

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
28 TAC §§5.4603, 5.4604, 5.4606, 5.4609, 5.4640, and 5.4642

INTRODUCTION. The Commissioner of Insurance adopts amended §§5.4603, 5.4604, 5.4609, 5.4640, and 5.4642; and repeals §5.4606 and replaces it with new §5.4606. These sections concern the process for certifying that structures comply with windstorm building codes for both ongoing and completed improvements. The adopted rules will apply to applications for certificates of compliance submitted on or after the effective date of the rules. The adopted rules are necessary to implement Senate Bill 615 and House Bill 1900, 86th Legislature, Regular Session (2019), and important to maintain uniformity within the Texas Department of Insurance's (TDI's) regulations.

TDI repeals §5.4606 and adopts §§5.4603, 5.4609, and 5.4642 without changes to the proposed text published in the June 19, 2020, issue of the *Texas Register* (45 TexReg 4150). TDI adopts §§5.4604, new 5.4606, and 5.4640 with changes made in response to public comments. These changes, which are identified below, do not add new requirements, and do not affect additional stakeholders.

REASONED JUSTIFICATION. Amendments to §§5.4603, 5.4604, 5.4609, 5.4640, and 5.4642, and the repeal of the previous §5.4606 and adoption of new §5.4606 are necessary to implement SB 615 and HB 1900, which amended Insurance Code §2210.251 and §2210.2515. TDI must fulfill its new statutory charge, effective June 1, 2020, to regulate the application process for certificates of compliance for completed improvements. While the application process for certificates of compliance for completed improvements moved from the Texas Windstorm Insurance Association (TWIA) to TDI effective June 1, 2020, the

adopted rules will apply to applications for certificates of compliance submitted on or after the effective date of the rules.

SB 615 and HB 1900, 86th Legislature. SB 615 and HB 1900 amend Insurance Code §2210.251 and §2210.2515. These amendments require TDI to regulate the application process for certificates of compliance for completed improvements and provide additional disciplinary authority and remedies for TDI to use to address noncompliant applications or structures.

Insurance Code §2210.251 and §2210.2515 govern certificates of compliance that provide evidence of a structure's insurability by TWIA. In 2015, the Legislature passed HB 2439, 84th Legislature, Regular Session (2015), which divided the certificate of compliance process between TWIA and TDI. As required by HB 2439, TWIA oversaw the certificate of compliance process for completed improvements, while TDI oversaw the certificate of compliance process for ongoing improvements.

Under HB 2439, TWIA was required to issue a certificate of compliance for a completed improvement if it received specific statutorily required affirmations from a Texas-licensed professional engineer and a completed TDI-prescribed form. If TDI denied an application for an ongoing improvement for noncompliance, an applicant could apply to TWIA when the improvement was completed. For completed improvements, neither TDI nor TWIA had authority to inspect or verify the application's accuracy or enforcement authority. While HB 2439 was in effect, TDI received complaints about structures that were certified under TWIA's certificate application process, but that did not meet the required windstorm building code standards.

The Sunset Advisory Commission reviewed TWIA in 2018–2019. Following the review, the Sunset Advisory Commission issued a report examining six issues, including windstorm certificates of compliance. The Sunset Review Commission's report recommended statutory changes to require that a certificate of compliance for a completed improvement be based on some inspection of the improvement. Texas Sunset Advisory Commission, *Staff Report with Final Results*, 46 (2019), www.sunset.texas.gov/public/uploads/files/reports/Texas%20Winstorm%20Insurance%20Association%20Staff%20Report%20with%20Final%20Results.pdf.

With SB 615 and HB 1900, the Legislature put certificates of compliance for completed improvements under TDI regulation. TDI now has authority to deny applications for and rescind certificates of compliance for completed improvements. The bills also authorize TDI to submit a formal complaint on a licensed engineer to the Texas Board of Professional Engineers and Land Surveyors (TBPELS) related to the engineering work in an application for a completed improvement. SB 615, however, prohibits TDI from prescribing a form that requires an engineer to assume liability for the construction of the improvement.

Under SB 615 and HB 1900, TDI continues to regulate certificates of compliance for ongoing improvements. HB 1900 gives TDI authority to impose reasonable penalties on appointed qualified inspectors (AQIs) for failing to provide complete and accurate information in connection with the inspection of an ongoing improvement. The bill states that these reasonable penalties include prohibiting the inspector from applying for certificates of compliance under Insurance Code §2210.2515.

