

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 Commissioner of Insurance adopts amendments to §§5.4101, 5.4201, 5.4401, and 5.4501, concerning Texas Windstorm Insurance Association (TWIA) policy forms, endorsements, and manual rules. The sections are adopted with changes to the proposed text published in the January 4, 2008 issue of the *Texas Register* (33 TexReg 52).

2. REASONED JUSTIFICATION. The purpose of TWIA, as stated in the Insurance Code §2210.001, 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. The Insurance Code §2210.351 requires that TWIA must file with the Department modifications of policy and endorsement forms that TWIA proposes to use, and authorizes the Commissioner to approve, disapprove, or modify the modifications of policy forms and endorsements in writing. The Insurance Code §2210.008 requires

that the Commissioner approve TWIA policy forms by order after notice and a hearing. The Insurance Code §2210.351 also requires that TWIA must file with the Department each modification of the rules manual it proposes to use, and authorizes the Commissioner to approve, modify, or disapprove in writing each modification of the rules manual submitted.

Section 5.4101 adopts by reference the TWIA Dwelling and Commercial Policies; §5.4201 identifies endorsements available for the TWIA Dwelling, Commercial, and Texas Special Mobile Home Windstorm and Hail Insurance Policies, and adopts such endorsements by reference; §5.4401 adopts by reference the Texas Special Mobile Home Windstorm and Hail Insurance Policy; and §5.4501 adopts by reference a rules manual for TWIA.

Adopted §5.4101 is necessary to approve TWIA Commercial and Dwelling Policies that contain a clarified flood exclusion clause (specifically excluding losses or damages caused by floods, surface water, waves, storm surge, tides, tidal water, tidal waves, tsunamis, seiche, overflow of streams or other bodies of water, or spray from any of these, all whether driven by wind or not) and a clarified deductible clause that specifies that deductibles apply on a per item per occurrence basis. References to the Insurance Code in existing TWIA Commercial and Dwelling Policies are updated to conform to the non-substantive Code revision enacted by the 79th Legislature in HB 2017, effective April 1, 2007.

Adopted §5.4201 is necessary to approve an optional new endorsement for the TWIA Dwelling Policy that provides for an annual increase in the dwelling

limit of liability by a percentage determined from a building cost index to be designated by TWIA. Adopted §5.4201 is also necessary to conform references to the Insurance Code in existing endorsements for TWIA Commercial and Dwelling Policies to the non-substantive Code revision enacted by the 79th Legislature in HB 2017, and to delete from §5.4201 an endorsement for the TWIA Commercial Policy (Form No. TWIA-65, Large Deductible Endorsement). Form No. TWIA-65 is obsolete following the approval of new commercial deductible options in Commissioner's Order No. 06-1110, issued October 16, 2006.

Adopted §5.4401 is necessary to approve a Texas Special Mobile Home Windstorm and Hail Insurance Policy containing a clarified flood exclusion clause (specifically excluding the same losses or damages as the modified TWIA Dwelling and Commercial Policies) and to conform references to the Insurance Code to the non-substantive Code revision enacted by the 79th Legislature in HB 2017.

Adopted §5.4501 is necessary to implement updates to the existing TWIA rules manual that reflect commercial deductible options and associated credits established by Commissioner's Order No. 06-1110 and delete obsolete options and associated credits; clarify that commercial and dwelling deductibles apply on a per item per occurrence basis; make known the availability of an optional new Dwelling Policy endorsement that annually adjusts the limit of liability by a percentage determined from a building cost index to be designated by TWIA; and designate Form No. TWIA-65 as unavailable.

The modifications of the flood exclusion clause clarify existing language in the TWIA Dwelling Policy, the TWIA Commercial Policy, and the Texas Special Mobile Home Windstorm and Hail Insurance Policy. The adopted modified flood exclusion clause specifically excludes *any and all losses or damages caused by floods, surface water, waves, storm surge, tides, tidal water, tidal waves, tsunamis, seiche, overflow of streams or other bodies of water, or spray from any of these, all whether driven by wind or not.* The existing flood exclusion clauses in all three policies currently exclude flood losses, but do not contain as detailed a list of exclusions as the adopted modified clauses. It is particularly important that TWIA policy forms incorporate a clarified flood damage clause, so that policyholders fully understand that the risk of flood damage is not covered under the TWIA policies, and may consider the separate purchase of federal flood insurance if available.

