

**Subchapter E. Texas Windstorm Insurance Association
Division 7. Inspections for Windstorm and Hail Insurance**

28 TAC §§5.4601, 5.4603, 5.4604, 5.4608 - 5.4610, 5.4612, 5.4615, 5.4620 - 5.4623, 5.4625 - 5.4626, 5.4640, and 5.4642

Repeal of 28 TAC §§5.4601, 5.4602, 5.4604, and 5.4608

**Subchapter E. Texas Windstorm Insurance Association
Division 9. Windstorm Building Code Advisory Committee on Specifications and Maintenance**

Repeal of 28 TAC §5.4800

INTRODUCTION.

The Texas Department of Insurance proposes amendments to Subchapter E, Division 7 Inspections for Windstorm and Hail Insurance, §5.4603; and new §§5.4601, 5.4604, 5.4608 - 5.4610, 5.4612, 5.4615, 5.4620 - 5.4623, 5.4625 - 5.4626, 5.4640, and 5.4642; and the repeal of §§5.4601, 5.4602, 5.4604, and 5.4608. These amendments, new sections, and repeals would implement HB 2439, 84th Legislature, Regular Session (2015).

TDI proposes the repeal of Subchapter E, Division 9 Windstorm Building Code Advisory Committee on Specifications and Maintenance, §5.4800. This repeal would conform TDI rules to HB 4409, 81st Legislature, Regular Session (2009), which abolished the Windstorm Building Code Advisory Committee on Specifications and Maintenance referenced in §5.4800.

EXPLANATION. The proposed amendments, repeals, and new sections would implement HB 2439, which made changes to the inspections process for eligibility for windstorm and hail insurance through the Texas Windstorm Insurance Association (association).

HB 2439 created a two-path system to certify that a structure complies with the applicable windstorm building code. The pre-HB 2439 certification system requires that, to be eligible for association coverage, all construction, alteration, remodeling, enlargement, and repair of, or addition to a structure in the catastrophe area be verified by a qualified inspector as complying with the applicable windstorm building code. Upon receipt of a verification, TDI issues a Certificate of Compliance, Form WPI-8, which certifies the structure's eligibility for windstorm insurance through the association. Qualified inspectors, under the immediate prior version of Insurance Code §2210.254 (Acts 2005, 79th Leg., ch. 727, §2, 2005 Tex. Gen. Laws 1941 (amended 2011)), include persons TDI deemed qualified by training or experience, Texas-licensed professional engineers who qualified for placement on a roster

maintained by the Texas Board of Professional Engineers, or persons certified by one of several code councils. Most inspections under the pre-HB 2439 certification system are carried out by Texas-licensed professional engineers who are on the Texas Board of Professional Engineers roster and appointed by TDI as qualified inspectors. A fraction of inspections under the pre-HB 2439 certification system are carried out by TDI-employed inspectors deemed qualified by training or experience to inspect component or cladding items.

HB 2439's two-path system creates different certification procedures for ongoing and completed construction. Ongoing construction is inspected by appointed qualified inspectors who may be Texas-licensed engineers, but need not be. Appointed qualified inspectors may inspect new structures, additions, repairs, alterations, and re-roof applications and submit their findings to TDI for a TDI-issued Certificate of Compliance. TDI must issue a Certificate of Compliance if the appointed qualified inspector has inspected the ongoing improvement in accordance with TDI rules and has affirmed that the ongoing improvement meets one of two criteria. The ongoing improvement must either conform to a design that complies with the applicable building code and that has a seal affixed by a Texas-licensed professional engineer, or, in cases involving ongoing improvements that ordinarily do not call for plans, such as reroofs, must comply with the wind load requirements of the applicable building code. HB 2439 repealed the requirement that Texas-licensed engineers be listed on a roster maintained by the Texas Board of Professional Engineers to be qualified inspectors.

Completed construction is certified only by Texas-licensed engineers who may send either a signed and sealed design or postconstruction evaluation report directly to the association for a Certificate of Compliance to be issued by the association.

Under HB 2439, TDI must adopt and enforce rules on how qualified inspectors conduct windstorm inspections. HB 2439 gives TDI exclusive authority over all matters relating to the appointment and oversight of qualified inspectors for the purposes of Chapter 2210 and to the physical inspection of ongoing improvements, including determining whether to issue the Certificate of Compliance. But HB 2439 prohibits the adoption or enforcement of a rule that requires Texas-licensed engineers to seal inspection forms submitted to TDI.

Under HB 2439, TDI must prescribe the form on which a person applies to the association for a Certificate of Compliance for a completed improvement. The proposal describes the information Texas-

licensed engineers must send to the association when they verify that completed construction meets the applicable windstorm building codes.

Proposed §§5.4609, 5.4610, and 5.4612 describe the requirements for appointment as a qualified inspector and renewal of that appointment. Under the proposed rules, only Texas-licensed professional engineers may apply for appointment as qualified inspectors. Proposed §5.4621 and §5.4623 describe the information that appointed qualified inspectors will be responsible for gathering as they inspect ongoing construction to determine if it conforms to an engineer-sealed design and complies with the applicable windstorm building code. Proposed §5.4642 describes disciplinary proceedings the commissioner of insurance may bring against appointed qualified inspectors. Proposed §5.4608 describes the procedure by which qualified inspectors who are TDI employees may verify the windstorm building code compliance of ongoing improvements to certain components.

HB 2439 requires TDI to adopt rules effective December 31, 2016, to implement the bill. The changes HB 2439 enacts apply to association policies delivered, issued, or renewed on or after January 1, 2017. Current law continues in effect for association policies delivered, issued, or renewed before January 1, 2017. TDI adopted its current rules on qualified inspectors under the authority of pre-HB 2439 statutes. The proposed rules would amend or replace TDI's current rules governing qualified inspectors to implement HB 2439. Because the rules under which qualified inspectors were appointed will be amended or replaced, individuals who are appointed qualified inspectors as of the effective date of rules implementing HB 2439 will not be able to continue their appointment after December 31, 2016. The proposed rules require these individuals to submit a new application for appointment as qualified inspectors. TDI considered proposing rules that would allow the submission of a renewal application, which is shorter, but this would not be appropriate because the individuals would never have held an appointment under the new rules and the changes to these appointments required under HB 2439. One cannot renew an appointment one has never had.

Under proposed §5.4610, qualified inspectors would be appointed for a two-year term. The proposed rule requires appointed qualified inspectors to submit a renewal application before the end of their term. The renewal application in the proposed rules is brief and requiring renewal has the advantage of keeping the list of appointed qualified inspectors—which the public consults when seeking windstorm inspections—current.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Steve Thompson, chief engineer, Engineering Services Program, has determined that for each year of the first five years the proposed new sections, amendments, and repeals 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 not be any measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Thompson has determined that for each year of the first five years the proposed new sections, amendments, and repeals are in effect, there will be public benefits resulting from the proposal and costs to appointed qualified inspectors, who are required to comply with the proposal.

