

SUBCHAPTER E. FIRE EXTINGUISHER AND INSTALLATION

§§34.501, 34.504, 34.506, 34.510, 34.513, 34.514, 34.516, 34.517, 34.519, 34.520, and
34.521

SUBCHAPTER F. FIRE ALARM RULES

§§34.607, 34.611, 34.613, 34.619 34.620, 34.623, 34.628, and 34.630

SUBCHAPTER G. FIRE SPRINKLER RULES

§§34.701, 34.704, 34.706, 34.707, 34.712, 34.713, 34.715, 34.716, 34.721, 34.723, and
34.724

SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

§§34.811, 34.815, and 34.817

SUBCHAPTER L. FIRE STANDARD COMPLIANT CIGARETTES

§34.1203 and §34.1212

1. INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 Texas Administrative Code Chapter 34, Subchapter E, Fire Extinguisher and Installation §§34.501, 34.504, 35.506, 34.510, 34.513, 34.514, 34.516 , 34.517, 34.519, 34.520, and 34.521; Subchapter F, Fire Alarm Rules, §§34.607, 34.611, 34.613, 34.619, 34.620, 34.623, 34.628, and 34.630; Subchapter G, Fire Sprinkler Rules, §§34.701, 34.704, 34.706, 34.707, 34.712, 34.713, 34.715, 34.716, 34.721, 34.723, and 34.724; Subchapter H, Storage and Sale of Fireworks, §§34.811, 34.815, and 34.817; and Subchapter L, Fire Standard Compliant Cigarettes, §34.1203 and §34.1212.

The proposed amendments make substantive changes to §§34.506, 34.519, 34.521, 34.623, 34.706, 34.721, 34.815, and 34.817 to clarify the intent of the rule or to better reflect the statutory purpose. Additionally, §§34.516, 34.715, and 34.811 are amended to conform with similar testing requirements in §34.615. The amendments also implement House Bill (HB) 1951, enacted by the 82nd Legislature, Regular

Session, amending Insurance Code §6002.158. Other amendments implement portions of Senate Bill (SB) 14, enacted by the 78th Legislature, Regular Session, repealing Insurance Code Article 5.33C. The proposed amendments also adopt certain updated National Fire Protection Association (NFPA) codes applicable to the fire alarm and fire sprinkler rules. Finally, the proposed amendments update numerous obsolete statutory references and make nonsubstantive editorial changes to improve readability and consistency, and conform to current agency style.

Substantive Changes

TDI and the state fire marshal proposed several minor but substantive changes to clarify the intent of the rule or to better reflect the statutory purpose.

A proposed amendment to §34.506(19) of the fire extinguisher rules clarifies the definition of “direct supervision” so that the definition agrees with the language used in §34.517(e) of this subchapter. The word “installation” replaces “work” so that the term is less general and more applicable to the actual installation of engineered fixed fire extinguisher systems. The final sentence of the definition is amended to read “The licensee performing the direct supervision of an engineered fixed fire extinguisher system is not required to be on-site at all times when the installation is performed.”

A proposed amendment to §34.516 adds new subsection (g) to require that any non-NICET test required for a license must have been completed in the last year. A proposed amendment to §34.715 adds new subsection (f) to require that any non-NICET test required for a license must have been completed in the last year. A similar change is proposed to add a new §34.811(d) and also redesignates existing

subsections (d) - (g) as subsections (e) - (h). These amendments ensure that the knowledge demonstrated by passing the test is current. These amendments bring the testing requirements for the fire extinguisher, fire sprinkler, and fireworks rules up to the standard for fire alarm licensure testing requirements in §34.615(e).

Proposed amendments to §34.519 eliminate an unnecessary and redundant task. The amended section no longer requires the submission of certificates of installation to the state fire marshal's office. In Figure: 28 TAC §34.519(b) the existing installation label is deleted and replaced with an updated label. New §34.519(d) provides directions to clarify who should receive copies of the certificate of installation. Additionally, the certificate of installation in Figure: 28 TAC §34.519(c) is deleted and replaced with a new certificate to make conforming changes.

A proposed amendment to §34.521(a) clarifies that a red tag is required for a portable extinguisher or fixed system where an impairment exists, and not merely found. This change clarifies that ignorance of an impairment is not an excuse for failing to identify and properly tag an impaired fire extinguisher or fixed system. The first sentence is amended to state, "If impairments exist which make a portable extinguisher or fixed system unsafe or inoperable, the owner or the owner's representative must be notified in writing of all impairments."

A proposed amendment to §34.611 adds language to §34.611(a)(5) so a residential fire alarm superintendent may act as a fire alarm technician. This amendment makes the section consistent with Insurance Code §6002.154(d). Another

amendment deletes §34.611(f)(2) and redesignates the remainder of the paragraphs in that subsection because of redundancy with §34.611(e).

Proposed amendment to §34.619(b) allows a local authority having jurisdiction to waive the requirement that fire alarm and detection system plans be signed and dated with an original signature. The existing section already allows a local authority having jurisdiction to waive the requirement of having plans submitted. The proposed amendment would allow local authorities having jurisdiction to waive the original signature requirement on submitted plans. In 2006, TDI amended §34.717(c) to make a similar change with respect to fire sprinkler system plans.

TDI proposes additional language for §34.623(a) of the fire alarm rules to require yellow labels to identify systems where required inspection, testing, and maintenance services are not being performed. This change clarifies that a fire alarm and fire detection system must be both installed and maintained in compliance with applicable codes and standards. With the proposed change, §34.623(a) states, "If, after any service, inspection or test, a system does not comply with applicable codes and standards adopted at the time the system was installed or is not being tested or maintained in accordance with those standards, a completed yellow label must be attached to the outside of the control panel cover or, if the system has no panel, in a permanent location to indicate that corrective action is necessary."

A proposed amendment to §34.706 of the fire sprinkler rules adds a definition of "employee" and redesignates existing paragraphs (6) - (21) as paragraphs (7) - (22). The term is defined as, "An individual that performs tasks assigned by the employer.

The employee's pay is subject to the deduction of social security and federal income tax. The employee may be full time, part time, or seasonal. For the purposes of this section, employees of a registered firm who are paid through a staff leasing company are considered to be employees of the registered firm." This additional definition clarifies the nature and role of an employee and is consistent with Labor Code Chapter 91.

A proposed amendment to §34.721 clarifies that a yellow tag is appropriate if the fire protection sprinkler system is found to be noncompliant with the applicable NFPA standard at the time it was installed. The additional language adds the limiting language "at the time it was installed" to §34.721(a). The yellow tag in Figure: 28 TAC §34.721(g) is deleted and replaced with a tag containing instructions that more closely mirror the text of §34.721(a). Additionally, the new figure updates the inspection dates.

Two new paragraphs are proposed for §34.815(b). The first is due to moving the language in §34.817(q) regarding sales tax permit requirements to a more appropriate location in the rules. The second proposed change clarifies that retail permits cannot be sold along with fireworks to a non-retailer. Resale of a retail permit to a non-retailer would otherwise allow the purchase of fireworks year round in contravention of Occupations Code Chapter 2154.

A proposed change to §34.817(f) of the Storage and Sale of Fireworks subchapter is made to address the appropriate storage of fireworks. The language "Fireworks shall not be sold or stored for future sale at any inhabited dwelling, house, apartment, or other structure used in whole or in part as a home or place of abode by

any person or persons” is added to §34.817(f) to ensure the protection, safety, and preservation of life and property. Additionally, in connection with the proposed new §34.815(b)(5) regarding sales tax permits, §34.817(q) will be deleted.

Update Minimum Standards

Proposed amendments to §34.607 and §34.707 update four applicable NFPA code standards. In Subchapter F, Fire Alarm Rules, amendments to §34.607 update the adopted NFPA standards for NFPA 11, Standard for Low-, Medium-, and High-Expansion Foam; NFPA 13, Standard for the Installation of Sprinkler Systems; NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes; and NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height. These four NFPA codes are brought up to the 2010 versions of the NFPA codes. Amending these NFPA standards makes the applicable standards for the fire alarm rules consistent with those already adopted in §34.707 for the fire sprinkler rules.

