

SUBCHAPTER E. Texas Windstorm Insurance Association
Division 1. Plan of Operation
28 TAC §5.4011 and §5.4012

Division 7. Inspections for Windstorm and Hail Insurance
28 TAC §§5.4601, 5.4603, 5.4621, 5.4622, and 5.4642

INTRODUCTION. The Commissioner of Insurance adopts new 28 TAC §5.4012 and amendments to §5.4011 and §§5.4601, 5.4603, 5.4621, 5.4622, and 5.4642, concerning windstorm building codes for structures insured by the Texas Windstorm Insurance Association (TWIA). The new and amended sections implement Insurance Code §2210.251(b) and §2210.252, which give the Commissioner authority to adopt windstorm building codes. The sections are also updated to reflect that the Texas Board of Professional Engineers is now the Texas Board of Professional Engineers and Land Surveyors.

The new section and amendments are adopted with changes to the proposed text published in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6501). TDI adopts §§5.4621, 5.4622, and 5.4642 without changes to the proposed text. TDI revised §§5.4011, 5.4012, 5.4601, and 5.4603 from the proposed text in response to public comments. TDI revised §§5.4011, 5.4012, 5.4601, and 5.4603 to change the effective date of the new building codes from January 1, 2020, to April 1, 2020. TDI revised §5.4012 to require that structures in the catastrophe area be constructed in accordance with the wind provisions in the 2018 *International Building Code (IBC)* and *International Residential Code (IRC)*.

Section 5.4011 and Section 5.4603 were also changed from the proposed text to conform to agency style and update addresses and to change a form's effective date, respectively.

REASONED JUSTIFICATION.

Section 5.4011. Amendments to §5.4011 are necessary to specify that the 2006 editions of the *IBC* and the *IRC* with Texas Revisions will not apply to construction begun on or after April 1, 2020. The *IRC* specifies building code standards for residential structures and the *IBC* specifies building code standards for other structures, including commercial buildings and government buildings. The proposal would have applied the 2018 *IBC* and *IRC* beginning January 1, 2020; in response to comment, the 2018 codes will apply beginning April 1, 2020. The 2006 *IBC* and *IRC* with Texas Revisions will apply to construction begun on or after January 1, 2008, and before April 1, 2020. Section 5.4011 was also changed from the proposed text to conform to agency style and to update contact information.

Section 5.4012. New §5.4012 adopts the 2018 editions of the *IBC* and the *IRC*. Under the rule, the 2018 editions apply to structures constructed, repaired, or added to on or after April 1, 2020. For construction to be eligible for windstorm coverage through TWIA, the construction must comply with the windstorm building code adopted by the Commissioner for the year in which the construction began. The International Code Council (ICC) publishes revised building codes every three years. Adopting newer editions of the building codes is periodically necessary to ensure that new construction incorporates advances in technology and greater understanding of wind engineering.

Adopted subsection (b) of §5.4012 provides an exemption from §5.4012(a) for repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a historic structure. Subsection (b)(1) - (3) defines the attributes that make a structure a historic structure. These subsections are consistent with previously adopted building code requirements.

Proposed §5.4012 contained specified wind speeds for each risk category in each of the three zones in the catastrophe area (Seaward, Inland I, and Inland II), which are delineated in §5.4008(a)-(c) of this title. In response to comment, adopted §5.4012 does not contain these specified wind speeds. Instead of determining wind speed based on which zone a structure is in, appointed qualified inspectors and engineers must determine wind speed by using the 2018 *IBC* or one of the five building code standards referenced in the 2018 *IRC*.

The proposal would have applied the 2018 *IBC* and *IRC* beginning January 1, 2020; in response to comment, the 2018 codes will apply beginning April 1, 2020.

Section 5.4601. The adopted amendment to §5.4601 will update the definition of "windstorm building code standards" to include the 2018 editions in new §5.4012. The proposed amendment to §5.4601 also reflects that the Texas Board of Professional Engineers is now the Texas Board of Professional Engineers and Land Surveyors.

In response to comment, TDI is changing the date for compliance with the new codes from January 1, 2020, to April 1, 2020 in the definition of "Windstorm building code standards."

