

**SUBCHAPTER A. COVID-19 EMERGENCY RULES
28 TAC §35.3**

INTRODUCTION. The Commissioner of Insurance adopts new 28 TAC §35.3, concerning windstorm building codes for structures insured by the Texas Windstorm Insurance Association (TWIA), on an emergency basis, effective immediately. The emergency adoption is necessary to limit the effect of the COVID 19 pandemic on construction along the Texas coast.

REASONED JUSTIFICATION. On March 13, 2020, Governor Abbott issued a statewide disaster declaration due to the COVID-19 pandemic. As part of the declaration, Governor Abbott authorized the use of all available resources of state government that are reasonably necessary to cope with the disaster.

The Commissioner recently adopted new 28 TAC §5.4012 and amendments to §§5.4011, 5.4601, 5.4603, 5.4621, 5.4622, and 5.4642. These sections adopted the wind provisions in the 2018 *International Building Code (IBC)* and *International Residential Code (IRC)* as the standards for insurability through TWIA. The 2018 *IBC* and *IRC* were to apply to structures constructed, repaired, or to which additions are made on or after April 1, 2020.

But because the global pandemic is disrupting supply chains and manufacturing operations around the world, compliance with the new building codes may not be possible without delaying construction on the Texas coast. The supply chain and manufacturing disruptions are already making it difficult to obtain construction materials. Requirements for complying with the 2018 *IBC* and *IRC* vary according to each structure. However, because the new building codes require greater windstorm resistance than the

current codes, compliance often requires more materials than the current codes require for the same structure. In some cases, compliance with the 2018 *IBC* and *IRC* also requires different building materials.

An emergency rule is necessary

Pursuant to Government Code §2001.034 and §2001.036(a)(2), the new rule is adopted on an emergency basis and with an immediate effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice.

Residential and commercial construction are considered critical infrastructure sectors by the National Cybersecurity and Infrastructure Agency. The sector's importance is underscored by the fact that the Department of Homeland Security (DHS) categorizes workers supporting the construction of housing as an Essential Critical Infrastructure Workforce. In Executive Order No. GA-14, issued March 31, 2020, Governor Abbott adopted the DHS's guidelines on the Essential Critical Infrastructure Workforce. The new rule is adopted to ensure that supply chain and manufacturing problems arising from the pandemic do not interfere with this essential function. Therefore, it is vital to the public health and welfare that the new rule goes into effect immediately.

Under Government Code §2001.034, this emergency rule may not be in effect for longer than 180 days.

STATUTORY AUTHORITY. The new rule is adopted on an emergency basis with an immediate effective date under Insurance Code §§2210.008, 2210.251, 2210.2515, 2210.252, and 36.001; and Government Code §2001.034 and §2001.036(a)(2).

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.

Government Code §2001.034 provides that a state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice.

Government Code §2001.036(a)(2) provides that if a state agency finds that an expedited effective date is necessary because of imminent peril to the public health, safety, or welfare, and subject to applicable constitutional or statutory provisions, a rule is effective immediately on filing with the secretary of state, or on a stated date less than 20 days after the filing date.

TEXT.**SUBCHAPTER A. COVID-19 EMERGENCY RULES
28 TAC §35.3****§35.3. Effective date of 2018 International Building Code and 2018 International Residential Code.**

(a) Notwithstanding §§5.4011, 5.4012, 5.4601, 5.4603, 5.4621, 5.4622, and 5.4642 of this title, the 2018 International Building Code and the 2018 International Residential Code will apply to structures constructed, repaired, or to which additions are made on or after September 1, 2020. The 2006 International Building Code and International Residential Code with Texas Revisions will apply to structures constructed, repaired, or to which additions are made on or after January 1, 2008, and before September 1, 2020.

(b) This section may not be construed as preventing structures constructed, repaired, or to which additions are made on or after April 1, 2020, but before September 1, 2020, from being built in compliance with the 2018 International Building Code and the 2018 International Residential Code.

2020-6310

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 35. Emergency Rules

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

4/3/2020

Issued at Austin, Texas, on _____.

DocuSigned by:

James Person

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James Person, General Counsel
Texas Department of Insurance

The Commissioner adopts new §35.3 on an emergency basis, effective immediately.

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Kent Sullivan

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Kent C. Sullivan
Commissioner of Insurance

Commissioner's Order No. **2020-6310**