

SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL INSPECTIONS

DIVISION 1. General Provisions 28 TAC §§34.301, 34.303, and 34.304

DIVISION 2. Inspection Guidelines 28 TAC §34.320

DIVISION 3. Inspection Fees 28 TAC §34.340

1. INTRODUCTION. The Texas Department of Insurance adopts amendments to §§34.301, 34.303, and 34.304, and new §34.320 and §34.340, concerning inspection guidelines and fees that may be charged if a property owner or occupant requests a state fire marshal inspection. Amendments to update and reorganize the subchapter are also adopted. The amendments to §§34.301, 34.303, and 34.304 are adopted without changes to the proposed text published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3347) and will not be republished. Section 34.320, §34.340, and the Inspection Request Form adopted by reference in §34.340 are adopted with nonsubstantive changes.

2. REASONED JUSTIFICATION. The amendments and new sections are necessary to implement House Bill 1951, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011. House Bill 1951 amends Government Code §417.008 and §417.0081, modifying the fire safety inspection duties of the state fire marshal and authorizing the state fire marshal to charge the property owner or occupant a fee for a requested inspection. Additional amendments include updating the purpose of the

subchapter; reorganizing the subchapter; and adopting the updated National Fire Protection Association (NFPA) Life Safety Code. Finally, the amendments update obsolete severability language.

HB 1951--Guidelines For Assigning Potential Fire Safety Risk.

Chapter 417, Government Code, addresses certain powers and duties of the commissioner and the state fire marshal. HB 1951 adds new Government Code §417.0081(b) to require the commissioner of insurance to adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings to determine a schedule for the inspection of the buildings. New §34.320 implements this requirement.

The State Fire Marshal's Office (SFMO) already inspects state-owned buildings, including the capitol complex, hospitals, correctional facilities, and universities. The addition of leased properties to the inspection schedule will add more than 1,000 buildings and more than 10 million square feet to these inspection responsibilities.

The SFMO determines the relative risk level of a particular state-owned building from Texas Facilities Commission files and previous SFMO inspection reports. SFMO must rely on Texas Facilities Commission file information regarding state-leased buildings because the SFMO did not previously inspect leased facilities. That information is frequently limited to location and square footage of leased space. In October 2011, the SFMO began inspecting leased properties around the state to start accumulating risk factor data on the properties. Information gathered in prior SFMO inspection reports will modify a building's risk factor.

The assessment model identifies risk factors that can affect both the occurrence (frequency and number) of fire and the loss (casualties and dollar loss) from fire. A fire safety inspection uses these considerations or features. An inspection categorizes the risk factors into more subjective detail, including revealing what structure or feature is adequate; what meets minimal standards; what is non-compliant; and what constitutes severe danger. Because information concerning every characteristic is not currently available for use in prioritizing inspections, the SFMO will use available information to make a good faith estimate for prioritization purposes. The SFMO will then reprioritize inspections using the adopted guidelines after more risk criteria information becomes available.

Section 34.320 establishes the factors for identifying and prioritizing the inspection of state-owned and state-leased buildings that evidence the highest risk. The guidelines establish the following nine factors for consideration in prioritizing inspections: (1) gross square feet; (2) occupancy classification; (3) occupant load; (4) fire protection features; (5) fire protection systems; (6) stories/height; (7) maintenance/management issues; (8) replacement cost/building value; and (9) critical nature of facility. Section 34.320 describes these risk factors.

HB 1951--Fees For Requested Inspections.

HB 1951 also adds new Government Code §417.008(f) requiring the commissioner to prescribe a reasonable fee that may be charged to a private property owner or occupant who requests a SFMO inspection. In prescribing the fee, §417.008(f) requires the commissioner to consider the overall cost to the SFMO to

perform the inspections, including the approximate amount of time the SFMO staff needs to perform an inspection, travel costs, and other expenses.

