

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 3
POLICY FORMS
28 TAC §5.4101

DIVISION 4
ENDORSEMENTS
28 TAC §5.4201

DIVISION 5
TEXAS SPECIAL MOBILE HOME
WINDSTORM AND HAIL INSURANCE POLICY
28 TAC §5.4401

DIVISION 6
MANUAL
28 TAC §5.4501

1. **INTRODUCTION.** The Texas Department of Insurance proposes amendments to §§5.4101, 5.4201, 5.4401 and 5.4501, concerning the adoption by reference of the dwelling, mobile home, and commercial policy forms, endorsements for use with policy forms, and the rules manual used to provide windstorm and hail insurance coverage through the Texas Windstorm Insurance Association (TWIA). The purpose of TWIA is to provide windstorm and hail coverage to residents and businesses in the designated catastrophe areas that are unable to obtain such coverage in the voluntary market. TWIA filed a petition with the department on December 1, 2004 (Ref. No. P-1204-22) requesting that §§5.4101, 5.4201, 5.4401 and 5.4501 and documents adopted by reference (Form No. TWIA-431, Form No. TWIA-432, Form No. TWIA-320, TWIA Dwelling Policy, TWIA Texas Special Mobile Home Windstorm and Hail Insurance

Policy, TWIA Commercial Policy, and TWIA Manual) be amended. These forms and manual may be obtained by contacting the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-0909, (512) 899-4900 or the Personal Lines Division, Mail Code 104-1A, of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104, and (512) 322-2266.

The proposed amendments reflect five separate and distinct changes in policy forms and endorsements. The first amendment is the proposal of two new endorsements that provide coverage for increased cost in construction due to a requirement or regulation to rebuild or repair a structure in accordance with the windstorm building code or any building ordinance or law. This amendment includes the withdrawal of an existing endorsement as well as changes to the Manual. The second proposed amendment clarifies the exception to the exclusion of rain damage in the dwelling policy. The third proposed amendment clarifies coverage for wind-driven rain damage provided in the extension of coverage endorsement that may be attached to the dwelling policy. The fourth proposed amendment clarifies the exclusion for mold, fungi, or other microorganisms in the dwelling, commercial, and mobile home policies. The fifth proposed amendment provides for the exclusion of damage caused by or resulting from asbestos, including exclusion for the cost for testing and clean-up in the dwelling, commercial and mobile home policies.

Lastly, the department proposes editorial changes to the rules that include current titles and addresses, consistent language between rules and elimination of obsolete references.

The TWIA Dwelling Policy and the TWIA Commercial Policy do not currently provide coverage for the increased cost in construction that may occur due to requirements to rebuild or replace structures in accordance with current building laws or ordinances. TWIA currently offers coverage for increased cost of construction to rebuild to the windstorm building code through the attachment of an optional endorsement: Form No. TWIA-430, Extension of Coverage-Increased Cost of Construction. The proposed amendment withdraws Form No. TWIA-430 and proposes replacing it with two new optional endorsements: Form No. TWIA-431, Extension of Coverage-Increased Cost of Construction (for dwelling policies) and Form No. TWIA-432, Extension of Coverage-Increased Cost of Construction (for commercial policies). The new endorsements would provide coverage for increased cost of construction to rebuild to current building laws or ordinances and provide the current coverage for increased cost of construction to rebuild to the applicable windstorm building code. The proposed additional coverage would apply to the demolition or repair of an undamaged portion of a structure if necessary to meet the requirements of the law or ordinance. In addition to proposing Form No. TWIA-431 and Form No. TWIA-432, the department proposes to amend the Manual to reflect the usage of the new endorsements and corresponding rates.

Rain damage is not covered by the dwelling or commercial policies, unless wind or hail first makes an opening in the walls or roof and the rain enters through the opening. The proposal amends the exception to the rain damage exclusion in the TWIA Dwelling Policy to be more consistent with the rain damage exclusion in the Commercial Policy. The proposed amendment clarifies that for coverage to apply, the direct force of the wind or hail must first make an opening in the walls or roof and the wind-driven rain must “immediately” cause damage during a windstorm to the interior of the building and its contents. Additionally, TWIA currently offers an extension of coverage, Form No. TWIA-320, that may be attached to the TWIA Dwelling Policy to provide coverage for damage caused by wind-driven rain whether or not an opening is made in the dwelling by the direct force of wind or hail. This proposal amends Form No. TWIA-320 to specify that coverage applies only to “sudden and accidental” losses caused “immediately by wind-driven rain during a windstorm.”

