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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 adopts new 28 TAC §5.4204 and amendments to 28 TAC §§5.4203, 5.4211, 5.4222, and 5.4241. The 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 and House Bills 1900 and 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.

Sections 5.4203, 5.4204, 5.4222, and 5.4241 are adopted without changes to the proposed text published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5873). TDI held a public hearing on the proposal on October 28, 2019. Section 5.4211 is adopted with two changes to the text as proposed to clarify a reference to the Insurance Code.

REASONED JUSTIFICATION. 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.

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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.

Section 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.

Section 5.4203(e) implements HB 1900's changes to the limits on deadline extensions. The 120-day limit is now for claims arising from the same occurrence, rather than during the same catastrophe year. The limit applies to deadlines that apply only to TWIA.

Section 5.4204. Supplemental Payments. New §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 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.

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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 TWIA will pay 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.

Section 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 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

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

For the reasons described in the explanation for §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 a claimant's right to appraisal, §5.4211(c) defines what constitutes an appraisal demand and clarifies 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.

Section 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

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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.

The requirement in §5.4211(i) 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. After claimants request a replacement cost payment under Insurance Code §2210.5741, TWIA will give them information about the appraisal and supplemental payment request deadline. Requiring another notice—the reminder notice—for claims with replacement cost coverage would likely be of minimal benefit to claimants.

Sections 5.4211(a) and 5.4211(b) are also amended, and §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 payments, including the opportunity to demand appraisal under Insurance Code §2210.5741. Section 5.4211(c)(2) also clarifies that claimants do not need to begin repairs before they can dispute the amount TWIA will pay under replacement cost coverage. 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 amended to "hire an appraiser." The word "hire" appears elsewhere in §5.4211.

The proposed text of §5.4211(b)(2) and §5.4211(i)(1) are revised to add the words "Insurance Code" to clarify references to Insurance Code §2210.574.

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, the deadlines are 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).

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Clarifying that the Commissioner can extend deadlines for groups of claims or in the absence of a request demonstrates that the Commissioner can be efficient and flexible in granting deadline relief. When there is good cause to extend a deadline for many claims, the Commissioner can 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. Section 5.4241 keeps 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 are 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 clarifies what is considered good cause for granting an extension. 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

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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).

Section 5.4241 also clarifies the Commissioner's authority to extend deadlines for groups of claims. Clarifying the Commissioner's authority to extend deadlines for groups of claims makes TWIA and claimants aware that the Commissioner can grant relief without waiting for requests on a claim-by-claim basis.

The amendments also include nonsubstantive editorial and formatting changes to conform to the agency's current style and to improve the rule's clarity.

Informal Draft. 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 the rule proposal.

Proposal. The rule proposal was published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5873). TDI also posted the proposal on TDI's website. TWIA posted a link to the proposal on TWIA's website and used social media to publicize the proposal, comment period, and public hearing.

SUMMARY OF COMMENTS. TDI did not receive any written comments on the proposed new section and amendments. TDI received one oral comment, from TWIA, at the public hearing on the proposal. Specifically, TWIA thanked TDI staff for working with TWIA on the proposal and listening to TWIA's concerns.

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SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

28 TAC §§5.4203, 5.4204, 5.4211, 5.4222, and 5.4241.

STATUTORY AUTHORITY. The Commissioner adopts new 28 TAC §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 and gives TDI authority to adopt rules necessary to implement the section. HB 1900 and HB 1944 amended Section 2210.581 to 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 may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

TEXT.

§5.4203. Good Cause Extensions for 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). In this section, "good cause" means objective facts beyond the association's control that reasonably caused or may

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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 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

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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.

(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 of this title describe the appraisal process and apply when:

- (1) the association has accepted coverage for a claim, in full or in part; and

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(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.

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

(1) accepting 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 Insurance Code §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.

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

(e) 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) 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 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;

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

(h) 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 Insurance Code §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.

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(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 may extend any deadline 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) Request for extension. To ask the 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) 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.

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(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) **Extensions.**

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

(2) For good cause, the Commissioner may extend any deadline 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).

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

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

(e) **Request for extension.** To request the Commissioner to extend a deadline, a party or mediator must send the request in writing to the department, under §5.4251 of

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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) 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.

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

Issued at Austin, Texas, on December 10, 2109

/s/ James Person

James Person, General Counsel
Texas Department of Insurance

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The Commissioner adopts new 28 TAC §5.4204 and amendments to 28 TAC §§5.4203, 5.4211, 5.4222, and 5.4241.

/s/ Kent C. Sullivan

Kent C. Sullivan

Commissioner of Insurance

Commissioner's Order No. **2019-6173**