

**SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 4. CONSUMER ASSISTANCE; CLAIM PROCESSES
28 TAC §5.4203**

INTRODUCTION. The Texas Department of Insurance proposes new 28 TAC §5.4203, concerning extensions of deadlines found in Insurance Code §2210.573(b) and (d). Section 5.4203 implements the Commissioner's authority to extend for good cause the deadlines that are part of the claim-handling process for claims filed under a Texas Windstorm Insurance Association (association) policy.

EXPLANATION. New §5.4203 is necessary to implement on a permanent basis the Commissioner's authority to extend for good cause the deadlines in Insurance Code §2210.573(b) and (d) for the association to request information on a claim from a claimant and 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 for good cause 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.

Proposed §5.4203 would permanently establish the process by which the association can request and receive extensions of the deadlines in Insurance Code §2210.573(b) and (d). Under Insurance 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 gets notice of the claim or receives additional information it has requested from the claimant.

The following paragraphs summarize the subsections of proposed §5.4203, including how proposed §5.4203 differs from emergency §5.4203. Other than the differences noted in the following paragraphs, the currently proposed section and the section adopted as an emergency rule are identical.

Section 5.4302(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 would create a reasonable, objective standard. Other than changes in punctuation, this proposed subsection is identical to subsection (a) in the emergency rule.

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 and also in the absence of a request from the association if the Commissioner determines good cause exists. Subsection (d) would allow the Commissioner to use any additional information the Commissioner deems appropriate when determining if good cause exists under §5.4203. Subsections (b) and (d) would give the Commissioner flexibility to determine that good cause exists without relying solely on the association's request. In subsection (b), the provision that the Commissioner may for good cause extend the deadlines is changed to state that the Commissioner will for good cause extend the deadlines, subject to the 120-day limit in subsection (e). Subsection (b) is otherwise identical to subsection (b) in the emergency rule.

Section 5.4203(c) requires a request to include information useful for the Commissioner to make a determination. The subsection has been changed from the emergency rule to add that if the association requests a specific amount of additional time, the association must provide an explanation for the amount of time requested.

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. Subsection (f) is not in emergency §5.4203.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director of the Property and Casualty Lines Office of the Regulatory Policy Division, has determined that for each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of this proposal.

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 is in effect, Ms. Baker expects that proposed §5.4203 will have the public benefit of permanently establishing a means for the Commissioner to grant the association, for good cause, additional time to request information on a claim from a claimant and to accept or deny a claim. This will enable the association to adjust claims accurately when circumstances beyond its control may prevent it from doing so within the statutory deadlines. Such circumstances may include a weather-related event such as Hurricane Harvey, which stressed the association's resources and those of other insurers, who also faced an elevated number of claims. The Commissioner may extend claim-handling deadlines for some insurers under Insurance Code §542.059 and 28 TAC §5.9303, but those sections do not apply to the association.

The section will help ensure the association has sufficient time to adjust claims accurately. The association, its member insurers, and consumers benefit when the association's claims are adjusted accurately and its funds are used to pay claims. Accurate claims adjustment is necessary to achieve the association's purpose of providing an adequate windstorm and hail insurance market in the seacoast territory. Adequate windstorm and hail insurance is necessary to the economic welfare of the state of Texas.

Ms. Baker expects that requesting an extension under proposed §5.4203 will impose an economic cost on the association. Based on the association's experience compiling the information necessary to request an extension under emergency §5.4203, the department anticipates that

requesting an extension under proposed §5.4203 will take three association employees between six and 12 hours total, at a cost of approximately \$1,000. Requesting an extension is discretionary; the association will decide whether requesting an extension justifies the cost.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

The department has determined that proposed §5.4203 will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. The cost of requesting an extension of claim-handling deadlines under proposed §5.4203 will be borne by the association, which is not a small or micro-business or rural community as defined under Government Code §2006.001. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments or repeals are required under Government Code §2001.0045 because proposed §5.4203 is necessary to implement legislation. The proposed rule implements Insurance Code §2210.581 as added by HB 3, 82nd Legislature, First Called Session (2011).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years the proposed amendments are in effect:

- the proposed rule will not create or eliminate a government program;
- the proposed rule will not create new employee positions or eliminate existing employee positions;
- the proposed rule will not require an increase or decrease in future legislative appropriations to the agency;
- the proposed rule will not increase or decrease fees paid to the agency;
- the proposed rule will create a new regulation at 28 TAC §5.4203;
- the proposed rule will not expand, limit, or repeal an existing regulation;
- the proposed rule will not increase or decrease the number of individuals subject to the rule's applicability; and

-- the proposed rule will positively affect the Texas economy by enabling the association to achieve its purpose of providing an adequate market for windstorm and hail insurance on the Texas seacoast.

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. 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. Submit any written comments on the proposal no later than 5 p.m., Central time, on April 30, 2018. The department requires two copies of your comments. Send one copy to ChiefClerk@tdi.texas.gov, or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to CommercialPC@tdi.texas.gov, or to Marianne Baker, Director, Property and Casualty Lines Office, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov, or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

STATUTORY AUTHORITY. The department proposes §5.4203 under Insurance Code §§2210.008, 2210.581, and 36.001.

Insurance Code §2210.008(b) authorizes the Commissioner to adopt reasonable and necessary rules to implement Chapter 2210.

Insurance Code §2210.581 authorizes the Commissioner to extend deadlines established under Subchapter L-1 by rule.

Insurance Code §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.

CROSS-REFERENCE TO STATUTE. Section 5.4203 implements Insurance Code §2210.581, enacted by HB 3, 82nd Legislature, First Called Session (2011).

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;

(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 proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 14, 2018.



Norma Garcia, General Counsel
Texas Department of Insurance