A. Anticipated Public Benefits.

Adopting amended section §5.4603; new sections §§5.4601, 5.4604, 5.4608 - 5.4610, 5.4612, 5.4615, 5.4620 - 5.4623, 5.4625 - 5.4626, 5.4640, and 5.4642; and repealing §§5.4601, 5.4602, 5.4604, and 5.4608 will implement HB 2439. The amended and new sections describe the types of structures appointed qualified inspectors may inspect under the new statute and what information they must gather to certify that a structure meets the wind-load requirements of the applicable building code. The proposed rules will provide a clear inspection process which will benefit consumers.

Repealing §5.4800 will simplify the association rules by removing outdated text.

B. Estimated Costs to Comply with this Proposal.

Costs associated with implementing HB 2439 include the costs to retain information substantiating a verification for five years from the date of the most recent inspection verification form submitted on an ongoing improvement, the costs to apply for appointment as a qualified inspector or to renew an appointment, costs to provide a notification and a verification of a structure's noncompliance, and the costs to attend or view a TDI orientation program. The proposed rules retain but do not add to the current rule requirements for conducting inspections and gathering substantiating information; therefore, this cost note does not consider these costs.

The costs of storing the substantiating information on an ongoing improvement for five years after the submission of the most recent inspection verification form will vary depending on the amount of substantiating information, the method of storage, and the costs of converting the information into

the form in which it will be stored. The amount of substantiating information will vary depending on the size and complexity of the ongoing improvement inspected.

TDI estimates that inspecting a reroof or another ongoing improvement that is a component of a structure will result in approximately 12 to 24 pages of substantiating information. Inspecting an entire structure will likely result in a greater amount of substantiating information; TDI estimates as many as 100 pages of substantiating information for a residential structure and as many as 250 pages for a commercial structure, depending on its size.

TDI anticipates that most appointed qualified inspectors will gather and generate most of the substantiating information in digital form, so storing it in that form will not impose conversion costs. The conversion cost estimates in the following two paragraphs assume all substantiating information will need to be converted from paper to digital form for storage and so represent an upper limit for these costs.

If substantiating information is scanned in portable document format, one gigabyte will hold around 10,000 pages; other formats will allow more pages per gigabyte. Scanners today range in price from around \$45 for portable models to around \$450 for self-loading models. According to the U.S. Bureau of Labor Statistics, the mean hourly wage in the Coastal Plains Region of Texas nonmetropolitan area for civil engineers is \$35.45; for civil engineering technicians, \$18.99; and for secretaries and administrative assistants, \$14.08. *Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, May 2015 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates, Coastal Plains Region of Texas nonmetropolitan area*, accessed July 13, 2016, www.bls.gov/oes/current/oes_4800006.htm. According to the U.S. Bureau of Labor Statistics, the mean hourly wage in the Houston area for civil engineers is \$52.96; for civil engineering technicians, \$25.10; and for secretaries and administrative assistants, \$17.28. *Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, May 2015 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates, Houston-The Woodlands-Sugarland, Texas metropolitan area*, accessed July 13, 2016, www.bls.gov/oes/current/oes_26420.htm.

The cost of scanning substantiating information for storage will vary depending on who scans the information, the number of pages being scanned, and the scanner speed. TDI estimates that scanning 24 pages of information from a reroof will take an average of less than an hour, while scanning 100 pages from a residential structure will take an average of three hours.

The cost of storing hard copies of substantiating information will depend on where the copies are stored.

The costs of application and renewal will be the costs of mailing and printing several pages, if an applicant chooses to submit the documents through first class U.S. mail, and the time cost of providing the information required. While an applicant could email the application and renewal, TDI uses the cost of first class U.S. mail in its cost analysis because that method is available to everyone interested in applying for appointment as a qualified inspector. TDI anticipates that each person will use the most cost-effective method of compliance. Considering the costs of printing pages containing the information required in proposed §5.4609 or §5.4610, a one-ounce standard envelope, and postage for the envelope, TDI estimates the cost of application or renewal to be less than \$1.

TDI also anticipates that providing the information required for application will take approximately an hour and a half of an applicant's time. TDI assumes that the summary of an applicant's education and experience related to windstorm design required for an application can be modified from an existing resume. The proposed rule on appointment renewal requires only a statement affirming the currency and nonrestricted status of the appointed qualified inspector's license with the Texas Board of Professional Engineers, and TDI anticipates that renewal will take half an hour. The proposed rules require that an appointment be renewed every two years.

The costs of notifying a person seeking a certification for an ongoing improvement that the ongoing improvement does not meet the applicable windstorm building code standard will be the costs of mailing and printing several pages, if the notification is through first class U.S. mail, and the cost in time for an appointed qualified inspector to write the notice of noncompliance. The time required to prepare the notice of noncompliance will depend on the type of ongoing improvement and the reasons for its noncompliance. If the ongoing improvement is not brought into compliance, the proposed rules require the appointed qualified inspector to inform TDI by submitting a verification of noncompliance. The costs of submitting the verification of noncompliance will be the costs of postage and printing and the time cost of writing the verification. It is difficult to separate the time necessary to prepare a verification of noncompliance from the time spent performing an inspection because the information needed for the verification is gathered as part of the inspection.

The cost to attend or view a TDI orientation for qualified inspector applicants will be the time costs of doing so and any associated travel costs, which will vary. TDI anticipates that the orientation will be conducted via webinar and will last approximately one hour.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. 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 these businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(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. Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees.

The vast majority of the 306 current qualified inspectors are small or micro businesses. Under HB 2439 and the proposed rules, they and the rest of the over 56,000 Texas-licensed professional engineers will be eligible to apply for appointment as qualified inspectors. Because each of these persons is licensed and appointed in an individual capacity, TDI presumes that each applicant or qualified inspector under the proposed rules is a small business or micro business for the purpose of this analysis.

As stated in the Public Benefit/Cost Note in this proposal, TDI anticipates that each person acting as a qualified inspector or applying for or renewing an appointment as a qualified inspector would incur some costs because of this proposal. Those costs would result from mailing an application, renewal, or notification or verification of noncompliance; from attending or viewing a TDI orientation; or from storing substantiating information.

TDI, in accordance with Government Code §2006.002(c-1), has considered methods of reducing the adverse impact of the proposed rules implementing HB 2439 on small or micro businesses.

