

## **SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION**

### **DIVISION 4. CONSUMER ASSISTANCE; CLAIM PROCESSES**

#### **28 TAC §5.4201**

**1. INTRODUCTION.** The Texas Department of Insurance (Department) proposes new Division 4, §5.4201. Section 5.4201 establishes the Coastal Outreach and Assistance Services Team (COAST) Program. The COAST Program satisfies the requirement of the Insurance Code §2210.582, which was adopted in House Bill 3 (HB 3), 82nd Legislature, 2011, First Called Session, to establish an ombudsman program. The COAST Program will provide information and educational programs to assist persons insured by the Texas Windstorm Insurance Association (Association) with claim processes.

The Legislature has stated in the Insurance Code §2210.001 its finding that the provision of windstorm and hail insurance is necessary for the economic welfare of this state, and without that insurance, the orderly growth and development of this state would be severely impeded. The designated catastrophe area, which consists of the 14 Texas coastal counties and parts of Harris County, has been determined to be underserved for windstorm and hail insurance coverage by the Commissioner under the Insurance Code §2210.005. Under the Insurance Code Chapter 2210, the Association offers windstorm and hail insurance coverage (Association insurance coverage) in the designated catastrophe area as a residual insurer of last resort. Thus, persons who obtain windstorm and hail insurance coverage from the Association have few, if any,

other sources from which they may obtain such insurance coverage; and the ability to obtain insurance coverage from the Association has a direct effect on the welfare of persons living and working in the designated catastrophe area. Failure to understand the coverage, rights, and remedies applicable to Association insurance coverage affects the ability of people to select the proper coverage and pursue their Association insurance coverage claims in an efficient and cost-effective manner.

Section 2210.582 of the Insurance Code directs the Department to establish an ombudsman program to provide information and educational programs to assist Association policyholders with the claim processes under the Insurance Code Chapter 2210, Subchapter L-1 (Association's claim processes). The Insurance Code §2210.580 does not directly reference §2210.582; however, §2210.580 states legislative intent that all rules adopted under §2210.580 to implement the Association's claim processes must promote the fairness of the process, protect the rights of aggrieved policyholders, and ensure that policyholders may participate in the claims review process without the necessity of engaging legal counsel. The Department considers the ombudsman program essential to implementing that intent. The proposed section will function as described in the following paragraphs.

Section 5.4201(a) establishes the COAST Program to fulfill the requirement to establish an ombudsman program as required in the Insurance Code §2210.582(a). Section 5.4201(b) provides that the COAST Program shall be administered by the Department as required by the Insurance Code §2210.582(f). As an administered program, the Department will retain managerial control over the operations of the COAST Program. Section 5.4201(c) addresses COAST Program staffing. The COAST

Program will rely on an ombudsman and a staff person hired by the Department on a permanent full-time basis to provide the educational and information outreach services to Association policyholders. Following a catastrophic event, the number of COAST Program staff may be increased through an amended budget process authorized in the Insurance Code §2210.582(d).

Section 5.4201(d) sets forth the funding year, budget submission and funding dates, and the procedure and time period for funding an amended budget following a catastrophic event. Consistent with the Insurance Code §2210.582(b) – (c), the funding year shall be from May 1 of each year to April 30 of the following year; the Department shall prepare and submit to the Commissioner a budget for the COAST Program not later than March 1 of each year; the Commissioner shall adopt the budget, or modify the budget before adopting it, not later than April 1 of each year; and the Association shall then transfer the budgeted amount adopted by the Commissioner to the Department for the COAST Program not later than May 1 of each year.

As required by the Insurance Code §2210.582(d), this proposal sets forth in §5.4201(d)(2) and (4) procedures and requirements implementing the amended budget process, including the transfer of additional money from the Association to the Department for the COAST Program. Section 5.4201(d)(2) directs the Department to include expenses for ongoing ombudsman catastrophe operations in its annual budget submissions. This will provide for funding transparency and recognizes that the need for COAST Program information and educational programs may continue into subsequent years. Section 5.4201(d)(4) addresses the procedures and requirements implementing the amended budget process immediately following a catastrophic event,

including the transfer of additional money from the Association to the Department for the COAST Program.

