

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 4. Endorsements 28 TAC §5.4201

DIVISION 6. Manual 28 TAC §5.4501

1. INTRODUCTION. The Texas Department of Insurance proposes amendments to §5.4201 and §5.4501 to adopt by reference a proposed new Texas Windstorm Insurance Association (TWIA) endorsement for use with the TWIA Commercial Policy and a proposed update to the existing rules manual for the TWIA to reflect the availability of the proposed new endorsement.

The proposed amendment to §5.4201, relating to Endorsements for Use with TWIA Policy Forms, is necessary to adopt a new optional endorsement, Form No. TWIA-165, Replacement Cost Endorsement, Excluding Roof Coverings, for the TWIA Commercial Policy that provides replacement cost coverage for a commercial building. The proposed new optional endorsement excludes replacement cost coverage for certain items, including the roof and the materials required for the replacement of the roof. The proposed amendment to §5.4501, relating to Manual Rules for the Texas Windstorm Insurance Association, is necessary to update the existing TWIA rules manual to reflect the availability of the new replacement cost endorsement for commercial structures.

Pursuant to the Insurance Code §2210.001, the purpose of the 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. The Insurance Code §2210.351 requires that the TWIA file with the Department endorsement forms that the TWIA proposes to use and requires the Commissioner in writing to approve, disapprove, or modify the endorsements. The Insurance Code §2210.207(e) authorizes the Commissioner, after notice and a hearing, to adopt rules to authorize the TWIA to provide actual cash value coverage instead of replacement cost coverage on the roof covering of a building insured by the TWIA. The Insurance Code §2210.008 authorizes the Commissioner to issue any orders, after notice and a hearing, that the Commissioner considers necessary to implement Chapter 2210, the Texas Windstorm Insurance Association Act, including orders regarding TWIA policy and endorsement forms. The Insurance Code §2210.351 also requires the TWIA to file with the Department each modification of the rules manual it proposes to use and authorizes the Commissioner to approve, disapprove or modify in writing each modification of the rules manual submitted.

The TWIA filed a petition (Ref. No. P-0108-03) with the Department on January 22, 2008, requesting that §5.4201 be amended to adopt by reference the proposed new endorsement and also requesting that §5.4501 be amended to adopt by reference a proposed rules manual update that reflects the availability of the new endorsement.

The proposed new optional commercial endorsement (Form No. TWIA-165, Replacement Cost Endorsement, Excluding Roof Coverings) provides replacement cost coverage, excluding roof coverings, for commercial buildings. This proposed new endorsement will be offered to insureds and applicants who

have an otherwise insurable commercial structure but are declined replacement cost coverage under Form No. TWIA-164, Replacement Cost Endorsement (Without Deduction for Depreciation) because of the condition of the structure's roof. The proposed new endorsement will allow these insureds and applicants to obtain replacement cost coverage for their building, but not for the roof, until the roof is repaired or replaced. An update to the existing TWIA rules manual is proposed to reflect the availability of the new commercial endorsement (Rules Manual Section II, Policy Forms and Endorsements, subsection b.(15)).

Section §5.4201 is proposed to be amended as follows: (i) new subparagraph (F) is added which proposes to adopt by reference new Form No. TWIA-165, Replacement Cost Endorsement, Excluding Roof Coverings, effective October 1, 2008, and (ii) existing subparagraphs (F) – (J) are proposed to be redesignated as subparagraphs (G) – (K).

The amendment to §5.4501 proposes to adopt by reference, effective October 1, 2008, an update to the existing TWIA rules manual to reflect the availability of the new commercial endorsement (Rules Manual Section II, Policy Forms and Endorsements).

No other modifications of existing TWIA endorsements or manual rules are proposed at this time.

Copies of the proposed endorsement and manual rules update may be obtained by contacting the Personal Lines Division, Mail Code 104-1A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701, (512) 322-2266.

2. FISCAL NOTE. Marilyn Hamilton, Associate Commissioner of the Property and Casualty Program, has determined that for each year of the first five years the proposed endorsement and amendments 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. Hamilton has further determined that for each year of the first five years the proposed endorsement and amendments are in effect, the anticipated public benefit will be the availability to TWIA insureds and applicants of replacement cost coverage, excluding the roof and roofing materials, on commercial buildings that would not otherwise qualify for such coverage. Purchase of the new endorsement is at the option of insureds and applicants. The TWIA may offer a commercial policy with the new endorsement to insureds and applicants who are declined replacement cost coverage because of the condition of the structure's roof. The total annual cost of a TWIA Commercial Policy with Form No. 165, Replacement Cost Endorsement, Excluding Roof Coverings, will vary according to the amount of insurance purchased and the TWIA commercial rate in effect at the time of purchase. The proposed amendments will assist the TWIA in continuing 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 persons who are required to comply with the proposed amendments are the TWIA and agents who utilize the TWIA rules manual in writing TWIA coverage. The TWIA will incur costs for printing and distributing the new endorsement; however, the TWIA agreed to bear such costs in filing the petition requesting the adoption of the new endorsement. Under proposed §5.4501, the TWIA will not incur the costs in printing and distributing the updated pages of the rules manual because the rules manual is printed and distributed by ICT Services (ICT) and Wolters Kluwer Financial Services. Agents who utilize the rules manual subscribe to it directly from one of these sources. ICT charges \$15 for new subscriptions and \$15 to renew a subscription, which includes providing the rules manual and all updates to the rules manual. Wolters Kluwer Financial Services charges \$109 for new subscriptions and \$85 to renew a subscription, which includes providing the rules manual and all updates to the rules manual. ICT and Wolters Kluwer have informed the Department that they will print and distribute the updated rules manual pages to their subscribers at no additional charge.

