

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 4. CONSUMER ASSISTANCE; CLAIM PROCESSES
28 TAC §5.4201

1. INTRODUCTION. The Commissioner of Insurance (Commissioner) adopts new Division 4, §5.4201. Section 5.4201 is adopted with changes to the proposed text published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6864).

2. REASONED JUSTIFICATION. Section 5.4201 is necessary to implement new Insurance Code §2210.582, enacted in House Bill 3 (HB 3), 82nd Legislature, 2011, First Called Session. Section 2210.582 requires the Department to establish an ombudsman program to provide information and educational programs that will assist persons insured by the Texas Windstorm Insurance Association (Association) with the claim processes under Subchapter L-1, Chapter 2210, Insurance Code.

In response to written comments on the published proposal, the Department has changed some of the proposed language in the text of the rule as adopted. The changes, however, do not introduce new subject matter, create additional costs, or affect persons other than those previously on notice from the proposal.

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 ombudsman program is essential to implementing that intent.

Section 5.4201(a) establishes the Coastal Outreach and Assistance Services Team (COAST) Program to satisfy the ombudsman requirement in Insurance Code §2210.582. In response to comments, the language of §5.4201(a) has been amended from the proposed text to exactly restate the statutory requirement. The change is not considered substantive, but is made to avoid potential confusion.

Section 5.4201(b) states that the COAST Program will be administered by the Department, as required under Insurance Code §2210.582(f). As an administered program, the Department will have exclusive control over the staffing, location, equipment, and operations of the COAST Program.

Section 5.4201(c) addresses COAST Program staffing. The COAST Program will rely on an ombudsman and a sufficient staff to support the Coast Program's purpose. Funding for regular staff will be provided through the annual budget process set forth in §5.4201(d), which is described below. The number of COAST Program staff may be increased to support the increased number of policyholders requiring assistance following a catastrophic event. Funding for the additional staff would be granted through the amended budget process set forth in §5.4201(d)(2), as authorized in the Insurance Code §2210.582(d).

The Insurance Code §2210.582(c) requires the Association to fund all expenses incurred in administering and operating the program. Section 5.4201(d) sets forth funding provisions for the COAST Program. These provisions are consistent with

Insurance Code §2210.582(b) - (d). In response to comments, the language of §5.4201(d) has been amended from the proposed text.

Section §5.4201(d)(1) describes the budget process that is set forth in Insurance Code §2210.582(b) and (c). Because this budget is determined yearly, it is referred to in §5.4201(d)(1) as the annual budget. Section §5.4201(d)(2) describes the process of amending the budget following a catastrophic event. This post-catastrophic event budget is referred to in §5.4201(d) as the amended budget.

The annual budget process is set forth in the statute and included in the adopted section to provide the reader with the complete process. As required by statute, the Department is to propose the budget by March 1 of each year to the Commissioner. The Commissioner must adopt, or modify and adopt, the COAST program budget not later than April 1 of each year. The Association must transfer the budgeted amount adopted by the Commissioner to the Department for the COAST Program not later than May 1 of each year. The statute does not require a rule to implement the annual budget process. The statute does not include additional requirements that the annual budget be in a particular form, be adopted by Commissioner order, or be submitted to the Association in a particular form, and the rule does not create these additional requirements.

In contrast, Insurance Code §2210.582(d) requires the Commissioner to adopt necessary rules concerning the amended budget process, including the transfer of additional money required to fund the amended budget. Section 5.4201(d)(2)

addresses the procedures and requirements implementing the amended budget process.

Consistent with the Insurance Code §2210.582(d), §5.4201(d)(2)(A)(i) and (ii) 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)(2)(B) provides that the Commissioner may modify the amended budget before adopting it. Again, this requirement is consistent with the statute, which does not require that the amended budget be adopted by order or specify the form of the budget.

Section 5.4201(d)(2)(C) has been changed to provide that the Association must transfer additional money required to fund the adopted COAST Program amended budget within 30 days of the adoption of the amended budget, which is consistent with the 30-day statutory time period of April 1 to May 1 for funding the annual budget. It is not necessary for the Commissioner to issue an additional order to require the Association to comply with Department rules.

Section 5.4201(d)(3) has been added to the adopted text to clarify the application of the return of funds provision stated in Insurance Code §2210.582(c). The statute requires the COAST Program to return to the Association unexpended funds that were received in the previous year, not later than April 30 of each year. The location of the requirement in Insurance Code §2210.582(c) demonstrates that it applies to annual budget funds. The adopted text clarifies that the requirement also provides an orderly

process for returning unexpended amended budget funds. Thus, §5.4201(d)(3) applies to both unexpended annual and amended budget funds received in the previous year. Section 5.4201(d)(3) does not require the return of unexpended funds that have been received prior to April 30 in the same year. 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 necessary and appropriate. The means listed in §5.4201(e) are consistent with those listed in the Insurance Code §2210.582(e). This subsection emphasizes that the COAST program can be flexible in selecting the appropriate means to reach its intended audience.