Consistent with the Insurance Code §2210.582(d), §5.4201(d)(4)(A) and (B) provide that the Department must, not later than 60 days following a catastrophic event, submit an amended budget to the Commissioner for approval and report to the Commissioner on the approximate number of claimants eligible for COAST Program services. Section 5.4201(d)(4)(C) provides that the Commissioner may modify the amended budget before adopting it. Section 5.4201(d)(4)(D) requires the Association to fund the amended COAST Program budget within 15 days of receiving notice of the Commissioner's adoption of the amended budget. The Department considers 15 days to be reasonable because the Association will have begun determining claims liability and coverage before the 60th day following a catastrophic event and the information and educational programs offered by the COAST Program should be available as soon as possible to reach the policyholders with claims.

Section 5.4201(e) sets forth that the COAST Program may provide information and educational programs through the means that the COAST Program determines to be appropriate. Section 5.4201(e)(1) provides a list of potential means for providing COAST Program information and educational programs that is consistent with the Insurance Code §2210.582(e). The Insurance Code §2210.582(h) requires the Association to notify each of its policyholders about the ombudsman program as prescribed by the Commissioner by rule. Section 5.4201(f)(1) prescribes that the Association must notify its policyholders about the COAST Program when the Association issues or renews the policy. Section 5.4201(f)(1) requires the Association

to use both the English and Spanish notices set forth in §5.4201(g). Section 5.4201(f)(2) and (3) prescribe that the Association must also notify its policyholders about the COAST Program when the Association acknowledges receipt of a claim, and when the Association sends written notice to a policyholder that it has accepted or denied coverage for a claim. The required COAST Program notice may be incorporated into documents being sent at those times, including the Important Notice required by §1.601 of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures) and the written notice accepting or denying coverage for a claim required by the Insurance Code §2210.573(d). Section 5.4201(g) provides the notice required by §5.4201(f) in both English and Spanish.

**2. FISCAL NOTE.** Audrey Selden, Deputy Commissioner of the Compliance Division, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

**3. PUBLIC BENEFIT/COST NOTE.** Ms. Selden also has determined that for each year of the first five years the proposed sections are in effect, there will be public benefits resulting from the proposal and there will be costs to persons required to comply with the proposal.

**Anticipated Public Benefits.** The anticipated public benefit is the establishment and implementation of the ombudsman program required by the Insurance Code §2210.582 to provide information and educational programs to assist people insured by the Association with the Association's claim processes. The ombudsman program requirement will be fulfilled by the COAST Program.

**Estimated Costs for Persons Required to Comply with the Proposal.** The Association will incur costs for compliance with the proposal. The Department has determined that costs to the Association will result from the Insurance Code §2210.582 requirements (i) that the Association fund the ombudsman program; and (ii) that the Association provide notice of the COAST Program to each person the Association insures. The expected expenses and estimated costs in this analysis are set forth in the following paragraphs and are based on the Department's experience implementing other statutory requirements.

**Funding.** Under the Insurance Code §2210.582(f), the COAST Program is administratively attached to the Department. The Department provides the staff, services, and facilities necessary for the COAST Program to operate. As required by the Insurance Code §2210.582(b), the Department must propose the COAST Program budget (budget) not later than March 1 of each year. The budget must include all expenditures incurred in administering and operating the COAST Program. The Insurance Code §2210.582(b) further requires the Commissioner to adopt, or modify and adopt, the budget not later than April 1 of the year in which the budget is submitted. The Insurance Code §2210.582(c) requires the Association to fund the adopted budget not later than May 1 of each year.

The Department estimates that the overall cost associated with funding the COAST Program will be \$250,000 in the first year and \$187,700 in each subsequent year for the first five years of the COAST Program's existence.

The Department has determined that the COAST Program will require a staff of the ombudsman and one additional person. The ombudsman position will serve as team lead and will conduct outreach. The ombudsman position qualifies as an Information Specialist IV in the state's current employee classification system. The Department estimates that the ombudsman position would cost approximately \$65,000 annually, including salary and benefits. The additional staff member would conduct outreach and perform other related functions. The staff position qualifies as an Information Specialist III in the state's current employee classification system. The Department estimates that the staff position would cost approximately \$52,000 annually, including salary and benefits. The benefits included in these estimated costs include employee retirement, old age and survivors insurance, and group insurance. The state salary classification schedule does not indicate any scheduled increases for Information Specialist IV or Information Specialist III positions through fiscal year 2013. The Legislature has not established a salary schedule beyond fiscal year 2013. The Department estimates that the annual staffing cost of the COAST Program will be approximately \$117,000 through the first five years of the COAST Program.