The following paragraphs explain how the adopted rules implement SB 615 and HB 1900.

Section 5.4603. Windstorm Inspection Forms. Section 5.4603 addresses windstorm inspection forms. Amending §5.4603 is necessary because amended Insurance Code §2210.2515 requires TDI to prescribe forms for applying for a certificate of compliance for a completed improvement. The rule lists what is required to apply for a completed-improvement certification. These requirements are listed on a form that TDI has made available on its website—new Certification Form for Completed Improvement, WPI-2E. The rule also identifies new forms for the completed-improvement process available on TDI's website, such as the new certification form for a completed improvement.

Section 5.4604. Certification Form for Completed Improvement. Section 5.4604 addresses the application process for certificates of compliance for completed improvements. Amending §5.4604 is necessary to describe the new application process for completed improvements, including adding new forms prescribed by TDI as required in amended Insurance Code §2210.2515. The adopted rules also implement TDI's authority to deny an application for a certificate of compliance for a completed improvement and to submit a formal complaint to TBPELS. In addition, the adopted rules include nonsubstantive amendments to improve consistency and readability of TDI's regulations.

Section 5.4604 is adopted with the following changes to the text as proposed. Section 5.4604(a)(2)(C), which included a requirement for the postconstruction evaluation

report to contain the engineer's seal, was removed because subsection (a)(2) already references the postconstruction evaluation report as being sealed.

In response to a comment, TDI removed subsection (b)(20) and moved "and" from after subsection (b)(19) to after (b)(18).

In response to another comment, TDI added a clarifying statement in a new subsection (d) that identifies expectations for an application using a sealed design, including clarification that TDI is authorized to verify an engineer's affirmation under subsection (a)(1) of the section and the sealed design that the engineer relies on for the certification application. This statement further clarifies §5.4606(a)(8), which allows for "[a]ny other documentation or other form of evidence that supports statements made in the application, design, or postconstruction evaluation report submitted to TDI."

Repealed §5.4606. Requirements for Temporary Appointment of Qualified Inspectors. Repealed §5.4606 addressed requirements for temporary appointment of qualified inspectors. TDI has repealed this section because it is no longer needed. TDI implemented requirements for temporary appointment of qualified inspectors in 2006 in response to Hurricane Rita in §5.4606, but the response to Hurricane Rita is complete.

New §5.4606. Supporting Evidence for Sealed Postconstruction Evaluation Report and Design for Certificate of Compliance for Completed Improvement. TDI replaces repealed §5.4606 by adopting a new section that addresses supporting evidence requirements as necessitated by amended Insurance Code §2210.2515. Applicants must submit supporting evidence with an application for a completed-improvement certificate. TDI may request additional supporting evidence as identified in this section.

In response to comment, TDI revised the section heading and added language to the text of the section to further clarify that this list provides examples of supporting evidence an applicant can provide to support a postconstruction evaluation report.

Section 5.4609. Application for Qualified Inspector Appointment. Section 5.4609 addresses the application for a qualified-inspector appointment. As amended, TDI deletes §5.4609(d) and (f). This revision is important, because subsections (d) and (f) no longer apply. The subsections addressed engineers appointed as AQIs as of the effective date of §5.4606 under the previous version of Insurance Code §2210.254(a)(2) (Acts 2005, 79th Leg., Ch. 727, §2, 2005 Tex. Gen. Laws 1941 (amended 2011)).

Section 5.4640. Oversight. Amendments to §5.4640 implement TDI's new oversight authority for completed-improvement-certificate applications and issued certificates. The adopted changes specify that TDI can deny an application, rescind an issued certificate, or report an engineer to TBPELS. In response to comment, changes were made to clarify that TDI can audit, inspect, or both audit and inspect structures for which it has received a Certification Form for Completed Improvement, Form WPI-2E, as well as structures for which TDI has issued a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E.

Section 5.4642. Disciplinary Action. Section 5.4642 addresses disciplinary actions that TDI may take. The amendments to §5.4642 describe the penalties TDI is authorized to impose on a person acting as an AQI under Insurance Code §2210.254 who has failed to provide complete and accurate information in connection with an inspection for a certificate of compliance.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received comments from three commenters.