Section 5.4603. The adopted amendment to §5.4603, which lists windstorm inspection forms, conforms that section to the new building codes. TDI also adopts nonsubstantive amendments to the names of some forms to improve consistency. In response to comment, TDI is changing the date for compliance with the new codes from January 1, 2020, to April 1, 2020.

Section 5.4603 was also changed from the proposed text to change the effective date of the Field Form, the WPI-7, used by TDI-employed inspectors. The form was changed to conform to the new building code adoption. The information captured in the WPI-7 is unchanged and is listed in §5.4608.

Sections 5.4621, 5.4622, and 5.4642. The adopted amendments to §§5.4621, 5.4622, and 5.4642 update references to windstorm inspection forms consistent with the amendments to §5.4603.

In addition, the adopted amendments update references to the Texas Board of Professional Engineers and Land Surveyors and make nonsubstantive capitalization and punctuation changes to conform the sections to the agency's current style.

TDI received comments on an informal draft of this rule, which was posted on TDI's website on January 18, 2019. TDI considered those comments when drafting the proposal.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received eight written comments. Commenters in support of the proposal were: two individuals, the ICC, and the South-Central Partnership for Energy Efficiency as a Resource. Commenters in support of the proposal with changes were: one individual, the Lone Star Chapter of the Sierra Club, Oldcastle BuildingEnvelope Inc., and the Texas Association of Builders.

Comments in support: Four commenters support adopting the 2018 editions of the *IBC* and the *IRC*.

Agency Response: TDI appreciates the support.

Comments on effective date: Two commenters questioned the proposed January 1, 2020 effective date.

Agency response: In response to comment, TDI is changing the date for compliance with the 2018 editions of the *IBC* and the *IRC* from January 1, 2020, to April 1, 2020.

Comment on product evaluations: One commenter asked about updating product evaluations on TDI's website regarding the products' compliance with the 2018 *IBC* and *IRC*.

Agency Response: TDI does not intend to reexamine existing product evaluations for compliance with the 2018 *IBC* and *IRC*. Product evaluations on TDI's website will remain there.

Building product manufacturers that have submitted product testing data and drawings to TDI for TDI to evaluate for compliance with the 2006 *IBC* and *IRC* may resubmit data and drawings for evaluation for compliance with the 2018 codes.

The product evaluations are not necessary for a structure to comply with the windstorm building code. An engineer certifying a structure may review a manufacturer's data and drawings to determine whether using the product is consistent with what the windstorm code requires for that structure.

Comment: One commenter supports adopting the 2018 *IBC* and *IRC* building codes, but requests that TDI specifically exclude the 2018 *International Existing Building Code (IEBC)* from the adoption. The commenter states that some engineering companies working for insurance companies and local governments have argued that the *IEBC* applies to the repair of existing buildings.

Agency Response: TDI declines to make the change. TDI adopts the 2018 editions of the *IBC* and *IRC*, both of which reference the *IEBC*.

Section 101.4.7 of the 2018 *IBC* states that "The provisions of the *International Existing Building Code* shall apply to matters governing the repair, alteration, change of occupancy, addition to and relocation of existing buildings."

Section R110.2 of the 2018 *IRC* requires applying the *IEBC* to construction that changes the character or use of an existing structure. In addition, the *IRC* requires wind design in certain areas, and Section R301.2.1.1 requires an engineer to choose from among five standards for wind design. One of those five standards, the *IBC*, requires applying the *IEBC*.

Carving the *IEBC* out from the adopted *IRC* would revise the *IRC* and limit engineers' options for complying with the wind design provisions in the *IRC*. TDI is adopting the 2018 *IBC* and *IRC* without revisions.

Comment: One commenter suggests TDI adopt the 2015 *IBC* and *IRC* because many jurisdictions have adopted these already. The commenter suggests that the rule allow for the 2015 *IBC* and *IRC* in addition to the 2018 *IBC* and *IRC*.

Agency Response: TDI declines to make the change. It is reasonable to adopt the most recent editions of the *IBC* and *IRC* and adopting a single year's editions will reduce confusion. Adopting the 2018 editions ensures that the codes adopted include the most recent advances in technology and greater understanding of wind engineering. However, TDI notes that in many instances the changes from the current 2006 editions of the *IBC* and *IRC* to either the 2015 or 2018 editions will be similar.