The Department expects that the COAST Program will incur regular operating expenses, including travel, educational campaigns, toll-free telephone usage, and supplies. The Department expects that the ombudsman and staff will make approximately 30 educational trips annually to various locations in the catastrophe area

to provide educational presentations, at an estimated cost of \$500 per trip. Thus, the Department estimates the cost of travel to be \$15,000 in each year of the first five years the COAST Program is in existence. The COAST Program will also require publications, fliers, newspaper and online advertising, and exhibit fees for educational campaigns. The Department estimates the cost of the educational campaigns to be \$50,000 in each year of the first five years of the COAST Program. The Department expects that the COAST Program telephone expenses will include the set up of a toll-free help line at \$2,300. Annual call charges are estimated to be approximately \$2,700 based on 100 calls per week. The Department estimates the cost of the COAST Program's telephone expense to be \$5,000 in the first year of the COAST Program and \$2,700 for each year of the next four years of the COAST Program. The Department also expects that the COAST Program will use an estimated \$3,000 in office supplies in each year of the first five years of the COAST Program.

The Department expects that the COAST Program will incur charges for office equipment and design of a website in the COAST Program's first year of operation. These costs are not expected to be recurring during the next four years. The Department estimates that the cost of website design for the COAST Program will be \$50,000. The Department estimates the cost of office equipment, including desks, chairs, computers, and printers, will be \$10,000.

Insurance Code §2210.582(d) also provides that the Department may submit and the Commissioner may adopt an amended budget following a catastrophic event. The occurrence of a catastrophic event is speculative, and any additional cost necessary for the COAST Program will depend in part on the location of the event, the

number of policyholders affected, and the need for additional resources or equipment. The additional costs that might be incurred following a catastrophic event are not part of the implementation or establishment of the COAST Program and are not included in this analysis.

Notice. The Department further expects that the Association will incur a cost for providing notice of the operation of the COAST Program required by §5.4201(f). The additional cost is estimated to be less than \$5,000 annually. Although the Association is required to provide the notice under the Insurance Code §2210.582(h), the cost is not simply attributable to the statutory requirement because the Commissioner must determine the manner of notice.

The Department has attempted to minimize the cost of providing the notice by requiring it to be distributed only with other written communications from the Association. Thus the Association should not need to incur additional costs for postage or other delivery means. Further, the Association may also incorporate the notice into existing forms or communications which should eliminate the need for additional paper cost in providing the notice. If the Association should choose to comply with §5.4201(f) by printing or mailing a separate notice, it will be the Association's business decision and not an additional cost imposed by this section.

The Department has estimated the cost of ink at approximately one cent per page in previous analyses of printing expenses. The required notices set forth in §5.4201(g) are significantly less than one page; however, based on the estimated one cent cost, the Department estimates that printing the notice for the Association's approximately 250,000 current policyholders will be \$2,500 over the course of the first

year that policies are delivered, issued for delivery, or renewed on or after November 27, 2011. This amount will change in subsequent years as the number of policyholders changes; however, the result overall effect on cost should be minimal. The additional cost of ink with respect to claims will depend on the number of claims made against the Association. As each claim would both be acknowledged and at some point accepted or denied, the estimated cost is two cents per claim. For example, Hurricane Ike resulted in approximately 90,000 claims. That level of claims activity would result in an additional estimated printing expense of \$1,800. Thus, §5.4201(f) is reasonably estimated to result in less than \$5,000 of additional costs to the Association annually.

Because the Association is the only entity required to implement the proposed notice requirement, the Department also sent the Association an inquiry as to any additional costs that the Association expected might be incurred, including costs relating to modifying forms or implementing the notice distribution requirement. The Association responded that it did not expect any additional costs from providing the notice in the manner described by §5.4201(f).

Any other costs required to establish and implement the COAST program are not a result of the adoption, enforcement, or administration of this proposal, but result from the legislative enactment of the Insurance Code Chapter 2210 and the amendments to Chapter 2210 in HB 3.

**4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** The Government Code §2006.002(c)

requires that if a proposed rule may have an economic impact on small businesses or micro businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on these businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(2) defines “small business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. The Government Code §2006.001(1) defines “micro-business” similarly to “small business” but specifies that such a business may not have more than 20 employees. The Government Code §2006.001(1) does not specify a maximum level of gross receipts for a “micro-business.” The Texas Windstorm Insurance Association is the only individual or entity that must be analyzed to determine whether it is subject to the Government Code §2006.002 small and micro business analysis as a result of this proposal.

