

**SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
28 TAC §5.4203**

INTRODUCTION. The Commissioner of Insurance adopts new 28 TAC §5.4203, relating to extensions of deadlines in Insurance Code §2210.573(b) and (d). The new section is adopted without changes to the proposed text published in the March 30, 2018, issue of the *Texas Register* (43 TexReg 1940).

REASONED JUSTIFICATION. The new section is necessary to permanently implement the Commissioner's authority to extend for good cause the Texas Windstorm Insurance Association's deadlines to request information from a claimant and to accept or deny a claim.

The association is the residual insurer of last resort for windstorm and hail insurance coverage in designated parts of the seacoast territory for those who are unable to obtain that coverage in the private market. The Commissioner designates the catastrophe area eligible for coverage through the association under Insurance Code §2210.005. The catastrophe area currently includes the 14 first-tier coastal counties and parts of Harris County. The association's largest risk exposure is to catastrophic losses from hurricanes.

Insurance Code Chapter 2210, Subchapter L-1 governs claims under an association policy, and it governs the process for resolution of disputes on those claims. Under Insurance Code §2210.581, the Commissioner may by rule and for good cause extend any deadline in Subchapter L-1.

After Hurricane Harvey struck in August 2017, the department adopted 28 TAC §5.4203 under emergency rulemaking procedures. Section 5.4203 implemented the Commissioner's authority to extend the deadlines in Insurance Code §2210.573(b) and (d). Section 5.4203 was published in the October 6, 2017, issue of the *Texas Register* (42 TexReg 5293). As an emergency rule, it was effective from September 21, 2017, until January 20, 2018. The proposal for the new section, published in the March 30, 2018, issue of the *Texas Register* (43 TexReg 1940), describes the few differences between the new section and the section adopted as an emergency rule.

Section 5.4203 permanently establishes the process by which the association can request and receive extensions of the deadlines in Insurance Code §2210.573(b) and (d). Under Insurance

2018-5544

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

Adopted Section
Page 2 of 5

Code §2210.573(b), the association must ask a claimant for information necessary to determine whether to accept or deny a claim not later than the 30th day after the claim is filed. Under Insurance Code §2210.573(d), the association must accept or deny a claim, either in full or in part, not later than 60 days after it receives the claim or receives additional information it has requested from the claimant.

The following paragraphs summarize the subsections of §5.4203.

Section 5.4203(a) defines "good cause" for the purpose of extending the deadlines in Insurance Code §2210.573(b) and (d). Insurance Code §2210.581 does not include a definition of "good cause." The definition in §5.4203 creates a reasonable, objective standard.

Section 5.4203(b) states that the Commissioner may extend the deadlines under Insurance Code §2210.573(b) and (d) if the association shows good cause. The Commissioner may also extend the deadlines in the absence of a request from the association if the Commissioner determines good cause exists. Subsection (d) allows the Commissioner to use any additional information the Commissioner deems appropriate when determining if good cause exists under §5.4203. Subsections (b) and (d) give the Commissioner flexibility to determine that good cause exists without relying solely on the association's request.

Section 5.4203(c) requires a request to include information useful for the Commissioner to make a determination.

Section 5.4203(e) states that for claims filed in a particular catastrophe year, extensions granted under Insurance Code §2210.581 may not exceed 120 days in the aggregate.

Section 5.4203(f) states that the section applies to association policies ceded to voluntary market insurers under the assumption reinsurance program in Insurance Code Chapter 2210, Subchapter O, but that have not yet been renewed on the reinsurer's paper. The deadlines applicable to those policies are in Chapter 2210, Subchapter L-1 and cannot be extended under §542.059 as other voluntary market policy deadlines may.

SUMMARY OF COMMENTS. The department did not receive any comments on the proposed new section.

STATUTORY AUTHORITY. The Commissioner adopts new 28 TAC §5.4203 under Insurance Code §§2210.008, 2210.581, and 36.001.

Section 2210.008(b) provides that the Commissioner may adopt reasonable and necessary rules to implement Chapter 2210.

Section 2210.581 provides that the Commissioner may extend deadlines established under Subchapter L-1 by rule.

Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

TEXT.**§5.4203. Good Cause Extensions under Insurance Code §2210.573(b) and (d).**

(a) This section defines "good cause" for the purpose of extending the deadlines in Insurance Code §2210.573(b) and (d), 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).

(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). 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 and a description of the event that gave rise to the claims;

2018-5544

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

Adopted Section
Page 4 of 5

(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

(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).

(e) 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.

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.

Issued at Austin, Texas, on June 1, 2018.

/s/ Norma Garcia

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The Commissioner adopts new 28 TAC §5.4203.

2018-5544

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Adopted Section

Page 5 of 5

/s/ Kent C. Sullivan

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Commissioner of Insurance

COMMISSIONER'S ORDER NO. **2018-5544**