One method would be to exempt small or micro businesses from some of the requirements likely to lead to costs. However, because the majority of qualified inspectors qualify as small or micro businesses, the exemptions would apply to most of the regulated entities, defeating the purpose of

revising the regulation. For example, TDI could exempt qualified inspector applicants from having to view or attend a TDI orientation if they are employed by small or micro businesses and have previously inspected structures for compliance with windstorm building codes. But this exemption would result in the requirement not being applied to most of the applicants. For this reason, TDI rejected this option.

A second method would be to exempt small or micro businesses from all of the requirements likely to lead to costs. However, again, because the majority of appointed qualified inspectors would qualify as small or micro businesses, the exemptions would apply to most of the regulated entities, defeating the purpose of revising the regulation. It would also lead to uneven enforcement of the certification program, as the few appointed qualified inspectors who would not qualify as small or micro businesses would be held to standards that the rest would not be. For these reasons, TDI rejected this option.

A third method of reducing the adverse impact of the proposed rules implementing HB 2439 on small or micro businesses would be to not adopt rules at all. But not adopting rules would mean that the new certification system that HB 2439 created would go into effect without a framework to implement it. Such a framework is necessary so that the new system can function successfully. The association, potential appointed qualified inspectors, and consumers need to know what is required to certify a structure under the new two-path system. Potential appointed qualified inspectors will need to know their specific responsibilities under the new system. For this reason, TDI rejected this option.

TAKINGS IMPACT ASSESSMENT. TDI 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 Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI invites the public to comment on this proposal. Submit your written comments on the proposal no later than 5 p.m., Central time, on October 31, 2016. Send written comments by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. You must simultaneously submit an additional copy of the comment by mail to

Steve Thompson, Chief Engineer, MC 104-ENG, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to steve.thompson@tdi.texas.gov.

The commissioner will consider the rule proposal in a public hearing under Docket Number 2791, scheduled for 9:30 a.m., Central time, on October 21, 2016, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Written comments and public testimony presented at the hearing will be considered.

28 TAC §§5.4601, 5.4603, 5.4604, 5.4608 - 5.4610, 5.4612, 5.4615, 5.4620 - 5.4623, 5.4625 - 5.4626, 5.4640, and 5.4642.

STATUTORY AUTHORITY. New §§5.4601, 5.4604, 5.4608 - 5.4610, 5.4612, 5.4615, 5.4620 - 5.4623, 5.4625 - 5.4626, 5.4640, and 5.4642 and the amendments to §5.4603 are proposed under Insurance Code §§36.001, 2210.008, 2210.251, 2210.252, 2210.2515, 2210.254, and 2210.2551.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210.

Section 2210.251(b) states that for geographic areas specified by the commissioner, the commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code. Section 2210.251(g) states that a certificate of compliance issued by TDI or the association under §2210.2515 demonstrates compliance with the applicable building code under the plan of operation.

Section 2210.2515 gives TDI the authority to prescribe a form on which a person may apply to the association for a certificate of compliance for a completed structure and to prescribe a form on which a person may apply to TDI for a certificate of compliance for an ongoing improvement. Under §2210.2515, TDI must issue a certificate of compliance for an ongoing improvement if a qualified inspector inspects it in accordance with TDI rules and affirms that the improvement meets certain standards.

Section 2210.254 states that a qualified inspector includes a licensed professional engineer, authorizes TDI to establish an annual renewal period for individuals appointed as qualified inspectors, and states that a qualified inspector must be approved and appointed or employed by TDI.

Section 2210.2551 gives TDI exclusive authority over all matters relating to the appointment and oversight of qualified inspectors and to the physical inspection of structures for the purpose of determining whether to issue a certificate of compliance under §2210.2515(d).

CROSS REFERENCE TO STATUTE. Proposed §5.4601 implements Insurance Code §§2210.251, 2210.252, and 2210.2515. Proposed §5.4603 implements Insurance Code §§2210.2515, 2210.254, and 2210.2551. Proposed §5.4604 and §5.4608 implement Insurance Code §§2210.2515, 2210.2551, and 2210.258. Proposed §§5.4609, 5.4610, and 5.4612 implement Insurance Code §2210.254 and §2210.2551. Proposed §5.4615 and §5.4620 implement Insurance Code §2210.2551. Proposed §§5.4621 - 5.4623, §5.4625, and §5.4626 implement Insurance Code §2210.2515 and §2210.2551. Proposed §5.4640 implements Insurance Code §2210.2551. Proposed §5.4642 implements Insurance Code §2210.256.

TEXT.

DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

§5.4601. Definitions.

The following words and terms when used in this subchapter will have the following meanings unless the context clearly indicates otherwise:

(1) Applicant--A person who submits a new or renewal application for appointment as an appointed qualified inspector.

(2) Appointed qualified inspector--An engineer licensed by the Texas Board of Professional Engineers and appointed by TDI as a qualified inspector under Insurance Code §2210.254(a)(2).

(3) Appointed qualified inspector number--A number TDI assigns to each appointed qualified inspector.

(4) Constructed or construction--The act of building or erecting a structure or altering, remodeling, enlarging, adding to, or repairing, including reroofing, an existing structure.

(5) Completed improvement--

(A) An improvement in which the original transfer of title from the builder to the initial owner of the improvement has occurred; or

(B) if a transfer under subparagraph (A) of this paragraph is not contemplated, an improvement that is substantially completed.

(6) Improvement--The construction of or repair, including reroofing, alteration, remodeling, or enlargement of a structure to which the plan of operation applies.

(7) Ongoing improvement--

(A) An improvement in which the original transfer of title from the builder to the initial owner of the improvement has not occurred; or

(B) if a transfer under subparagraph (A) of this paragraph is not contemplated, an improvement that is not substantially completed.

(8) Substantially completed--An improvement for which the final framing stage, including attachment of component and cladding items and installation of windborne debris protection, has been completed.

(9) TDI inspector--A qualified inspector authorized under Insurance Code §2210.254(a)(1) and employed by TDI.

(10) TDI--The Texas Department of Insurance.

(11) Association--The Texas Windstorm Insurance Association.

(12) Windstorm building code standards-- The requirements for building construction in §§5.4007 - 5.4011 of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made Prior to September 1, 1998; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After February 1, 2003 and before January 1, 2005; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2005, and before January 1, 2008; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008; respectively).