The Sunset Advisory Commission's "Texas Department of Insurance Report to the 82nd Legislature" recommends authorizing the SFMO to charge a fee for inspections of privately owned buildings. The Sunset Advisory Commission's July 2009 "Final Report to the Legislature on the Texas Department of Insurance and Office of Public Insurance Council" states that "the inability to charge an inspection fee continues to contribute to the SFMO's inappropriate involvement in private building inspections." Further, the July 2011 report states that "the 2008 Sunset review found that although the SFMO has limited resources to effectively perform fire safety inspections of privately owned buildings, it is often the inspector of choice because it cannot charge a fee, unlike local county and city fire marshals. Inspections of private buildings continue to represent almost 40 percent of the SFMO's inspection workload. As a result of these findings, the Sunset Commission recommended that the Legislature authorize the SFMO to charge a fee for inspections of privately owned buildings. This recommendation remains appropriate as the Office still needs statutory authority to charge inspection fees."

Section 34.340 states the fee schedule that the SFMO will use for requested inspections and prescribes the form of payment required. The fees vary based on the use of the facility and the number of buildings. Requesters must use the Inspection Request Form to request an inspection.

In determining the fee schedule, TDI considered the SFMO's costs to perform the inspections, including the approximate amount of time the staff of the SFMO needs to perform an inspection, travel costs, and other expenses. The SFMO employs a limited number of trained professional inspectors stationed throughout the state. However, requested inspections of privately owned buildings are not the SFMO's inspectors' only responsibility. They also inspect state-owned and state-leased facilities, including all state health institutions, prisons, educational institutions, office space, and warehouses.

TDI also considered that different uses of a building may involve the application of additional fire codes or may indicate certain activities that require more extensive fire protection devices. The fee schedule reflects the additional time required to inspect certain types of buildings. Note that additional buildings in §3.340(b)(8) includes support buildings such as boiler houses, maintenance shops, and repair shops. Scheduling of inspections is based on the availability and priorities of SFMO inspectors. SFMO inspectors often schedule inspections based on a circuit of their general area of responsibility, inspecting facilities in close proximity at the same time to minimize travel. SFMO inspectors will not cancel or change previously agreed upon inspection schedules in order to schedule expedited inspections. The scheduled date for inspections is selected by the SFMO.

The Inspection Request Form is adopted by reference in §34.340. The form requires the submission of contact information for the requester and the property owner. The form also requires the submission of the property address and disclosure of the use

of the building, the number of buildings, and whether the requester is seeking an expedited request.

General Updates.

The amendments to §34.301 clarify the purpose of the subchapter to reflect the amendments in HB 1951 that expand the duties of the SFMO. The amendments clarify that the subchapter now applies to the inspections of both public and private buildings.

Implementing the changes to SFMO inspections in HB 1951 requires the expansion of rules regarding inspections in Subchapter C of 28 Texas Administrative Code Chapter 34. The amendments revise the title of the subchapter to reflect its revised content as including the fee that will be charged for inspections. New divisions improve the organization of the subchapter. New Division 1, entitled General Provisions, includes existing §§34.301 – 34.304. New Division 2, entitled Inspection Guidelines, contains §34.320 and concerns guidelines for assigning the potential fire safety risk of state-owned and state-leased buildings. New Division 3, entitled Inspection Fees, contains §34.340 and concerns procedures and fees for SFMO inspections.

The amendment to §34.304 modifies the severability language to reflect TDI's current standardized language.

Update Minimum Standards.

Amendments to §34.303 adopt the most recent version of the National Fire Protection Association (NFPA) Life Safety Code 101 for inspections performed under Government Code §417.008. Government Code §417.008(e) provides that the

commissioner may adopt by rule any appropriate standard a nationally recognized standards-making association has developed for this purpose. The NFPA Life Safety Code 101 addresses those construction, protection, and occupancy features necessary to minimize danger to life from the effects of fire, including smoke, heat, and toxic gases created during a fire.

The Life Safety Code addresses life safety standards in both new and existing structures and includes standards concerning exits, sprinklers, alarms, emergency lighting, smoke barriers, and special hazard protection. The 2012 revision of the Life Safety Code amends definitions and provides clarification in consensus with associated codes and standards. In addition, the revised code requires fire sprinklers on covered balconies, porches, and attics for certain residential board and care facilities. Modified healthcare occupancy requirements allow the healthcare setting to be more homelike, including permitting fireplaces and food warming equipment. The 2012 revision also provides that building services areas that are not normally occupied have new alternate provisions for means of egress. The revised code also requires carbon monoxide detection for new residential occupancies where fuel fired equipment or attached garages are present.