NFPA 11-2010, Standard for Low-, Medium-, and High-Expansion Foam and Combined Agent Systems, incorporates requirements previously found in NFPA 11A, Standard for Medium- and High-Expansion Foam and adds a new chapter to address compressed air foam systems. The updated standard revises some chapters to accommodate the incorporation of medium- and high-expansion foam systems previously regulated by NFPA 11A.

NFPA 13-2010, Standard for the Installation of Sprinkler Systems, adds definitions relating to private water supply terms; clarifies the requirements of Ordinary

Hazard Group 1 and Group 2 Occupancies where storage is present; revises requirements relating to trapeze hangers and bracing criteria; re-organizes the requirements relating to storage according to storage size, type, material, and commodity; specifies new requirements for listed expansion chambers; clarifies ceiling pocket rules; and clarifies the formulas used in calculating large antifreeze systems.

NFPA 13D-2010, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, includes new spacing and obstruction rules addressing sloped ceilings, ceiling pockets, ceiling fans, and kitchen cabinets; specifies installation, design, and acceptance requirements for pumps; clarifies the acceptability of insulation as a method of freeze protection and the acceptability of wells as a water source; specifies new requirements for listed dry pipe or preaction residential sprinkler systems, as well as clarifies requirements for multipurpose combined and networked sprinkler systems; and adopts specific obstruction rules for residential sprinklers.

NFPA 13R-2010, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height; includes spacing and obstruction rules addressing sloped ceilings, ceiling pockets, ceiling fans, and kitchen cabinets; clarifies the requirements for utilizing quick-response sprinklers within NFPA 13R regulations; adds new requirements addressing architectural features within dwelling units; and clarifies the requirements covering closets, including obstructions within closets and protection of mechanical closets.

A proposed amendment to §34.707 updates the NFPA 20-2008, Standard for the Installation of Stationary Pumps for Fire Protection. Revised NFPA 20-2010, Standard for the Installation of Stationary Pumps for Fire Protection, updates the standard to conform with the latest edition of the Manual of Style for NFPA Technical Committee Documents; adds provisions addressing the use of fire pump drivers using variable speed pressure limiting control; adds acceptance test criteria for replacement of critical path components of a fire pump installation; refines requirements for variable speed drives were refined; adds requirements for break tanks and component replacement testing tables; and adds requirements on fire pumps for high-rise buildings and for pumps arranged in series.

Copies of the standards are available for public inspection in the state fire marshal's office. The NFPA also makes available codes for read-only inspection online through their website at www.nfpa.org. To view the NFPA codes on the NFPA website, users must create a free account and agree to certain terms and conditions.

Nonsubstantive Amendments

The rule updates numerous obsolete statutory references. These changes are nonsubstantive and are made to reflect the Texas Legislature's recodification of the Insurance Code. HB 2636, 80th Legislature, 2007, repealed and recodified Article 5.43-1 as Insurance Code Chapter 6001.

Portions of Article 5.43-2 were repealed and recodified as Insurance Code Chapter 6002 in the nonsubstantive Insurance Code revision contained in HB 2636, 80th Legislature, Regular Session, 2007. The remaining portions of Article 5.43-2,

including changes made by HB 2118, relating to the new licensing category of residential fire alarm technicians, were repealed and recodified as Insurance Code Chapter 6002 in the nonsubstantive Insurance Code revision contained in SB 1969, 81st Legislature, Regular Session, 2009. Article 5.43-3 was repealed and recodified as Insurance Code Chapter 6003 in the nonsubstantive Insurance Code revision contained in HB 2636. The affected sections are §§34.501, 34.504, 34.510, 34.513, 34.514, 34.516, 34.517, 34.613, 34.620, Figure: 28 TAC §34.620(g), 34.701, 34.704, 34.706, 34.712, 34.713, 34.715, 34.716, 34.723, and 34.724. Finally, §34.713(b)(2)(A) is amended so that the language tracks the changed National Institute for Certification in Engineering Technologies' (NICET) terminology which has replaced "fire protection automatic sprinkler" with "water-based fire protection."

The Business and Commerce Code Chapter 36, which codified the Assumed Business or Professional Name Act, was repealed in the nonsubstantive Business and Commerce Code revision, Acts 2007, 80th Legislature, Chapter 885, §2.47. The Business and Commerce Code Chapter 36 was re-adopted as the Business and Commerce Code Chapter 71 in the same nonsubstantive Business and Commerce Code revision. The affected sections are §34.514 and §34.713.

The service tag in Figure: 28 TAC §34.520(g) is deleted and replaced with a new tag that updates the part of the tag showing the date of last service.

The proposed rules also make numerous nonsubstantive editorial changes to reflect agency style and improve readability. These changes replace "shall" with "must" or "will" and amend inconsistent capitalization.

The proposed rules also update obsolete web addresses in §§34.630, 34.1203, and 34.1212.

HB 1951 – 28 TAC §34.628 and §34.630. Section 34.630 is amended so that subsection (f) refers to Renewal Application for Training School Approval form, and deletes the form number, consistent with new agency style.

Article 15 of HB 1951 amended Insurance Code §6002.158, related to residential fire alarm technicians. The amendment reduced the curriculum requirement for the residential fire alarm technician course from eight to seven hours. Proposed amended §34.628 makes the corresponding change to the rule that implements §6002.158.

SB 14 – 28 TAC §34.716(f)

What is now §34.716(f) was adopted in 1996 to implement Art. 5.33C, in 21 Tex Reg 7663. In 2003, SB 14 repealed Insurance Code Articles 5.33A and 5.33C, providing for certificates used for premium credits and discounts on insurance rates. Section 34.716 was formerly 37 TAC §541.14. Section 34.716(f) is obsolete and proposed for deletion.

The proposed rules amend §34.1212 to delete form numbers from the Certification by Manufacturer for Fire Standard Compliant Cigarette (FSCC) and Application for Fire Standard Compliant Cigarette Marking Approval forms, consistent with agency style.

2. FISCAL NOTE. Chris Connealy, state fire marshal, has determined that for each year of the first five years the proposed sections will be in effect, there will no

measurable fiscal impact to state government and no measurable impact to local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Mr. Connealy has also determined that for each year of the first five years the proposal is in effect, there is an anticipated public benefit of more orderly administration of the licensing process and increased clarity in regulatory requirements.

TDI drafted the proposed rules to maximize public benefits while mitigating costs. Except for the costs associated with the updated NFPA codes, and the testing requirements in §§34.516(g), 34.715(f), and 34.811(d) to require that any test required for a license must have been completed in the last year, the proposed changes will have no expected financial impact on the public. The proposed non-substantive amendments will have no expected financial impact on the public.

Costs Relating to NFPA Code Updates

The costs for compliance will vary between the smallest and largest businesses because the amount of work a business does may vary with firm size. Businesses and individuals may face higher costs to meet the updated code standards. The estimated cost to purchase all of the proposed updated NFPA standards is approximately \$500. However, because fire alarm firms will only need to purchase the applicable standards in their area of expertise, the cost may actually be less. These costs will apply equally

to small and micro businesses. However, TDI has considered the purpose of the adopted NFPA standards, which is to provide for the safety of lives and property, and has determined that it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses.

The proposed amendments adopt four revised NFPA codes. Because of revisions in the updated codes, building owners and licensees may be required to meet more stringent or altered code requirements, and building owners and licensees may have higher costs to comply with the more recent version of the NFPA codes. However, these costs will be individualized based on the existing condition of the building, the number of buildings affected by the updated standards, and the work processes of licensees.

