

No. 06-1281

Official Order  
*of the*  
Commissioner of Insurance  
*of the*  
State of Texas  
Austin, Texas

Date: DEC 12 2006

**Subject Considered:**

APPROVAL OF THE TEXAS WINDSTORM INSURANCE ASSOCIATION  
SURCHARGE ON THE BASE RATE FOR POLICIES OF WINDSTORM AND HAIL  
INSURANCE FOR RESIDENTIAL STRUCTURES TO BE APPROVED FOR  
INSURABILITY WITHOUT AN INSPECTION

Docket No. 2656

**General remarks and official action taken:**

On this day came on for consideration by the Commissioner of Insurance (Commissioner) a petition filed by the Texas Windstorm Insurance Association (Association) requesting approval of a surcharge above the Association's base rate for policies of windstorm and hail insurance issued on residential structures that qualify under approved Association regulations that permit coverage for structures that are approved for insurability without an inspection. The Association requested approval of an increase in the current surcharge from 5 percent above the Association's base rate to 25 percent above the Association's base rate.

The Commissioner has jurisdiction over this matter pursuant to the Insurance Code Article 21.49. Article 21.49 §8(a) provides that the Association shall file with the Commissioner every manual of classification, rules, rates which shall include condition

charges, every rating plan, and every modification of any of the foregoing which it proposes to use. Article 21.49 §8(a) provides that, after notice and hearing, the Commissioner may accept, modify, or reject a recommendation made by the Association. Article 21.49 §5A(a) provides that after notice and a hearing, the Commissioner may issue any orders which are considered necessary to carry out the purposes of the Texas Windstorm Insurance Act including, but not limited to, maximum rates, competitive rates, and policy forms.

The purpose of the Association is to provide windstorm and hail insurance coverage to residents and businesses in the designated catastrophe area that are unable to obtain such coverage in the voluntary market. On May 26, 2006, Commissioner's Order No. 06-0525 approved a surcharge of 5 percent above the Association's base rate for policies of windstorm and hail insurance issued on residential structures that qualify under approved Association regulations that permit coverage for structures that are approved for insurability without an inspection. Pursuant to the Insurance Code Article 21.49 §6A(a), to be considered insurable property by the Association, structures built after 1987 must be inspected or approved by the Commissioner for compliance with the Association's plan of operation. In response to anticipated restrictions in the voluntary market and to provide a viable alternative market that will provide continued economic stability in the catastrophe area, the Commissioner, on April 12, 2006, approved regulations for an approval process pursuant to the Association's plan of operation. This approval process is an alternative to the inspection process and the requisite WPI-8 certificate of compliance that is evidence of insurability by the Association. The

approval process is intended to address the need to provide windstorm and hail coverage that may be otherwise unavailable to residential structures currently insured in the voluntary market that do not have a certificate of compliance. The regulations that permit coverage without an inspection were approved based on evidence that there are property owners in the designated catastrophe areas that were losing their wind and hail insurance due to insurers discontinuing this coverage or withdrawing entirely from the catastrophe areas. Many of these owners were unable to obtain a WPI-8 certificate of compliance for their residential structures.

The Association filed petition No. P-0806-11 on August 11, 2006, requesting an increase in the surcharge from 5 percent above the Association's base rate to 25 percent above the Association's base rate otherwise charged for post-1987 property approved for insurability without an inspection.

The Commissioner conducted a public hearing on September 20, 2006, during which four witnesses testified on the proposed surcharge, with three in favor and one opposed. One additional witness did not testify but wished to be recorded as a proponent. The Association presented testimony and a written report asserting that a surcharge of 25 percent was justified on the basis that (1) anecdotal loss experience from recent storms indicated that structures built to stringent building codes suffered far less damage than structures not built to such codes, and that deference to the Association's policy of encouraging building to code deserved an increased surcharge in order to communicate commitment to that policy decision; and (2) the distribution of

building code credits of residential in-force policies as of 7/31/2006 implied a surcharge of 34%, which the Association reduced to 25%. However, the Association presented no actuarial evidence to support the 25 percent surcharge and acknowledged that no such actuarial support exists. The Association produced no statistical or historical evidence to substantiate its conclusion or to support its request.

The Office of Public Insurance Counsel (OPIC) argued that there is no evidence suggesting that structures that would be eligible for wind and hail coverage by the Association under the approval program are of greater risk than other classes of structures currently insured by the Association at the base rate.

It is feasible that properties insured under the approval process as opposed to those that have been inspected and have obtained certificates of compliance may on average be more likely to sustain more severe damage in the event of a serious windstorm and therefore, some increase in the surcharge may be appropriate.

After considering the evidence and arguments presented at the hearing, the Commissioner has determined that an increase of the surcharge from 5 to 10 percent above the Association base rate for policies of windstorm and hail insurance issued on residential structures is reasonably justified to accommodate the difference between post-1987 residential structures built to the current building code standards and structures currently insured in the voluntary market that do not have a certificate of compliance issued by the Department that is evidence of insurability by the Association.


Also, an increase of the surcharge from 5 to 10 percent is reasonable in deference to the Association's policy of encouraging building to code. The increase in the surcharge from 5 to 10 percent is approved for residential properties insured by the Association through the approval process approved by the Commissioner.

**IT IS THEREFORE THE ORDER** of the Commissioner of Insurance that a surcharge of 10 percent above the Association's current base rate is approved for policies of windstorm and hail insurance issued on residential structures that qualify under the approved Association regulations that permit issuance of windstorm and hail insurance coverage for structures that are approved without an inspection.

**IT IS FURTHER THE ORDER** that any request or proposal not approved herein is **DENIED**.

**AND IT IS SO ORDERED.**

TEXAS DEPARTMENT OF INSURANCE

  
s/ MIKE GEESLIN  
COMMISSIONER OF INSURANCE

RECOMMENDED BY:

  
Marilyn Hamilton  
Marilyn Hamilton

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Associate Commissioner  
Property and Casualty Program

ATTEST:



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

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