

**Subchapter E. Texas Windstorm Insurance Association**  
**Division 4. Consumer Assistance; Claim Processes**  
**28 TAC §5.4211**

**INTRODUCTION.** The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.4211, concerning establishment of a time period for the Texas Windstorm Insurance Association (TWIA) appraisal process. Amendments to §5.4211 implement House Bill 3310, 88th Legislature, 2023.

**EXPLANATION.** HB 3310 requires the commissioner to adopt rules that establish a time period for an appraisal demanded under Insurance Code §2210.574. Amendments to §5.4211 are necessary to establish the required deadline.

Amendments to subsections (a)(2) and (b)(1) insert the titles of cited Insurance Code.

Proposed amendments add new subsections (e), (f), (j), (k), and (m). Existing subsections are redesignated as appropriate to reflect the addition of these new subsections.

Proposed new subsection (e) sets a deadline by which appraisers must disclose their projected fees to the parties and agree on an umpire. The deadline will help ensure that appraisers begin their involvement with the appraisal in a timely manner and help claimants evaluate the anticipated cost of the appraisal.

Proposed new subsection (f) establishes a deadline by which the appraisers must agree on the amount of loss. One way to complete an appraisal is for the appraisers to agree on the amount of loss, so proposed subsection (f) establishes a deadline to complete that effort. The deadline is longer for commercial claims because losses are frequently larger or more complex than the losses in residential claims.

The proposed amendment to redesignated subsection (i) provides for an umpire to become involved if the appraisers do not agree on the amount of loss by the applicable deadline in proposed subsection (f). The proposed amendment does not prevent an umpire from becoming involved before the deadline.

If the appraisers do not agree on the amount of loss, the way to complete the appraisal is for the appraisal panel to decide on the amount of loss. The appraisal panel consists of the two appraisers and the umpire. Accordingly, proposed new subsection (j) establishes a deadline for the appraisal panel to decide on the amount of loss. The deadline is based on when the umpire becomes involved in the appraisal. The deadline is longer for commercial claims because losses are frequently larger or more complex than losses in residential claims.

Proposed new subsection (k) provides that TWIA and the claimant may extend the deadlines in subsections (f) or (j) by written agreement. Giving the parties the ability to extend the deadlines adds flexibility to provide more time for the appraisal when both parties agree it is appropriate. The proposed subsection also recognizes that the commissioner may extend deadlines under 28 TAC §5.4222.

The proposed amendment to redesignated subsection (l) provides that when the appraisers--rather than the parties--cannot agree on the amount of loss, and the umpire participates, an itemized decision agreed to by any two of these three is binding on the parties. In an appraisal, decisions about the amount of loss are made by appraisers and umpires, not the parties. This proposed amendment clarifies that distinction.

Proposed new subsection (m) allows the appraisers to select a new umpire if a decision is not issued within the deadlines. Allowing the appraisers to select a new umpire will help ensure the appraisal is completed in a timely manner. If the appraisers cannot agree on a new umpire, either of the appraisers may ask TDI to select one. This proposed subsection follows the same process used to select an umpire at the outset of an appraisal.

The proposed amendment to redesignated subsection (n) removes an obsolete applicability date. The subsection's applicability remains the same.

Other amendments add articles "the" or "an" before "appraisal" as appropriate to conform with current agency drafting style.

As required by HB 3310, TDI developed the proposed amendments in consultation with TWIA. TDI also received comments on a request for information posted on TDI's website on August 21, 2023. TDI considered those comments when drafting this proposal.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** David Muckerheide, assistant director, Property and Casualty Lines, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than that imposed by the statute. Mr. Muckerheide made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Muckerheide 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 amendments are in effect, Mr. Muckerheide expects that administering the proposed amendments will have the public benefits of ensuring that TDI's rules conform to Insurance Code §2210.574, helping TWIA claimants evaluate the anticipated cost of an appraisal, and leading to the timelier resolution of TWIA appraisals. Insurance Code Chapter 2210 prescribes an appraisal as the formal method for TWIA claimants to resolve disputes about the amount of a loss for which TWIA has accepted coverage.

