

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 10. ELIGIBILITY AND FORMS
28 TAC §5.4906 and §5.4907

INTRODUCTION. The Texas Department of Insurance proposes repealing 28 TAC §5.4906 and §5.4907, which concern the certificate of compliance approval program and the certificate of compliance transition program for the Texas Windstorm Insurance Association (association), respectively. Subsequent legislation has rendered these sections obsolete.

EXPLANATION. 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, or 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 various windstorm building codes for the association's plan of operation.

Title 28 TAC §5.4906 and §5.4907 refer to programs through which structures could gain TDI approval without being inspected or complying with the applicable windstorm building code, under certain statutory exceptions. At the time §5.4906 was adopted, Insurance Code §2210.251(f) and §2210.258 provided that a residential structure insured by the association as of September 1, 2009, could continue coverage through the association, provided that any construction, alteration, remodeling, enlargements, repairs, or additions begun on or after June 19, 2009, complied with the applicable windstorm building code. Section 5.4906 applies to residential structures insured by the association under a policy that was issued in accordance with TDI's approval process regulations initiated April 12, 2006, and that continued to be eligible for that coverage on September 1, 2009. The section reminds persons that the declination and flood insurance requirements in the Insurance Code and the association's underwriting requirements apply to structures in the certificate of compliance approval program.

Section 5.4907 was also adopted under the authority of Insurance Code §2210.251 and §2210.258. Section 5.4907 describes the certificate of compliance transition program, which provided

that between September 1, 2009, and August 31, 2011, residential structures could obtain coverage through the association without complying with the applicable windstorm building code. Under the program, the association could provide coverage to noncompliant residential structures for which private market windstorm and hail insurance coverage had been discontinued within the 12 months before the date of the application to the association; that had not been constructed, altered, remodeled, enlarged, repaired, or added to since June 19, 2009; and that met other requirements.

HB 3, 82nd Legislature, First Called Session (2011) and SB 1702, 83rd Legislature, Regular Session (2013) rendered §5.4906 and §5.4907 obsolete. HB 3 established the alternative certification program, which made noncompliant residential structures eligible for association coverage provided that at least one qualifying structural building component had been inspected and found to comply with applicable building code standards. SB 1702 repealed the alternative certification program but enabled noncompliant residential structures insured in the private market on or after June 19, 2009, to obtain insurance through the association, even if they had been constructed, altered, remodeled, enlarged, repaired, or added to on or after that date. The provisions of SB 1702 were to expire on December 31, 2015, but SB 498, 84th Legislature, Regular Session (2015) extended the provisions indefinitely.

In the absence of §5.4906 and §5.4907, noncompliant residential structures that became eligible for association coverage under former versions of Insurance Code §2210.251(f) and §2210.258 are still eligible. Policyholders will continue to pay a premium surcharge of 15 percent for each noncompliant residential structure under Insurance Code §2210.259(a). Currently, 36,990 structures in Texas are in this category.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Sam Nelson, director, Inspections Office, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state or local government. If adopted, the proposal would impose no additional requirements that affect state or local government. This proposal repeals sections that were made obsolete by HB 3, 82nd Legislature, First Called Session (2011) and SB 1702, 83rd Legislature, Regular Session (2013).

PUBLIC BENEFIT AND COST NOTE. Mr. Nelson has also determined that for each year of the first five years the proposed repeal will be in effect, there will be public benefits resulting from the proposal and there will be no costs to persons required to comply with the proposal. The public benefit of the proposed repeal will be that it will update TDI rules to be consistent with existing law on exceptions to the windstorm building code compliance requirements. This should reduce potential confusion on the part of agents and policyholders.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) and (f) require that if a proposed rule may have an economic impact on small or micro 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.

This proposal does not have any economic impact on small or micro businesses, so no economic impact statement or regulatory flexibility analysis is required.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, so it 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 this proposal you must do so in writing no later than 5 p.m., Central time on March 7, 2016. Send one copy either by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, 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

comments to Sam Nelson, Director, Inspections Office, Mail Code 105-5G, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to Sam.Nelson@tdi.texas.gov. If you wish to request a public hearing on this proposed repeal, you must submit a request separately by mail to the Texas Department of Insurance, Office of the Chief Clerk, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov before the close of the public comment period. If TDI holds a hearing, the commissioner will consider written comments and testimony presented at the hearing.

STATUTORY AUTHORITY. TDI proposes repealing 28 TAC §5.4906 and §5.4907. The repeals are proposed under Insurance Code §36.001 and §2210.008.

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 proposal affects the following statutes:

<u>Rule</u>	<u>Statute</u>
§5.4906	Insurance Code §§2210.251, 2210.258, and 2210.259
§5.4907	Insurance Code §§2210.251, 2210.258, and 2210.259

TEXT.

§5.4906. Certificate of Compliance Approval Program.

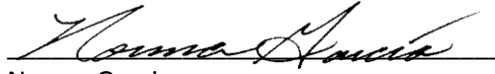
§5.4907. Certificate of Compliance Transition Program.

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

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

Proposed Sections
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Issued at Austin, Texas, on January 12, 2016.

A handwritten signature in black ink, appearing to read "Norma Garcia", written over a horizontal line.

Norma Garcia
General Counsel
Texas Department of Insurance