Costs Relating to One Year Testing Requirements

Proposed amendments to §§34.516(g), 34.715(f), and 34.811(d) requiring that any non-NICET test required for a license must have been completed in the last year may have a cost to some licensee applications. Formerly, an individual who had already passed the applicable exam, even if many years before, could use that examination grade for meeting licensing requirements. The proposed amendments may mean that some individuals will have to demonstrate their command of the subject matter by taking and passing an exam within one year of application. This revised testing requirement does not apply to NICET exams. For non-NICET exams, testing is done through Prometric and the tests cost \$40.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. As required by Government Code

§2006.002(c), the department has determined that the proposed amendments may have an adverse economic effect on small or micro businesses that must comply with the proposed rules. The cost of compliance with the proposal may vary between large businesses and small or micro businesses, and TDI's cost analysis and resulting estimated costs for building owners licensees in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro businesses.

The SFMO and TDI do not directly regulate the building owners that may need to comply with the updated NFPA codes. Because of the broad scope of potential building owners, it is impossible to determine what effects the rule will have on small or micro businesses. According to the state comptroller, 91.6 percent of all businesses are small or micro businesses (<https://fmx.cpa.state.tx.us/fmx/legis/ecoeffect/>). TDI estimates that many small or micro businesses may be required to comply with the updated NFPA codes. However, because the costs attributable to the rule vary with the amount of code compliant work, size, and number of buildings, TDI anticipates that the proposal is likely to have a smaller cost impact on small or micro businesses because such businesses and licensees are likely to have fewer buildings and less work requiring code compliance.

The proposed amendments adopt NFPA 13-2010, Standard for the Installation of Sprinkler Systems, NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, and NFPA 13R-2010,

Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, for the purposes of the Fire Alarm Rules. Additionally, the proposed amendments adopt NFPA 20-2010, Standard for the Installation of Stationary Pumps for Fire. The updated standards are necessary to better protect the health and safety of the public. TDI has determined, in accord with Government Code §2006.002(c-1), that the proposal substantially contributes to the health and safety of Texas citizens by incorporating more current fire alarm and fire sprinkler NFPA standards. There are no regulatory alternatives to the adoption of the updated standards in this proposal that will sufficiently protect the health and safety of Texas citizens affected by the rules.

The proposed amendments add licensing examination requirements to §§34.516(g), 34.715(e), and 34.811(d). It is unknown to how many fire extinguisher, fire sprinkler, and fireworks license applicants these rules would apply. The updated examination standards are necessary to better protect the health and safety of the public. TDI has determined, in accord with Government Code §2006.002(c-1), that the proposal substantially contributes to the health and safety of Texas citizens by requiring proof of recent examination passage to determine the applicant's knowledge and ability. There are no regulatory alternatives to the adoption of the revised testing requirements in this proposal that will sufficiently protect the health and safety of Texas citizens affected by the rules.

5. 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 and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 27, 2012, to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Chris Connealy, State Fire Marshal, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The amendments are proposed pursuant to Government Code §417.004 and §417.005, Insurance Code §§6001.051, 6001.052, 6002.051, 6002.052, 6003.051, 6003.052, 6003.054, and §36.001, Occupations Code §2154.051 and §2154.052, and Health & Safety Code §796.008. Government Code §417.004 specifies that the commissioner of insurance shall perform the rulemaking

functions previously performed by the Texas Commission on Fire Protection.

Government Code §417.005 specifies that the commissioner of insurance may, after consulting with the state fire marshal, adopt necessary rules to guide the state fire marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the commissioner of insurance.

Insurance Code §6001.051(a) specifies that the department shall administer Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the commissioner may issue rules the commissioner considers necessary to administer Chapter 6001 through the state fire marshal. Insurance Code §6001.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards published by the National Fire Protection Association; recognized by federal law or regulation; published by any nationally recognized standards-making organization; or contained in the manufacturer's installation manuals. Insurance Code §6001.052(b) specifies that the commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that

the commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §6002.051(a) specifies that the department shall administer Chapter 6002. Insurance Code §6002.051(b) specifies that the commissioner may adopt rules as necessary to administer Chapter 6002, including rules the commissioner considers necessary to administer Chapter 6002 through the state fire marshal. Insurance Code §6002.052(a) specifies that in adopting necessary rules, the commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association; standards recognized by federal law or regulation; or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. Insurance Code §6002.052(b) specifies that rules adopted under Section 6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate. Insurance Code §6002.052(c) specifies that the commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter, and that in adopting standards, the commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station

is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

Insurance Code §6003.051(a) specifies that the department shall administer Chapter 6003. Insurance Code §6003.051(b) specifies that the commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal. Insurance Code §6003.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards adopted by federal law or regulation; standards published by a nationally recognized standards-making organization; or standards developed by individual manufacturers. Section 6003.054(a) further specifies that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Occupations Code §2154.051 states that the commissioner shall determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays. Section 2154.052 further provides that the commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property. Under §2154.052(e), a rule may not be adopted under Occupations Code Chapter 2154 that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

Health and Safety Code §796.008 states that the state fire marshal may adopt rules to administer the cigarette fire safety standards chapter.

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

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

<u>Rule</u>	<u>Statute</u>
§34.501	Insurance Code §6001.052
§34.504	Insurance Code §6001.052
§34.506	Insurance Code §§6001.051, 6001.052, 6001.155, and 6001.251.
§34.510	Insurance Code §6001.052

§34.513	Insurance Code §6001.052
§34.514	Insurance Code §6001.052
§34.516	Insurance Code §§6001.051, 6001.052, and 6001.157
§34.517	Insurance Code §6001.052
§34.519	Insurance Code §§6001.051, 6001.052, 6001.155, and 6001.251
§34.520	Insurance Code §§6001.051, 6001.052, 6001.155, and 6001.251
§34.521	Insurance Code §§6001.051, 6001.052, 6001.155, and 6001.251
§34.607	Insurance Code §6002.051 and §6002.052
§34.611	Insurance Code §§6002.051, 6002.052 and 6002.154
§34.613	Insurance Code §6002.051 and §6002.052
§34.619	Insurance Code §6002.051 and §6002.052
§34.620	Insurance Code §6002.051 and §6002.052
§34.623	Insurance Code §6002.051 and §6002.052
§34.628	Insurance Code §§6002.051, 6002.052 and 6002.158
§34.630	Insurance Code §6002.051 and §6002.052

§34.701	Insurance Code §6003.051 and §6003.052
§34.704	Insurance Code §6003.051 and §6003.052
§34.706	Insurance Code §6003.051 and §6003.052
§34.707	Insurance Code §6003.051 and §6003.052
§34.712	Insurance Code §6003.051 and §6003.052
§34.713	Insurance Code §6003.051 and §6003.052
§34.715	Insurance Code §§6003.051, 6003.052, and 6003.156
§34.716	Insurance Code §6003.051 and §6003.052; Senate Bill 14, 78th Legislature (2003)
§34.721	Insurance Code §6003.051 and §6003.052
§34.723	Insurance Code §6003.051 and §6003.052
§34.724	Insurance Code §6003.051 and §6003.052
§34.811	Occupations Code §2154.051 and §2154.052
§34.815	Occupations Code §2154.051 and §2154.052
§34.817	Occupations Code §2154.051 and §2154.052
§34.1203	Health and Safety Code §796.008
§34.1212	Health and Safety Code §796.008

9. TEXT.

SUBCHAPTER E. FIRE EXTINGUISHER AND INSTALLATION

§34.501. Purpose. The purpose of this subchapter is to regulate the business of leasing, renting, selling, installing, and servicing of portable fire extinguishers and the planning, certifying, installing, or servicing of fixed fire extinguisher systems and to prohibit portable fire extinguishers, fixed fire extinguisher systems, and extinguisher equipment not labeled or listed by a testing laboratory approved by the commissioner in the interests of protecting and preserving lives and property pursuant to ~~the~~ Insurance Code Chapter 6001 ~~[, Article 5.43-1]~~.