The Association does not meet the definition of a *small business* under Government Code §2006.001(2). The Association is an *association. . . composed of all property insurers authorized to engage in the business of property insurance in this state*, formed under the authority of the Insurance Code §2210.051. It is not a corporation, partnership, nor sole proprietorship. It is not formed for the purpose of making a profit, but to provide a method by which adequate windstorm and hail insurance may be made available in certain designated portions of this state, as mandated by the Insurance Code §2210.001.

Under the Insurance Code §2210.056, the net earnings of the Association may not inure to the benefit of private shareholders or individuals; and the assets of the Association may not be used, except to satisfy claims on policies, make investments authorized under applicable law, pay reasonable and necessary administrative expenses, satisfy the obligations of the Association, including public securities and financial instruments, purchase reinsurance, or prepare for or mitigate the effects of catastrophic natural events. Under the Insurance Code §2210.452, the net gain from operations of the Association, including all premium and other revenue of the Association in excess of incurred losses, operating expenses, and public security obligations and administrative expenses, is paid to a catastrophe reserve trust fund or used to procure reinsurance. Further, under the Insurance Code §2210.056 and §2210.452, upon dissolution of the Association, all assets other than assets pledged for the repayment of public securities revert to the state.

The Association is not *independently owned and operated*. In addition to not being owned by its members, under the Insurance Code §2210.101 and §2210.102, the Association operates with a board of directors, which is responsible and accountable to the Commissioner. The Association provides windstorm and hail insurance according to a plan of operation as specified by the Insurance Code §2210.152 and adopted by the Commissioner by rule pursuant to Insurance Code §2210.151. Further, the Association has approximately 150 employees (including employees who are providing services by contract to the FAIR Plan) and net receipts of over \$6 million. Therefore, based on these factors, the Association does not meet the definition of a small or micro business under the Government Code §2006.001(1) and (2), and an analysis of the

economic impact of this proposal on the Association pursuant to the Government Code §2006.002(c) is not required.

**5. 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 and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**6. REQUEST FOR PUBLIC COMMENT.** To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on November 14, 2011, to Sara Waitt, Acting General Counsel, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing must be submitted separately to the Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

**7. STATUTORY AUTHORITY.** Section 5.4201 is proposed under §§2210.008, 2210.580, 2210.582, and 36.001 of the Insurance Code. The Insurance Code §2210.008 authorizes the Commissioner to adopt reasonable and necessary rules in the manner prescribed in Subchapter A, Chapter 36, of the Insurance Code. Section

2210.580 of the Insurance Code authorizes the Commissioner to adopt rules regarding the provisions of the Insurance Code Chapter 2210, Subchapter L-1, including rules concerning any other matters regarding the handling of claims that are not inconsistent with Subchapter L-1. Section 2210.580(b) requires that all rules adopted under this §2210.580 shall promote the fairness of the process, protect the rights of aggrieved policyholders, and ensure that policyholders may participate in the claims review process without the necessity of engaging legal counsel.

Section 2210.582(a) of the Insurance Code directs the Department to establish an ombudsman program to provide information and educational programs to assist persons insured under Chapter 2210 of the Insurance Code with the claim processes under Subchapter L-1, Chapter 2210. Section 2210.582(d) provides that the Commissioner shall adopt rules as necessary to implement an amended budget submitted under this section, including rules regarding the transfer of additional money from the Association to the ombudsman program. Section 2210.582(h) provides that the Association, in the manner prescribed by the Commissioner by rule, shall notify each person insured under this chapter concerning the operation of the ombudsman program. Section 2210.582(i) provides that the Commissioner may adopt rules as necessary to implement §2210.582. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of the state.

**8. CROSS-REFERENCE TO STATUTE.** The following statute is affected by this proposal:

RULE	STATUTE
§5.4201	Insurance Code §2210.582

**9. TEXT.**

**DIVISION 4. CONSUMER ASSISTANCE; CLAIM PROCESSES.**

**§5.4201. Coastal Outreach and Assistance Services Team (COAST) Program.**

(a) Establishment. The Texas Department of Insurance (department) establishes the Coastal Outreach and Assistance Services Team (COAST) Program to provide information and educational programs to assist persons insured under Chapter 2210 of the Insurance Code. Areas of assistance include the claim processes prescribed under Subchapter L-1, Chapter 2210 of the Insurance Code.

(b) Administration. The COAST Program is administratively attached to the department and will be administered by the department.

(c) Staffing. The COAST Program will include an ombudsman familiar with the claim processes prescribed under Subchapter L-1, Chapter 2210, of the Insurance Code, as well as sufficient staff to support its purpose. If a catastrophic event occurs, the COAST Program may expand as necessary to support the increased number of policyholders requiring assistance.