In addition, adopting the 2018 editions complies with federal recommendations and enables Texas to qualify for federal funds. The FEMA Harvey Mitigation report recommends that TDI adopt the 2018 *IBC* and *IRC* codes. The Federal Bipartisan Budget Act of 2018 included the Federal Cost Share Reform Incentive, which encourages states to adopt the latest building codes among other incentives. The Federal Cost Share Reform Incentive allows post-disaster federal cost-share with states to increase from 75 percent to 85 percent on a sliding scale based on several factors, including the adoption and

enforcement of the latest building codes. By adopting the 2018 editions of the codes, Texas can qualify for more assistance from the federal government in post-disaster recovery funding. For these reasons, TDI adopts the 2018 *IBC* and *IRC* codes for the windstorm inspection program.

Comment: One commenter suggests that in §5.4012, the reference to "three-second gust wind speed" be changed to "ultimate design wind speed" as used by the 2018 *IBC* and *IRC* codes.

Agency Response: In response to another comment, TDI has removed the text in §5.4012 that refers to "three second-gust wind speed." However, the term will continue to appear on the forms TDI makes available to appointed qualified inspectors and engineers. The term is still appropriate because it is used in the 2016 edition of the *American Society of Civil Engineers Minimum Design Loads and Associated Criteria for Buildings and Other Structures*, which is referenced in the 2018 *IBC* and *IRC*.

Comment: One commenter requests that §5.4012, which applies to construction begun on or after April 1, 2020, be rewritten so that the Seaward, Inland I, and Inland II zones do not each require a single wind speed for each risk category in the zone. The commenter states that as proposed, §5.4012 revises the 2018 *IRC*'s wind speed requirements. The commenter states that the wind speeds in proposed §5.4012 would trigger the requirement for windborne debris protection in areas where the 2018 *IRC* would not, and vice versa.

Agency Response: TDI has made the suggested change to §5.4012. Structures in the catastrophe area must be constructed in accordance with the wind provisions in the 2018 *IBC* and *IRC*. Appointed qualified inspectors and engineers must use the applicable wind

speed according to the *IBC* or *IRC* at each site. Web resources and software applications are available to determine the applicable wind speed based on the longitude and latitude or address of a construction site.

SUBCHAPTER E.

Division 1. Plan of Operation 28 TAC §5.4011 and §5.4012

STATUTORY AUTHORITY. TDI adopts amended §5.4011 and new §5.4012 under Insurance Code §§2210.008, 2210.251, 2210.252, and 36.001.

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

Insurance Code §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.

Insurance Code §2210.252 provides that 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.

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.

TEXT.

§5.4011. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008, and before April 1, 2020.

(a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in §5.4008 of this title (relating to 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) and which are constructed, repaired, or to which additions are made on and after January 1, 2008, and before April 1, 2020, must comply with the 2006 Editions of the International Residential Code and the International Building Code, as each is revised by the 2006 Texas Revisions, and all of which are adopted by reference to be effective January 1, 2008. The codes are published by and available from the International Code Council, Publications, 4051 West Flossmoor Road, Country Club Hills, Illinois, 60478-5795, (Telephone: 888-422-7233), and the 2006 Texas Revisions to the 2006 Edition of the International Residential Code and the 2006 Texas Revisions to the 2006 Edition of the International Building Code are available from the Windstorm Inspections Section of the Inspections Division, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, MC 104-INS, Austin, Texas, 78714-9104 and on the Texas Department of Insurance website at www.tdi.texas.gov. The following wind speed requirements must apply:

(1) Areas seaward of the intracoastal canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are seaward of the intracoastal canal and constructed, repaired, or to which additions are made on or after January 1, 2008, and before April 1, 2020, must be designed and constructed to resist a 3-second gust of 130 miles per hour.

(2) Areas inland of the intracoastal canal and within approximately 25 miles of the Texas coastline and east of the specified boundary line and certain areas in Harris County. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in §5.4008(b)(2)(A) and (B) of this title (relating to

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) and constructed, repaired, or to which additions are made on or after January 1, 2008, and before April 1, 2020, must be designed and constructed to resist a 3-second gust of 120 miles per hour.