§34.504. Exceptions. The exceptions of ~~the~~ Insurance Code §6001.156 ~~[, Article 5.43-1, §6,]~~ are applicable to the sections of this subchapter.

§34.506. Definitions - The following words and terms, when used in this subchapter, ~~shall~~ have the following meanings, unless the context clearly indicates otherwise.

(1) - (18) (No change.)

(19) Direct supervision--The oversight by a licensee of the services performed by another licensee or permittee. The licensee, performing the direct supervision at the shop, must be present~~[,]~~ at all times~~[,]~~ on the premises where the supervised licensee or permittee is performing the service. When not at the shop, the individual being supervised must be within sight of the licensee performing the direct supervision when installing or servicing portable fire extinguishers or pre-engineered fixed fire extinguisher systems. The licensee performing the direct supervision of an engineered fixed fire

extinguisher system is not required to be on-site at all times when the installation [work] is performed.

§34.510. Certificates of Registration.

(a) - (d) (No change.)

(e) Shop. A registered firm must establish and maintain a shop whether at a specific location or in a mobile unit designed so that servicing, repairing, or hydrostatic testing can be performed. The shop must be adequately equipped to service or test all fire extinguishers or systems the registered firm installs and services. At a minimum a firm must [~~shall~~] maintain the following:

(1) (No change.)

(2) a copy of the most recently adopted [~~Texas~~] Insurance Code Chapter 6001 [~~Article 5.43-1~~] and this chapter;

(3) - (7) (No change.)

(8) if performing internal maintenance for portable extinguishers, a written notice must [~~shall~~] be kept on file indicating the registered firm performing the maintenance or, at a minimum, the following additional items are required:

(A) - (L) (No change.)

(9) if performing hydrostatic testing for portable extinguishers, a written notice must [~~shall~~] be kept on file indicating the registered firm performing the test or, at a minimum, the following additional items are required:

(A) - (F) (No change.)

(10) if performing maintenance for DOT specification portable fire extinguishers, a written notice must ~~[shall]~~ be kept on file indicating the registered firm which would perform the hydrostatic test when required or, at a minimum, the following additional items are required:

(A) and (B) (No change.)

(f) - (m) (No change.)

(11) (No change.)

§34.513. Alterations of Certificates, Licenses, or Permits. Alteration of such documents renders them invalid and is the basis for administrative action pursuant to ~~[the]~~ Insurance Code §6001.252 ~~[, Article 5.43-1, §7]~~.

§34.514. Applications.

(a) Certificates of registration.

(1) Applications for certificates and branch office certificates must be submitted on forms provided by the state fire marshal and accompanied by all other information required by ~~[the]~~ Insurance Code Chapter 6001 ~~[, Article 5.43-1,]~~ and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the state fire marshal's office.

(2) Applications must be signed by the sole proprietor, or by each partner of a partnership, or by an officer of a corporation. For corporations, the application must be accompanied by the corporate charter of a Texas corporation, or, in the case of a

foreign corporation, a copy of the Texas certificate of authority to do business. For applicants using an assumed name, the application must also be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, Texas Business and Commerce Code, Chapter 71 [~~§36-01~~]. The application must [~~shall~~] also include written authorization by the applicant permitting the state fire marshal or the state fire marshal's [~~his~~] representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of [~~the~~] Insurance Code Chapter 6001 [~~Article 5.43-1,~~] and this subchapter.

(3) and (4) (No change.)

(5) The applicant must comply with the following requirements concerning liability insurance.

(A) and (B) (No change.)

(C) Evidence of public liability insurance, as required by [~~the~~] Insurance Code §6001.154, [~~Article 5.43-1, §4A,~~] must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state.

(D) - (F) (No change.)

(b) Fire extinguisher licenses.

(1) Original applications for a license from an employee of a firm engaged in the business must be submitted on forms provided by the state fire marshal and accompanied by all other information required by [~~the~~] Insurance Code Chapter 6001 [~~, Article 5.43-1,~~] and this subchapter.

(2) - (4) (No change.)

(c) Complete application required for renewal. Renewal applications for certificates of registration and licenses must be submitted on forms provided by the state fire marshal and accompanied by all other information required by ~~the~~ Insurance Code Chapter 6001 ~~[, Article 5.43-1,]~~ and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the state fire marshal's office.

(d) Timely filed. A license or registration will ~~[shall]~~ expire at 12:00 midnight on the date printed on the license or registration. A renewal application and fee for license or registration must be postmarked on or before the date of expiration to be accepted as timely. If a renewal application is not complete but there has been no lapse in the required insurance, the applicant will ~~[shall]~~ have 30 days from the time the applicant is notified by the state fire marshal's office of the deficiencies in the renewal application to submit any additional requirement. If an applicant fails to respond and correct all deficiencies in a renewal application within the 30-day period, a late fee may be charged.

(e) Requirements for applicants holding licenses from other states. An applicant holding a valid license in another state who desires to obtain a Texas license through reciprocity must submit the following documentation with the application in addition to all other information required by ~~the~~ Insurance Code Chapter 6001 ~~[, Article 5.43-1,]~~ and this subchapter:

(1) and (2) (No change.)

(f) (No change.)

(g) Complete applications. The application form for a license or registration must be accompanied by the required fee and must, within 180 days of receipt by the department of the initial application, be complete and accompanied by all other information required by ~~[the]~~ Insurance Code Chapter 6001 ~~[Article 5.43-1]~~ and this subchapter, or a new application must be submitted, including all applicable fees.

§34.516. Tests.

(a) Applicants for licenses are required to take a test and obtain ~~[at least]~~ a grade of at least 70 percent ~~[70%]~~ on the test. Tests may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The test content, frequency, location, and outsource testing service must ~~[shall]~~ be designated by the state fire marshal.

(1) The Type B license test will include questions on the following:

(A) this subchapter and ~~[the]~~ Insurance Code Chapter 6001 ~~[Article 5.43-1]~~; and

(B) (No change.)

(2) The Type A license test will include questions on the following:

(A) this subchapter and ~~[the]~~ Insurance Code Chapter 6001 ~~[Article 5.43-1]~~;

(B) - (D) (No change.)

(3) The Type K license test will include questions on the following:

(A) this subchapter and ~~[the]~~ Insurance Code Chapter 6001 ~~[Article 5.43-1]~~;

(B) and (C) (No change.)

(4) The Type PL license test will include questions on the following:

(A) this subchapter and ~~[the]~~ Insurance Code Chapter 6001 ~~[Article 5.43-1]~~; and

(B) (No change.)

(5) The Type R license test will include questions on this subchapter and Insurance Code Chapter 6001 ~~[Article 5.43-1]~~.

(b) - (f) (No change.)

(g) An applicant for a license must complete and submit all application requirements within one year of the successful completion of any test required for a license, except for testing conducted through NICET; otherwise, the test is voided and the individual will have to pass the test again.

§34.517. Installation and Service.

(a) - (f) (No change.)

(g) If the installation or servicing of a fixed fire extinguishing system includes the installation or servicing of any part of a fire alarm or detection system or ~~[and/or]~~ a fire sprinkler system other than the installation and servicing of mechanical or pneumatic detection or ~~[and/or]~~ actuation devices in connection with the fire extinguishing system,

the licensing requirements of the appropriate Insurance Code Chapters 6002 or 6003

~~[Article 5.43-2 or 5.43-3]~~ must be satisfied.

(h) - (k) (No change.)

§34.519. Installation Labels for Fixed Extinguisher Systems.

(a) After an installation has been completed, an installation label must be affixed to the control head or panel of the fixed fire extinguisher system ~~[and an installation certificate form shall be sent to the state fire marshal's office]~~. The signature of the licensee on the label certifies that the system has been installed according to law. Labels must ~~[shall]~~ be five inches in height and four inches in width and must ~~[shall]~~ be of the gum label type. They must ~~[shall]~~ not be red in color. Installation labels must ~~[shall]~~ contain only the following information in the format of the label shown in subsection (b) of this section:

(1) - (6) (No change.)