The modification of the deductible clause in both the Commercial and Dwelling Policies clarifies that deductibles apply on a per item per occurrence basis. This modification reflects the current practice and is not a substantive change in the TWIA application of deductibles following a loss. In addition, Commissioner's Order No. 06-1110, dated October 16, 2006, established three commercial deductible options of one percent, two percent, and five percent, based on the limit of insurance for the covered item and associated credits for each option. Two examples in the TWIA Commercial Policy illustrating the effect of coinsurance on coverage are updated by using a new value for a hypothetical deductible from the options established in Commissioner's Order No. 06-1110. A

Commercial Policy endorsement (Form No. TWIA-65, Large Deductible Endorsement), is repealed because it is obsolete following the revision in TWIA commercial deductible options. Updates to the existing TWIA rules manual include new commercial deductible options and a schedule of credits for the new options (and delete obsolete commercial deductible options and schedules of credits for the obsolete options) (Rules Manual Section I, General Rules, subsection J.2). These updates will assist agents by providing a correct schedule of credits for current commercial policy deductible options. Other updates clarify that commercial deductibles apply per item per occurrence (Rules Manual Section I, General Rules, subsection J.2), and advise that Commercial Policy endorsement Form No. TWIA-65 is no longer available (Rules Manual Section II, Policy Forms and Endorsements, subparagraph A.2.b.(7)).

Additional modifications to the existing TWIA Dwelling Policy, the existing TWIA Commercial Policy, and the existing Texas Special Mobile Home Windstorm and Hail Insurance Policy update references to the Government Code Chapter 418 concerning the declaration of a disaster and provide in each existing policy form a lengthier disclosure of Insurance Code appeal procedures. The lengthier disclosure of Insurance Code appeal procedures does not substantively change the legal procedures available to policyholders through the existing policies, but does update the Insurance Code references to conform to the non-substantive Code revision enacted by the 79th Legislature in HB 2017. An adopted modification of the existing Texas Special Mobile Home Windstorm and Hail Insurance Policy deletes an obsolete reference to the *Board of Insurance*

and replaces it with the *Texas Department of Insurance*. The adopted modifications of two existing endorsements (Form No. TWIA-432, Extension of Coverage--Increased Cost of Construction (Commercial) and Form No. TWIA-431, Extension of Coverage--Increased Cost of Construction (Dwelling)), do not change the substantive terms of the endorsements, but provide updated references to the Insurance Code Chapter 2210 to conform to the non-substantive Code revision enacted by the 79th Legislature in HB 2017. The updating of legal references in the policy forms and endorsements will assist policyholders and agents locate and review applicable law.

A new optional dwelling endorsement (Form No. TWIA-200, Adjusted Building Cost Endorsement), adopted by reference in amended §5.4201(4)(Q), provides for an annual increase in the dwelling limit of liability by a percentage determined from a building cost index to be designated by TWIA. This endorsement will be provided, at the insured's option, at no additional premium. The resulting increases in limits are not mandatory and may be subsequently modified or rejected by the insured. An update to the existing TWIA rules manual reflects the availability of the new dwelling endorsement (Rules Manual Section II, Policy Forms and Endorsements, subparagraphs A.2.a.(11) and A.2.c.(11)). Non-substantive changes in Rules Manual Section II are also made to the lettered and numbered designations of endorsements listed after amended Rules Manual Section II, subparagraphs A.2.a.(11) and A.2.a.c.(13). The adoption of the new dwelling endorsement (Form No. TWIA-200, Adjusted Building Cost Endorsement) and the amendment of the rules manual to reflect the availability

of the new endorsement will assist policyholders and agents maintain adequate windstorm and hail insurance coverage.