(3) Areas inland and west of the specified boundary line. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in §5.4008(c) of this title (relating to 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) and constructed, repaired, or to which additions are made on or after January 1, 2008, and before April 1, 2020, must be designed and constructed to resist a 3-second gust of 110 miles per hour.

(b) Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. In order for a historic structure to be exempted, at least one of the following conditions must be met:

(1) The structure is listed or is eligible for listing on the National Register of Historic places.

(2) The structure is a Recorded Texas Historic Landmark (RTHL).

(3) The structure has been specifically designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure, in order to maintain its historical designation.

§5.4012. Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made on or after April 1, 2020.

(a) To be eligible for catastrophe property insurance, structures located in the designated catastrophe areas specified in paragraphs (1), (2), and (3) of this subsection that are constructed, repaired, or to which additions are made on or after April 1, 2020, must comply with the 2018 editions of the *International Residential Code* and the *International Building Code*, which are adopted by reference and applicable beginning April 1, 2020. The codes are published by and available from the International Code Council at iccsafe.org or by calling toll-free 1-888-422-7233. The designated catastrophe areas are:

(1) Areas seaward of the intracoastal canal;

(2) Areas inland of the intracoastal canal and within approximately 25 miles of the Texas coastline and east of the specified boundary line and certain areas in Harris County as described in §5.4008(b)(2)(A) and (B) of this title; and

(3) Areas inland and west of the specified boundary line as described in §5.4008(c) of this title.

(b) Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a historic structure may be made without conformance to the requirements of subsection (a) of this section. For a historic structure to be exempted, at least one of the following conditions must apply to the structure:

(1) The structure is listed or is eligible for listing on the National Register of Historic Places.

(2) The structure is a Recorded Texas Historic Landmark by the Texas Historical Commission.

(3) The structure has been designated by official action of a legally constituted municipal or county authority as having special historical or architectural significance, is at least 50 years old, and is subject to the municipal or county requirements relative to construction, alteration, or repair of the structure to maintain its historical designation.

SUBCHAPTER E.

Division 7. Inspections for Windstorm and Hail Insurance

28 TAC §§5.4601, 5.4603, 5.4621, 5.4622, and 5.4642

STATUTORY AUTHORITY. TDI adopts amended §§5.4601, 5.4603, 5.4621, 5.4622, and 5.4642 under Insurance Code §§2210.008, 2210.251, 2210.2515, 2210.252, and 36.001.

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

Insurance Code §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.

Insurance Code §2210.2515 gives TDI the authority to prescribe forms on which a person may apply for a certificate of compliance.

Insurance Code §2210.252 provides that 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.

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.

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) Texas Board of Professional Engineers and Land Surveyors, Texas Board of Professional Engineers, or TBPE--House Bill 1523, 86th Legislature, Regular Session, 2019, abolished the Texas Board of Professional Land Surveying and transferred its functions to the renamed Texas Board of Professional Engineers and Land Surveyors, effective September 1, 2019. All references to the Texas Board of Professional Engineers or the TBPE in this division are references to the Texas Board of Professional Engineers and Land Surveyors.

(12) Association--The Texas Windstorm Insurance Association.

(13) Windstorm building code standards--The requirements for building construction in §§5.4007 – 5.4012 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, and before April 1, 2020; and Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made on or after April 1, 2020; 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, 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) 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.

§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, 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, or a 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 and Land Surveyors; 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 paragraph (1)(A) or (B) of this section, the appointed qualified inspector is able to provide TDI with information and evidence substantiating compliance.

§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 or 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 and Land Surveyors revokes or suspends an engineer's license, the engineer's appointment as an appointed qualified inspector is automatically canceled.

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

Adopted Sections
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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 3/6/2020.

DocuSigned by:
James Person
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James Person, General Counsel
Texas Department of Insurance

The Commissioner adopts 28 TAC §5.4012 and amendments to §5.4011 and §§5.4601, 5.4603, 5.4621, 5.4622, and 5.4642.

DocuSigned by:
Kent Sullivan
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Kent C. Sullivan
Commissioner of Insurance

Commissioner's Order No. 2020 - 6285