(b) Installation label:

Figure: 28 TAC §34.519(b): [~~Figure: 28 TAC §34.519(b):~~]

DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL SYSTEM INSTALLATION RECORD	
Firm Name	_____
Firm Address	_____
City	_____
Telephone	_____
Cert. of Registration No.	_____
Name of Licensee	_____
License Number	_____
_____ (Signature of Licensee)	
Installation Date	_____
Manufacturer's Installation Manual	_____

(c) Certificate of Installation [~~(Form Number FML 010)~~].

Figure: 28 TAC §34.519(c): [~~Figure: 28 TAC §34.519(c):~~]

(d) After completion of the installation, modification, or addition of a fixed fire extinguisher system, the licensee must complete an installation certificate in the format provided by the state fire marshal (see Certificate of Installation). When an installation certificate has been completed, legible copies must be distributed as follows:

- (1) original to owner or posted on site at control head or panel;
- (2) a copy to main authority having jurisdiction, if required; and
- (3) a copy certifying firm to retain in their office for access by SFMO

§34.520. Service Tags.

(a) - (f) (No change.)

(g) Service tag:

Figure: 28 TAC §34.520(g): [~~Figure: 28 TAC §34.520(g):~~]



**DO NOT REMOVE BY ORDER OF
TEXAS STATE FIRE MARSHAL**

*Name & Address and Telephone
Number of Fire Protection Firm*

Certificate of Registration Number

Name of Licensee

License Number

Signature

TYPE OF WORK

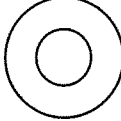
MAINTENANCE

NEW EXTINGUISHER

SERVICE (List on back)

DATE OF LAST SERVICE

DEC	2016
NOV	2016
OCT	2015
SEP	2015
AUG	2015
JUL	2015
JUN	2014
MAY	2014
APR	2013
MAR	2013
FEB	2012
JAN	2012



**EXTINGUISHER TYPE, SIZE and
LOCATION:**

OWNER'S NAME and ADDRESS

LIST SERVICE PERFORMED:

(Monthly Inspection – Initial and date below)

§34.521. Red Tags.

(a) If impairments exist [~~are found~~] which make a portable extinguisher or fixed system unsafe or inoperable, the owner or the owner's [~~his~~] representative must be notified in writing of all impairments. The registered firm must [~~shall~~] notify the owner or the owner's [~~his~~] representative immediately and must also notify the local authority having jurisdiction (AHJ) when available within 24 hours by phone, fax, or email [~~e-mail~~]

describing the impairments or deficiencies. A copy of the written notice to the owner must [~~shall~~] be submitted to the AHJ within three [~~3~~] business days. A completed red tag must be attached to indicate that corrective action or replacement is necessary.

The signature of the licensee on the tag certifies that the impairments listed indicate that the equipment is unsafe or inoperable. A service tag must not be attached until the impairments have been corrected or the portable extinguisher or fixed system replaced and the extinguisher or fire extinguisher system reinspected and found to be in good operating condition.

(b) - (e) (No change.)

SUBCHAPTER F. FIRE ALARM RULES

§34.607. Adopted Standards.

(a) The commissioner adopts by reference those sections of the following copyrighted minimum standards, recommendations, and appendices concerning fire alarm, fire detection, or supervisory services or systems, except to the extent they are at variance with [~~to~~] sections of this subchapter, [~~the~~] Insurance Code Chapter 6002, or other state statutes. The standards are published by and are available from the National Fire Protection Association, Quincy, Massachusetts. A copy of the standards will [~~shall~~] be kept available for public inspection at the State Fire Marshal's Office.

(1) NFPA 11-2010 [~~11-2005~~], Standard for Low-, Medium-, and High-Expansion Foam.

(2) and (3) (No change.)

(4) NFPA 13-2010 [~~13-2007~~], Standard for the Installation of Sprinkler Systems.

(5) NFPA 13D-2010 [~~13D-2007~~], Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.

(6) NFPA 13R-2010 [~~13R-2007~~], Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.

(7) - (17) (No change.)

(b) (No change.)

§34.611. Licenses and Approvals.

(a) Types of licenses [~~Licenses~~] and approvals [~~Approvals~~]. The following licenses and approvals are issued by the State Fire Marshal's Office in accordance with [~~the~~] Insurance Code Chapter 6002 and this subchapter. As required by [~~the~~] Insurance Code Chapter 6002, an individual or entity must be licensed or approved [~~in order~~] to lawfully perform the functions for which the license or approval is issued.

(1) - (4) (No change.)

(5) Residential fire alarm superintendent license--For planning, installing, certifying, inspecting, testing, servicing, monitoring, and maintaining fire alarm or fire detection devices and systems in single-family or two-family residences. A residential fire alarm superintendent may act as a fire alarm technician.

(6) - (8) (No change.)

(b) Pocket license [~~License~~] and approval [~~Approval~~].

(1) and (2) (No change.)

(c) Duplicate license [~~License~~]. A duplicate license must be obtained from the state fire marshal to replace a lost or destroyed license. The license holder or registered firm must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(d) Licensee responsibilities relating to revised licenses [~~Responsibilities Relating to Revised Licenses~~]. A change in the licensee's name, the licensee's mailing address, or a new or additional registered firm employing the licensee requires a revised license. Within 14 days after the change requiring the revision, the license holder must submit written notification of the necessary change accompanied by the required fee.

(e) Registered firms' responsibilities relating to licensees [~~Firms' Responsibilities Relating to Licensees~~]. A registered firm must submit notification of any licensee employment, termination, or resignation within 14 days of its occurrence.

(f) Restrictions on licensees and registered firms [~~Licensees and Registered Firms~~].

(1) (No change.)

~~[(2) A registered firm must notify the state fire marshal within 14 days after termination of employment of a licensee.]~~

(2) [~~(3)~~] Each person who engages in the activities of the business must have the appropriate license issued by the state fire marshal unless excepted from the licensing provisions by ~~the~~ Insurance Code §6002.155.

(g) Restrictions on approval holders [~~Approval Holders~~]. Approvals are not transferable.

(h) Responsibilities relating to revised approvals [~~Relating to Revised Approvals~~]. A change in an instructor's name or mailing address requires a revised approval. The change in the mailing address of a fire alarm training school requires a revised approval. Within 14 days after the change requiring the revision, the approval holder must submit written notification of the necessary change accompanied by the required fee.

§34.613. Applications.

(a) (No change.)

(b) Fire Alarm Licenses.

(1) To [~~In order to~~] be complete, applications for a license from an employee or agent of a registered firm must be submitted on forms provided by the state fire marshal and be accompanied by all fees, documents, and information required by [~~the~~] Insurance Code Chapter 6002 [~~, Article 5.43-2,~~] and this subchapter.

Applications must be signed by the applicant and by a person authorized to sign on behalf of the registered firm. All applicants for any type of license must successfully complete a qualifying test regarding Insurance Code Chapter 6002 [~~, Article 5.43-2,~~] and the Fire Alarm Rules as designated by the State Fire Marshal's Office.

(2) - (7) (No change.)

(c) - (e) (No change.)

§34.619. Fire Alarm and Detection System Plans and Record Drawings.

(a) (No change.)

(b) Except for plans sealed by a Texas registered engineer or where specifically waived by the local authority having jurisdiction, at least one set of plans submitted for review, rating, permit, or record purposes must be dated and signed with an original signature, unless waived by the local authority having jurisdiction, by the applicable licensed planner, certifying that the plans meet the applicable codes and standards or were copied from sealed engineering plans with any violations of the applicable codes and standards noted. In addition, the plans must contain the license number of the licensee, the name, address, phone number, and the certificate of registration number of the registered firm. This information may be in the form of a stamp as shown in subsection (d) of this section.

(c) – (f) (No change.)

§34.620. Installation Labels.