Commenters in support of the proposal with changes: Aran + Franklin Engineering, Inc.; the International Code Council (ICC); and TBPELS.

After the end of the comment period stated in the proposal, TDI also received a written comment from a fourth commenter. Because the comment was not submitted within the stated comment period, it was not addressed in this order.

Comment on §5.4603

Comment: A commenter noted that there have been issues in the past concerning the details and the scope of items required by a professional engineer engaged in the windstorm process. The commenter also asks that, while not having specific changes to recommend for the new WPI-2E form, TDI allow professional engineers to review the form.

Agency Response: To clarify the details and scope of items required by a professional engineer engaged in the windstorm process, TDI has added subsection (d) to §5.4604. TDI has also added language to further clarify that the list in §5.4606 provides examples of supporting evidence an applicant can provide to support a postconstruction evaluation report.

The form has been available on TDI's website since June 1, 2020. TDI published the proposal with an opportunity to comment, and an engineering firm provided timely comment. The adopted rule requires the same information as identified in the proposed rule. Going forward, TDI welcomes any discussion to facilitate clarity for the application process and expectations for practitioners.

Comments on §5.4604

Comment: A commenter requests that TDI add "and" after §5.4604(a)(2)(A), remove "and" from subparagraph (B), and delete in subparagraph (C) "contains the engineer's seal," because subsection (a)(2) already requires that an engineer seal the postconstruction report.

Agency Response: TDI agrees with this comment and has changed §5.4604(a)(2) as proposed to reflect the commenter's recommended edits.

Comment: A commenter recommends TDI delete §5.4604(b)(20), which requires supporting evidence as identified in §5.4606. The commenter suggests that subsection (b)(20) is redundant because subsection (a)(2) already requires that supporting evidence be submitted with a postconstruction evaluation report. The commenter also suggests that (b)(20), requiring submission of supporting evidence with the application, is inapplicable for sealed design submissions described under (a)(1).

Agency Response: TDI agrees with this comment and has deleted subsection (b)(20) to eliminate redundancy. TDI has also added a clarifying statement in a new subsection (d) that identifies expectations for an application using a sealed design under §5.4604(a)(1), including clarifying that TDI is authorized to verify what an engineer has submitted under subsection (a)(1), including verifying an engineer's affirmation and the sealed design that the engineer relies on for the certification application. Subsection (d) further clarifies §5.4606(a)(8), which refers to "[a]ny other documentation or other form of evidence that supports statements made in the application, design, or postconstruction evaluation report submitted to TDI."

Comments on §5.4606

Comment: A commenter supports the rules but asks that TDI directly accept product evaluation reports developed and published by ICC.

Agency Response: TDI will accept product evaluation reports as supporting evidence as described under §5.4606(a)(1), including reports from ICC. However, TDI will not limit the reports to a specific entity.

Comment: A commenter requests that TDI edit the language in §5.4606 to clarify that the supporting evidence list is a guideline and not a requirement. The commenter also requests that TDI work with professional engineers practicing in the field of windstorm certification to determine what is necessary prior to the passage of the rule.

Agency Response: In response to this comment, TDI has added language to clarify that the list in §5.4606 provides examples of supporting evidence an applicant can provide to support a postconstruction evaluation report. TDI notes that it did consult professional engineers practicing in the field of windstorm certification to determine what was necessary prior to proposing this rule and that, consistent with Government Code Chapter 2001, TDI also published this rule for comment and held a public hearing to discuss it prior to this adoption.

Comment: A commenter supports the rule but recommends that TDI should not require engineers to submit additional documentation for WPI-2E postconstruction evaluation reports unless TDI requests the documentation as part of an oversight. The

commenter recommends that engineers maintain the documentation described as part of their records.

Agency Response: TDI declines to make the requested change, because Texas Insurance Code §2210.2515(c)(2)(B) requires submission of supporting documentation for postconstruction evaluation reports. Subsection (d) of §5.4606 requires engineers to retain the supporting documentation and applicable information for five years from the date of the most recent certification application submitted.

Comment on §5.4640

Comment: A commenter asks TDI to identify what parts of the submitted documentation are considered engineering for purposes of §5.4640(b)(2)(B) and clarify what action TDI may take regarding submitted supporting evidence. The commenter recommends a channel of ongoing communication to confer on this issue.