§5.4603. Windstorm Inspection Forms. [~~Forms for Windstorm Inspections.~~]

(a) Inspection Verification, Form WPI-2-BC-5. TDI [The Texas Department of Insurance] adopts by reference the Inspection Verification, Form WPI-2-BC-5, effective January 1, 2008, [~~following forms~~] for use in windstorm inspection.[:]

- [~~(1) Application for Certificate of Compliance, Form WPI-1, effective January 1, 2005;~~
- [~~(2) Inspection Verification, Form WPI-2-BC-1, effective January 1, 2008;~~
- [~~(3) Inspection Verification, Form WPI-2-BC-2, effective January 1, 2008;~~
- [~~(4) Inspection Verification, Form WPI-2-BC-3, effective January 1, 2008;~~
- [~~(5) Inspection Verification, Form WPI-2-BC-4, effective January 1, 2008;~~
- [~~(6) Inspection Verification, Form WPI-2-BC-5, effective January 1, 2008;~~
- [~~(7) Design Certification, Form WPI-2D, effective January 1, 2008;~~
- [~~(8) Field Form, Form WPI-7, effective January 1, 2005;~~
- [~~(9) Certificate of Compliance, Form WPI-8, as amended October 1, 1998.~~]

(b) Application, inspection, and renewal forms. TDI will make available the following forms on its website:

(1) Qualified Inspector Appointment Application Form, Form AQI-1, effective XXXXXXXX XX, 20XX;

(2) Qualified Inspector Appointment Renewal Application Form, Form AQI-R, effective XXXXXXXX XX, 20XX;

(3) Application for Certificate of Compliance, Form WPI-1, effective XXXXXXXX XX, 20XX;

and

(4) Inspection Verification Form, Form WPI-2-BC-15, effective XXXXXXXX XX, 20XX.

[~~(b) These forms are published by and available from the Texas Department of Insurance. Copies of these forms may be obtained from the Windstorm Inspections Section of the Inspections Division, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, MC 103-3A, Austin, Texas 78714-9104 and the Texas Department of Insurance website at www.state.tx.us.~~]

(c) TDI inspection and certification forms. When appropriate, TDI will issue the following forms:

(1) Field Form, Form WPI-7, effective XXXXXXXX XX, 20XX; and

(2) Certificate of Compliance, Form WPI-8, effective XXXXXXXX XX, 20XX.

§5.4604. Certification Form for Completed Improvement.

(a) Professional engineers licensed by the Texas Board of Professional Engineers must submit the following information when applying to the association for a certificate of compliance for a completed improvement on a structure:

(1) the physical address (including street, street number, city, county, and ZIP code);

(2) the wind zone location;

(3) whether the structure is in a Coastal Barrier Resource Zone;

(4) the owner's name and contact information;

(5) the name and contact information of the builder or contractor making the completed improvement;

(6) the name and contact information of the engineer certifying the completed improvement;

(7) the date construction of the completed improvement began;

(8) the date of application for the certificate of compliance for the completed improvement;

(9) the name of the person submitting the application for the certificate of compliance for the completed improvement;

(10) the type of structure to which the completed improvement is being made, including the structure's name or number and number of units, if applicable;

(11) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(12) the building code standard and applicable wind load standard under which the completed improvement was designed or inspected;

(13) an affirmation that the completed improvement complies with the applicable building code standard;

(14) either:

(A) the plan or drawing number for the design of the completed improvement;

or

(B) the title, date, and number of the postconstruction evaluation report relied on to certify the completed improvement;

(15) the wind speed conditions that the completed improvement is designed to withstand;

(16) the risk category of the structure;

(17) the exposure category of the structure;

(18) information on the protection of exterior openings from windborne debris;

(19) the dates the completed improvement was inspected; and

(20) the signature and Texas Board of Professional Engineers registration number of the engineer certifying the completed improvement.

(b) The association will make available a form on which the information in subsection (a) of this section may be provided.

§5.4608. Certification by TDI-Employed Windstorm Inspectors.

This section describes the procedure for the certification of ongoing improvements to certain components inspected by TDI-employed inspectors.

(1) Eligible components.

(A) TDI-employed inspectors may inspect ongoing construction on certain alterations, repairs, and reroofs including components such as:

(i) roofs;

(ii) exterior wall coverings;

(iii) exterior doors;

(iv) windows;

(v) skylights;

(vi) garage doors; and

(vii) devices protecting exterior openings from windborne debris;

(B) TDI-employed inspectors may inspect components of the kind described in subparagraph (A) of this paragraph for which TDI has received the following information:

(i) the physical address (including street, street number, city, county, and ZIP code);

- (ii) the wind zone location;
- (iii) the type of structure the improvement is or is a part of, including the structure's name or number, and number of units, if applicable;
- (iv) the subject of the inspection (for example, entire structure, addition, alteration, or repair);
- (v) the name and contact information of the builder or contractor making the improvement;
- (vi) the storm code, if applicable;
- (vii) the date construction of the improvement began;
- (viii) the date of application for the certificate of compliance for the improvement;
- (ix) the name of the person submitting the application for the certificate of compliance for the improvement;
- (x) the owner's name and contact information;
- (xi) whether the structure is located inside or outside city limits; and
- (xii) whether the structure is in a Coastal Barrier Resource Zone.

(2) Application for Certificate of Compliance, Form WPI-1. TDI will make available on its website the Application for Certificate of Compliance, Form WPI-1, on which the information required by paragraph (1)(B) of this section may be provided.

(3) Verification of compliance or noncompliance. After inspecting the improvement, the TDI-employed inspector will document the following information:

- (A) the information in paragraph (1)(B)(i) - (vi) of this section;
- (B) whether the improvement meets the applicable windstorm building code standard;
- (C) the dates and times the improvement was inspected;
- (D) the length of the inspection or inspections;
- (E) the inspection number;
- (F) the structure's roof pitch;
- (G) component and cladding loads;
- (H) the structure's mean roof height;

- (I) roof decking information;
- (J) the field office performing the inspection;
- (K) the application number from TDI; and
- (L) comments.

(4) Field Form, Form WPI-7, effective XXXXXXXX XX, 20XX. TDI will use the Field Form, Form WPI-7, on which TDI-employed inspectors will provide the information in paragraph (3) of this section.

(5) Certification. If TDI determines that the ongoing improvement meets the windstorm building code standards, TDI will issue a form with the following information:

- (A) the information in paragraph (1)(B)(i) - (iv) of this section;
- (B) the building code standard and applicable wind load standard with which the improvement complies;
- (C) the date construction of the improvement began;
- (D) whether the occupancy type is considered residential, commercial, agricultural, or religious;
- (E) the certification date;
- (F) TDI's certification number; and
- (G) the type of inspector.

(6) Certificate of Compliance, Form WPI-8, effective XXXXXXXX XX, 20XX. When appropriate, TDI will issue the Certificate of Compliance, Form WPI-8, with the information in paragraph (5) of this section.

(7) Availability of inspection results. TDI will make the results of inspections under this section available to builders, contractors, and owners.

§5.4609. Application for Qualified Inspector Appointment.