A copy of the standard is 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.

Changes to Proposed Text and Form.

A change is made to §34.340(c) to eliminate the formal request to expedite inspection requests. Based on current demand for inspectors, at this time the SFMO cannot routinely promise to make requested inspections in the time allotted. The text of §34.340(c) has changed to delete subsections (C)(1), (2), and (3). Subsection §34.340(c) now reads "To obtain an inspection, a person requesting an inspection must submit the Inspection Request Form to the State Fire Marshal's Office. The form must be submitted as specified in the Inspection Request. All payments are nonrefundable." Corresponding changes have been made to the Inspection Request Form. Requesters requiring an expedited inspection may contact the SFMO, but all inspection scheduling is subject to the existing schedules and availability of the SFMO inspectors.

A nonsubstantive change was made to the Guidelines For Assigning Potential Fire Safety Risk for the occupational load in §34.320(b)(3). The subsection is changed so that only the NFPA 101 Life Safety Code is referenced, and not the International Building Code. This change is made because the state fire marshal works primarily with the Life Safety Code and state fire marshal inspectors are not experts on the International Building Code.

A nonsubstantive change was made to the form to update the name of the form and to correct the name of the office to contact to correct the requester's TDI-held information. Section 34.340 is revised to change the name of Form No. SF259 (Inspection Request Form) to Inspection Request Form. The change of form name is made to make the new section and form match new agency style guidelines. Additional instruction was added below the box for multiple buildings to specifically mention the

possibility of support buildings such as boiler houses, maintenance shops, and repair shops. Also, the Inspection Request Form is changed to request the name of the business, the mailing address if different from the business address, and a business phone and cell phone number. An explanatory note is added to the form to explain who may request an inspection, and to warn the requestor that a local authority having jurisdiction may be the proper inspector. Another explanatory note is added to state that a single reinspection is included without additional cost, but that subsequent inspections will require submission of the Inspection Request Form and the associated fee.

None of the changes made to the proposed text materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

3. HOW THE SECTIONS WILL FUNCTION.

Section 34.301 clarifies the purpose of the subchapter and reflects the HB 1951 amendments .

Section 34.303 adopts the most recent version of the NFPA Life Safety Code 101 for inspections performed under Government Code §417.008.

Section 34.304 states the severability language of the subchapter.

Section 34.320 implements the Government Code §417.0081(b) requirements that the commissioner adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings to determine a schedule for the inspection of the

buildings. The section specifies the nine factors the SFMO will use to prioritize fire safety inspections for state-owned and state-leased buildings.

Section 34.340 prescribes a reasonable fee for an SFMO inspection that may be charged to a private property owner or occupant who requests an inspection. The section also requires the use of the Inspection Request Form to request an inspection and prescribes the form of payment required.

The Inspection Request Form is adopted by reference in §34.340. The form requires the submission of contact information for the requester and the property owner. The form also requires the submission of the property address and disclosure of the use of the building, and the number of buildings. The form includes notices regarding the payment, scheduling of inspections, the use of certified inspectors by local jurisdictions, and a notice about privacy laws.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI did not receive any comments on the published proposal.

5. STATUTORY AUTHORITY. The amendments and new sections are adopted pursuant to Government Code §§417.004, 417.005, 417.008, and 417.0081 and Insurance Code §36.001. Government Code §417.004 specifies that the commissioner of insurance shall perform the rulemaking functions the Texas Commission on Fire Protection previously performed. Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to

guide the state fire marshal and fire and arson investigators the state fire marshal commissions and in the performance of other duties for the commissioner. Government Code §417.008 provides that the commissioner by rule shall prescribe a reasonable fee for a state fire marshal inspection that may be charged to a property owner or occupant who requests the inspection, as the commissioner considers appropriate. Government Code §417.008(e) provides that the commissioner may adopt by rule any appropriate standard related developed by a nationally recognized standards-making association. Government Code §417.0081 provides that the commissioner by rule shall adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies. 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.