Agency Response: TDI has added language to clarify that TDI can audit, inspect, or both audit and inspect structures for which it has received a Certification Form for Completed Improvement, Form WPI-2E, as well as structures for which TDI has issued a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E.

Because TDI is not authorized to regulate professional engineers, TDI does not have authority to identify what acts constitute engineering and what acts do not. TDI adopted the current language of Texas Insurance Code §2210.2515(i), which states that TDI may only refer an engineer to TBPELS for engineering work as reflected in the sealed postconstruction evaluation report or other materials submitted by an engineer. TDI welcomes ongoing communication with TBPELS.

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

Repeal of 28 TAC §5.4606

STATUTORY AUTHORITY. The Commissioner repeals 28 TAC §5.4606 under Insurance Code §2210.008(b) and §36.001.

Insurance Code §2210.008(b) authorizes the Commissioner to adopt rules as reasonable and necessary to implement Insurance Code Chapter 2210.

Insurance Code §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.

TEXT.

§5.4606. Requirements for Temporary Appointment of Qualified Inspectors.

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

28 TAC §§5.4603, 5.4604, 5.4606, 5.4609, 5.4640, and 5.4642

STATUTORY AUTHORITY. The Commissioner adopts amendments to 28 TAC §§5.4603, 5.4604, 5.4609, 5.4640, 5.4642, and new §5.4606 under Insurance Code §§2210.251, 2210.2515, and 36.001.

Insurance Code §2210.251 provides that TDI's issuance of a certificate of compliance demonstrates compliance with the applicable building code under the TWIA plan of operation.

Insurance Code §2210.2515 provides that TDI oversees the certification-of-compliance application process for both ongoing and completed improvements and authorizes the Commissioner to adopt rules as necessary to impose reasonable penalties on qualified inspectors that fail to provide complete and accurate information in connection with an inspection for a certificate of compliance and rescind certificates of compliance.

Insurance Code §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.

TEXT.**§5.4603. Windstorm Inspection Forms.**

(a) Inspection Verification, Form WPI-2-BC-6. TDI adopts by reference the Inspection Verification, Form WPI-2-BC-6, effective January 1, 2017, for use in windstorm inspection, for structures constructed, repaired, or to which additions are made on and after January 1, 2008, and before April 1, 2020.

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

(1) Application for Appointment as a Qualified Inspector, Form AQI-1, effective January 1, 2017;

(2) Renewal Application for Appointment as a Qualified Inspector, Form AQI-R, effective January 1, 2017;

(3) Application for Certificate of Compliance for Ongoing Improvement, Form WPI-1, January 1, 2017;

(4) Certification Form for Completed Improvement, Form WPI-2E, effective June 1, 2020; and

(5) Inspection Verification, Form WPI-2, effective April 1, 2020, for structures constructed, repaired, or to which additions are made on and after April 1, 2020.

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

(1) Field Form, Form WPI-7, effective April 1, 2020; and

(2) Certificate of Compliance for Ongoing Improvement, Form WPI-8, effective January 1, 2017; and

(3) Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E.

§5.4604. Certification Form for Completed Improvement.

(a) Persons must submit the following information when applying to TDI for a certificate of compliance for a completed improvement on a structure:

(1) a statement from a professional engineer licensed by the Texas Board of Professional Engineer and Land Surveyors that affirms that the engineer has:

(A) designed the improvement;

(B) affixed the engineer's seal on the design; and

(C) affirmed the design complies with the applicable building code under the plan of operation, and that the improvement was constructed in accordance with the design; or

(2) a sealed postconstruction evaluation report completed and submitted by a professional engineer licensed by the Texas Board of Professional Engineer and Land Surveyors that:

(A) confirms the improvement's compliance with the applicable building code under the plan of operation; and

(B) includes supporting evidence such as that identified in §5.4606 of this title (relating to Supporting Evidence for Sealed Postconstruction Evaluation Report for Certificate of Compliance for Completed Improvement) for the engineer's postconstruction evaluation report.

(b) The following information must also be provided:

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

(2) whether the original transfer of title from the builder to the initial owner of the improvement has occurred or is expected to occur in the future;

(3) whether the improvement is substantially completed;

(4) the wind zone location;

(5) whether the structure is in a Coastal Barrier Resource System Unit;

(6) the property owner's name and contact information, or the name and contact information of the builder or contractor that made the completed improvement;

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

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

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

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

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

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

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

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

(15) the importance factor or risk category of the structure;

(16) the exposure category of the structure;

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

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

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

(c) TDI will make available the Certification Form for Completed Improvement, Form WPI-2E on which the information in subsections (a) and (b) of this section may be provided.