The proposed amendments also provide an exclusion to the commercial, dwelling, and mobile home policies for any loss or damage due to asbestos, fungi, mold and other microorganisms.

The department will consider the adoption of these amendments in a public hearing under Docket Number 2624, scheduled for 9:30 a.m. on October 20, 2005, in Room

100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

2. FISCAL NOTE. Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal implications for state government or local government as a result of enforcing or administering the proposed amendments. Ms. Hamilton has also determined that for each year of the first five years the proposed amendments will be in effect, there will be no adverse effect on local employment or the local economy.

3. PUBLIC BENEFIT/COST NOTE. Ms. Hamilton has further determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the proposed amendments will be the availability of two new optional endorsements that provide coverage for increased costs in construction beyond what is currently offered by TWIA as well as the offering of policies that more clearly state the coverage provided by and excluded under TWIA policies. Clarifying the TWIA policy exclusions and exceptions to those exclusions benefits TWIA insureds by enabling TWIA to pay only for losses that were intended to be covered by its policies and eliminating unnecessary costs that could lead to higher rates or possible

assessments to its members. Additionally, clarifying what is excluded and covered under its policies will enable TWIA to achieve its purpose.

TWIA will incur costs for printing the new policies and endorsements; however, TWIA has agreed to bear such costs by filing the petition. Under proposed §5.4501, TWIA will not incur the costs in printing and distributing the revised pages of the Manual because the Manual is printed and distributed by CCH Insurance Services (CCH) and ICT Services (ICT). Agents who utilize the Manual subscribe to it directly from one of these sources. ICT charges \$15.00 for new subscriptions and \$15.00 to renew a subscription which includes providing the Manual and all updates to the Manual. CCH charges \$44.00 for new subscriptions and \$21.00 to renew a subscription which includes providing the Manual and all updates to the Manual. CCH and ICT have informed the department that they will print and distribute the updated Manual pages to their subscribers at no additional charge. Since there will be no new costs, other than printing new policies and endorsements and no new costs to agents who write windstorm and hail insurance through TWIA to obtain the Manual updates, there is no anticipated adverse economic effect regarding the regulatory cost of compliance with the proposal. Additionally, Government Code §2006.001 defines "small business" and "micro-business" in pertinent part as a legal entity, including a corporation, partnership, or sole proprietorship that is formed for the purpose of making a profit. Since TWIA was

not formed for the purpose of making a profit, it does not meet the definition, and thus a small or micro-business analysis is not statutorily required.

4. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposed amendments must be submitted no later than 5:00 p.m. on October 24, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, MC 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104.

5. STATUTORY AUTHORITY. The amendments are proposed pursuant to Insurance Code Article 21.49 and §36.001. Pursuant to Article 21.49, §8, the Commissioner is authorized to promulgate policy forms and endorsements for use by the TWIA in providing windstorm and hail insurance coverage without regard to other forms filed with, approved by, or promulgated by the Commissioner for use in this state, and further the Commissioner is authorized to approve, modify, or disapprove every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing used by the TWIA. Article 21.49, §5A provides that the Commissioner may, after notice and hearing, issue any orders which the Commissioner considers necessary to carry out the purposes of Article 21.49, including, but not limited to, maximum rates,

competitive rates, and policy forms. 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 this state.

6. CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal:

<u>Rule Number</u>	<u>Statute</u>
§§5.4101, 5.4201, 5.4401, and 5.4501	Insurance Code Article 21.49

7. TEXT.

DIVISION 3. POLICY FORMS

§5.4101. TWIA [~~Association~~] **Dwelling and Commercial Policy Forms.** The Texas Department of Insurance adopts by reference the Texas Windstorm Insurance Association Dwelling Policy and the Texas Windstorm Insurance Association Commercial Policy as amended effective January 1, 2006 [~~March 1, 2003~~]. Specimen copies of these policy forms [~~These documents~~] are [~~published by and~~] available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. Copies [~~They~~] may also be obtained by contacting the Personal Lines [~~Automobile and Homeowners~~] Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, [~~P.O. Box 149104,~~] Austin, Texas 78714-9104.

