

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

1. INTRODUCTION. The Commissioner of Insurance (Commissioner) adopts 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. Section 5.4701 is adopted without changes to the proposed text published in the July 16, 2010 issue of the *Texas Register* (35 TexReg 6225).

2. REASONED JUSTIFICATION. The new section 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 section 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. Over those years this requirement has not generated significant questions as to what constitutes valid additional supporting information. For this reason the section does not define what constitutes a valid request for additional supporting information beyond the requirement in §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. However, the section still 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, §5.4701 establishes a procedure for providing interested persons with reasonable notice of the rate filing, information on how to obtain a copy of the rate filing, and a time frame for submitting comments on the rate filing. Section 5.4701(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 §5.4701(a). It is necessary to establish a date for the submission of comments and information because 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. The October 1st date will provide the Commissioner with a necessary time period 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.

The Insurance Code §2210.354 was also amended by HB 4409. Amended §2210.354(a)(2) directs 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. Section 5.4701(c) 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. This period is the earlier of September 1st 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 §5.4701(a). This period will 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.

3. HOW THE SECTION WILL FUNCTION. 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 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 subsections (c) and (d) of §5.4701. Further, the notice shall provide the mail, delivery, and electronic addresses to which these requests, comments, and information may be delivered.

Section 5.4701(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 §5.4701.

Section 5.4701(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 §5.4701. 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). This period is the earlier of September 1st 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 §5.4701(a).

Section 5.4701(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 §5.4701(a).

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE. The department did not receive any comments on the published proposal.

5. STATUTORY AUTHORITY. The new section is adopted under 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.

6. 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.

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(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.

CERTIFICATION. This agency hereby certifies that the adopted section has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on January 4, 2011.


Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that new §5.4701 specified herein, to implement legislative changes to the Insurance Code Chapter 2210 and amend the plan of operation of the Texas Windstorm Insurance Association as specified herein, 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, is adopted.

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AND IT IS SO ORDERED.



MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:



Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. **11-0008**
JAN 05 2011