(a) Appointed qualified Inspector application. To apply for appointment as a qualified inspector, an applicant must provide TDI with:

- (1) the applicant's name and contact information;
- (2) the applicant's Texas Board of Professional Engineers registration number;

(3) a summary of the applicant's education and experience related to windstorm design;
and

(4) state whether the applicant has attended an orientation program as described in subsection (d) of this section or is an engineer described in subsection (c) of this section.

(b) Form AQI-1. TDI will make available the Qualified Inspector Appointment Application Form, Form AQI-1, on which applicants can provide the information required by subsection (a) of this section.

(c) Engineers appointed as of the effective date of this section. Texas-licensed professional engineers who, as of the effective date of this section, are appointed as qualified inspectors under the immediate prior version of Insurance Code §2210.254(a)(2) (Acts 2005, 79th Leg., Ch. 727, §2, 2005 Tex. Gen. Laws 1941 (amended 2011)), must submit the information required by subsection (a) of this section on or before December 31, 2016, to be appointed as qualified inspectors under current Insurance Code §2210.254(a)(2).

(d) Orientation program. Within the 180-day period immediately preceding the date TDI receives the application, an applicant must have attended or viewed a TDI-sponsored orientation program on TDI procedures and rules relating to windstorm and hail inspections.

(e) Orientation program for engineers appointed as of the effective date of this section. Texas-licensed professional engineers who, as of the effective date of this section, are appointed as qualified inspectors under the immediate prior version of Insurance Code §2210.254(a)(2), must have attended or viewed the TDI-sponsored orientation program on TDI procedures and rules relating to windstorm and hail inspections within the 90-day period immediately following December 31, 2016.

§5.4610. Renewal of Qualified Inspector Appointment.

(a) Appointment term. The commissioner will appoint a qualified inspector to a two-year term.

(b) Renewal timelines.

(1) No less than 30 days before the end of the term, an appointed qualified inspector must submit to TDI an affirmation of the currency and nonrestricted status of the appointed qualified inspector's license with the Texas Board of Professional Engineers.

(2) If an appointed qualified inspector does not submit the renewal information required by this subsection within 30 days after the end of the term, the inspector must submit a new application.

(3) TDI will make available the Qualified Inspector Appointment Renewal Application Form, Form AQI-R, effective XXXXXXXX XX, 20XX, on which the inspector can provide the information required by this subsection.

(c) Surrender. An appointed qualified inspector may voluntarily surrender an appointment at any time by giving written notice to TDI. The surrender will be effective on the date that TDI receives the notice or on the date stated in the notice.

(d) Continuation. If an appointed qualified inspector submits the information required by subsection (b)(1) of this section, the appointed qualified inspector's appointment will continue until TDI either grants or denies the renewal application. If an appointed qualified inspector does not submit a renewal application as required by subsection (b)(1) of this section, the appointed qualified inspector's appointment ends at the end of the term.

§5.4612. Appointment as Qualified Inspector.

(a) No deemed appointment. The commissioner must affirmatively appoint an applicant before the appointment is effective. No applicant will be deemed appointed.

(b) Denial. The commissioner may deny an application or a renewal application because:

(1) the application is incomplete;

(2) the applicant is not qualified; or

(3) for any of the reasons described in §5.4642(a) of this title (relating to Disciplinary Action).

(c) Notice.

(1) TDI will notify the applicant whether the commissioner has approved or denied the appointment or renewal application.

(2) Any communication of denial will state the reasons for denial and will notify the applicant that the applicant has 30 days from the date of the communication to make a written request for hearing.

(3) If the applicant makes a timely request for hearing, the request will be granted and the procedures for a contested case under the Government Code, Chapter 2001, Administrative Procedure Act, will apply.

§5.4615. General Responsibilities of Appointed Qualified Inspectors.

An appointed qualified inspector must:

- (1) maintain a current license with the Texas Board of Professional Engineers;
- (2) notify TDI in writing not later than 30 days after a change in the appointed qualified

inspector's:

- (A) legal name;
- (B) mailing address;
- (C) telephone number; or
- (D) email address;

(3) notify TDI in writing not later than 30 days after a change in the appointed qualified inspector's employment status. The appointed qualified inspector must include, as applicable, the:

- (A) full legal trade or business name of employer;
- (B) physical location and mailing address of the employer's business office;
- (C) telephone number of the employer's business office;
- (D) employer's type of business (corporation, assumed name, partnership, or self-employment through use of own name);
- (E) legal relationship to and position in the employer's business; and
- (F) effective date of this change in employment status;

(4) respond to TDI requests to authenticate inspection verification forms bearing the appointed qualified inspector's name and appointed qualified inspector number; and

- (5) respond to other TDI requests for information made under Insurance Code §38.001.

§5.4620. Accountability of Appointed Qualified Inspector.

(a) Appointed qualified inspector accountability. An appointed qualified inspector is solely accountable for inspections performed under the appointed qualified inspector's name.

(b) Failure to comply. An appointed qualified inspector is strictly accountable for any failure to comply with Insurance Code Chapter 2210 and all of the responsibilities outlined in this chapter without regard to whether the failure to comply is the result of the actions of the appointed qualified inspector or a designated representative of the appointed qualified inspector.

§5.4621. Certification of Ongoing Improvements Inspected by Appointed Qualified Inspectors.

This section describes the procedure for the certification of ongoing improvements inspected by appointed qualified inspectors.

(1) Eligible structures. An appointed qualified inspector or a designated representative of an appointed qualified inspector may only inspect an ongoing improvement for which TDI has received the following information:

(A) the physical address (including street, street number, city, county, and ZIP code);

(B) the wind zone location;

(C) the type of structure the ongoing improvement is or is a part of, including the structure's name or number, and number of units, if applicable;

(D) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(E) the name and contact information of the appointed qualified inspector inspecting the ongoing improvement, or whose designated representative is inspecting the ongoing improvement;

(F) the storm code, if applicable;

(G) the date construction of the ongoing improvement began;

(H) the date of application for the certificate of compliance for the ongoing improvement;

(I) the name of the person submitting the application for the certificate of compliance for the ongoing improvement;

(J) the owner's name and contact information;

(K) the name and contact information of the builder or contractor making the ongoing improvement;

(L) whether the structure is located inside or outside city limits; and

(M) whether the structure is in a Coastal Barrier Resource Zone.

(2) Application for Certificate of Compliance, Form WPI-1. TDI will make available the Application for Certificate of Compliance, Form WPI-1, on which the information in paragraph (1) of this section may be provided.