Clarifying through modified policy forms, endorsements, and the rules manual what is covered and what is excluded under TWIA policies benefits TWIA policyholders by enabling TWIA to pay only for losses that were intended to be covered by its policies and eliminating unnecessary disputes that could lead to higher rates. TWIA members also benefit by avoiding assessments for losses not intended to be covered by TWIA policies, and the general revenue of the state avoids the loss of premium taxes. The adopted modifications will assist TWIA to continue to achieve its statutory purpose of providing a method by which adequate windstorm and hail insurance may be made available in certain designated portions of this state.

The only change to the proposed amendments as published is the change of the proposed effective date for the amended dwelling, commercial, and mobile home policies; the two amended endorsements (Form No. TWIA-431 and Form No. TWIA-432); the new endorsement (Form No. TWIA-200); and the updates to the rules manual from March 1, 2008 to April 1, 2008. This change does not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

3. HOW THE SECTIONS WILL FUNCTION. Amended §5.4101 adopts by reference, effective April 1, 2008, modifications to existing TWIA Dwelling and Commercial Policies to incorporate in each existing policy a clarified flood

exclusion clause, a clarified deductible clause, and a lengthier disclosure of Insurance Code appeal procedures; to update in each existing policy a reference to the Government Code Chapter 418; and to provide Insurance Code references in each existing policy conforming to the non-substantive Code revision enacted by the 79th Legislature in HB 2017. An additional modification to the existing TWIA Commercial Policy is also adopted to use a new value for a hypothetical commercial deductible, taken from the range of commercial deductibles adopted in Commissioner's Order No. 06-1110, in two examples in the policy form illustrating the effect of coinsurance on coverage.

Amended §5.4201(3) deletes existing subparagraph (D) because subparagraph (D) adopts by reference commercial endorsement Form No. TWIA-65, Large Deductible Endorsement. This endorsement is deleted because it was made obsolete by Commissioner's Order No. 06-1110 adopting new commercial deductible options. Amended §5.4201(3) redesignates existing subparagraphs (E) – (K) as subparagraphs (D) – (J) because of the deletion of existing subparagraph (D). Amended §5.4201(3)(J) and amended §5.4201(4)(H) adopt by reference, effective April 1, 2008, modifications to two existing endorsements, Form No. TWIA-432, Extension of Coverage—Increased Cost of Construction (Commercial) and Form No. TWIA-431, Extension of Coverage—Increased Cost of Construction (Dwelling), respectively, to conform the Insurance Code references in the endorsements to the non-substantive Code revision enacted by the 79th Legislature in HB 2017.

Amended §5.4201 combines two separate redundant paragraphs (existing §5.4201(4) and (5)) into a single paragraph, §5.4201(4). Subparagraphs (A) – (H) of amended §5.4201(4) remain designated as in existing text, but existing subparagraphs (A) – (H) of §5.4201(5) are redesignated as subparagraphs (I) – (P) of amended §5.4201(4). Existing §5.4201(6) is renumbered as amended §5.4201(5) because of the deletion of existing §5.4201(5).

Amended §5.4201(4)(Q) adopts by reference a new endorsement for the TWIA Dwelling Policy, Form No. TWIA-200, Adjusted Building Cost Endorsement, effective April 1, 2008. This endorsement provides for an annual increase in the dwelling limit of liability by a percentage determined from a building cost index to be designated by TWIA.

Amended §5.4401 adopts by reference, effective April 1, 2008, modifications to the existing Texas Special Mobile Windstorm and Hail Insurance Policy, incorporating in the policy a clarified flood exclusion clause, a lengthier disclosure of Insurance Code appeal procedures, and an updated reference to Government Code Chapter 418; conforming Insurance Code references in the existing policy to the non-substantive Code revision enacted by the 79th Legislature in HB 2017; and replacing an obsolete reference in the policy to the *Board of Insurance* with the *Texas Department of Insurance*.