(d) If an applicant applies using a sealed design, an engineer must maintain the evidence supporting that design, such as information listed in §5.4606(a)(8) of this title and §5.4623 of this title (relating to Information Required to Inspect Design Documents). TDI may request to view the sealed design and supporting documents, as applicable, to verify that there is a sealed design, designed by the engineer, and to verify the engineer's affirmation that the design complies with the applicable building code under the plan of operation and the improvement was constructed in accordance with the design.

§5.4606. Supporting Evidence for Sealed Postconstruction Evaluation Report and Design for Certificate of Compliance for Completed Improvement.

(a) "Supporting evidence" includes:

- (1) Product evaluations;
- (2) Installation instructions from the manufacturer for the product;
- (3) Test data;
- (4) Written evidence from inspections—for example, an inspection report;
- (5) Photographs;
- (6) Video recording;
- (7) Plans, either as-built plans (plans that demonstrate compliance with the applicable building code for the design of the structure), design drawings, shop drawings, or sketches; or

(8) Any other documentation or other form of evidence that supports statements made in the application, design, or postconstruction evaluation report submitted to TDI, as applicable.

(b) To verify that an engineer's postconstruction evaluation report confirms the completed improvement's compliance with the applicable building code under the plan of operation, as required under §5.4604 of this title (relating to Certification Form for Completed Improvement), it must include supporting evidence. TDI may also request supporting evidence, as applicable, to verify an engineer's application, sealed design, or affirmation under §5.4604(a). The supporting evidence may include the following, as related to the part of the structure being certified:

(1) Roof covering certifications.

(A) Supporting evidence identifying all products and components included in the scope of the certification, including roof covering, fasteners, underlayment, roof deck, roof vents, skylights, and all other parts of the roof-covering assembly.

(B) Manufacturer's installation instructions, product evaluation reports, or test laboratory reports, and code-required installation requirements for all components included in the scope of certification (for example, see subparagraph (A) of this paragraph).

(C) Supporting evidence that the components of the installed building products meet or exceed the code-required design pressures.

(D) Supporting evidence verifying that the roof covering, roof vents, and skylights are installed according to the manufacturer installation instructions, product test reports, and specifications in the applicable windstorm building code.

(E) Applicable information listed in §5.4626 of this title (relating to Substantiating Information).

(2) Building product certifications.

(A) Supporting evidence identifying all products included in the scope of the certification, including windows, side-hinged doors, sliding doors, overhead doors (sectional or rolling), exterior wall coverings, and other applicable building products.

(B) Manufacturer's installation instructions; product evaluation, reports, or test laboratory reports; product certifications; and code-required installation requirements for the building products included in the scope of the certification.

(C) Supporting evidence verifying that design-pressure ratings for all building products meet or exceed the required design pressures as specified in the applicable windstorm building code for the installation.

(D) Supporting evidence verifying that the building products that are required by the applicable windstorm building code were certified by a certification agency, such as the Window and Door Manufacturers Association or the American Architectural Manufacturers Association; are properly labeled; and have valid certifications.

(E) Supporting evidence recording all information on certification labels and verifying that the product test pressure exceeds code-required design pressure, and that building products are within the maximum size tested on each label and are installed exactly as tested.

(F) Supporting evidence specifying the minimum design pressures required by the applicable windstorm building code.

(G) Applicable information listed in §5.4626 of this title.

(H) Where the applicable windstorm building code requires windborne debris protection, supporting evidence either verifying the product is impact-resistant or protected with a windborne debris protection system. Where the applicable code requires windborne debris protection, the protection must be installed according to manufacturers' instructions and product test reports.

(3) Entire new building, existing building, or a new addition to an existing structure.

(A) Supporting evidence verifying complete load path as specified by the applicable windstorm building code, including connections between roof, walls, floor, and foundation.

(B) Supporting evidence verifying roof coverings as specified under paragraph (1) of this subsection.

(C) Supporting evidence verifying building products as specified under paragraph (2) of this subsection.