(3) Inspection. The appointed qualified inspector or a designated representative of the appointed qualified inspector must inspect for compliance with the applicable building code standard each ongoing improvement during each major construction phase, including the foundation stage; rough framing stage; final framing stage, including attachment of component and cladding items and installation of windborne debris protection; and installation of mechanical equipment. The appointed qualified inspector's designated representatives may assist in conducting inspections, but the appointed qualified inspector must closely monitor and provide direct supervision of any designated representative assisting with the inspection process.

(4) Report. The appointed qualified inspector or a designated representative of the appointed qualified inspector must prepare all necessary construction inspection reports under §5.4625 of this title (relating to Inspection Reports).

(5) Verification of compliance. If the appointed qualified inspector determines that the ongoing improvement meets the applicable windstorm building code standard, the appointed qualified inspector must submit the following information to TDI:

(A) the information required by paragraph (1)(A) - (F) of this section;

(B) the building code standard and applicable wind load standard with which the ongoing improvement complies;

(C) the wind speed conditions the ongoing improvement is certified to withstand;

(D) the dates the ongoing improvement was inspected;

(E) the exposure category of the structure;

(F) information on the protection of exterior openings from windborne debris;

(G) the risk category of the structure;

(H) the appointed qualified inspector's appointment number; and

(I) the application number from TDI.

(6) Inspection Verification Form, Form WPI-2. TDI will make available the Inspection Verification Form, Form WPI-2, on which the inspector can provide the information required by paragraph (5) of this section.

(7) Notification of noncompliance. If the appointed qualified inspector determines that the ongoing improvement does not meet the applicable windstorm building code standard, the appointed qualified inspector must inform the person seeking certification in writing. The notice must:

(A) list specific deficiencies in the construction and deviations from the design;
(B) list other items of concern relating to the windstorm inspection and certification; and

(C) describe remedial actions required for compliance.

(8) Verification of noncompliance. If the remedial actions described in the notification of noncompliance in paragraph (7)(C) of this section are not taken, the appointed qualified inspector must submit the information required by paragraph (5) of this section to TDI, certifying that the ongoing improvement does not meet the applicable windstorm building code standard.

(9) Review. TDI will review the submitted information, and any other relevant information including information requested under §5.4626 of this title (relating to Substantiating Information), to determine whether the ongoing improvement meets the applicable windstorm building code standard.

(10) Certification. If TDI determines that the ongoing improvement meets the windstorm building code standards, TDI will issue a form with the following information:

(A) the information described in paragraph (1)(A) - (C) of this section;

(B) the subject of the certification (for example, entire structure, addition, alteration, or repair);

(C) the building code standard and applicable wind load standard with which the ongoing improvement complies;

(D) the date construction of the ongoing improvement began;

(E) whether the occupancy type is considered residential, commercial, agricultural, or religious;

(F) the certification date;

(G) TDI's certification number; and

(H) the type of inspector.

§5.4622. Inspection Verification.

In submitting an Inspection Verification, Form WPI-2, an appointed qualified inspector verifies that:

(1) the ongoing improvement either:

(A) complies with the wind load requirements of the applicable building code; or

(B) conforms to a design of the ongoing improvement that complies with the applicable building code under the plan of operation and that has a seal affixed by a professional engineer licensed by the Texas Board of Professional Engineers; and

(2) the appointed qualified inspector is able to provide TDI with information and evidence substantiating the verification.

§5.4623. Information Required to Inspect to Design Documents.

(a) To verify that a design of an ongoing improvement complies with the applicable building code under the plan of operation, an appointed qualified inspector must review design documents sealed by the engineer of record for the ongoing improvement, including design criteria, wind loads, plans, and building product specifications, which must include the following information:

(1) design criteria, including:

(A) the building code standard applicable to the improvement;

(B) the live loads on the structure's floor and roof;

(C) the basic wind speed the improvement is designed to withstand;

(D) the wind importance factor or risk category of the structure;

(E) the exposure category of the structure;

(F) the structure's mean roof height;

(G) the 'a' distance, measuring the width of a zone of wind pressure; and

(H) the structure's internal pressure coefficient.

(2) a summary of wind loads the structure is designed to withstand, including:

(A) the main wind force-resisting system loads;

(B) the component and cladding loads;

(C) the uplift loads and components used to transfer uplift loads from the roof to the foundation; and

(D) the lateral loads, the type of lateral resisting system used, and the components used to transfer lateral loads from the roof to the foundation;

(3) plans, including:

(A) the details and dimensions of each type of foundation system, including:

(i) for monolithic slab on grade foundations:

(I) details on reinforcement;

(II) the type and size of anchor bolts and washers;

(III) the placement of holddown anchors;

(IV) the dowel requirements for masonry construction; and

(V) any offsets necessary for masonry or masonry veneer walls

(proper brick ledge);

(ii) for piling foundations:

(I) the pile embedment depths;

(II) the size and spacing of piles;

(III) details on concrete pile reinforcement;

(IV) details and specifications for wood piles;

(V) details on the anchorage of beams to piles;

(VI) the size and location of beams;

(VII) the span, size, and spacing of floor joists;

(VIII) details on the anchorage of floor joists to beams;

(IX) the height of the structure's lowest structural member;

(X) the elevation of the ground floor, or in an elevated structure,

the first floor; and

(XI) whether the ground floor walls are designed as breakaway

walls;

(iii) for pier and beam foundations:

(I) the size and depth of footings;

(II) the size of piers;

(III) details of pier reinforcement;

(IV) details of concrete masonry unit reinforcement;

(V) the size and location of beams;
(VI) details on the anchorage of sills- or beams-to-piers and
piers-to-footings;

(VII) the span, size, and spacing of floor joists; and
(VIII) details on the anchorage of floor joists to beams and sills
or to beams or sills;

(B) details on floor plans, including:

(i) dimensions; and

(ii) door and window opening sizes and locations;

(C) details on roof plans, including:

(i) dimensions; and

(ii) header schedule on plans showing size;

(D) standard notes for windstorm construction; and

(E) additional notes for special construction or special conditions; and

(4) building product specifications, including:

(A) building product information;

(B) model code product evaluation reports;

(C) product evaluations from other agencies;

(D) manufacturers' test reports if product evaluations are not available; and

(E) other data to document compliance with codes and design criteria.

