

**Subchapter E. Texas Windstorm Insurance Association**  
**Division 4. Consumer Assistance; Claim Processes**  
**28 TAC §5.4215 and §5.4233**

**INTRODUCTION.** The Texas Department of Insurance (TDI) proposes amendments to 28 TAC Chapter 5, Subchapter E, Division 4, §5.4215 and §5.4233, concerning updates to umpire and mediator roster application forms. The amendments implement Senate Bill 510, 88th Legislature, 2023.

**EXPLANATION.** SB 510 added Government Code §552.11765, which created new categories of confidential information for state agencies. Section 5.4215 provides requirements for the appraisal umpire roster that TDI maintains for Texas Windstorm Insurance Association (TWIA) claims. That section specifies the information that umpire applicants must provide to register with TDI. Section 5.4233 does the same for the mediator roster. The proposal amends §5.4215 and §5.4233 to add requirements related to applicants' consent to publish confidential information, and to state if umpires are insured by TWIA.

The following paragraphs describe the proposed amendments.

**Section 5.4215.** Section 5.4215(b) is amended to require the applicant to give consent to have information that might otherwise be confidential published on the umpire roster. In addition, to reflect TDI practice, §5.4215(b) is amended to require applicants to state whether they are insured by TWIA. The umpire application form already asks applicants to state whether they are TWIA policyholders. With this change, the umpire rule will parallel the mediator rule. Section 5.4215(e) is amended to specify that certain information collected from applicants will be published only to the extent the applicant consents.

**Section 5.4233.** Section 5.4233(b) is amended to require the applicant to give consent to have information that might otherwise be confidential published on the mediator roster. Section 5.4233(e) is amended to specify that certain information collected from applicants will be published only to the extent the applicant consents.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Marianne Baker, director of 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. Ms. Baker 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.

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 amendments are in effect, Ms. Baker expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to the confidentiality requirements of Government Code §552.11765.

Ms. Baker does not expect the amendments will result in increased costs to any regulated entities. The amendments implement statutory provisions governing state agency use of information collected as part of a licensing application process and align TDI's rules with current practice.

**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. The amendments do not add or subtract any costs to individuals or businesses; rather, the amendments implement a statute changing the categories of information considered confidential and reflect current TDI practice. 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 not impose a possible cost on regulated persons.

**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 not expand an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**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 July 15, 2024. 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 the TDI no later than 5:00 p.m., central time, on July 15, 2024. 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 §5.4215 and §5.4233**

**STATUTORY AUTHORITY.** TDI proposes amendments to §5.4215 and §5.4233 under Insurance Code §§2210.008, 2210.575, 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 §2210.575 requires the commissioner to establish rules for alternative dispute resolution for disputes concerning denied coverage.

Insurance Code §2210.580 provides that the commissioner must adopt rules regarding the qualifications and selection of appraisers for the appraisal process, and the qualifications and selection of mediators.

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.** The revisions to §5.4215 and §5.4233 implement Government Code §552.11765.

**TEXT.**

**§5.4215. Appraisal Process - Umpire Roster.**

(a) Eligibility. To be placed on the umpire roster, a person must register with the department and must meet the qualifications in §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest).

(b) Registration. The registration must include contact information and details about:

(1) the person's training and experience related to building construction, repair, estimating, or investigating property damage;

(2) any training and experience related to estimating property damage claims;

(3) whether the person's experience is with residential or commercial property damage;

(4) any relevant licenses or certifications;

(5) a general description of the approximate number, type of policies, and value and complexity of property damage claims on which the applicant worked over the previous three years;

(6) the counties in which the person is willing to work;

(7) the type of policies, and value and complexity of claims on which the person is willing to work;

(8) potential conflicts of interest, under §5.4214 of this title;

(9) any professional disciplinary actions or criminal convictions; ~~and~~

(10) whether the umpire is insured by the association;

(11) ~~(10)~~ an up-to-date biography, resume, or curriculum vitae; and

(12) whether the applicant consents to have information that might otherwise be confidential published on the roster.

(c) Notice. A person is not on the umpire roster until the department sends written notice of placement on the roster.

(d) Limited number. The department may limit the number of umpires on the roster.

(e) Publication. The department will publish the umpire roster on the department's website. Published roster information will include an umpire's name, and, to the extent that the applicant consents, contact information, required qualifications, preferred types of claims, and preferred geographic areas.

(f) Disqualifying conflicts. The umpire must notify the department of a disqualifying conflict of interest under §5.4214 of this title within 10 days of learning about the conflict.

(g) Term. An umpire will be on the umpire roster for a term of three years, except as provided under §5.4216 of this title (relating to Appraisal Process - Removal of Umpire from Roster). To remain on the roster for additional terms, an umpire must submit a new registration to the department.

(h) Submissions. Notices and registrations sent to the department under this section must comply with §5.4251 of this title (relating to Requests and Submissions to the Department).

**§5.4233. Mediation Process - Mediator Roster.**

(a) Eligibility. To be placed on the mediator roster, a mediator must register with the department and must meet the qualifications in §5.4232 of this title (relating to Mediation Process - Mediator Qualifications and Conflicts of Interest).

(b) Registration. The registration must include contact information and details about:

- (1) the mediator's mediation training;
- (2) any mediation certification;
- (3) any other relevant licenses or certifications;
- (4) any training or experience relating to property damage claims;
- (5) a general description of the approximate number, value, complexity, and nature of disputes mediated over the previous three years;
- (6) the counties in which the mediator is willing to mediate;
- (7) the types of policies, and value and complexity of claims the mediator is willing to mediate;
- (8) potential conflicts of interest, under §5.4232 of this title;
- (9) any professional disciplinary actions or criminal convictions;
- (10) whether the mediator is insured by the association; ~~and~~
- (11) an up-to-date biography, resume, or curriculum vitae; and
- (12) whether the applicant consents to have information that might otherwise be confidential published on the roster.

(c) Notice. A person is not on the mediator roster until the department sends written notice of placement on the roster.

(d) Limited number. The department may limit the number of mediators on the roster.

(e) Publication. The department will publish the mediator roster on the department's website. Published roster information will include a mediator's name, and, to the extent that the applicant consents, contact information, required qualifications, preferred types of claims, and preferred geographic areas.

(f) Disqualifying conflicts. The mediator must notify the department of a disqualifying conflict of interest, under §5.4232 of this title.

(g) Term. A mediator will be on the mediator roster for a term of three years, except as provided under §5.4234 of this title (relating to Mediation Process - Removal of Mediator from Roster). To remain on the roster for additional terms, a mediator must submit a new registration to the department.

(h) Submissions. Notices and registrations under this section must comply with §5.4251 of this title (relating to Requests and Submissions to the Department).

**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 May 24, 2024.

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*Jessica Barta*  
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Jessica Barta, General Counsel  
Texas Department of Insurance