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) specifies how the Association must fulfill that requirement. The Association must include the required COAST Program notice with or within documents being sent at policy issuance and renewal and with communications concerning receipt, acceptance, or denial of claims. Section 5.4201(f) provides that these documents may be sent with other notices, 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). The requirement is not retroactive, because the Association policy form was amended to include the notice in its new and renewal policies issued on and after November 27, 2011. Sending the notice in this manner should make the notice more accessible and timely to policyholders and reduce costs

for the Association. A nonsubstantive change was made to §5.4201(f) to correct the term “notices” to “notice.” Section 5.4201(g) provides the notice contents required by §5.4201(f) in both English and Spanish.

3. HOW THE SECTION WILL FUNCTION. Section 5.4201 establishes the COAST Program to fulfill the Insurance Code §2210.582 requirement 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. Section 5.4201 further sets forth procedures for adopting and funding the COAST Program budget, adopting and funding an amended budget following a catastrophic event, and the procedure that the Association shall use to notify policyholders about the COAST program and its services.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Section 5.4201(a).

Comment: A commenter stated that language in subsection (a) and the use of the term “including” could be read to extend the functions of the COAST Program beyond the scope of the statutory authorization in Insurance Code §2210.582(a). The commenter suggests that the language be limited to the statutory provision.

Agency Response: The inclusion of subsection (a) is to provide the reader with the purpose of the COAST Program under the statute and was not intended to extend the

program's functions. To avoid potential confusion, the Department has made the suggested change.

Section 5.4201(d).

Comment: A commenter suggests that the subsection be changed to create two subdivisions. The first subdivision would address the COAST Program's "annual budget" procedure under Insurance Code §2210.582(b) and (c). The second subdivision would address the COAST Program's "amended budget" procedure under Insurance Code §2210.582(d). The suggested change would also remove the phrase "on a yearly basis" from §5.4201(d).

Agency Response: The Department agrees and has made the suggested changes. The Department will use the terms "annual budget" and "amended budget."

Comment: A commenter suggests that §5.4201(d) specify that the Commissioner must issue an order adopting the annual budget and the amended budget.

Agency Response: Insurance Code §2210.582 does not require the "annual budget" or the "amended budget" to be adopted by order. Insurance Code §2210.582(b) requires the Commissioner to adopt or modify and adopt the annual budget. Insurance Code §2210.582(d) requires the Department to submit an amended budget to the Commissioner for approval.

Insurance Code §2210.582(b) compels the Association to, not later than May 1 of each year, transfer money in an amount equal to the adopted annual budget amount to the COAST Program. Insurance Code §2210.582(d) requires the Commissioner to

establish rules regarding the transfer of additional money required under the amended budget from the Association to the COAST Program.

The Department administers the COAST Program under Insurance Code §2210.582(f) and has exclusive authority to determine how budgeted funds are spent to fulfill the COAST Program's statutory requirements. The Commissioner is the Department's chief executive and administrative officer, under Insurance Code §31.021. The Commissioner does not administer the Department through orders.

Adoption of the annual budget is a Commissioner decision concerning a Department administered activity. The Commissioner is not required to issue orders to the Department concerning its administrative activity. Insurance Code §2210.582(c) sets the annual budget process and requires the Association to transfer the adopted budget amount not later than May 1 of each year. Thus, neither the adopted section nor an order is required to implement funding of the annual budget.

Approval of the amended budget is also a Commissioner decision concerning a Department administered activity and likewise an order would not be required for that approval. Insurance Code §2210.582(d) states that the transfer of the amended budget will be determined by rule. The proposed section required the Association to transfer the additional amended budget funds within 15 days of the adoption of the amended budget. As this requirement set a definite period, a specific requirement for an order implementing the period was not necessary. As the section has been revised, §5.4201(d)(2)(C) establishes the requirement that the Association shall transfer additional money required to fund the adopted COAST Program amended budget within

30 days of the adoption of the amended budget, which is an extension of the 15-day period set forth in the proposal and consistent with the 30-day statutory time period of April 1 to May 1 for funding the annual budget. It is not necessary for the Commissioner to issue an additional order to require the Association to comply with Department rules,

Comment: A commenter suggests that §5.4201(d) specify criteria for budget items and requirements that they comply with legislative requirements. The commenter provides suggested language that the budgets specifically state: (1) staff and salaries; (2) each area of a specific expenditure; (3) differences in the proposed and adopted budgets and the reason for the difference; and (4) how the approved funds will fulfill the legislative requirements.

Agency Response: Legislative requirements concerning the COAST Program are set forth in Insurance Code §2210.582. As provided in Insurance Code §32.021, the Commissioner is the chief executive and administrative officer of the Department and charged with administering and enforcing the Insurance Code. As chief executive officer, the Commissioner is responsible for determining that the annual budget and amended budget are in compliance with the requirements of the Insurance Code. The suggested rule requirements are unnecessary.