Mr. Muckerheide expects that the proposed amendments do impose a possible cost on TWIA. However, Insurance Code §2210.574 requires the commissioner to adopt rules establishing the period in which an appraisal must be completed. As a result, the cost associated with TWIA updating its communication materials and business processes to conform with the new deadlines does not result from the enforcement or administration of the proposed amendments. Additionally, the initial administrative cost should be offset by TWIA cost savings associated with more timely resolutions of appraisals.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. 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 possible cost on TWIA. Specifically, TWIA will face a modest, one-time administrative cost associated with these proposed amendments. However, the initial administrative cost should be offset by TWIA cost savings associated with more timely resolutions of appraisals. Even if there were no offsetting cost savings, no additional rule amendments would be required under Government Code §2001.0045 because the proposed amendments to §5.4211 are necessary to implement legislation. The proposal implements Insurance Code §2210.574, as amended by HB 3310.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed 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 not create a new regulation;
- will expand an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will positively affect the Texas economy by ensuring TWIA policyholders appraisal demands are resolved in a timely manner.

**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 December 11, 2023. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on December 11, 2023. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

### **Subchapter E. Texas Windstorm Insurance Association 28 TAC §5.4211**

**STATUTORY AUTHORITY.** TDI proposes amendments to §5.4211 under Insurance Code §§2210.008, 2210.574(d-1), 2210.580, and 36.001.

Insurance Code §2210.008 provides that the commissioner may adopt rules as reasonable and necessary to implement Chapter 2210.

Insurance Code §2210.574(d-1) requires the commissioner to adopt rules establishing the period in which an appraisal demand must be completed.

Insurance Code §2210.580 requires the commissioner to adopt rules regarding procedures and deadlines for payment and handling of claims.

Insurance Code §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.

**CROSS-REFERENCE TO STATUTE.** Section 5.4211 implements Insurance Code §2210.574 and §2210.5741.

**TEXT.**

**§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  
(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, concerning Disputes Concerning Amount of Accepted Coverage, or §2210.5741, concerning Replacement Cost Coverage Claim Processing.

(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, concerning Filing of Claim; Claim Processing; 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 an appraisal and requesting a supplemental payment.

(c) Appraisal demand.

(1) A claimant may demand an 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 an 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 an 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) 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) Deadline for appraisal budget disclosure and naming an umpire. Within 15 days of the date by which the appraisers are named by the parties, the appraisers must disclose their projected fees to the parties and agree on an umpire. If the appraisers cannot agree on an umpire, they may ask the department to select an umpire under subsection (h) of this section. The deadlines in this subsection may be extended as provided by subsection (k) of this section.

(f) Deadline for appraiser agreement. Except as provided by subsection (k) of this section, appraisers must agree on the amount of loss:



(1) for residential claims, within 90 days of the date by which both appraisers were named; or

(2) for commercial claims, within 120 days of the date by which both appraisers were named.

(g) [(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.

(h) [(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;

(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.

(i) [(g)] Umpire participation. The selected umpire must participate in the resolution of the dispute if the appraisers fail to agree on a decision by the deadlines specified in subsection (e) of this section.

(j) Deadline for appraisal panel decision. Except as provided by subsection (k) of this section, the appraisal panel must decide on the amount of loss:

(1) for residential claims, within 60 days of the date by which the umpire becomes involved; or

(2) for commercial claims, within 90 days of the date by which the umpire becomes involved.

(k) Extension of deadlines. The association and the claimant may extend deadlines by written agreement of both parties. The commissioner may also extend deadlines, as provided in §5.4222 of this title (relating to Appraisal Process - Extensions of Deadlines).

(l) [(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 appraisers [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.

(m) New umpire. If a decision is not issued within the deadlines established by subsection (j) of this section, or as extended by subsection (k) of this section, the appraisers may select a new umpire as described in subsection (h)(1) of this section, or either appraiser may ask the department to select a new umpire as described in subsection (h)(2) of this section.

(n) [(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 an 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 an appraisal under Insurance Code §2210.574.

(2) The notice must inform the claimant that:

(A) an 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 an 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.]~~

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

Issued in Austin, Texas, on October 26, 2023.

DocuSigned by:  
*Jessica Barta*  
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Jessica Barta, General Counsel  
Texas Department of Insurance