Amended §5.4501 adopts by reference, effective April 1, 2008, updates to the existing TWIA rules manual that reflect commercial deductible options and associated credits adopted by Commissioner's Order No. 06-1110 and deletes obsolete options and associated credits; clarifies that commercial deductibles

apply on a per item per occurrence basis; indicates the availability of an optional new Dwelling Policy endorsement that annually adjusts the limit of liability by a percentage determined from a building cost index to be designated by TWIA; and designates as unavailable an obsolete Commercial Policy endorsement. Non-substantive changes in Rules Manual Section II are also made to the lettered and numbered designations of endorsements listed after new subparagraphs A.2.a.(11) and A.2.c.(11). A typographical error occurring in the second sentence of amended §5.4501 is corrected by replacing the existing word *manuals* with the word *manual*.

4. SUMMARY OF COMMENTS. The Department did not receive any comments on the published proposal.

5. STATUTORY AUTHORITY. The amendments are adopted pursuant to the Insurance Code Chapter 2210 and §36.001. The Insurance Code §2210.008 authorizes the Commissioner, after notice and hearing, to issue any orders which the Commissioner considers necessary to carry out the purposes of the Insurance Code Chapter 2210, including orders regarding maximum rates, competitive rates, and policy forms. The Insurance Code §2210.351(c) authorizes the Commissioner to approve, modify, or disapprove each rules manual and each modification of the rules manual TWIA proposes to use. The Insurance Code §2210.351(b) requires that proposed policy and endorsement forms be filed with the Department along with proposed manuals of

classifications, rules, rates, rating plans and each modification of those items that TWIA proposes to use. The Insurance Code §36.001 authorizes the Commissioner of Insurance to 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. TEXT.

DIVISION 3. POLICY FORMS

§5.4101. TWIA 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 April 1, 2008. Specimen copies of these policy forms are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. They may also be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

DIVISION 4. ENDORSEMENTS

§5.4201. Endorsements for Use with TWIA Policy Forms. The Texas Department of Insurance adopts by reference endorsements for use with the Texas Windstorm Insurance Association (TWIA) Policy Forms. Specimen copies of these endorsements are available from the Texas Windstorm Insurance Association, P.O. Box 99090, Austin, Texas 78709-9090. They are also

available from the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. The endorsement forms are more specifically identified as follows.

(1) Endorsements for use with the TWIA Dwelling Policy and the TWIA Commercial Policy Form No. TWIA-1, Blank Schedule Form, effective June 15, 1999.

(2) Endorsements for use with the TWIA Dwelling Policy and the TWIA Commercial Policy and the Texas Special Mobile Home Windstorm and Hail Insurance Policy.

(A) Form No. TWIA-12, Assignment of Interest or Change in Mortgagee or Trustee, effective June 15, 1999.

(B) Form No. TWIA-23, Cancellation Report, effective June 15, 1999.

(C) Form No. TWIA-77, General Change Endorsement, effective June 15, 1999.

(D) Form No. TWIA-112, Loss Payable Clause, effective June 15, 1999.

(E) Form No. TWIA-113, Lost Policy Voucher, effective June 15, 1999.

(F) Form No. TWIA-130, Mortgage Clause (Without Contribution), effective June 15, 1999.

(G) Form No. TWIA-151A, Premium Assignment Clause, effective June 15, 1999.

- (H) Form No. TWIA-175, Sale Contract Clause, effective June 15, 1999.
- (I) Form No. TWIA-195, Sworn Statement in Proof of Loss, effective June 15, 1999.
- (3) Endorsements for use with the TWIA Commercial Policy.
- (A) Form No. TWIA-18, Builders Risk--Stated Value Form, effective June 15, 1999.
- (B) Form No. TWIA-21, Builders Risk--Actual Completed Value Form, effective June 15, 1999.
- (C) Form No. TWIA-26, Church Form, effective June 15, 1999.
- (D) Form No. TWIA-115, Lumber Form--Specific--Retail Yard, effective June 15, 1999.
- (E) Form No. TWIA-164, Replacement Cost Endorsement, effective June 15, 1999.
- (F) Form No. TWIA-176, School Form, effective June 15, 1999.
- (G) Form No. TWIA-280, Condominium Property Form--Additional Policy Provisions, effective June 15, 1999.
- (H) Form No. TWIA-282, Condominium Property Form--Additional Property Provisions, amended June 15, 1999.
- (I) Form No. TWIA-17, Business Income Coverage, effective May 1, 2001.