(D) Building plans, such as structural drawings from the engineer of record or as-built plans that demonstrate compliance with the applicable windstorm building code. The plans must show items such as lateral resisting elements, wall framing, roof framing, floor framing, and other pertinent elements of the structure that are included in the scope of work for the certification.

(E) Supporting evidence verifying the foundation system, such as existing plans or as-built plans. The plans must show the location of anchors, ties, or straps; pile locations; or other pertinent elements of the structural system that are included in the scope of work for the certification.

(F) For additions, supporting evidence verifying whether the addition is attached or detached from main structure. If the addition is attached, the supporting evidence must specify the load on the existing structure, the load imposed by the addition on the existing structure, and if the existing structure and the connection will satisfy the combined loading. Attached additions rely on the existing structure for stability and strength. Detached additions are independent of the existing structure. Supporting evidence must also verify load path from addition to existing structure, if applicable.

(G) Applicable information listed in §5.4626 of this title.

(c) Failure to provide the documents requested by TDI could result in a denial of a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E, or other action taken by TDI as stated in §5.4640 of this title (relating to Oversight) or §5.4642 of this title (relating to Disciplinary Action).

(d) For each component inspected, including roof, window, door, garage door, or exterior cladding, the engineer listed on the certificate of compliance for completed improvement must retain the supporting evidence and applicable information described in this section for that component for five years from the date of the most recent certification application submitted on the structure.

§5.4609. Application for Qualified Inspector Appointment.

(a) Experience and education. An appointed qualified inspector must display demonstrable experience and education related to windstorm design.

(b) 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 and Land Surveyors registration number;

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

(4) a statement addressing whether the applicant has attended an orientation program as described in subsection (d) of this section.

(c) 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 (b) of this section.

(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.

§5.4640. Oversight.

(a) Inspection oversight. An appointed qualified inspector is subject to TDI's regulatory authority, 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.

(1) Ongoing Improvements. 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.

(2) Completed Improvements.

(A) TDI may deny an application for certificate of compliance if the postconstruction evaluation report or Certification Form for Completed Improvement, Form WPI-2E, is not fully documented as required under §5.4604 of this title (relating to Certification Form for Completed Improvement) or §5.4606 of this title (relating to Supporting Evidence for Sealed Postconstruction Evaluation Report for Certificate of Compliance for Completed Improvement). TDI may audit, inspect, or both audit and inspect structures for which it has received a Certification Form for Completed Improvement, Form WPI-2E.

(B) TDI may submit a formal complaint to the Texas Board of Professional Engineers and Land Surveyors related to the engineering work of a

professional engineer, as reflected in the sealed postconstruction evaluation report or other materials submitted by an engineer under §5.4604 and §5.4606 of this title.

(C) TDI may rescind a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E, if TDI finds that the improvement does not comply with the applicable building code under the plan of operation. TDI may audit, inspect, or both audit and inspect structures for which TDI has issued a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E.

(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 all audits in which TDI asks the appointed qualified inspector to bring substantiating information to the audit, TDI will expect the audit to take place no less than 15 days after the appointed qualified inspectors receives notice of the audit.

(2) 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.

(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 verification. For oversight audits, the appointed qualified inspector bears the burden of verifying, under §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 Certificate of Compliance, Form WPI-8 for the ongoing improvement, 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, report, or other information required to be submitted to TDI, including an Application for Certificate of Compliance for Ongoing Improvement, Form WPI-1; a construction inspection report; an Inspection Verification, Form WPI-2; an Inspection Verification, Form WPI-2-BC-6; or a Certification Form for Completed Improvement, Form WPI-2E.

(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 subsections (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 and Land Surveyors revokes or suspends an engineer's license, the engineer's appointment as an appointed qualified inspector is automatically canceled.

(g) Reasonable penalty. If TDI finds that a person acting as an appointed qualified inspector under Insurance Code §2210.254 has failed to provide complete and accurate information regarding an inspection for a certificate of compliance under Insurance Code §2210.2515, then TDI may impose a reasonable penalty on the inspector, including prohibiting the inspector from applying for certificates of compliance under Insurance Code §2210.2515.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on 9/28/2020.

DocuSigned by:
James Person
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James Person, General Counsel
Texas Department of Insurance

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 5. Property and Casualty Insurance

Adopted Sections
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DocuSigned by:

Kent Sullivan

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Kent C. Sullivan
Commissioner of Insurance

Commissioner's Order No. **2020-6486**