendments beyond the requirements in SB 615 and HB 1900 are the costs TWIA will incur to send a deadline reminder notice to certain policyholders who have not yet demanded appraisal. TWIA estimates the cost to implement the required notice by June 1, 2021, will be about \$40,000. TWIA will also incur modest printing and postage expenses, which depend on the number of affected claims. According to TWIA, this requirement would have affected about 1,600 claims if it had been in place for Hurricane Harvey.

#### **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.**

TDI has determined that the proposed new section and amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. As specified in the Public Benefit and Cost Note section of this proposal, the proposed changes will have a small economic impact on TWIA. TWIA is not a small or micro business or a rural community as defined in Government Code §2006.001. 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 impose a cost on a regulated person, TWIA. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed new 28 TAC §5.4204 and amendments to 28 TAC §§5.4203, 5.4211, 5.4222, and 5.4241 are necessary to implement HB 1900 and SB 615.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed new section and amendments 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 new regulations to clarify deadlines related to supplemental payments and ensure that supplemental payment requests will not impair the right to appraisal;
- will expand regulation of the extension of claim-related deadlines to reflect statutory changes concerning replacement cost payment requests and how long the Commissioner can extend deadlines. It will also expand regulation of the appraisal process to incorporate statutory changes concerning replacement cost payment requests;
- will not limit or repeal an existing regulation;
- will not increase or decrease 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 November 12, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2816 at 1:00 p.m., central time, on October 28, 2019, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

## **SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION**

### **28 TAC §§5.4203, 5.4204, 5.4211, 5.4222, AND 5.4241**

**STATUTORY AUTHORITY.** TDI proposes new §5.4204 and amended §§5.4203, 5.4211, 5.4222, and 5.4241 under Insurance Code §§2210.5732, 2210.581, and 36.001.

Section 2210.5732 requires the Commissioner to adopt rules clarifying the deadlines related to supplemental payments. The rules must ensure that a supplemental payment request will not impair a policyholder's right to appraisal.

Section 2210.581 allows the Commissioner to extend deadlines established under Subchapter L-1. Section 2210.581, as amended by HB 1900 and HB 1944, gives TDI authority to adopt rules necessary to implement the section. The amendments provide

that deadlines applicable to a claimant, or to both a claimant and TWIA, can be extended an unlimited number of days by rule. Deadlines applicable only to TWIA can be extended, in aggregate, not more than 120 days.

Section 36.001 provides that the Commissioner can 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.** New §5.4204 and the amendments to §5.4211 implement Insurance Code §2210.5732.

New §5.4204 and the amendments to §§5.4203, 5.4211, 5.4222, and 5.4241 implement Insurance Code §2210.581.

**TEXT.**

**§5.4203. Good Cause Extensions for ~~[under]~~ Insurance Code §2210.573(b) and (d) and §2210.5741(b).**

(a) This section defines "good cause" for the purpose of extending the deadlines in Insurance Code §2210.573(b) and (d) and §2210.5741(b) ~~[relating to the association's request for claim-related information and the association's acceptance or denial of a claim, respectively]~~. In this section, "good cause" means objective facts beyond the association's control that reasonably caused or may cause the association to fail to meet a deadline in Insurance Code §2210.573(b) or (d) or §2210.5741(b).

(b) If the association shows good cause in a request for an extension, or in the absence of a request, if the Commissioner determines good cause exists, the Commissioner may, consistent with subsection (e) of this section, extend the deadlines established under Insurance Code §2210.573(b) and (d) and §2210.5741(b). An extension

granted under this section is effective on the date of the deadline for which it is granted.  
An extension is limited to the claims 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) specify the deadline or deadlines for which an extension is requested;

(3) identify the claims for which an extension is requested by:

(A) the type of policy; and

(B) the time period during which the event occurred and a description of the event that gave rise to the claims;

(4) specify the association's estimated total number of claims arising from the event that gave rise to the claims for which an extension is requested;

(5) describe the good cause for which the association cannot meet the deadlines in Insurance Code §2210.573(b) and (d) and §2210.5741(b); and

(6) if the association requests a specific amount of time, provide an explanation for the ~~[amount of]~~ time requested.

(d) In addition to the information described in subsection (c) of this section, the Commissioner may use any other information the Commissioner deems appropriate when determining if good cause exists to extend the deadlines in Insurance Code §2210.573(b) and (d) and §2210.5741(b).