(J) Form No. TWIA-432, Extension of Coverage--Increased

Cost of Construction (Commercial) effective April 1, 2008.

(4) Endorsements for use with the TWIA Dwelling Policy.

(A) Form No. TWIA-310, Extensions of Coverage, amended

June 15, 1999.

(B) Form No. TWIA-315, Extensions of Coverage, amended

June 15, 1999.

(C) Form No. TWIA-320, Extensions of Coverage, amended

June 15, 1999.

(D) Form No. TWIA-325, Extensions of Coverage, amended

June 15, 1999.

(E) Form No. TWIA-326, Extensions of Coverage, amended

June 15, 1999.

(F) Form No. TWIA-328, Extensions of Coverage, amended

June 15, 1999.

(G) Form No. TWIA-410, Conversion to Farm and Ranch

Dwelling Policy, effective June 15, 1999.

(H) Form No. TWIA-431, Extension of Coverage--Increased

Cost of Construction (Dwelling), effective April 1, 2008.

(I) Form No. TWIA-330, Extensions of Coverage, amended

June 15, 1999.

(J) Form No. TWIA-335, Extensions of Coverage, amended

June 15, 1999.

(K) Form No. TWIA-340, Extensions of Coverage, amended
June 15, 1999.

(L) Form No. TWIA-345, Extensions of Coverage, amended
June 15, 1999.

(M) Form No. TWIA-350, Extensions of Coverage, amended
June 15, 1999.

(N) Form No. TWIA-365, Replacement Cost Endorsement--
Personal Property, amended June 15, 1999.

(O) Form No. TWIA-400, Actual Cash Value--Roofs (One or
Two Family Dwellings), effective June 15, 1999.

(P) Form No. TWIA-420, Exclusion of Cosmetic Damage to
Roof Coverings Caused by Hail, effective June 15, 1999.

(Q) Form No. TWIA-200, Adjusted Building Cost
Endorsement, effective April 1, 2008.

(5) Endorsements for use with the Texas Special Mobile Home
Windstorm and Hail Insurance Policy.

(A) Form No. TWIA-29, Mandatory Endorsement, amended
June 15, 1999.

(B) Form No. TWIA-570, Mobile Home Percentage
Deductible Clause (Coastal Area), amended June 15, 1999.

(C) Form No. TWIA-575, Mobile Home Percentage
Deductible Clause (Beach Area), amended June 15, 1999.

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

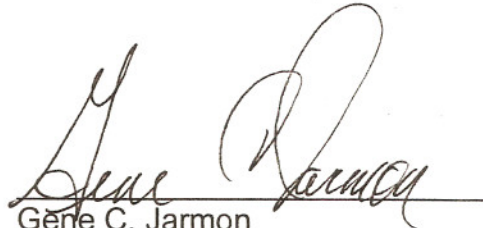
§5.4401. Texas Special Mobile Home Windstorm and Hail Insurance Policy--Deductible Coverage. The Texas Department of Insurance adopts by reference the Texas Special Mobile Home Windstorm and Hail Insurance Policy--Deductible Coverage as amended effective April 1, 2008. Specimen copies of this policy are 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 Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

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 April 1, 2008. A specimen copy of the rules manual is 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 Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

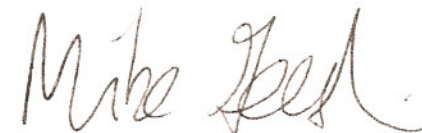
CERTIFICATION. This agency hereby certifies that the adopted amendments have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on March 5th, 2008.

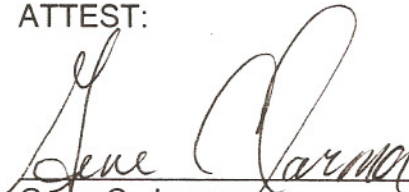

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the amendments to §§5.4101, 5.4201, 5.4401, and 5.4501 specified herein, concerning Texas Windstorm Insurance Association (TWIA) policy forms, endorsements, and manual rules, are adopted.

AND IT IS SO ORDERED.


MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:


Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. 08-0188
MAR 05 2008