(b) To verify that an ongoing improvement conforms to design documents, an appointed
qualified inspector must gather information, including:

(1) the details of connections to transfer wind loads from the roof to the foundation;

(2) the specifications of roof-cladding components, including:

(A) a description of roof coverings (these may include shingles, tile, metal roofs,
modified bitumen, and low slope roof assemblies);

(B) the attachment methods of roof anchorages (fastener type and spacing, or
other attachment methods); and

(C) the material of which soffits are made and their anchorage method (fastener
type and spacing);

(3) the roof and floor diaphragm systems, including:

(A) the roof deck type and anchorage method (fastener type and spacing);

(B) the collectors;

(C) the drag struts;

(D) the diaphragm boundary elements;

(E) the roof-to-wall connections;

(F) the wall-to-floor diaphragms and framing; and

(G) the wall-to-floor connections;

(4) the horizontal wind force-resisting systems, including:

(A) the braced frames;

(B) the moment frames;

(C) the shear walls and hold downs; and

(D) the wind-force-resisting system connections to foundation;

(5) the specifications of exterior wall coverings, including:

(A) the materials of which exterior wall coverings are made (these may include brick veneer, vinyl siding, fiber cement siding, wood siding, stucco, exterior insulation and finish systems, or stone veneer); and

(B) the high-wind-specific installation methods for the exterior wall coverings (anchorage or other attachment methods);

(6) the specifications of exterior opening products;

(A) the exterior opening products (these may include windows, skylights, curtain walls, exterior doors, or garage doors); and

(B) the high wind-specific installation methods for exterior opening products (anchorage or other attachment methods); and

(7) information on the protection of exterior openings from windborne debris, when applicable.

(c) For ongoing improvements without plans, such as roofs or replacement of exterior openings, information necessary for an appointed qualified inspector to verify that the ongoing improvement complies with the wind load requirements of the applicable building code may include information listed in subsections (a) and (b) of this section.

§5.4625. Inspection Reports.

An appointed qualified inspector or a designated representative under the appointed qualified inspector's supervision must prepare a written inspection report for each inspection. All inspection reports must include the following:

(1) the complete physical address of the inspected property (including street, street number, city, county, and ZIP code);

(2) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(3) the type of construction inspected (for example, commercial tilt wall or residential wood frame);

(4) information indicating where actual inspections occurred, including, at the appointed qualified inspector's discretion:

(A) the plan or sketches, with inspection notes on whichever the appointed qualified inspector chooses; and

(B) the plan or sketches, with notes on whichever the appointed qualified inspector chooses showing the location of photographs taken as part of the inspection;

(5) the wind zone location (Inland I, Inland II, or Seaward) (initial inspection only);

(6) the exposure category of the structure (initial inspection only);

(7) the structure's mean roof height (initial inspection only);

(8) a complete description of the building products used, including:

(A) the manufacturer's name and product name;

(B) product testing information or product evaluation;

(C) the manufacturer's installation instructions, including any special instructions for high wind areas;

(D) fastener type, length, type of corrosion resistance, and placement; and

(E) the contractor's means and methods used to install the product;

(9) all discrepancies between the ongoing improvement's as-built construction and the design documents and specifications;

(10) all discrepancies between the building products specified and the building products installed;

(11) legible copies of labels of all installed components and other manufacturer information, including shingle wrappers;

(12) a description of any action taken to remedy any discrepancies described in paragraphs (9) and (10) of this section;

(13) the status of the inspection, indicating whether the appointed qualified inspector approved or disapproved the structure; and

(14) the date and printed name and signature of the appointed qualified inspector or the designated representative of the appointed qualified inspector.

§5.4626. Substantiating Information.

(a) Upon request from TDI, an appointed qualified inspector must provide information and evidence necessary to substantiate the appointed qualified inspector's verification that an ongoing improvement complies with the wind load requirements of the applicable building code.

(b) The appointed qualified inspector may provide the information and evidence described in subsection (a) of this section to TDI in the form of:

(1) product information on building components including manufacturer name, testing information, installation instructions, and model code evaluation reports or other building information as described in §5.4623 of this title (relating to Information Required to Inspect to Design Documents);

(2) information in windstorm plans, as described in §5.4623 of this title;

(3) inspection verification forms and other documents previously filed with TDI;

(4) as-built drawings;

(5) shop drawings;

(6) building product submittal information;

(7) photographs; and

(8) inspection reports, as described in §5.4625 of this title (relating to Inspection Reports).

(c) For each structure inspected, an appointed qualified inspector must retain the substantiating evidence and information described in this section for five years from the date of the most recent inspection verification form submitted on the structure.

§5.4640. Oversight.

(a) Inspection oversight. An appointed qualified inspector is subject to the regulatory authority of TDI, which includes oversight inspections conducted by TDI. TDI oversees all aspects of the inspection and notification of compliance of ongoing improvements by an appointed qualified inspector under Insurance Code Chapter 2210 and this chapter.

(b) Certificate of compliance oversight. As part of TDI's oversight, TDI may audit the inspections on structures for which it has received an Application for Windstorm Inspection Certificate of Compliance, Form WPI-1, or an Inspection Verification, Form WPI-2, including structures for which TDI has issued a Certificate of Compliance, Form WPI-8. If TDI determines that a structure does not meet the windstorm building code standards, TDI will not issue a Form WPI-8; or if TDI has issued a Form WPI-8 on a structure that is subsequently found not to be in compliance with the windstorm building code standards, TDI may rescind the Form WPI-8.

(c) Types of oversight audits. TDI may conduct an oversight audit of an appointed qualified inspector by any one, or a combination, of the following methods:

(1) TDI may conduct an audit of an appointed qualified inspector based on documents and other information submitted to TDI; or

(2) TDI may conduct an on-site audit at the appointed qualified inspector's place of employment or ongoing improvement for which TDI has received a Form WPI-1, or a Form WPI-2.

(d) Notification of audits.

(1) In conducting oversight audits of new structures and additions, TDI will give appointed qualified inspectors advance notice of no less than 10 business days before beginning the audit.

(2) In conducting oversight audits of components and cladding such as roofs, exterior wall coverings, exterior doors, windows, skylights, garage doors, and devices protecting exterior openings from windborne debris, TDI will give appointed qualified inspectors advance notice of no less than two business days before beginning the audit.

(3) The appointed qualified inspector may request a shorter time frame if a notice period in this subsection would cause a delay in the construction schedule. The notice periods in this subsection do not apply if TDI has received a complaint about a structure on which it has a Form WPI-1.

(e) Information for oversight audits. In the process of conducting an oversight audit, TDI may require the appointed qualified inspector to provide:

(1) documentation described in §5.4626 of this title (relating to Substantiating Information); and

(2) any other information maintained by the appointed qualified inspector that will demonstrate that the ongoing improvement complies with the appropriate windstorm building code standards, and that the ongoing improvement is eligible for association insurance.

(f) Burden of proof. With respect to audits, the appointed qualified inspector bears the burden of verifying, as set forth in §5.4622 of this title (relating to Inspection Verification), that the ongoing improvement complies with the wind load requirements of the applicable building code.