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, state agencies must prepare as part of the rulemaking process

an Economic Impact Statement that assesses the potential impact of the proposed rule on small and micro businesses and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(a)(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(a)(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(a)(1) does not specify a maximum level of gross receipts for a “micro business.”

The TWIA does not meet the definition of a “small business” under the Government Code §2006.001(a)(2) or a “micro business” under the Government Code §2006.001(a)(1). Pursuant to the Insurance Code §2210.051, the TWIA is an “association ... composed of all property insurers authorized to engage in the business of property insurance in this state.” 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 TWIA may not inure to the benefit of private shareholders or individuals, and the assets of the TWIA may not be used other than to satisfy claims on policies, make investments authorized under applicable law, pay

reasonable and necessary administrative expenses, and purchase reinsurance or prepare for or mitigate the effects of catastrophic natural events. Under the Insurance Code §2210.452, all premium and other revenue of the TWIA in excess of incurred losses and operating expenses is paid to a catastrophe reserve trust fund or a reinsurance program approved by the Commissioner. Further, under the Insurance Code §2210.056 and §2210.452, on the dissolution of the TWIA, all assets revert to the state. The TWIA 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 TWIA operates with a nine member board of directors responsible and accountable to the Commissioner. The TWIA 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 the Insurance Code §2210.151. Further, the TWIA has approximately 150 employees and net receipts of over \$6 million. Therefore, pursuant to the Government Code §2006.002(c), an analysis of the economic impact of the proposal on the TWIA is not required.

Agents who write windstorm and hail insurance through the TWIA may meet the definition of “small business” or “micro business” in the Government Code §2006.001. However, as previously noted in the Public Benefits/Cost Note part of this proposal notice, costs for printing and distributing the new endorsement will be borne by the TWIA. There will be no new costs to an agent whose business organization qualifies as a small or micro business to obtain the updated rules manual because updates to the rules manual are included in the

cost of the agent's subscription to ICT Services or Wolters Kluwer Financial Services.

Purchase of the new endorsement is at the option of insureds and applicants. The TWIA may offer the new endorsement, Form No. TWIA-165, Replacement Cost Endorsement, Excluding Roof Coverings, to insureds and applicants who are declined replacement cost coverage because of the condition of the structure's roof. The cost of the commercial policy with the new endorsement to any small or micro business that opts to purchase it will vary based on the amount of insurance purchased and the TWIA commercial rate in effect at the time of purchase.

Based on the foregoing analysis, there is no anticipated adverse economic effect on any small or micro business as a result of the proposal. Therefore, pursuant to the Government Code §2006.002(c), preparation of an Economic Impact Statement and Regulatory Flexibility Analysis 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 August 5, 2008, to

Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, Mail Code 104-PC, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the adoption of the proposed amendments in a public hearing under Docket No. 2687, scheduled for July 18, 2008, at 9:30 a.m., in Room 100 of the William P. Hobby, Jr., State Office Building, 333 Guadalupe Street, Austin, TX 78701. Written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The amendments are proposed pursuant to the Insurance Code Chapter 2210 and §36.001. The Insurance Code §2210.207(e) authorizes the Commissioner, after notice and a hearing, to adopt rules to authorize the TWIA to provide actual cash value coverage instead of replacement cost coverage on the roof covering of a building insured by the TWIA. 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(a) authorizes the Commissioner to approve, modify, or disapprove each rules manual and each modification of the rules

manual that the TWIA proposes to use. The Insurance Code §2210.351(b) requires that the TWIA file proposed policy and endorsement forms with the Department along with proposed manuals of classifications, rules, rates, rating plans and each modification of those items that the 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.

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

<u>Rule</u>	<u>Statute</u>
§5.4201 and §5.4501	Insurance Code Chapter 2210

9. TEXT.

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) – (2) (No change.)

(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-165, Replacement Cost Endorsement, Excluding Roof Coverings, effective October 1, 2008.

(G)~~(F)~~ Form No. TWIA-176, School Form, effective June 15, 1999.

(H)~~(G)~~ Form No. TWIA-280, Condominium Property Form--Additional Policy Provisions, effective June 15, 1999.

(I)~~(H)~~ Form No. TWIA-282, Condominium Property Form--Additional Property Provisions, amended June 15, 1999.

~~(J)~~~~(H)~~ Form No. TWIA-17, Business Income Coverage, effective May 1, 2001.

~~(K)~~~~(J)~~ Form No. TWIA-432, Extension of Coverage-- Increased Cost of Construction (Commercial), effective April 1, 2008.

(4) – (5) (No change.)

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 October ~~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.

10. 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 at Austin, Texas, on _____, 2008.

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