(a) After the completion of an installation of new fire alarm equipment or a new system, or the extension, alteration, or modification to a fire alarm system already in place, an installation label must be affixed to the inside of the control panel cover, or, if the system has no panel, in a permanent location. Yellow or red labels must ~~shall~~ not be attached for the installation of a new system or new equipment used in the extension, alteration, or modification to an existing fire alarm system. Attachment of the

installation label for a one-or-two-family residence certifies that the fire alarm equipment or system has been tested and complies with the requirements of [the] Insurance Code Chapter 6002 [~~Article 5.43-2~~], this subchapter, the adopted codes and standards, and the manufacturer's requirements.

(b) - (e) (No change.)

(f) Installation labels for one-or-two-family residence must contain the following information in the format of the label as set forth in subsection (g) of this section:

(1) - (4) (No change.)

(5) the inscription "I [~~hereby~~] certify, on behalf of the registered firm, that the fire alarm equipment or system has been tested and complies with the requirements of [the] Insurance Code Chapter 6002 [~~Article 5.43-2~~], the Fire Alarm Rules, the adopted codes and standards, and the manufacturer's requirements."

(g) One-or-two-family residence installation label:

Figure: 28 TAC §34.620(g): [~~Figure: 28 TAC §34.620(g):~~]

<p style="text-align: center;">DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL (for life of system) 1 or 2 family fire alarm/detection devices or system INSTALLATION RECORD (Post inside panel or if no panel in a permanent location)</p> <p style="text-align: center;"><i>Registered Firm's Name</i> <i>Street Address</i> <i>City, State, Zip</i> <i>Phone Number ACR-(number)</i></p> <hr/> <p>Installation Date - Licensee Signature - License #</p> <p>I hereby certify, on behalf of the registered firm, that the fire alarm equipment or system has been tested and complies with the requirements of Insurance Code Chapter 6002, the Fire Alarm Rules, the adopted codes and standards, and the manufacturer's requirements.</p>
--

§34.623. Yellow Labels.

(a) If, after any service, inspection, or test, a system does not comply with applicable codes and standards adopted at the time the system was installed or is not being tested or maintained in accord with those standards, a completed yellow label must be attached to the outside of the control panel cover or, if the system has no panel, in a permanent location to indicate that corrective action is necessary.

(b) - (h) (No change.)

§34.628. Requirements for Residential Fire Alarm Technician Training Course.

The training curriculum for a residential fire alarm technician training course must ~~shall~~ consist of at least seven ~~eight~~ hours of instruction on installing, servicing, and

maintaining single-family and two-family residential fire alarm systems as defined by National Fire Protection Association Standard No. 72. The training curriculum for a residential fire alarm technician training course must include the following minimum instruction time for the following subjects:

(1) one hour of instruction on ~~[the]~~ Insurance Code Chapter 6002 and the Fire Alarm Rules;

~~[(2) one hour of instruction pertaining to the equipment, system, and other hardware relating to household fire alarms;]~~

(2) ~~[(3)]~~ one hour of instruction on the National Electric Code, NFPA 70;

(3) ~~[(4)]~~ four and one-half hours of total combined instruction on:

(A) NFPA 72;

(B) NFPA 101, the Life Safety Code; and

(C) the International Residential Code for One- and Two-Family

Dwellings; and

(4) ~~[(5)]~~ one-half hour of instruction on the monitoring of household fire alarm systems.

§34.630. Application and Renewal Forms.

(a) - (e) (No change.)

(f) The commissioner adopts by reference the Renewal Application for Training School Approval form, ~~[Form Number SF246]~~, which contains instructions for completion of the form, provides information regarding necessary filing documents

pursuant to business entity type, and requires information to be provided regarding the applicant and course location and schedule.

(g) and (h) (No change.)

(i) The forms adopted by reference in this section are available at the department's website at www.tdi.texas.gov [~~www.tdi.tate.tx.us~~].

SUBCHAPTER G. FIRE SPRINKLER RULES

§34.701. Purpose. The purpose of this subchapter is to regulate [the] persons engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems in the interest of safeguarding lives and property pursuant to [the] Insurance Code Chapter 6003 [~~Article 5.43-3~~].

§34.704. Exceptions. The exceptions of [the] Insurance Code §6003.002 [~~Article 5.43-3, §2,~~] are applicable to the sections of this subchapter.

§34.706. Definitions. The following words and terms, when used in this subchapter, [shall] have the following meanings, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Employee--An individual that performs tasks assigned by the employer. The employee's pay is subject to the deduction of social security and federal income tax. The employee may be full time, part time, or seasonal. For the purposes of

this section, employees of a registered firm who are paid through a staff leasing company are considered to be employees of the registered firm.

(7) [(6)] Firm--A person or organization as defined in this section.

(8) [(7)] Full-time--The number of hours that represents the regular, normal, or standard amount of time per week each employee of the firm devotes to work-related activities.

(9) [(8)] Full-time employment basis--An employee is considered to work on a full-time basis if the employee works per week at least the average number of hours worked per week by all other employees of the firm.

(10) [(9)] Inspection--A visual examination of a system or portion thereof to verify that it appears to be in operating condition and is free of physical damage.

(11) [(10)] Inspection, testing, and maintenance service--A service program provided by a qualified contractor in which all components unique to the property's systems are inspected and tested at the required times and necessary maintenance is provided and/or recommended. This program includes logging and retention of relevant records.

(12) [(11)] NFPA--National Fire Protection Association, a nationally recognized standards-making organization.

(13) [(12)] NICET--National Institute for the Certification in Engineering Technologies.

(14) [(13)] Organization--A corporation, partnership or other business association, or governmental entity.

(15) [(14)] Outsource testing service--The testing service selected by the state fire marshal to administer certain designated qualifying tests for licenses under this subchapter.

(16) [(15)] Person--A natural person.

(17) [(16)] Plan--To lay out, detail, draw, calculate, devise, or arrange an assembly of underground and overhead piping and appurtenances in accordance with either adopted fire protection standards or specifications especially designed by an engineer.

(18) [(17)] Registered firm--A person or organization holding a current certificate of registration.

(19) [(18)] Repair--Any work performed after initial installation on fire protection sprinkler systems, not including inspecting or testing.

(20) [(19)] Responsible managing employee--A responsible managing employee, as defined in [the] Insurance Code §6003.001(10) [~~Article 5.43-3, §1(10)~~], and also referenced within this subchapter as an RME.

(21) [(20)] Sprinkler system--A sprinkler system, for fire protection purposes which:

(A) is an integrated system of underground and overhead piping designed in accordance with fire protection engineering standards;

(B) is an installation including a water supply such as a gravity tank, fire pump, reservoir, or pressure tank, or [~~and/or~~] connection by underground

pipng to a city main from the point of connection or valve where the primary purpose of the water is for a fire protection sprinkler system;

(C) includes, as the portion of the sprinkler system aboveground, a network of specially sized or hydraulically designed piping installed in a building, structure, or area, generally overhead, and to which sprinklers are connected in a systematic pattern;

(D) includes a controlling valve and a device for actuating an alarm when the system is in operation; and

(E) is usually activated by heat from a fire and discharges water over the fire area.

(22) [(21)] Testing--A procedure used to determine the status of a system as intended by conducting periodic physical checks on water-based fire protection systems such as water-flow tests, fire pump tests, alarm tests, and trip tests of dry pipe, deluge, or preaction valves. These tests follow up on the original acceptance test at intervals specified in the applicable adopted standard.

§34.707. Adopted Standards. The commissioner [~~Commissioner~~] adopts by reference in their entirety the following copyrighted standards and recommended practices published by and available from the National Fire Protection Association, Inc. (NFPA), Batterymarch Park, Quincy, Massachusetts 02269. A copy of the standards will [~~shall~~] be kept available for public inspection in the State Fire Marshal's Office.

(1) - (7) (No change.)

(8) NFPA (20-2010) [~~(20-2008)~~], Standard for the Installation of Stationary Pumps for Fire Protection;

(9) - (15) (No change.)