7. TEXT.

SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL INSPECTIONS

DIVISION 2. Inspection Guidelines

§34.320. Guidelines For Assigning Potential Fire Safety Risk.

(a) The commissioner adopts the following “Guidelines For Assigning Potential Fire Safety Risk”, for use by the state fire marshal in the inspection of state-owned and state-leased buildings.

(b) The state fire marshal will review all available information regarding the potential risk factors stated in paragraphs (1) – (9) of this subsection for a building to determine its inspection priority. The scheduling of inspections will prioritize those buildings that evidence the highest potential risk.

(1) Gross square feet--the total area reported for the building in square feet;

(2) Occupancy classification--the purpose and intended use of a building or portion of the building;

(3) Occupant load--the total number of persons that might occupy a building or portion of the building at any point in time, equal to the usable square footage divided by an occupant load factor. Occupant load factors are commonly assigned for each type of building use under the NFPA 101, "Life Safety Code";

(4) Fire protection features--includes the type of building construction, use of compartmentalization, use of fire-resistive and -rated materials and components, smoke control, and adequacy of means of exit;

(5) Fire protection systems--fire alarm, extinguisher, and sprinkler systems, communications systems, and fire fighter emergency operations equipment;

(6) Stories/Height--the reported height of the building in stories above grade;

(7) Maintenance/Management issues--the building environment, including staff availability and responsiveness, sanitation, deferred maintenance, security, and occupancy;

(8) Replacement cost/Building value; and

(9) Critical nature of facility--the specific use and occupancy of a building that warrants additional consideration because of historical value, the building contents, or the function or operations carried on in the building that are vital to the public health, safety, or general welfare.

DIVISION 3. Inspection Fees

§34.340. Inspection Fees For Requested Inspections.

(a) The commissioner adopts by reference the Inspection Request Form for use to request a fire safety inspection by the State Fire Marshal's Office. This form is published by and available from the State Fire Marshal's Office.

(b) The amount of money a person requesting an inspection must pay to the department for a state fire marshal fire safety inspection is listed in paragraphs (1) - (7) of this subsection. If the building includes more than one building type as listed in paragraphs (1) - (7) of this subsection, then the requester must pay for the most expensive building type that the building includes, plus the amount of money specified in paragraph (8) of this subsection.

(1) Licensed adult or child day care facility or foster home--\$75;

(2) Licensed nursing home, assisted living or board and care facility, or school--\$100;

(3) Apartment building, hotel, motel, lodge, or rooming house--\$150;

(4) Assembly occupancy, restaurant, or other commercial facility--\$150;

- (5) Industrial facility or warehouse--\$200;
- (6) Private prison or jail--\$200;
- (7) Other building not listed in paragraphs (1) – (6) of this subsection:
 - (A) less than 25,000 square feet--\$100;
 - (B) 25,000 square feet to less than 100,000 square feet-- \$200;

and

- (C) 100,000 square feet or greater--\$300.
- (8) Each additional building after the first--\$25.

(c) To obtain an inspection, a person requesting an inspection must submit the Inspection Request Form to the State Fire Marshal's Office. The form must be submitted as specified in the Inspection Request Form. All payments are nonrefundable.

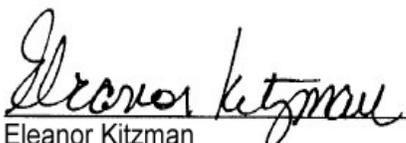
(d) A person submitting an inspection request must pay the inspection fee by cashier's check or money order made payable to the Texas Department of Insurance at the time the Inspection Request Form is submitted to the state fire marshal.

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

Issued at Austin, Texas, on October 19, 2012.


Sara Waitt, General Counsel
Texas Department of Insurance

The commissioner adopts the amendments to §§34.301, 34.303, and 34.304, and new §34.320 and §34.340.


Eleanor Kitzman
Commissioner of Insurance

COMMISSIONER'S ORDER NO. 12-0835