(e) For deadlines under this section and Insurance Code Chapter 2210, Subchapter L-1 that apply only to the association, the Commissioner may not extend the deadlines more than 120 days in the aggregate for claims arising from the same occurrence. ~~[With reference to claims filed during a particular catastrophe year, extensions under this section and any other extension granted under Insurance Code §2210.581, relating to the extension of claim handling deadlines, may not exceed 120 days in the aggregate.]~~

(f) This section applies to the remaining term of association policies ceded to an insurer under the assumption reinsurance depopulation program in Insurance Code Chapter 2210, Subchapter O. If one of these insurers seeks a deadline extension under this section, the insurer must comply with subsections (a) – (c) of this section, as though it were the association. This section does not apply to a policy renewed under Insurance Code §2210.703.

**§5.4204. Supplemental Payments.**

A claimant who timely demands appraisal under Insurance Code §2210.574 or §2210.5741 may request a supplemental payment on the accepted claim or accepted portion of the claim at any time. A claimant who does not timely demand appraisal may not request a supplemental payment after the deadlines for demanding appraisal under Insurance Code §2210.574 or §2210.5741.

**§5.4211. Appraisal Process.**

(a) Applicability. This section and §§5.4212 – 5.4222 [~~Sections 5.4211 – 5.4222~~] of this title describe [~~are~~] the appraisal process and apply when:

(1) the association has accepted coverage for a claim, in full or in part; and  
(2) the claimant disputes the amount of loss the association will pay for the accepted portion of the claim within the time allowed by Insurance Code §2210.574 or §2210.5741. [~~; and~~]

~~[(3) the claimant demands an appraisal under the association policy within the time frame allowed by Insurance Code §2210.574.]~~

(b) Appraisal explanation. The association must include an explanation of the appraisal process, and the process for requesting a supplemental payment, with each [~~the~~] notice either:

(1) accepting [~~or denying~~] coverage under Insurance Code §2210.573, or  
(2) stating the amount of the replacement cost payment the association will  
make in response to a request under §2210.5741.

(3) The explanation must include the deadlines for demanding appraisal and  
requesting a supplemental payment.

(c) Appraisal demand.

(1) A claimant may demand appraisal under Insurance Code §2210.574 or  
§2210.5741 by telling the association that the claimant disagrees with the amount of loss  
the association will pay for the accepted portion of the claim. A disagreement includes  
asking for additional money or telling the association that the amount may not be  
enough.

(2) A claimant may demand appraisal under Insurance Code §2210.5741:

(A) at any time after the claimant receives the claim acceptance notice  
described in Insurance Code §2210.573(d)(1) or (2), but not later than the 30th day after  
the date the claimant receives the replacement cost notice described by Insurance Code  
§2210.5741(b);

(B) if the claimant has not demanded appraisal on the claim under  
Insurance Code §2210.574; and

(C) regardless of whether repairs are complete.

(3) If the association receives an appraisal demand from a claimant, the  
association must, in writing, acknowledge the appraisal demand not later than the 10th  
day after the date of receipt.

(4) The acknowledgment of an appraisal demand must include an  
explanation of the:

(A) appraisal process, including that the process begins when the  
claimant hires an appraiser; and

(B) process for requesting a supplemental payment, including the opportunity to seek a supplemental payment before the appraisal process begins.

(d) [~~(e)~~] Appraiser selection. The association and the claimant must each hire [~~select~~] an appraiser who is independent and qualified under §5.4212 of this title (relating to Appraisal Process - Appraiser Qualifications and Conflicts of Interest).

(e) [~~(d)~~] Appraiser fee information. No later than five days after hiring an appraiser, each party must tell the other party the fees to be charged by the appraiser.

(f) [~~(e)~~] Umpire selection.

(1) The appraisers must select an umpire who is independent and qualified under §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest).

(2) If the appraisers are unable to agree on an umpire, either appraiser may ask [~~request~~] the department to select an umpire. The appraiser must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must include the following information:

(A) the type of policy;

(B) a description of the claim and, if known, the claimed value of the covered loss;

(C) the association's claim acceptance letter, including the amount the association will pay for the loss; and

(D) any other information that the department requests.

(g) [~~(f)~~] Umpire participation. The selected umpire must participate in the resolution of the dispute if the appraisers fail to agree on a decision.

(h) [~~(g)~~] Decision. If the appraisers agree on the amount of loss, their decision is binding on the parties as to the amount of loss the association will pay for the claim. If the parties cannot agree, and the umpire participates, an itemized decision agreed to by

any two of these three is binding on the parties as to the amount of loss the association will pay for the claim. Parties may challenge the decision only as permitted by Insurance Code §2210.574.

(i) Notice for actual cash value coverage. The association must send a notice to the claimant for each accepted claim for damage to a structure, or part of a structure, on which the claimant has only actual cash value coverage and appraisal has not been demanded.

(1) The association must send the notice not earlier than the 45th day before but not later than the 30th day before the deadline to demand appraisal under §2210.574.