§34.712. Alterations of Certificates or Licenses. Alteration of certificates or licenses renders them invalid and is the basis for administrative action pursuant to [the] Insurance Code §6003.251 [~~Article 5.43-3, §9~~].

§34.713. Applications.

(a) Certificates of registration.

(1) Applications for certificates must be submitted on forms provided by the state fire marshal and must be accompanied by all other information required by [the] Insurance Code Chapter 6003 [~~Article 5.43-3,~~] and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the State Fire Marshal's Office [~~state fire marshal's office~~].

(2) Applications must [~~shall~~] be signed by the sole proprietor, or by each partner of a partnership, or by an officer of a corporation. For corporations, the application must be accompanied by the corporate charter of a Texas corporation, or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business. For applicants using an assumed name, the application must also be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, [Texas] Business and Commerce Code [~~Annotated,~~] Chapter 71 [~~§36.01~~].

The application must [~~shall~~] also include written authorization by the applicant permitting the state fire marshal or the state fire marshal's [~~his~~] representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of [~~the~~] Insurance Code Chapter 6003 [~~, Article 5.43-3,~~] and this subchapter.

(3) For corporations, the application must also include the corporate taxpayer identification number, the charter number, and a copy of the corporation's current franchise tax certificate of good standing issued by the state comptroller [~~comptroller's office~~].

(4) An applicant must [~~shall~~] not designate as its full-time RME a person who is the designated full-time RME of another registered firm.

(5) and (6) (No change.)

(7) Insurance required.

(A) and (B) (No change.)

(C) Evidence of public liability insurance, as required by [~~the~~] Insurance Code §6001.152, ~~Article 5.43-3, §5,~~] must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state, or a certificate of insurance for surplus lines coverage, secured in compliance with [~~the~~] Insurance Code[;] Chapter 981, as contemplated by Insurance Code §6001.152(c) [~~, Article 5.43-3, §5(b)~~].

(b) Responsible managing employee licenses.

(1) Original and renewal applications for a license from an employee of a firm engaged in the business must be submitted on forms provided by the state fire marshal and accompanied by all other information required by ~~the~~ Insurance Code Chapter 6003 ~~[, Article 5.43-3,]~~ and this subchapter.

(2) The following documents must accompany the application as evidence of technical qualifications for a license:

(A) RME-General:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of NICET's notification letter confirming the applicant's successful completion of the test requirements for certification at Level III for water-based fire protection ~~[fire protection automatic sprinkler]~~ systems layout.

(B) RME-Dwelling:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of the notification letter confirming at least a 70 percent ~~[70%]~~ grade on the test covering dwelling fire protection sprinkler systems, administered by the State Fire Marshal's Office or an outsource testing service, and one of the following:

(I) - (III) (No change.)

(C) and (D) (No change.)

(c) Complete applications. The application form for a license or registration must be accompanied by the required fee and must, within 180 days of receipt by the department of the initial application, be complete and accompanied by all other information required by ~~[the]~~ Insurance Code Chapter 6003 ~~[Article 5.43-3]~~ and this subchapter, or a new application must be submitted including all applicable fees.

§34.715. Tests.

(a) Each applicant for a license must ~~[shall]~~ take and pass with at least a 70 percent ~~[70%]~~ grade, a test covering this subchapter and ~~[the]~~ Insurance Code Chapter 6003 ~~[, Article 5.43-3]~~ and if applicable, a technical qualifying test as specified in §34.713(b) of this title (relating to Applications). The content, frequency, and location of the test must ~~[shall]~~ be designated by the State Fire Marshal's Office.

(b) - (e) (No change.)

(f) An applicant for a license must complete and submit all application requirements within one year of the successful completion of any test required for a license, except for testing conducted by NICET; otherwise, the test is voided and the individual will have to pass the test again.

§34.716. Installation, Maintenance, and Service

(a) All fire protection sprinkler systems installed under ~~[the]~~ Insurance Code Chapter 6003 ~~[, Article 5.43-3,]~~ must be installed under the supervision of the appropriate licensed responsible managing employee.

(1) - (3) (No change.)

(b) Upon completion of the installation, the licensed responsible managing employee must [~~shall~~] have affixed a contractor's material and test certificate for aboveground and/or underground piping on or near the system riser. If the adopted installation standard does not require testing, all other sections except the testing portion of the contractor's material and test certificate must still be completed. The contractor's material and test certificate must [~~shall~~] be obtained from the State Fire Marshal's Office [~~state fire marshal's office~~]. The certificate must [~~shall~~] be distributed as follows:

(1) (No change.)

(2) second copy retained by the installing company at its place of business in a separate file used exclusively by that firm to retain all "Contractor's Material and Test Certificates." The certificates must [~~shall~~] be available for examination by the state fire marshal or the state fire marshal's representative upon request. The certificates must [~~shall~~] be retained for the life of the system; and

(3) (No change.)

(c) (No change.)

(d) Complete records must [~~shall~~] be kept of all service, maintenance, testing, and certification operations of the firm. The records must [~~shall~~] be available for examination by the state fire marshal or the state fire marshal's [~~his~~] representative.

(e) All vehicles used in service, maintenance, testing, or certification activities must [~~shall~~] prominently display the company name, telephone number, and certificate

of registration number. The numbers and letters must be at least two inches in height and must be permanently affixed or magnetically attached to a side panel or ~~[and/or]~~ front door panel in a color contrasting with the background color of the vehicle. The certificate of registration number must ~~[shall]~~ be designated as: Texas Fire Sprinkler Registration (number) or it may be abbreviated to Tex: SCR (number).

~~[(f) A premium reduction certification inspection for one- and two-family dwellings must meet the following requirements:]~~

~~[(1) Only a dwelling type responsible managing employee is authorized to conduct a premium reduction certification inspection of a fire protection sprinkler system in a one- or two-family dwelling.]~~

~~[(2) The inspection will be conducted in accordance with the laws regulating the Texas Department of Insurance and this chapter.]~~

~~[(3) The system will be inspected to meet the minimum standards of the latest edition of NFPA 13D or the edition indicated in the adopted standards section of this chapter.]~~

(f) ~~[(g)]~~ Each registered firm must employ at least one full-time RME-General or RME-Dwelling licensee at each business office where fire protection sprinkler system planning is performed, who is appropriately licensed to conduct the business performed therein.

(g) ~~[(h)]~~ The planning of an automatic fire protection sprinkler system must ~~[shall]~~ be performed under the direct supervision of the appropriately licensed RME.

(h) [(+)] The planning, installation, or service of a fire protection sprinkler system must be in accord [~~accordance~~] with the minimum requirements of the applicable adopted standards in §34.707 of this subchapter (relating to Adopted Standards) except when the plan, installation or service complies with a more recent edition of the standard that has been adopted by the political subdivision in which the system is installed.

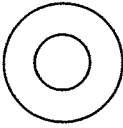
§34.721. Yellow Tags.

(a) If a fire protection sprinkler system is found to be noncompliant with the applicable NFPA standards at the time it was installed or to contain equipment that has been recalled by the manufacturer, but the noncompliance or recalled equipment does not constitute an emergency condition, a completed yellow tag must be attached to the respective riser of each system to permit convenient inspection, to not hamper the system's actuation or operation, and also to indicate that corrective action is necessary.

(b) - (f) (No change.)

(g) Sample yellow tag:

Figure: 28 TAC §34.721(g): [~~Figure: 28 TAC §34.721(g):~~]



**DO NOT REMOVE BY ORDER OF
 TEXAS STATE FIRE MARSHAL**

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YELLOW TAG

*Name & Address
 of Sprinkler Firm
 Phone Number
 SCR-Number*

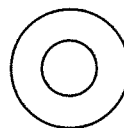
RME's License Number

Printed name of
 serviceperson / inspector

Signature of authorized
 serviceperson / inspector

**REPORT STATUS TO
 OWNER AND AHJ
 IN WRITING
 (within 5 business
days)**

DEC	2017
NOV	
OCT	2016
SEP	
AUG	2015
JUL	
JUN	2014
MAY	
APR	2013
MAR	
FEB	2012
JAN	



The system has been found to be noncompliant with applicable NFPA standards, at the time it was installed – or contains equipment recalled by the manufacturer. An authorized individual may remove this tag after a service tag has been attached indicating the condition has been corrected.

