

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

INTRODUCTION. The Texas Department of Insurance adopts the repeal of 28 TAC §5.4906 and §5.4907, which concern the certificate of compliance approval program and the certificate of compliance transition program for the Texas Windstorm Insurance Association (association), respectively. Subsequent legislation has rendered these sections obsolete. The repeal is adopted without changes to the proposal published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 916).

REASONED JUSTIFICATION. The repeal is necessary to remove outdated sections from the TAC.

The association is the residual insurer of last resort for windstorm and hail insurance in the designated catastrophe area along the Texas coast. The association provides windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market. Insurance Code §2210.251 requires that structures constructed, altered, remodeled, enlarged, or repaired or to which additions are made after January 1, 1988, be inspected and approved by TDI for compliance with the association's plan of operation to be eligible for coverage through the association. The commissioner of insurance has adopted various windstorm building codes for the association's plan of operation.

Repealed 28 TAC §5.4906 and §5.4907 referred to programs through which structures could gain TDI approval without being inspected or complying with the applicable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

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Section 5.4907 was also adopted under the authority of Insurance Code §2210.251 and §2210.258. Section 5.4907 described the certificate of compliance transition program, which provided that between September 1, 2009, and August 31, 2011, residential structures could be covered through the association without complying with the applicable windstorm building code. Under the program, the association could provide coverage to noncompliant residential structures for which private market windstorm and hail insurance coverage had been discontinued within the 12 months before the date of the application to the association; that had not been constructed, altered, remodeled, enlarged, repaired, or added to since June 19, 2009; and that met other requirements.

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

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

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY. The repeal is adopted under Insurance Code §2210.008 and §36.001. Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A. Section 36.001 provides that the commissioner of insurance 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.

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

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TEXT.

§5.4906. Certificate of Compliance Approval Program.

§5.4907. Certificate of Compliance Transition Program.

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

Issued at Austin, Texas, on May 6, 2016.



Norma Garcia
General Counsel
Texas Department of Insurance

The commissioner adopts the repeal of 28 TAC §5.4906 and §5.4907.



David C. Mattax
Commissioner of Insurance

COMMISSIONER'S ORDER NO. **4438**