The legislature has not prescribed the form of the budget. The Commissioner and Department may prepare the budget in a form that complies with the requirements of the Department, which administers the COAST Program. The Department has not made changes to the proposed text based on this comment.

Comment: A commenter suggests that the time period in §5.4201(d) for transferring money under the amended budget be extended from within 15 days to within 30 days after the amended budget is adopted. The commenter is concerned that the Association may not have sufficient time to convene a meeting of the Association's board of directors within the 15-day period to authorize the transfer if the required amount exceeds management's preauthorized payment authority.

Agency Response: As addressed in a prior response, the legislature provided a 30-day time period of April 1 to May 1 for funding the annual budget. The adopted section has been changed to establish a similar 30-day funding period following the adoption of the amended budget.

Comment: A commenter suggests that §5.4201(d) state that unexpended funds from the annual budget and amended budget be returned to the Association not later than April 30 of each year.

Agency Response: The Department agrees that it is necessary to clarify the procedure concerning the return of funds. Section 5.4201(d)(3) has been added to the adopted text to clarify the application of the return of funds provision stated in Insurance Code §2210.582(c). The statute requires the COAST Program to return to the Association unexpended funds that were received in the previous year, not later than April 30 of each year. The location of the requirement in Insurance Code §2210.582(c) demonstrates that it applies to annual budget funds. The adopted text clarifies that the requirement also provides an orderly process for returning unexpended amended

budget funds. Thus, §5.4201(d)(3) applies to both unexpended annual and amended budget funds received in the previous year.

Comment: A commenter suggests changing “not” to “no” in certain statements in §5.4201(d).

Agency Response: The Department disagrees with this comment because the text conforms to the statute. The Department has not made the suggested change.

Section 5.4201.

Comment: A commenter suggests that the rule require the COAST Program to provide a report to the Association evaluating the extent to which the COAST Program met the objectives described in Insurance Code §2210.582. The commenter suggests that the report would assist the Association in preparing its legislative reports on the performance of the Association and the Association’s board of directors required under Insurance Code §2210.107.

Agency Response: Insurance Code §2210.582 provides that the Department, not the Association, is responsible for the administration of the COAST program. Insurance Code §2210.582 does not require the requested report. The Commissioner and the Department will report to the legislature on the activities of the COAST program as required by statute and requested by the legislature. The Department has not made a change based on this comment.

5. NAMES OF THOSE COMMENTING ON THE PROPOSAL.

Neither for nor Against the proposal, with suggested changes: Texas Windstorm Insurance Association.

6. STATUTORY AUTHORITY. Section 5.4201 is adopted under §§2210.008, 2210.580, 2210.582, and 36.001 of the Insurance Code. The Insurance Code §2210.008(a) authorizes the Commissioner to issue orders that the Commissioner considers necessary to implement Chapter 2210. The Insurance Code §2210.008(b) 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(b) requires that all rules adopted under §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 after a catastrophic event, 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 the Insurance Code Chapter 2210 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.

7. 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 with 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 by the Texas Windstorm Insurance Association (the Association).

(1) Annual budget.

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

(B) 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.

(C) 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.

(2) Amended budget.

(A) Not later than 60 days after a catastrophic event, the department shall:

(i) prepare and submit an amended budget to the commissioner for approval, including staffing requirements and expenditures necessary to administer and operate the COAST Program; and

(ii) report to the commissioner the number of claimants eligible for COAST Program services.

(B) The commissioner may modify the amended budget before adopting it.

(C) Within 30 days after the commissioner adopts the amended budget, the Association must transfer the additional money required by the amended budget to the department for the COAST Program.

(3) Return of unexpended funds. Not later than April 30 of each year, the department must return to the Association any unexpended funds that the COAST Program received from the Association in the previous year.

(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 notice 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; email ConsumerProtection@tdi.state.tx.us; call toll-free 1-855-352-6278; or write to COAST Program – MC 111-1A, Texas Department of Insurance, PO 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; por medio de correo electrónico a 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.”

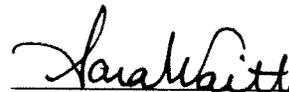
12-0156

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 5. Property and Casualty Insurance

Adopted Section
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10. CERTIFICATION. This agency certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

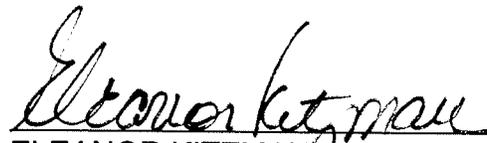
Issued at Austin, Texas, on February 8, 2012.



Sara Waitt
General Counsel
Texas Department of Insurance

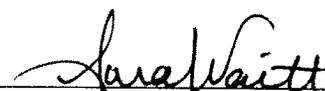
IT IS THEREFORE THE ORDER of the Commissioner of Insurance that §5.4201 is adopted.

AND IT IS SO ORDERED.



ELEANOR KITZMAN
COMMISSIONER OF INSURANCE

ATTEST:



Sara Waitt
General Counsel

COMMISSIONER'S ORDER NO. **12-0156**
FEB 28 2012