Name of Owner or Occupant

Address

Building No. or Location or System No.

List items not compliant with NFPA standards:

§34.723. Enforcement.

(a) The state fire marshal is authorized and directed to enforce the provisions of [the] Insurance Code Chapter 6003 [~~Article 5.43-3~~] and this subchapter. The state fire marshal must [~~shall~~] make, or cause to be made, inspections from time to time and as circumstances dictate to determine that licensed firms and persons engaged in the business act in conformity with the requirements of the law and this subchapter.

(b) (No change.)

§34.724. Administrative Actions. The failure to comply with the provisions of this subchapter and the provisions of Insurance Code Chapter 6003 [~~Article 5.43-3~~] by certificate holders or licensees may subject them, as provided in Government Code §417.010, to administrative action including, but not limited to, suspension, revocation, or refusal to issue or renew a license or a certificate of registration or issuance of a cease and desist order, [and/or] administrative penalty, [and/or] order for restitution to persons harmed, or combination of them.

SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

§34.811. Requirements, Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and Flame Effects Operator License.

(a) Applicants for a pyrotechnic operator license, pyrotechnic special effects operator license or flame effects operator license must [~~shall~~] take a written test and obtain at least a passing grade of 70 percent [~~70%~~]. Written tests may be

supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The content, frequency, and location of the tests must ~~shall~~ be designated by the state fire marshal.

(b) and (c) (No change.)

(d) An applicant for a license must complete and submit all application requirements within one year of the successful completion of any test required for a license; otherwise, the test is voided and the individual will have to pass the test again.

(e) ~~(d)~~ The state fire marshal may waive a test requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

(f) ~~(e)~~ A licensee whose license has been expired for two years or longer and makes application for a new license must pass another test.

(g) ~~(f)~~ A pyrotechnic operator license will ~~shall~~ not be issued to any person who fails to meet the requirements of subsection (a) of this section and the following:

(1) assisted in conducting at least five permitted or licensed public displays in ~~[the State of]~~ Texas under the direct supervision of and verified in writing by a pyrotechnic operator licensed in Texas;

(2) be at least 21 years of age.

(h) ~~(g)~~ The pocket license document issued along with the regular license document is for identification purposes only and must be carried by the licensee when engaged in the business.

§34.815. Retail Permits.

(a) A retail permit is ~~[shall be]~~ required for each retail stand or other retail sales location.

(b) Retail permits may be obtained at any time ~~[of the year]~~ from any participating manufacturer, distributor, or jobber holding a valid license to do business in Texas or from the state fire marshal, and must ~~[shall]~~ be signed by the applicant prior to the ~~[said]~~ permit becoming effective.

(1) A retail permittee must ~~[shall]~~ purchase Fireworks 1.4G only from a distributor or jobber licensed in this state.

(2) Bulk storage of Fireworks 1.4G by a retail permittee must ~~[shall]~~ be in compliance with §34.823 of this title (relating to Bulk Storage of Fireworks 1.4G).

(3) Fireworks 1.4G must ~~[shall]~~ be sold to the general public only at legally permitted retail fireworks sites and during the legal selling periods defined in the Occupations Code §2154.202.

(4) A copy of ~~[the]~~ Occupations Code Chapter 2154 and the fireworks rules, or a condensed version thereof, must ~~[shall]~~ be provided to the purchaser of a retail permit by the participating licensee at the time the permit is issued. Copies of ~~[the]~~ Occupations Code Chapter 2154 and the fireworks rules will ~~[shall]~~ be made available through the State Fire Marshal's Office ~~[office]~~.

(5) Prior to the issuance of a retail permit, the applicant must present evidence of a valid current sales tax permit issued by the state comptroller, and the

sales tax permit number must be entered on the retail fireworks permit by the person issuing the permit.

(6) Retail permits may only be issued to individuals or groups engaged in the retail sales of fireworks.

(c) (No change.)

§34.817. Retail Sales General Requirements.

(a) - (e) (No change.)

(f) The display, offer for sale, or sales of fireworks from tents and motor vehicles is prohibited. Fireworks may not be sold or stored for future sale at any inhabited dwelling, house, apartment, or other structure used in whole or in part as a home or place of abode by any person or persons.

(g) - (p) (No change.)

~~[(q) Prior to the issuance of a retail permit, the applicant must present evidence of a valid current sales tax permit issued by the comptroller of public accounts, and the sales tax permit number must be entered on the retail fireworks permit by the person issuing the permit.]~~

SUBCHAPTER L. FIRE STANDARD COMPLIANT CIGARETTES

§34.1203. General Provisions Regarding Required and Voluntary Submissions.

(a) (No change.)

(b) Submissions.

(1) Promulgated certification forms and marking applications. The certification form and marking application form specified in §34.1212 of this title [~~subchapter~~] (relating to Promulgated and Alternate Certification Forms and Marking Applications [~~Certification Forms and Marking Applications~~]) may be obtained from the State Fire Marshal's Office, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149221, Austin, Texas 78714-9221 or the department's website at www.tdi.texas.gov/forms/forms18.html [~~www.tdi.state.tx.us/forms/form18.html~~].

(2) – (5) (No change.)

(c) (No change.)

§34.1212. Promulgated and Alternate Certification Forms and Marking Applications.

(a) Promulgated Certification by Manufacturer for Fire Standard Compliant Cigarette [(FSCC), ~~Form Number SF250~~]. The commissioner adopts by reference the Certification by Manufacturer for Fire Standard Compliant Cigarette (FSCC)[~~, Form Number SF250~~], which contains instructions for completion of the form; information regarding certification fees; requires information to be provided regarding the certification type, cigarette manufacturer, testing entity, test method, testing and quality assurance program, and cigarette variety information required by [the] Health and Safety Code §796.005. The form is available at the department's website at www.tdi.texas.gov/forms/forms18.html [~~www.tdi.state.tx.us/forms/form18.html~~].

(b) Promulgated Application for Fire Standard Compliant Cigarette Marking Approval~~[, Form Number SF251]~~. The commissioner adopts by reference the Application for Fire Standard Compliant Cigarette Marking Approval~~[, Form Number SF251]~~, which contains instructions for completion of the form and requires information to be provided regarding the cigarette manufacturer, marking approval, and a certification that the manufacturer will or has provided required information to cigarette wholesale dealers and agents. The form is available at the department's website at www.tdi.texas.gov/forms/forms18.html [~~www.tdi.state.tx.us/forms/form18.html~~].

(c) Alternate Certification Form or Marking Application. The information required by the promulgated certification form or marking application may be submitted in an alternate form in lieu of the promulgated certification form or marking application.

(1) Manufacturers may submit either an alternate form in lieu of the promulgated certification form or an alternate form in lieu of the promulgated marking application or both an alternate certification form and alternate marking application. Manufacturers may submit an alternate certification form in conjunction with the promulgated Application for Fire Standard Compliant Cigarette Marking Approval~~[, Form Number SF251]~~. Manufacturers may submit an alternate marking application in conjunction with the promulgated Certification by Manufacturer for Fire Standard Compliant Cigarette (FSCC)~~[, Form Number SF250]~~.

(2) (No change.)

(3) A manufacturer may submit a request to the SFMO to use an alternate form in accordance with §34.1203 of this title (relating to General Provisions Regarding Required and Voluntary Submissions).

(4) (No change.)

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

Issued at Austin, Texas, on November 8, 2012.



Sara Waitt
General Counsel
Texas Department of Insurance