

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

Division 9. Windstorm Building Code Advisory Committee on Specifications Maintenance

Repeal of 28 TAC §5.4800

INTRODUCTION. The commissioner of insurance adopts amendments to 28 TAC §5.4603; 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, concerning implementation of HB 2439, 84th Legislature, Regular Session (2015).

The commissioner adopts the repeal of 28 TAC §5.4800, concerning the Windstorm Building Code Advisory Committee on Specifications Maintenance, which is obsolete.

The proposed rules were published in the September 30, 2016, issue of the *Texas Register* (41 TexReg 7665). The Texas Department of Insurance held a public hearing on the proposal on October 21, 2016.

The amendments and new sections are adopted with changes to the proposed text. TDI adopts §§5.4612, 5.4615, 5.4620, and 5.4623 without changes to the proposed text. TDI adopts §§5.4601, 5.4603, 5.4604, 5.4608 – 5.4610, 5.4621, 5.4622, 5.4625, 5.4626, 5.4640, and 5.4642 with nonsubstantive changes to the proposed text. TDI revised §§5.4601, 5.4604, 5.4609, 5.4610, 5.4625, 5.4626, and 5.4640 in response to public comments. TDI revised §§5.4601, 5.4603, 5.4608, 5.4621, and 5.4642 for grammatical clarity and to better identify forms; revised §5.4622 to conform it with §5.4621; and revised §5.4625 to require inspection reports to include dates of inspection. TDI revised §5.4604 for grammatical clarity and to require information necessary to determine if an improvement is ongoing or completed.

REASONED JUSTIFICATION. The adopted amendments, repeals, and new sections implement HB 2439, which made changes to the inspections process for eligibility for windstorm and hail insurance through the Texas Windstorm Insurance Association (association). The association is the residual insurer of last resort for windstorm and hail insurance coverage in the seacoast territory for those who are unable to obtain wind and hail insurance in the private

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market. The commissioner designates the catastrophe area eligible for coverage through the association under Insurance Code §2210.005.

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. On 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 "improvements." Under HB 2439, "improvement" means "the construction of or repair, alteration, remodeling, or enlargement of a structure to which the plan of operation applies." Insurance Code §2210.2515(a)(2). To be eligible for association coverage, an improvement must have a Certificate of Compliance, Form WPI-8, which demonstrates compliance with the applicable windstorm building code. Under HB 2439, TDI is responsible for issuing Certificates of Compliance for ongoing improvements and the association is responsible for issuing Certificates of Compliance for completed improvements.

HB 2439 requires ongoing improvements to be inspected by qualified inspectors. Qualified inspectors may come from any of three groups: persons TDI deems qualified by training or experience, Texas-licensed professional engineers, or persons certified by one of several code councils. Qualified inspectors submit their findings to TDI for a TDI-issued Certificate of Compliance. TDI must issue a Certificate of Compliance if the qualified inspector has inspected the ongoing improvement in accordance with TDI rules and has affirmed that the

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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 do not have 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.

HB 2439 requires completed improvements to receive a Certificate of Compliance from the association. The association must issue a Certificate of Compliance if a person applies for one using the TDI-prescribed form and a Texas-licensed professional engineer has done one of two things: the Texas-licensed professional engineer must have designed the completed improvement, affixed the engineer's seal on the design, and affirmed compliance with the applicable windstorm building code, or he or she must have completed a sealed postconstruction evaluation report that confirms compliance with the applicable windstorm building code.

HB 2439 requires TDI to adopt and enforce rules on how qualified inspectors conduct windstorm inspections. TDI has 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 TDI from adopting or enforcing a rule that requires Texas-licensed engineers to seal inspection forms submitted to TDI.

Adopted §§5.4609, 5.4610, and 5.4612 describe the requirements for appointment as a qualified inspector and renewal of that appointment. Under the adopted rules, only Texas-licensed professional engineers may apply for appointment as qualified inspectors. Adopted §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. Under adopted §5.4622, in submitting an Inspection Verification, Form WPI-2-BC-6, an appointed qualified inspector verifies that an ongoing improvement either does or does not satisfy either Insurance Code §2210.2515(d)(1) or (2); and, in the case of the former, that the appointed qualified inspector is able to provide TDI with information and evidence substantiating the verification. Adopted §5.4642 describes disciplinary proceedings the commissioner may bring against appointed qualified inspectors. Adopted §5.4608 concerns qualified inspectors who are

TDI employees and who are deemed qualified by training or experience to verify the windstorm building code compliance of ongoing improvements to certain component and cladding items.

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. Adopted §5.4604 lists the information required. Although any person may submit the form to the association, a Texas-licensed professional engineer must provide either the plan or drawing number for the engineer's sealed design of the completed improvement and the engineer's affirmation of compliance, or the title, date, and number of the engineer's sealed postconstruction evaluation report and the engineer's confirmation of the improvement's compliance.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received 10 written comments and three oral comments, with two of the commenters speaking at the public hearing having also submitted written comments.

One individual who is a professional engineer commented in support of the proposal.

State Representative Dennis Paul, the Texas Association of Builders, the Texas Windstorm Insurance Association, and one individual who is a professional engineer commented in support of the proposal with changes.

One engineering firm and four individuals who are professional engineers commented against the proposal.

One commenter did not address the proposed rules, but instead commented on windstorm building code requirements. Because the proposal concerned rules required to implement HB 2439, this adoption order does not address comments on windstorm buildings codes. For the same reason, this adoption order does not address remarks in the comments on HB 2439 itself.

Comment on §5.4601. A commenter asks that TDI use the term "appointed engineer" instead of "qualified inspector."

Agency Response to Comment on §5.4601. TDI disagrees with the comment and declines to make the requested change because HB 2439 uses the term "qualified inspector."

Comment on §5.4601. Two commenters suggest changing the definition of "substantially completed" in proposed §5.4601(8). As proposed, the definition lists "windborne debris

protection" among the items that must be installed for a structure to be "substantially completed." The commenters point out that when the windborne debris protection consists of wood structural panels nailed over the windows before a storm, installation is not an appropriate criterion for substantial completion. One of the commenters suggests that the definition of "substantially completed" require that if the windborne debris protection consists of wood structural panels, they be on location but need not be attached.

Agency Response to Comment on §5.4601. TDI agrees with the comment, and the definition of "substantially completed" in adopted §5.4601(8) has been changed to reflect the commenters' suggestion.

Comment on §5.4601. A commenter writes that the proposed definitions of "completed improvement" and "ongoing improvement," appear to allow a Texas-licensed professional engineer to verify both kinds of improvements through the association once an improvement is substantially complete. The commenter states that the definitions "make no allowance for [structures] that are both substantially complete and are pending title transfer."

Agency Response to Comment on §5.4601. TDI disagrees with the comment because the commenter's assertion is incorrect, and TDI declines to make a change. The definitions of "completed improvement" and "ongoing improvement" are taken directly from Insurance Code §2210.2515(a)(1) and (3). Under these definitions, the question of whether an improvement is substantially complete is relevant only when the original transfer of title from the builder to the initial owner of the improvement is not expected to occur.

In determining whether an improvement is completed or ongoing, the first question to ask is, "Has the original transfer of title from the builder to the initial owner of the improvement occurred?" If the answer is yes, the improvement is completed. If the answer is no, the second question is, "Is the original transfer of title from the builder to the initial owner of the improvement expected to occur?" If the answer is yes, the improvement is ongoing. If the answer is no, for example, if the improvement is a reroof where no transfer of title is involved, the third question is, "Is the improvement substantially completed under §5.4601(8)?" If the answer is yes, the improvement is completed. If the answer is no, the improvement is ongoing.

Comment on §5.4601. Three commenters ask whether the time frame in which an engineer engages in a project affects whether it should be considered a completed improvement.

Agency Response to Comment on §5.4601. No, the definitions of ongoing and completed improvement in Insurance Code §2210.2515(a)(1) and (3) determine whether a project is ongoing or completed. But the length of time that has passed since the final inspection of an ongoing improvement does affect whether TDI can issue a Certificate of Compliance on the improvement. Under §2210.2515(e), TDI may not issue a Certificate of Compliance if, within six months after the date of the final inspection of the structure that is the subject of the application, TDI has not received all required completed forms. The ongoing improvement does not automatically become a completed improvement when the six months have passed; but under §2210.2515(f), an improvement meeting the definition of completed improvement under §2210.2515(a)(1) can still be certified by the association even if TDI did not certify it while it was still an ongoing improvement. Subsection (f) does not mean that an ongoing improvement automatically becomes a completed improvement when six months have elapsed; this meaning would be inconsistent with the creation of two separate paths for ongoing and completed improvements.

Comment on §5.4601 and §5.4609. Three commenters ask why the proposal did not include rules providing for windstorm inspections by a third group of qualified inspectors, as Insurance Code §2210.254 permits.

Agency Response to Comment on §5.4601 and §5.4609. Under Insurance Code §2210.254, qualified inspectors include: 1) persons TDI determines qualified because of training or experience; 2) licensed professional engineers; and 3) persons certified by one of four code councils and who are certified as buildings inspectors and coastal construction inspectors and who comply with other requirements as specified in TDI rules. The statute has included the three groups of inspectors since 2001.

Under Government Code § 311.005(13), "includes" and "including" are "terms of enlargement and not of limitation or exclusive enumeration." Insurance Code §2210.254 permits TDI to adopt rules allowing members of any, all, or some of the three groups listed to become qualified inspectors. Except for rules adopted in 2006 providing for the appointment of temporary qualified inspectors in two specified counties, TDI has not adopted rules for the third group. The third group consists of a small number of people, and after adopting the rules on temporary qualified inspectors TDI had difficulty finding qualified persons from the third group.

Comment on §5.4601 and §5.4609. A commenter supports the requirement that appointed qualified inspectors be Texas-licensed professional engineers because of the engineer's commitment to building code compliance.

Agency Response to Comment on §5.4601 and §5.4609. TDI appreciates the comment.

Comment on §5.4604. A commenter asks whether TDI will maintain oversight of Texas-licensed professional engineers' submissions on completed improvements to the association.

Agency Response to Comment on §5.4604. No. Insurance Code §2210.2551(a) states that TDI has "exclusive authority over all matters relating to the appointment and oversight of qualified inspectors for purposes of [Chapter 2210] and to the physical inspection of structures for the purposes of determining whether to issue a certificate of compliance under §2210.2515(d), including the submission of documents to [TDI] or [the] association regarding the physical inspection of structures."

Section 2210.2551(a) gives TDI authority to conduct oversights of appointed qualified inspectors and to adopt rules on the inspection of structures under §2210.2515(d), which governs application to TDI for Certificates of Compliance for ongoing improvements. Subsection (a) does not explicitly give TDI authority to conduct oversights of Texas-licensed professional engineers who apply to the association for Certificates of Compliance for completed improvements. Regardless of whether they are appointed as qualified inspectors under §2210.2515(d), all Texas-licensed professional engineers may verify to the association that completed improvements comply with the applicable windstorm building codes.

If TDI were to regulate appointed qualified inspectors in their capacity as Texas-licensed professional engineers verifying the compliance of completed improvements, then those appointed qualified inspectors would be subject to regulation that the remainder of the Texas-licensed professional engineers would not be subject to. In addition, all of §2210.2551(a) refers to qualified inspectors. Subchapter F distinguishes qualified inspectors from persons submitting sealed reports or designs to the association under §2210.2515(c), and throughout the subchapter TDI is given the authority to regulate the former but not the latter.

Comment on §5.4604. A commenter asks whether proposed §5.4604(a)(14) is intended to require a Texas-licensed professional engineer to send the association the plan or drawing number for the design of a completed improvement or the design itself. If a postconstruction

evaluation report is used for verification instead of a design, the commenter asks if the professional engineer must send the title, date, and number of the report to be used or the report itself.

Agency Response to Comment on §5.4604. Only the plan or drawing number for the design, or, if a postconstruction evaluation report is used, the title, date, and number for the report, must be sent to the association. The design or report themselves do not need to be sent to the association. In response to the comment, TDI has revised §5.4604 as adopted to clarify this.

Comment on §5.4604. Two commenters suggest adding to the adopted rules a provision stating that the association must issue a Certificate of Compliance for a completed improvement if the association receives the required information.

Agency Response to Comment on §5.4604. This requirement is in Insurance Code §2210.2515(c). TDI agrees with the commenters and in response to their comments, TDI has added the requested provision to adopted §5.4604 as subsection (c).

Comment on §5.4604. A commenter asks that TDI add to the proposed rules a provision that would limit eligibility for a Certificate of Compliance for a completed improvement to current association policyholders and persons who will apply for an association policy within 90 days of the issuance of the Certificate of Compliance. The commenter states that such a provision would ensure that association coverage is available only for those unable to obtain coverage in the private market and who seek coverage from the insurer of last resort. The commenter is concerned about possible strain on association resources from persons applying for a Certificate of Compliance for a completed improvement when they have no intention of obtaining an association policy.

Agency Response to Comment on §5.4604. TDI disagrees with the comment and declines to make the requested change. Nothing in Insurance Code Chapter 2210 contemplates limiting eligibility for Certificates of Compliance for completed improvements in this manner. It would also be difficult to enforce a requirement that a person who applied for a Certificate of Compliance for a completed improvement apply for a policy within 90 days of the certificate's issuance.

Comment on §5.4604. A commenter asks that TDI add to proposed §5.4604 a provision stating that the Texas-licensed professional engineer whose work is used in an application for a Certificate of Compliance for a completed improvement is accountable for the information developed and work performed by the engineer and is accountable for any failure to comply with Insurance Code Chapter 2210. The commenter expresses concern that association insureds may try to hold the association accountable for work performed by a Texas-licensed professional engineer whose work is used in an application for a Certificate of Compliance for a completed improvement.

Agency Response to Comment on §5.4604. TDI disagrees with the comment and declines to add the suggested provision because Insurance Code Chapter 2210 does not contemplate such a provision.

Insurance Code §2210.2515(c) and adopted §5.4604(c) both require the association to issue a Certificate of Compliance for a completed improvement if the association receives the required information. In deciding whether to affirm that a sealed design complies with the applicable windstorm building code or whether to confirm in a sealed postconstruction evaluation report that a completed improvement complies with the applicable windstorm building code, a Texas-licensed professional engineer is subject to the laws and rules governing the engineering profession in Texas.

Comment on §5.4604. A commenter asks that TDI add to the proposed rules a provision allowing the association to rescind a Certificate of Compliance if a completed improvement is later found to be not in compliance with the windstorm building code or information on the application is found to be incorrect or inaccurate.

Agency Response to Comment on §5.4604. TDI disagrees with the comment and declines to add the suggested provision because Insurance Code Chapter 2210 does not contemplate such a provision.

Insurance Code §2210.2515(c) and adopted §5.4604(c) both require the association to issue a Certificate of Compliance for a completed improvement if the association receives the required information. The association does still have its "normal underwriting standards," which it can use to determine if a completed improvement is "insurable property" under Insurance Code §2210.004(a).

Comment on §5.4604. A commenter asks that TDI add to the proposed rules a provision prohibiting a Texas-licensed professional engineer from supporting an application for a Certificate of Compliance on a completed improvement if TDI has revoked or denied the engineer's appointment as a qualified inspector.

Agency Response to Comment on §5.4604. TDI disagrees with the comment and declines to add the suggested provision because Insurance Code Chapter 2210 does not contemplate such a provision.

Insurance Code §2210.2515(c) and adopted §5.4604(c) both require the association to issue a Certificate of Compliance for a completed improvement if the association receives the required information.

Comment on §5.4604. A commenter asks that TDI add to the proposed rules a provision requiring that the application for a completed improvement summarize the windstorm inspection and design experience of the Texas-licensed professional engineer affirming the compliance of a sealed design for the completed improvement or confirming the compliance of the completed improvement in a postconstruction evaluation report.

Agency Response to Comment on §5.4604. TDI disagrees with the comment and declines to make the suggested addition to §5.4604. Insurance Code §2210.2515(c) gives TDI authority to add a summary of the engineer's windstorm inspection and design experience to the information required to apply for a Certificate of Compliance for a completed improvement. But adding this requirement would not give the association authority to decline to issue a Certificate of Compliance based on the engineer's inspection and design experience, nor would it provide information about the completed improvement itself.

Comment on §5.4604. A commenter asks that TDI clarify whether the application form that goes to the association for a Certificate of Compliance for completed improvements will be prescribed by TDI.

Agency Response to Comment on §5.4604. TDI disagrees with the comment and declines to make a change, because no change is necessary. Insurance Code §2210.2515(c) refers to a form prescribed by TDI, and TDI has accomplished this by prescribing the information a person applying to the association for a Certificate of Compliance for a completed improvement must provide and states that TDI will make available a form on which the information may be

supplied. Listing required elements in a rule makes the rule more informative than merely adopting by reference a form which is displayed elsewhere. In addition, by using the word "may" in §5.4604(b), with regard to the form, the rule permits an applicant for a Certificate of Compliance for a completed improvement to supply the required information in another format, which may simplify the process for applicants.

Comment on §5.4608. A commenter states that some of the requirements in the proposed rules for appointed qualified inspectors exceed those placed on TDI-employed windstorm inspectors.

Agency Response to Comment on §5.4608. TDI disagrees with the comment because, under the adopted rules, TDI-employed inspectors may only inspect when the ongoing improvement is a component of a structure. Adopted §5.4608 lists examples of components--such as roofs, exterior wall coverings, and windows--eligible for inspection by TDI-employed inspectors. TDI-employed inspectors have fewer substantiating information requirements because they are limited to inspecting simple ongoing improvements.

Comment on §5.4608. Three commenters ask why the proposed rules do not provide for TDI-employed inspectors to charge a fee for inspections.

Agency Response to Comment on §5.4608. TDI declines to impose a fee at this time.

Comment on §5.4609. A commenter expresses concern that the proposed rules do not include criteria to ensure that a person applying for appointment as a qualified inspector has the knowledge and professional competence to inspect improvements for windstorm insurability through the association. The commenter states that adequate criteria for appointment are necessary to prevent the appointment of a large number of unqualified persons as inspectors "as was the case prior to House Bill 3 [82nd Legislature, First Called Session (2011)]."

Agency Response to Comment on §5.4609. The proposed and adopted §5.4609 require that an appointed applicant be licensed by the Texas Board of Professional Engineers (TBPE) and provide "a summary of the applicant's education and experience related to windstorm design." However, to address the concerns raised in the comment, adopted §5.4609 has been revised to state that an appointed qualified inspector must display demonstrable experience and education related to windstorm design.

Comment on §5.4610. A commenter objects to a two-year term of appointment for appointed qualified inspectors, stating that unscrupulous appointed qualified inspectors will use the end of their two-year term of appointment as an excuse to quit projects before completing their inspection duties, leaving consumers without an inspector or a Certificate of Compliance. The commenter also states that individuals already appointed as qualified inspectors should not have to apply for a new appointment under the rules implementing HB 2439.

Agency Response to Comment on §5.4610. TDI disagrees with the comment and declines to remove the provisions for a two-year term. The two-year term of appointment benefits both consumers and engineers as it ensures that consumers will only contact appointed qualified inspectors interested in performing inspections. It is unlikely that an appointed qualified inspector inclined to leave a project without completing the inspection would need the end of an appointment period as an excuse. The requirements for appointment renewal are light; an appointed qualified inspector must send to TDI an affirmation of the currency and nonrestricted status of the appointed qualified inspector's TBPE license.

However, the adopted rules have been changed from the proposal in that the renewal deadlines are timed to coincide with an appointed qualified inspector's deadlines for TBPE license renewal. Under adopted §5.4610(a), an appointed qualified inspector's initial appointment lasts for a term of two years plus the length of time until his or her next TBPE license renewal deadline. All consecutive renewal deadlines for the qualified inspector appointment will be at intervals of two years, coinciding with the TBPE license renewal deadline for that year. TDI made this change to make the renewal deadlines easier for appointed qualified inspectors to track.

All individuals who want a qualified inspector appointment must apply under the new rules. This is because inspectors appointed prior to the effective date of the new rules were appointed under the authority of pre-HB 2439 statutes. The adopted rules implement HB 2439 by amending and replacing TDI's pre-HB 2439 rules governing 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 not 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 not had.

Comment on §5.4621. A commenter writes that §5.4621(7), which requires an appointed qualified inspector to notify both TDI and the person seeking certification for an ongoing improvement if the ongoing improvement does not meet the applicable windstorm building code standard, may violate 22 TAC §137.61 (relating to Engineers Shall Maintain Confidentiality of Clients).

Agency Response to Comment on §5.4621. TDI disagrees with the comment and declines to make a change because §5.4621(7) and 22 TAC §137.61 do not conflict. Section 137.61(a) permits an engineer to share "confidences and private information only with a fully informed client's or employer's consent, or when required by law or court order; or when those confidences, if left undisclosed, would constitute a threat to the health, safety or welfare of the public." "Confidences and private information" are not defined in Title 22, Part 6 of the TAC or in the Texas Engineering Practice Act. Regardless of whether the information required in §5.4621(7) constitutes "confidences and private information," an appointed qualified inspector would not violate 22 TAC §137.61 by complying with §5.4621(7). Properly adopted administrative rules have the force of law. *Lewis v. Jacksonville Bldg. & Loan Ass'n.*, 540 S.W.2nd 307, 310 (Tex. 1976). *Texas Mut. Ins. Co. v. Vista Cmty. Med. Ctr., L.L.P.*, 275 S.W.3d 538, 548 (Tex. App.--Austin 2008, no pet.). In addition, information on how an ongoing improvement does not comply with the applicable windstorm building code could arguably constitute a threat to public welfare if it were not disclosed and certification were later sought from another appointed qualified inspector.

Comment on §5.4622. A commenter asks about an appointed qualified inspector's obligations when inspecting an ongoing improvement whose plan has been sealed by another engineer.

Agency Response to Comment on §5.4622. Under Insurance Code §2210.2515(d), certification of an ongoing improvement requires that a qualified inspector affirm that the improvement either: "(1) conforms to a design of the improvement that has a seal affixed by a professional engineer licensed by the Texas Board of Professional Engineers and complies with the applicable building code under the plan of operation; or (2) complies with the applicable building code under the plan of operation." This means that the qualified inspector must, for ongoing improvements that involve a design, decide whether to affirm that the design complies with the applicable windstorm building code and that the improvement conforms to that design. For ongoing improvements that do not call for designs, such as reroofs, the qualified inspector

must decide whether to affirm that the improvement complies with the applicable windstorm building code.

Comment on §5.4623. A commenter asks if the rules require that every ongoing improvement have an engineered foundation.

Agency Response to Comment on §5.4623. Whether an ongoing improvement must have an engineered foundation depends on the type of structure the ongoing improvement is or is a part of, and the requirements of the applicable windstorm building code.

Comment on §5.4623 and §5.4625. Six commenters state that the labor costs and time estimates in the rule proposal are unrealistic and that they are one-third of what they actually will be for small engineering companies. The commenters state that, contrary to what is stated in the proposal, the proposed rules impose additional requirements on Texas-licensed engineers who serve as appointed qualified inspectors. Some of the commenters object to the estimated number of pages for inspection reports in the proposal's cost note.

Agency Response to Comment on §5.4623 and §5.4625. TDI disagrees with the commenters because, based in the information available to TDI, the cost note in the proposal accurately reflects expenses that may apply under the rules. The items listed in §5.4623 and §5.4625 were the result of recommendations from a working group of engineers and, except for being modified to comply with HB 2439, are the same kinds of substantiating information that TDI has always requested. Therefore, the expense necessary to produce these items should be consistent with expenses under the previous rules.

As part of oversight audits, TDI staff has long requested substantiating information from engineers conducting windstorm inspections, under the authority of former Insurance Code §2210.2551(a), which gave TDI authority over the submission of documents to TDI regarding the physical inspection of structures. The adopted rules are based on Insurance Code §2210.2551(a), which gives TDI similar authority over the submission of documents to TDI regarding the physical inspection of ongoing improvements. The difference between existing rules and adopted rules is that the adopted rules list in detail the substantiating information that TDI may request. All the information listed in the rule may not be requested every time. In

addition, an appointed qualified inspector should have the substantiating information if he or she has verified that an ongoing improvement complies with the applicable windstorm building code.

Not all of the information will necessarily be generated by the appointed qualified inspector. Section 5.4623 requires the appointed qualified inspector to review design documents sealed by the engineer of record, which may not necessarily be the appointed qualified inspector. Items such as product testing information and installation instructions will come from manufacturers. However, TDI believes the cost note accurately reflects the expense necessary to obtain this information.

Finally, the page estimates for inspection reports in the rule proposal's cost note are estimates of the report length for three examples of specific types of ongoing improvements: a reroof, an entire residential structure, and an entire commercial structure. The page estimates do not represent a mandatory minimum for report length, but instead were made to estimate the cost of storing substantiating information.

Comment on §5.4625. A commenter objects to requirements in proposed §5.4625 for inspection reports to contain information already contained in other materials, such as design documents.

Agency Response to Comment on §5.4625. TDI agrees with the comment and has revised the proposed rule text. As adopted §5.4625 provides that information items listed in the section do not need to be included in the inspection report, as long as those information items are contained in the design documents listed in §5.4623. Adopted §5.4625 also provides that the appointed qualified inspector is still responsible for supplying the information if TDI requests substantiating information under §5.4626.

Comment on §5.4626. A commenter objects to the five-year retention requirement for substantiating information in proposed §5.4626(c).

Agency Response to Comment on §5.4626. TDI disagrees with the comment and declines to make a change. The five-year retention requirement for substantiating information is based on Insurance Code §81.001, which sets the relevant limitations periods for disciplinary actions against persons TDI regulates. Under §81.001(a), the limitations period ends two years from the date TDI discovers the conduct or the date the conduct is made known to TDI, whichever occurs first; but in either case not more than five years after the date on which the conduct that is a

violation occurred. Section 81.001(b) sets the limitations period for conduct involving fraud; this period ends five years after the date TDI discovers the conduct or the date the conduct is made known to TDI, whichever occurs first.

By way of comparison, the statute of repose for "Architects, Engineers, Interior Designers, and Landscape Architects Furnishing Design, Planning, or Inspection of Construction of improvements," in Texas Civil Practices and Remedies Code §16.008, is 10 years after the substantial completion of the improvement.

Comment on §5.4625 and §5.4626. A commenter states that the number of pages of substantiating information for ongoing improvements estimated in the proposal are reasonable. The commenter also states that the proposed five-year retention requirement for substantiating information appears to be in keeping with customary record-keeping practices.

Agency Response to Comment on §5.4625 and §5.4626. TDI appreciates the comment.

Comment on §5.4640. A commenter notes that proposed §5.4640(d) states that TDI will give appointed qualified inspectors no less than 10 business days notice before beginning an oversight audit for new structures and additions and no less than two business days' notice before beginning an oversight audit involving components and cladding. The commenter states that this may conflict with Insurance Code §38.001(c), which provides 15 days for a person to respond in writing to an inquiry from TDI.

Agency Response to Comment on §5.4640. TDI agrees to make a change in response to the concern raised in the comment. Oversight audits normally involve a visit by TDI staff to the site of an ongoing improvement, but appointed qualified inspectors may be asked to bring substantiating information with them to the site. Therefore, as adopted, §5.4640(d) provides for 15 days advance notice for all audits for which TDI requests substantiating information, consistent with Insurance Code §38.001.

Comment on §5.4640. A commenter objects to proposed §5.4640(f), which stated that in oversight audits, the appointed qualified inspector must show that an ongoing improvement either complies with the applicable wind load requirements or conforms to the design of an ongoing improvement that complies with the applicable wind load requirements and that has

been sealed by a Texas-licensed professional engineer. The commenter states that the appointed qualified inspector should not have to bear the burden of proof.

Agency Response to Comment on §5.4640. TDI disagrees with the comment. As proposed and adopted, §5.4640(f) refers to an appointed qualified inspector's responsibilities during oversight audits, not to the burden of proof during a hearing at the State Office of Administrative Hearings. But to avoid confusion, the introductory language in subsection (f) is changed to "Burden of verification."

Comment §5.4642. A commenter asks that TDI add to the proposed rules a provision creating a peer-review committee to resolve disputes between appointed qualified inspectors and TDI.

Agency Response to Comment §5.4642. TDI disagrees with the comment and declines to make a change. Insurance Code Chapter 2210 does not contemplate the creation of a peer-review committee. The chapter does specify TDI's enforcement authority through disciplinary proceedings at the State Office of Administrative Hearings.

**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

STATUTORY AUTHORITY. The commissioner adopts 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 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).

TEXT.**§5.4601. Definitions.**

The following definitions apply to this subchapter:

- (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 repairing (including reroofing), altering, remodeling, or enlarging 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. If the improvement's windborne debris protection consists of wood structural panels, all the panels must be present at the improvement's location but need not be installed.

(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.

(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.

(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 January 1, 2017;

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

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

(4) Application Form for Certificate of Compliance (WPI-8) for Completed Improvement, effective January 1, 2017.

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

(1) Field Form, Form WPI-7, effective January 1, 2017; and

(2) Certificate of Compliance, Form WPI-8, effective January 1, 2017

§5.4604. Certification Form for Completed Improvement.

(a) Persons 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) 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 Zone;

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

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

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

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

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

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

(12) 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;

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

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

(15) either of the following from a Texas-licensed professional engineer:

(A) the plan or drawing number for the engineer's sealed design of the completed improvement and the engineer's affirmation of compliance with the applicable windstorm building code; or

(B) the title, date, and number of the engineer's sealed postconstruction evaluation report on the completed improvement and the engineer's confirmation that the completed improvement complies with the applicable windstorm building code;

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

(17) the importance factor of the structure;

(18) the exposure category of the structure;

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

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

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

(b) The association will make available the Application for Certificate of Compliance (WPI-8) for Completed Improvement on which the information in subsection (a) of this section may be provided.

(c) The association must issue a Certificate of Compliance for a completed improvement on an improvement if the applicant for the certificate has complied with Insurance Code §2210.2515(c) and with this section.

§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 on certain alterations and repairs (including reroofs) on 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 January 1, 2017. 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, January 1, 2017. 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) 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 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 (e) of this section or is an engineer 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) 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 (b) of this section to be appointed as qualified inspectors under current Insurance Code §2210.254(a)(2).

(e) 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.

(f) 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. An appointed qualified inspector's first appointment will be for a term of two years plus the length of time between the first appointment and the earliest date by which the appointed qualified inspector must renew his or her Texas Board of Professional Engineers license. All subsequent, consecutive appointments will be for two years, with the appointed qualified inspector's appointment ending on the date by which the appointed qualified inspector must renew his or her Texas Board of Professional Engineers license for that year.

(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 January 1, 2017, 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 windstorm building code 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-BC-6, 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-BC-6, an appointed qualified inspector verifies that:

(1) the ongoing improvement:

(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 wind load requirements of 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; or

(C) does not comply with the wind load requirements of the applicable building code; and

(2) if the ongoing improvement meets the requirements of subparagraph (1)(A) or (1)(B) of this section, the appointed qualified inspector is able to provide TDI with information and evidence substantiating compliance.

§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.

(a) An appointed qualified inspector or a designated representative under the appointed qualified inspector's supervision must prepare a written inspection report for each inspection. Except as provided in subsection (b) of this section, 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 subsection;

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

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

(15) the date or dates of the inspection or inspections.

(b) Information that is listed in subsection (a) of this section does not need to be included in an inspection report, as long as that information is contained in the design documents listed in §5.4623(a) of this title (relating to Information Required to Inspect to Design Documents). The appointed qualified inspector will still be responsible for providing this information to TDI if requested under §5.4626 of this title (relating to Substantiating Information).

§5.4626. Substantiating Information.

(a) On 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 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. 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 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. With respect to oversight 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 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 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-BC-6.

(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.

**SUBCHAPTER E. Texas Windstorm Insurance Association
Division 7. Inspections for Windstorm and Hail Insurance
Repeal of 28 TAC §§5.4601, 5.4602, 5.4604, and 5.4608**

STATUTORY AUTHORITY. The commissioner adopts the repeals 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).

TEXT.**§5.4601.****§5.4602.****§5.4604.****§5.4608.**

**SUBCHAPTER E. Texas Windstorm Insurance Association
Division 9. Windstorm Building Code Advisory Committee on Specifications Maintenance
Repeal of 28 TAC §5.4800**

STATUTORY AUTHORITY. The commissioner adopts the repeal 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.

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TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 5, Subchapter E

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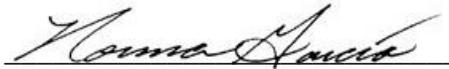
Section 2210.252 states that for geographic areas specified by the commissioner, the commissioner by rule may supplement the association's plan of operation building specifications with the structural provisions of the *International Residential Code*. Under §2210.252, the commissioner by rule may adopt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

TEXT.

§5.4800.

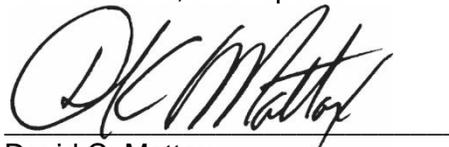
CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on December 22, 2016.



Norma Garcia
General Counsel
Texas Department of Insurance

The commissioner adopts the amendments, new sections, and repeals.



David C. Mattax
Commissioner of Insurance

COMMISSIONER'S ORDER NO. 2016-4869