(2) The notice must inform the claimant that:

(A) appraisal has not been demanded; and

(B) if the claimant disagrees with the amount the association will pay for the accepted part of the claim or thinks the amount may not be enough, the claimant must tell the association before the appraisal deadline. If the claimant does not tell the association before the deadline, the claimant cannot ask for a supplemental payment after the deadline passes.

(C) The notice must also inform the claimant of the deadline for demanding appraisal and requesting a supplemental payment.

(3) The association is required to send the notice only one time, unless the department extends the appraisal deadline after the association sends the notice.

(4) This subsection is applicable beginning June 1, 2021.

#### **§5.4222. Appraisal Process – Extension of Deadlines.**

(a) Extensions. For good cause, the Commissioner [~~commissioner~~] may extend any deadline [~~in this division~~] related to appraisal, except the deadline for the umpire to notify

the parties that the umpire is insured by the association, under §5.4218 of this title (relating to Appraisal Process - Umpire Obligations).

(b) Good cause. This section defines "good cause" for the purpose of extending the deadlines related to appraisal. In this section, "good cause" means objective facts beyond a party's, appraiser's, or umpire's control that reasonably caused or may cause the party, appraiser, or umpire to fail to meet a deadline related to appraisal.

(c) [(b)] Request for extension. To ask [request] the Commissioner [commissioner] to extend a deadline, a party, appraiser, or umpire must send the request in writing to the department, under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must explain the good cause for the extension. Good cause includes military deployment of the claimant. In the absence of a request, the Commissioner may extend a deadline if the Commissioner determines good cause exists.

(d) [(e)] Extension limit. For purposes of Insurance Code §2210.581(b), all deadlines related to appraisal—including those for appraisers and umpires—are considered applicable to the claimant or to both the claimant and the association. The deadlines are not subject to an extension limit. [Deadline extensions may not exceed an aggregate of 120 days. This limit does not apply to extensions of the deadline to file an objection because an umpire is insured by the association.]

(e) The Commissioner may extend deadlines for a single claim or a group of claims.

#### **§5.4241. Mediation Process – Deadlines and Extensions.**

(a) Deadline. Mediation must be completed by the 60th day after the association notifies the claimant that the association is requesting mediation, unless the deadline is extended. If the association does not ask the department to select a mediator before the 60-day deadline, or any extension of that deadline, the association waives its right to require mediation under Insurance Code §2210.575 and this division.

(b) Good cause. This section defines "good cause" for the purpose of extending the deadlines related to mediation. In this section, "good cause" means objective facts beyond a party's or mediator's control that reasonably caused or may cause the party or mediator to fail to meet a deadline related to mediation.

(c) ~~[(b)]~~ Extensions.

(1) The association and the claimant may agree to extend the 60-day deadline for mediation in subsection (a) of this section.

(2) ~~[If the commissioner extends the 60-day deadline in subsection (a) of this section, the extension must comply with the 120-day limit in Insurance Code §2210.581(b).]~~

~~[(3)]~~ For good cause, the Commissioner ~~[commissioner]~~ may extend any deadline ~~[in this division]~~ related to mediation, except the deadline for the mediator to notify the parties that the mediator is insured by the association, under §5.4236 of this title (relating to Mediation Process - Mediator Obligations) ~~[-may not be extended].~~

(3) The Commissioner may extend deadlines for a single claim or a group of claims.

(d) ~~[(e)]~~ Lawsuit. If mediation is not complete by the 60-day deadline or an extension, the claimant may file suit.

(e) ~~[(d)]~~ Request for extension. To request the Commissioner ~~[commissioner]~~ to extend a deadline, a party or mediator must send the request in writing to the department, under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must explain the good cause for the extension. Good cause includes military deployment of the claimant.

(f) ~~[(e)]~~ Extension limit. The extension of deadlines under Insurance Code §2210.575(c); the extension of deadlines under §5.4231(b) and §5.4235(f) of this title (relating to Mediation Process and Mediation Process – Mediator Selection by the

Department); and the extension of any other deadlines under Insurance Code Chapter 2210, Subchapter L-1 that apply only to the association may not exceed 120 days in the aggregate for claims arising from the same occurrence. For purposes of Insurance Code §2210.581(b), all other deadlines related to mediation—including those for mediators—are considered applicable to both the claimant and the association and are not subject to an extension limit. ~~[For claims filed during a particular catastrophe year, deadline extensions by the commissioner may not exceed an aggregate of 120 days. This limit does not apply to extensions of the deadline to file an objection because a mediator is insured by the association.]~~

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

Issued in Austin, Texas, on September 30, 2019.

*/s/ James Person*  
James Person, General Counsel  
Texas Department of Insurance