

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE
28 TAC §5.4605

INTRODUCTION. The Texas Department of Insurance proposes amending 28 TAC §5.4605, concerning Items Not Requiring an Inspection for the Purposes of Windstorm and Hail Insurance Coverage through the Texas Windstorm Insurance Association (association). The association is the residual insurer of last resort for windstorm and hail insurance in the designated catastrophe area along the Texas coast. The association provides windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market. Insurance Code §2210.251 requires that structures constructed, altered, remodeled, enlarged, repaired, or to which additions are made after January 1, 1988, be inspected and approved by TDI for compliance with the association's plan of operation to be eligible for coverage through the association. The commissioner of insurance has adopted several windstorm building codes for the association's plan of operation.

As part of its inspections program, TDI has developed a list of certain items not requiring an inspection for compliance with the association's plan of operation. Section 5.4605 lists the items that currently do not require an inspection for the purposes of windstorm and hail insurance coverage through the association, provided that any repairs, replacements, or procedures are made with like kind and quality materials, fasteners, and craftsmanship as compared to the structure before the repairs, replacements, or procedures are made; and as compared to the parts of the building, listed items may be installed or replaced without requiring an inspection. The amendments would add certain items to the list and modify other items currently listed.

The proposed amendments add three new items to the rule list: 1) leveling of an existing pier and beam foundation or piling foundation, if no repairs are made; 2) repairs or replacement of preformed flanges with a collar or sleeve used for mechanical, plumbing, or electrical roof penetrations; and 3) repairs or replacement of storm doors or screen doors (a supplemental door installed on the outside of an exterior door). The proposed amendments also modify four existing items on the list: 1) repairs to roof coverings with a cumulative area of less than 100 square feet (one square), not involving roof decking or framing members; 2) repairs to porch and balcony handrails and guardrails; 3) replacement of glass in windows or glass doors or replacement of exterior side-hinged doors not involving the frames provided that the area is less than 10 percent of the surface area of the affected side (elevation) of the structure; and 4) repairs or replacement of exterior wall coverings provided that

the area is less than 10 percent of the surface area of the affected side (elevation) of the structure. The purpose of the uniform list of items not requiring inspection is to allow for cost-effective repairs or replacement to various items on a structure.

FISCAL NOTE. Sam Nelson, director, Inspections Office of the Regulatory Policy Division, has determined that for each year of the first five years the proposed amended sections will be in effect, there will be minimal fiscal impact to state and local governments as a result of enforcement or administration of this proposal. Mr. Nelson does not anticipate any measurable effect on local employment or the local economy as a result of enforcement or administration of this proposal. Some local governments are association policyholders. A local government would experience a positive economic effect if items designated by the rule are covered by the association's windstorm and hail insurance policies without the requirement that the items be inspected.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amended sections are in effect, Mr. Nelson expects that administering or enforcing this rule will have the public benefit of increasing coverage of items designated by the rule under the association's windstorm and hail insurance policies without the added burden of the inspection requirement.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Mr. Nelson has determined that the proposed amended rule will have a negligible impact on small and micro businesses in the state. As a result, and in compliance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. TDI has determined that this proposal does not affect any private real property interests and does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you wish to comment on the proposal, you must submit written comments no later than 5 p.m., Central time, on June 6, 2016. TDI requires two copies of your comments. Send one copy to the Office of Chief Clerk by email to chiefclerk@tdi.texas.gov,

or by mail to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy by email to sam.nelson@tdi.texas.gov, or by mail to Sam Nelson, Director, Inspections Office, Mail Code 103-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must submit any request for a public hearing separately to the Office of Chief Clerk, before the close of the public comment period. If TDI holds a hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes the amendments under Insurance Code §§2210.251, 2210.008 and 36.001. Section 2210.251 states property inspection requirements for association windstorm and hail insurance. Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A. 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 the state.

CROSS REFERENCE TO STATUTE. The proposed amendments affect Insurance Code §2210.251.

TEXT.

§5.4605. Items Not Requiring an Inspection for the Purposes of Windstorm and Hail Insurance

Coverage through the Texas Windstorm Insurance Association. The items listed in this section do not require an inspection for compliance with the windstorm and hail insurance coverage through the Texas Windstorm Insurance Association provided that any repairs, replacements, or procedures are made with like kind and quality materials, fasteners, and craftsmanship as compared to the structure before the repairs, replacements, or procedures are made, and as compared to the parts of the building which are not repaired. In addition, if no structural change is made, the initial installation or replacement of the listed items may be made without requiring an inspection. The items are as follows:

(1) repairs to roof coverings with a cumulative area of [~~roofs~~] less than 100 square feet (one square), not involving roof decking or framing members,

- (2) repairs or replacement of gutters,
- (3) replacement of decorative shutters,
- (4) repairs to breakaway walls,
- (5) fascia repairs,

(6) repairs to porch and balcony handrails and guardrails [~~railings~~],
(7) repairs to stairways or steps [~~stairways / steps~~], and wheelchair ramps,
(8) protective measures before a storm,
(9) temporary repairs after a storm,
(10) leveling and repairs to an existing slab on grade foundation, unless wall and/or foundation anchorage is altered or repaired,

(11) leveling of an existing pier and beam foundation or piling foundation, if no repairs are made,

(12) [(11)] fence repair,

(13) [(12)] painting, carpeting, and refinishing,

(14) [(13)] plumbing and electrical repairs,

(15) repairs or replacement of preformed flanges with a collar or sleeve used for mechanical, plumbing, or electrical roof penetrations;

(16) [(14)] repairs to slabs poured on the ground for patios (including slabs under homes on pilings);

(17) [(15)] repairs or replacement of soffits less than 24 inches in width,

(18) [(16)] repairs or replacement of nonstructural [~~non-structural~~] interior fixtures, cabinets, partitions (nonloadbearing) [~~(non-loadbearing)~~], surfaces, trims or equipment,

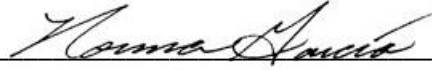
(19) [(17)] replacement of glass in windows or glass doors or replacement of exterior side-hinged doors not involving the frames provided that the area is less than 10 percent [%] of the surface area of the affected side (elevation) of the structure, [~~and~~]

(20) [(18)] repairs or replacement of exterior wall coverings [~~siding~~] provided that the area is less than 10 percent [%] of the surface area of the affected side (elevation) of the structure, and [-]

(21) repairs or replacement of storm doors or screen doors (a supplemental door installed on the outside of an exterior door).

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 April 20, 2016.

A handwritten signature in cursive script, appearing to read "Norma Garcia", is positioned above a horizontal line.

Norma Garcia
General Counsel
Texas Department of Insurance