(g) Requirement to provide information. The appointed qualified inspector must provide information related to an audit in the same manner and time frame as required in §5.4615(5) of this title (relating to General Responsibilities of Appointed Qualified Inspectors). Failure to provide the information requested by TDI under this section may result in the nonissuance or rescission of a Form WPI-8 for the subject structure, and the appointed qualified inspector may be subject to disciplinary action by TDI, as described in §5.4642 of this title (relating to Disciplinary Action).

§5.4642. Disciplinary Action.

(a) Revocation or denial of appointment. After notice and opportunity for hearing, the commissioner may revoke an appointed qualified inspector's appointment or deny an appointed qualified inspector's application for appointment if:

(1) the applicant or appointed qualified inspector violates or fails to comply with the Insurance Code or any rule in this chapter;

(2) the applicant has made a material misrepresentation in the appointment application;

(3) the applicant has attempted to obtain an appointment by fraud or misrepresentation; or

(4) the applicant or appointed qualified inspector has made a material misrepresentation in any form or report required to be filed with TDI, including an Application for Windstorm Inspection Certificate of Compliance, Form WPI-1; a construction inspection report; or an Inspection Verification, Form WPI-2.

(b) Cease and desist order. The commissioner, ex parte, may enter an emergency cease and desist order under Insurance Code Chapter 83 against an appointed qualified inspector, or a person acting as an appointed qualified inspector, if:

(1) the commissioner believes that:

(A) the appointed qualified inspector has:

(i) failed to demonstrate, through submitting or failing to submit to TDI substantiating information as described in §5.4626 of this title (relating to Substantiating Information), that an ongoing improvement or a portion of an ongoing improvement subject to inspection meets the requirements of Insurance Code Chapter 2210 and TDI rules; or

(ii) refused to comply with requirements imposed under this chapter or TDI rules; or

(B) a person acting as an appointed qualified inspector is acting without appointment under Insurance Code §2210.254 or §2210.255; and

(2) the commissioner determines that the conduct described by paragraph (1) of this subsection is fraudulent, hazardous, or creates an immediate danger to the public.

(c) Alternative sanctions. Under Insurance Code §2210.2551(b) and §2210.256(b), the commissioner, instead of revocation or denial, may impose one or more of the following sanctions if the commissioner determines from the facts that the alternative sanction would be fair, reasonable, or equitable:

(1) suspension of the appointment for a specific period, not to exceed one year; or

(2) issuance of an order directing the appointed qualified inspector to cease and desist from the specified activity or failure to act determined to be in violation of Insurance Code Chapter 2210, Subchapter F, or rules of the commissioner adopted under Insurance Code Chapter 2210, Subchapter F.

(d) Failure to comply with order. Under Insurance Code §2210.2551(b) and §2210.256(d), if the commissioner finds, after notice and a hearing, that an appointed qualified inspector has failed to

comply with an order issued under subsection (a), (b), or (c) of this section, the commissioner will, unless the commissioner's order is lawfully stayed, revoke the appointed qualified inspector's appointment.

(e) Informal disposition. The commissioner may informally dispose of any matter under this section or under §5.4612 of this title (relating to Appointment as Qualified Inspector) by consent order or default.

(f) Automatic cancellation. If the Texas Board of Professional Engineers revokes or suspends an engineer's license, the engineer's appointment as an appointed qualified inspector is automatically canceled.

Repeal of 28 TAC §§5.4601, 5.4602, 5.4604, and 5.4608.

STATUTORY AUTHORITY. The repeal of §§5.4601, 5.4602, 5.4604, and 5.4608 is proposed under Insurance Code §§36.001, 2210.008, 2210.251, 2210.252, 2210.2515, 2210.254, and 2210.2551.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210.

Section 2210.251(b) states that for geographic areas specified by the commissioner, the commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code. Section 2210.251(g) states that a certificate of compliance issued by TDI or the association under §2210.2515 demonstrates compliance with the applicable building code under the plan of operation.

Section 2210.2515 gives TDI the authority to prescribe a form on which a person may apply to the association for a certificate of compliance for a completed structure and to prescribe a form on which a person may apply to TDI for a certificate of compliance for an ongoing improvement. Under §2210.2515, TDI must issue a certificate of compliance for an ongoing improvement if a qualified inspector inspects it in accordance with TDI rules and affirms that the improvement meets certain standards.

Section 2210.252 states that for geographic areas specified by the commissioner, the commissioner by rule may supplement the association's plan of operation building specifications with

the structural provisions of the *International Residential Code*. Under §2210.252, the commissioner by rule may adopt an edition of the *International Residential Code* and a supplement published by the International Code Council or an amendment to that code.

Section 2210.254 states that a qualified inspector includes a licensed professional engineer, authorizes TDI to establish an annual renewal period for individuals appointed as qualified inspectors, and states that a qualified inspector must be approved and appointed or employed by TDI.

Section 2210.2551 gives TDI exclusive authority over all matters relating to the appointment and oversight of qualified inspectors and to the physical inspection of structures for the purpose of determining whether to issue a certificate of compliance under §2210.2515(d).

CROSS REFERENCE TO STATUTE. The repeal of §§5.4601, 5.4602, 5.4604, and 5.4608 implements Insurance Code §§2210.251, 2210.252, 2210.2515, 2210.254, and 2210.2551.

TEXT.

DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

§5.4601. Short Title.

§5.4602. Windstorm Inspection Manual.

§5.4604. Appointment of Engineers as Qualified Inspectors.

§5.4608. Texas Board of Professional Engineers Roster.

Repeal of 28 TAC §5.4800.

STATUTORY AUTHORITY. The repeal of §5.4800 is proposed under Insurance Code §§36.001, 2210.008(b), 2210.251, and 2210.252.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210.

Section 2210.251(b) states that for geographic areas specified by the commissioner, the commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code. Section 2210.251(g) states that a certificate of compliance issued by TDI or the association under §2210.2515 demonstrates compliance with the applicable building code under the plan of operation.

Section 2210.252 states that for geographic areas specified by the commissioner, the commissioner by rule may supplement the association's plan of operation building specifications with the structural provisions of the *International Residential Code*. Under §2210.252, the commissioner by rule may adopt an edition of the *International Residential Code* and a supplement published by the International Code Council or an amendment to that code.

CROSS REFERENCE TO STATUTE. The proposed repeal of §5.4800 implements Insurance Code §2210.251 and §2210.252.

TEXT.

**DIVISION 9. WINDSTORM BUILDING CODE ADVISORY COMMITTEE ON SPECIFICATIONS AND
MAINTENANCE**

§5.4800. Form Promulgated for Use in Proposing a Change to Windstorm Building Requirements or Procedures in the Texas Windstorm Insurance Association Plan of Operation.

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

Issued at Austin, Texas, on September 15, 2016.



Norma Garcia
General Counsel
Texas Department of Insurance