(d) Funding. The COAST Program will be funded on a yearly basis by the Texas Windstorm Insurance Association (the Association).

(1) The funding year shall be from May 1 of each year to April 30 of the following year.

(2) Not later than March 1 of each year, the department shall prepare and submit to the Commissioner of Insurance (commissioner) a budget for the COAST Program, including approval of all expenditures incurred to administer and operate the COAST Program. The department may include ongoing ombudsman activities related to a prior catastrophic event in the annual budget request. The commissioner will adopt or modify and adopt the budget not later than April 1 of each year.

(3) Not later than May 1 of each year, the Association shall transfer the budgeted amount adopted by the commissioner to the department for the COAST Program.

(4) Following a catastrophic event:

(A) not later than 60 days after the event, the department shall prepare and submit an amended budget to the commissioner for approval, including staffing requirements and expenditures necessary to administer and operate the COAST Program;

(B) not later than 60 days after the event, the department shall report to the commissioner the number of claimants eligible for COAST Program services;

(C) the commissioner may modify the amended budget before adopting it; and

(D) within 15 days of receiving notice of the adopted amended budget, the Association shall transfer the amended budget amount adopted by the commissioner to the department for the COAST Program.

(e) Services.

(1) The COAST Program may provide to persons insured under Chapter 2210 of the Insurance Code information and educational programs through means the COAST Program determines to be necessary and appropriate. Possible means include:

(A) informational materials;

(B) toll-free telephone numbers;

(C) public meetings;

(D) outreach centers;

(E) the Internet; and

(F) other reasonable means.

(2) The COAST Program shall prepare and make available to each person insured under Chapter 2210 of the Insurance Code information describing the functions of the COAST Program.

(f) Notice Requirement. The Association must provide each person insured by the Association on or after November 27, 2011, notice of the operation of the COAST Program. The Association shall fulfill this requirement by complying with paragraphs (1), (2), and (3) of this subsection.

(1) The Association must include the notices set forth in subsection (g)(1) and (2) of this section with each policy delivered, issued for delivery, renewed, or

otherwise processed by the Association. Notwithstanding §1.601(a)(3) of this title (relating to Notice of Toll-Free Telephone Numbers and Information and Complaint Procedures), the Association must fulfill this requirement by printing the notices on a separate piece of paper to be included with the policy or by incorporating the notice into the Important Notice required to be attached to the policy under §1.601 of this title.

(2) The Association must include the notice set forth in subsection (g)(1) of this section with each written communication acknowledging receipt of a claim. The Association must fulfill this requirement by printing the notice on a separate piece of paper to be included with the communication acknowledging receipt of a claim or by incorporating the notice into the acknowledgement.

(3) The Association must include the notice set forth in subsection (g)(1) of this section with each written communication accepting or denying coverage of a claim, in whole or in part, that is required to be provided to the claimant under the Insurance Code §2210.573(d). The Association must fulfill this requirement by printing the notice on a separate piece of paper to be included with the acceptance or denial communication or by incorporating the notice into the acceptance or denial document.

(g) Notice. The notice required by subsection (f) of this section must include the following text and be in at least 10 point type.

(1) “The Texas Department of Insurance has established the Coastal Outreach and Assistance Services Team (COAST) Program to assist consumers with understanding the TWIA claim process. To obtain assistance from the COAST Program, please refer to the COAST Program website at [www.tdi.texas.gov/COAST](http://www.tdi.texas.gov/COAST); email [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us); call toll-free 1-855-352-6278; or write to

COAST Program – MC 111-1A, Texas Department of Insurance, P.O. Box 149104, Austin, TX 78714-9104.”

(2) “El Departamento de Seguros de Texas ha establecido el Programa de Alcance Comunitario y Servicios de Asistencia para el Área Costera (Coastal Outreach and Assistance Services Team (COAST) Program, por su nombre y siglas en inglés) para ayudar a los consumidores a entender el proceso de las reclamaciones de TWIA. Para obtener ayuda del Programa COAST, visite el sitio Web del Programa COAST en [www.tdi.texas.gov/COAST](http://www.tdi.texas.gov/COAST); por medio de correo electrónico a [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us); o llame gratis al 1-855-352-6278; o escriba al Programa COAST - MC 111-1A, Texas Department of Insurance, PO Box 149104, Austin, TX 78714-9104.”