DIVISION 4. ENDORSEMENTS

§5.4201. Endorsements for Use with TWIA ~~[Association]~~ Policy Forms. The Texas Department ~~[Commissioner]~~ of Insurance adopts by reference endorsements for use with the Texas Windstorm Insurance Association (TWIA) Policy Forms. Specimen copies of these endorsements ~~[endorsement forms]~~ are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. They are also available from the Personal Lines ~~[Automobile and Homeowners]~~ Division, Mail Code 104-1A ~~[104-5A]~~, Texas Department of Insurance, 333 Guadalupe Street ~~[P.O. Box 149104]~~, Austin, Texas 78714-9104. The endorsement forms are more specifically identified as follows.

(1) Endorsements for use with the TWIA ~~[Association]~~ Dwelling Policy and the TWIA ~~[Association]~~ Commercial Policy ~~[and the Association Farm and Ranch Dwelling Policy.]:~~

~~[(A) Form No. TWIA-1, Blank Schedule Form, effective June 15, 1999.~~

~~[(B) Form No. TWIA-430, Extension of Coverage--Increased Cost in Construction, effective June 15, 1999.]~~

(2) Endorsements for use with the TWIA ~~[Association]~~ Dwelling Policy and the TWIA ~~[Association]~~ Commercial Policy and ~~[the Association Farm and Ranch~~

~~Dwelling Policy and~~ the Texas Special Mobile Home Windstorm and Hail Insurance Policy.

(A) - (I) (No change.)

(3) Endorsements for use with the TWIA ~~[Association]~~ Commercial Policy.

(A) - (J) (No change.)

(K) Form No. TWIA-432, Extension of Coverage -- Increased Cost of Construction (Commercial) effective January 1, 2006.

(4) Endorsements for use with the TWIA ~~[Association]~~ Dwelling Policy.

(A) - (B) (No change.)

(C) Form No. TWIA-320, Extensions of Coverage, effective January 1, 2006 ~~[amended, June 15, 1999]~~.

(D) - (G) (No change.)

(H) Form No. TWIA-431, Extension of Coverage - Increased Cost in Construction (Dwelling), effective January 1, 2006.

(5) Endorsements for use with the TWIA ~~[Association]~~ Dwelling Policy ~~[and the Association Farm and Ranch Dwelling Policy]~~.

(A) - (H) (No change.)

(6) Endorsements for use with the Texas Special ~~[Association]~~ Mobile Home ~~[Policy-Texas Special Mobile Home]~~ Windstorm and Hail Insurance Policy.

(A) - (C) (No change.)

DIVISION 5. TEXAS SPECIAL MOBILE HOME
WINDSTORM AND HAIL INSURANCE POLICY

**§5.4401. Texas Special Mobile Home Windstorm and Hail Insurance Policy--
Deductible Coverage.** The Texas Department of Insurance adopts by reference the Texas Special Mobile Home Windstorm [~~special mobile home windstorm~~] and Hail Insurance Policy [~~hail insurance policy~~]-Deductible Coverage, [~~deductible coverage~~] as amended effective January 1, 2006. [~~March 1, 2003~~]. Specimen copies of this policy are [~~This document is published by and~~] available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. Copies [~~#~~] may also be obtained by contacting the Personal Lines [~~Automobile and Homeowners~~] Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, [~~P.O. Box 149104,~~] Austin, Texas 78714-9104.

DIVISION 6. MANUAL

§5.4501. Rules for the Texas Windstorm Insurance Association. The Texas Department of Insurance adopts by reference a rules manual for the Texas Windstorm Insurance Association as amended effective January 1, 2006 [~~June 15, 1999~~]. ~~The Texas Department of Insurance adopts by reference amendments effective May 1, 2001, October 15, 2002, May 1, 2003, and July 31, 2003, to the rules manual~~. A specimen copy of the rules manual is available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin Texas 78709-9090. Copies [~~of the rules manual~~] may also be obtained by contacting the Personal Lines [~~Automobile and Homeowners~~]

Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street,
[~~P.O. Box 149104,~~] Austin, Texas 78714-9104.

8. CERTIFICATION. This agency hereby certifies that the proposal has been reviewed
by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas _____, 2005.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance