

SUBCHAPTER E. Texas Windstorm Insurance Association
28 TAC §§5.4603, 5.4604, 5.4606, 5.4609, 5.4640, 5.4642

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §§5.4603, 5.4604, 5.4609, 5.4640, and 5.4642; and to repeal 28 TAC §5.4606 and replace it with new §5.4606. These proposed changes concern the process for certifying that structures comply with windstorm building codes for both ongoing and completed improvements. The proposed rules will apply to applications for certificates of compliance submitted on or after the effective date of the rules. The proposed rules are necessary to implement Senate Bill 615, 86th Legislature, Regular Session (2019), and House Bill 1900, 86th Legislature, Regular Session (2019), and important to maintain uniformity within TDI's regulations.

EXPLANATION. Amending §§5.4603, 5.4604, 5.4609, 5.4640, and 5.4642, and repealing existing §5.4606 and replacing it with new §5.4606 are necessary to implement SB 615 and HB 1900, which amended Insurance Code §2210.251 and §2210.2515. TDI must fulfill its new statutory charge, effective June 1, 2020, to regulate the application process for certificates of compliance for completed improvements. While the application process for certificates of compliance for completed improvements moved from the Texas Windstorm Insurance Association (TWIA) to TDI effective June 1, 2020, the proposed rules will apply to applications for certificates of compliance submitted on or after the effective date of the rules. TDI also proposes nonsubstantive changes to the rule text to maintain stylistic uniformity in TDI's regulations and remove provisions that are no longer applicable.

SB 615 and HB 1900, 86th Legislature. SB 615 and HB 1900 amend Insurance Code §2210.251 and §2210.2515. These amendments require TDI to regulate the application process for certificates of compliance for completed improvements and

provide additional disciplinary authority and remedies for TDI to use to address noncompliant applications or structures.

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

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

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

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

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

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

Section 5.4603. Windstorm Inspection Forms. Section 5.4603 addresses windstorm inspection forms. Amending §5.4603 is necessary because amended Insurance Code §2210.2515 requires TDI to prescribe forms for applying for a certificate of compliance for a completed improvement. TDI will make available on its website new Certification Form for Completed Improvement, WPI-2E, and new Certificate of Compliance for Completed Improvement (Engineered), WPI-8E, both effective June 1, 2020. Proposed §5.4604 and §5.4606 specify the supporting evidence the WPI-2E will require.

Section 5.4604. Certification Form for Completed Improvement. Section 5.4604 addresses the application process for certificates of compliance for completed

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

To keep TDI's regulations up-to-date and organized, the following changes are also proposed.

Current §5.4606. Requirements for Temporary Appointment of Qualified Inspectors. Existing §5.4606 addresses requirements for temporary appointment of qualified inspectors. TDI proposes repealing the section because it is no longer needed. TDI implemented requirements for temporary appointment of qualified inspectors in 2006 in response to Hurricane Rita in §5.4606, but the response to Hurricane Rita is complete, and temporary appointment of qualified inspectors to respond to Hurricane Rita is no longer needed.

New §5.4606. Supporting Evidence for Sealed Postconstruction Evaluation Report for Certificate of Compliance for Completed Improvement. TDI proposes replacing repealed §5.4606 with a new section that will address supporting evidence requirements as required by amended Insurance Code §2210.2515. Applicants must submit supporting evidence with an application for a completed-improvement certificate. In addition to the evidence provided with the application, TDI may require additional supporting evidence as identified in this section.

Section 5.4609. Application for Qualified Inspector Appointment. Section 5.4609 addresses the application for a qualified-inspector appointment. TDI proposes deleting §5.4609(d) and (f). This revision is important because subsections (d) and (f) no longer apply. The subsections address engineers appointed as AQIs as of the effective

date of §5.4606 under the previous version of Insurance Code §2210.254(a)(2) (Acts 2005, 79th Leg., Ch. 727, §2, 2005 Tex. Gen. Laws 1941 (amended 2011)).

Section 5.4640. Oversight. Amendments to §5.4640 implement TDI's new oversight authority for completed-improvement-certificate applications and issued certificates. This includes adding authority for TDI to deny an application, rescind an issued certificate, or report an engineer to the TBPELS.

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

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Donny Cox, director of the Inspections Section, has determined that during each year of the first five years the proposed amendments, new section, and repeal are in effect, there will be no measurable fiscal impact on state or local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Cox does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments, new section, and repeal are in effect, Mr. Cox expects that administering and enforcing the proposed changes will have the public benefit of ensuring that TDI's

rules conform to amended Insurance Code §2210.251 and §2210.2515. By implementing amended §2210.251 and §2210.2515, these rules will also streamline and standardize the certificate of compliance application process by making TDI the sole regulator. In addition, the proposed rules give TDI enforcement authority to effectively regulate the application process and better protect consumers.

Mr. Cox expects that the proposed amendments, repeal, and new section will impose an economic cost on persons required to comply. Under the proposed rules, as required by amended Insurance Code §2210.2515, applicants are required to provide supporting evidence with their application to TDI for a certificate of completed improvement. Applicants, however, should already have had this supporting evidence to complete TWIA's completed-improvement-certificate application. Costs arise from additional expenses related to making hard copies, scanning documents, or mailing documents to TDI. Because the supporting evidence and submission method will vary per application, TDI cannot predict the cost amounts but expects the cost to be minimal.

Postage for a First-Class Mail Letter (1 oz.) is \$.55. *Mailing & Shipping Prices*, USPS.com (March 9, 2020 9:52 AM), www.usps.com/business/prices.htm. The total mailing cost will depend on the number of documents mailed. The cost to print supporting evidence is approximately \$.05 to \$.08 per page, with the total cost dependent on the amount of information printed. These costs will vary with each application.

Scanners range from \$50 to \$1200, and the price will depend on the scanner's quality, speed, and if it is a portable or self-loading model. If the applicant submits the documents electronically, there will be no postage or printing cost to do so.

TDI estimates individual employee compensation for an administrative assistant at \$17.61 an hour for one to ten hours of work to mail or scan and email documents to TDI. This wage is based on the national median hourly wage for each classification as reported in the May 2018 National Industry Specific Occupational Employment and Wage

Estimates. Bureau of Labor Statistics, *Occupational Employment Statistics*, United States Dep't of Labor (March 9, 2020 9:53 AM), www.bls.gov/oes/current/oes436014.htm.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments, repeal, and new section may have an adverse economic effect or a disproportionate economic impact on 7,687 small or micro businesses. The cost analysis in the Public Benefit and Cost Note section of this proposal applies to these small and micro businesses.

According to the Texas Comptroller of Public Accounts, there are 7,687 small engineering businesses in Texas. However, TDI cannot predict how many small engineering businesses will apply for a certificate for completed improvement under the proposed rules. In addition, TDI anticipates that the number of engineers who would apply for a completed-improvement certificate is small. Most certificates issued are for ongoing improvements. The proposed rules will not affect rural communities.

As stated in the Public Benefit and Cost Note section of this proposal, TDI anticipates that each person applying for a certificate of completed improvement may incur some costs because of the proposed rule changes. The primary objective of this proposal is to implement amended Insurance Code §2210.251 and §2210.2515. TDI considered the following alternatives to minimize any adverse impact on small and micro businesses while accomplishing the proposal's objectives:

- (1) not proposing the amendments, repeal, and new section;
- (2) proposing a different requirement for small and micro businesses; and
- (3) exempting small or micro businesses from the proposed requirement that could create the adverse impact.

Not proposing the amendments, repeal, and new section. Not proposing the amendments, repeal, and new section would not prevent small and micro businesses from

incurring the costs described above. The rules implement amended Insurance Code §2210.251 and §2210.2515, which require applicants to provide supporting evidence to apply for a certificate of completed improvement. Even if TDI does not make the proposed rule changes, applicants will still incur costs associated with providing supporting evidence to TDI under amended §2210.251 and §2210.2515. For these reasons, TDI rejected this option.

Proposing a different requirement for small and micro businesses. Proposing a different requirement would not alleviate any potential costs described above. The costs are imposed as a result of amended Insurance Code §2210.251 and §2210.2515. Although TDI has discretion to determine the submission method for and types of supporting evidence, TDI does not have discretion to not require it. For this reason, TDI rejected this option.

Exempting small or micro businesses and rural communities from the proposed requirement that could create the adverse impact. Adding an exemption would also not alleviate the potential costs associated with the proposed changes because these costs are a result of amended Insurance Code §2210.251 and §2210.2515. Even if TDI adds an exemption to the proposed rules, applicants would still be statutorily required to provide supporting evidence to TDI. For these reasons, TDI rejected this option.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a possible cost on regulated persons. However, Government Code §2001.0045 does not require additional rule amendments because the proposed changes are necessary to implement legislation. The proposed rule implements Insurance Code §2210.251 and §2210.2515 as added by SB 615 and HB 1900.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will increase the number of individuals subject to the rule's applicability; and
- will positively affect the Texas economy by verifying the insurability of homes in at-risk areas.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5 p.m. Central time on July 20, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2820 at 1:00 p.m. central time on July 10, 2020. To

avoid the risk of transmission of COVID-19, TDI will hold the public hearing remotely using online resources. Details of how to view and how to participate in the hearing will be made available on TDI's website at www.tdi.texas.gov/alert/event/2020/07/docket-2820.

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

Repeal of 28 TAC §5.4606

STATUTORY AUTHORITY. TDI proposes to repeal 28 TAC §5.4606 under Insurance Code §2210.008(b) and §36.001.

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

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

CROSS-REFERENCE TO STATUTE. Section 5.4606 is repealed under TDI's rulemaking authority in Insurance Code §2210.008(b) and Insurance Code §36.001.

TEXT.

§5.4606. Requirements for Temporary Appointment of Qualified Inspectors

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

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

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

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

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

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

CROSS-REFERENCE TO STATUTE. Amendments to §§5.4603, 5.4604, 5.4609, 5.4640, and 5.4642, and new §5.4606 implement Insurance Code §2210.251 and §2210.2515.

TEXT.

§5.4603. Windstorm Inspection Forms.

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

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

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

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

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

(4) Certification Form for Completed Improvement, Form WPI-2E, effective June 1, 2020~~Application Form for Certificate of Compliance (WPI-8) for Completed Improvement, effective April 1, 2020~~; and

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

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

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

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

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

§5.4604. Certification Form for Completed Improvement

(a) Persons must submit the following information when applying to TDI ~~the association~~ for a certificate of compliance ~~[Certificate of Compliance]~~ for a completed improvement on a structure:

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

(A) designed the improvement,

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

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

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

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

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

(C) contains the engineer's seal.

(b) The following information must also be provided:

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

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

(3) whether the improvement is substantially completed;

(4) the wind zone location;

(5) whether the structure is in a Coastal Barrier Resource System Unit [~~Zone~~];

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

~~[(7) the name and contact information of the builder or contractor that made the completed improvement;]~~

(7) ~~[(8)]~~ the name and contact information of the engineer certifying the completed improvement;

(8) ~~[(9)]~~ the date construction of the completed improvement began;

(9) ~~[(10)]~~ the date of application for the certificate of compliance for the completed improvement;

(10) ~~[(11)]~~ the name of the person submitting the application for the certificate of compliance for the completed improvement;

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

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

(13) ~~[(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;]~~

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

(15) ~~[(17)]~~ the importance factor or risk category of the structure;

(16) ~~[(18)]~~ the exposure category of the structure;

(17) ~~[(19)]~~ information on the protection of exterior openings from windborne debris;

(18) ~~[(20)]~~ the dates the completed improvement was inspected; ~~and~~

(19) ~~[(21)]~~ the signature and Texas Board of Professional Engineers and Land Surveyors registration number of the engineer certifying the completed improvement; and;

(20) supporting evidence under §5.4606 of this title.

~~(c)~~ ~~[(b)]~~ TDI ~~[The association]~~ will make available the Certification Form for Completed Improvement, Form WPI-2E ~~[Application for Certificate of Compliance (WPI-8) for Completed Improvement]~~ on which the information in subsections ~~[subsection]~~ (a) and (b) 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.]~~

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

(a) "Supporting evidence" includes but is not limited to:

(1) Product evaluations;

(2) Installation instructions from the manufacturer for the product;

(3) Test data;

(4) Written evidence from inspections—for example, an inspection report;

(5) Photographs;

(6) Video recording;

(7) Plans, either as-built plans (plans that demonstrate compliance with the applicable building code for the design of the structure), design drawings, shop drawings, or sketches; or

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

(b) To verify that an engineer's affirmed design or postconstruction evaluation report confirms the completed improvement's compliance with the applicable building code under the plan of operation, as required under §5.4604 of this title (relating to Certification Form for Completed Improvement), it must include supporting evidence, when applicable, such as the following:

(1) Roof covering certifications.

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

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

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

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

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

(2) Building product certifications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) For additions, supporting evidence verifying whether the addition is attached or detached from main structure. If the addition is attached, the supporting evidence must specify the load on the existing structure, the load imposed by the addition

on the existing structure, and if the existing structure and the connection will satisfy the combined loading. Attached additions rely on the existing structure for stability and strength. Detached additions are independent of the existing structure. Supporting evidence must also verify load path from addition to existing structure, if applicable.

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

(c) The engineer or applicant for the certificate of compliance for completed improvement may provide the applicable supporting evidence listed in subsection (b) of this section with the application, Form WPI-2E. In addition, the engineer or applicant may be required to provide additional information as listed in subsection (b) of this section if TDI requires more information to verify the application, design, or postconstruction evaluation report. Failure to provide the documents requested by TDI could result in a denial of a Certificate of Compliance for Completed Improvement (Engineered), Form WPI-8E, or other action taken by TDI as stated in §5.4640 of this title (relating to Oversight) or §5.4642 of this title (relating to Disciplinary Action).

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

§5.4609. Application for Qualified Inspector Appointment.

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

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

- (1) the applicant's name and contact information;
- (2) the applicant's Texas Board of Professional Engineers and Land Surveyors registration number;
- (3) a summary of the applicant's education and experience related to windstorm design; and
- (4) a statement addressing whether the applicant has attended an orientation program as described in subsection (d) [~~(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).]~~

(d) [~~(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.]~~

§5.4640. Oversight.

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

(b) Certificate of compliance oversight.

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

(2) Completed Improvements.

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

(B) TDI may submit a formal complaint to the Texas Board of Professional Engineers and Land Surveyors related to the engineering work of a professional engineer, as reflected in the sealed postconstruction evaluation report or other materials submitted by an engineer under §5.4604 and §5.4606 of this title.

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

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

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

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

(d) Notification of audits.

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

(2) The appointed qualified inspector may request a shorter time frame if a notice period in this subsection would cause a delay in the construction schedule.

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

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

(2) any other information maintained by the appointed qualified inspector that will demonstrate that the ongoing improvement complies with the appropriate

windstorm building code standards, and that the ongoing improvement is eligible for association insurance.

(f) Burden of verification. ~~For [With respect to]~~oversight audits, the appointed qualified inspector bears the burden of verifying, under ~~[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, or other information~~ required to be submitted to [filed with] TDI, including an Application for Certificate of Compliance for Ongoing Improvement ~~[Application for Windstorm Inspection Certificate of Compliance]~~, Form WPI-1; a construction inspection report; ~~[or] an Inspection Verification, Form WPI-2; an Inspection Verification, Form WPI-2-BC-6; or a Certification Form for Completed Improvement, form WPI-2E.~~

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

(1) the Commissioner believes that:

(A) the appointed qualified inspector has:

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

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

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

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

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

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

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

(d) Failure to comply with order. Under Insurance Code §2210.2551(b) and §2210.256(d), if the Commissioner finds, after notice and a hearing, that an appointed qualified inspector has failed to comply with an order issued under subsections (a), (b), or (c) of this section, the Commissioner will, unless the Commissioner's order is lawfully stayed, revoke the appointed qualified inspector's appointment.

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

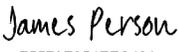
(f) Automatic cancellation. If the Texas Board of Professional Engineers and Land Surveyors revokes or suspends an engineer's license, the engineer's appointment as an appointed qualified inspector is automatically canceled.

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

prohibiting the inspector from applying for certificates of compliance under Insurance Code §2210.2515.

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

Issued in Austin, Texas, on June 2, 2020.

DocuSigned by:

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James Person, General Counsel
Texas Department of Insurance