

**SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL
INSPECTIONS
28 TAC §34.303**

INTRODUCTION. The Texas Department of Insurance proposes an amendment to 28 Texas Administrative Code §34.303, concerning adopted standards for inspections by the state fire marshal.

EXPLANATION. Government Code §417.008 authorizes the state fire marshal to enter, on the complaint of any person, any building or premises in the state at any reasonable time to examine the structure for certain dangerous conditions. Government Code §417.008 also authorizes the commissioner to adopt by rule any appropriate standard developed by a nationally recognized standards-making association under which the state fire marshal may enforce §417.008. The standards adopted by rule do not apply in a geographic area under the jurisdiction of a local government that has adopted fire protection ordinances that apply in the geographic area.

Section 34.303, which adopts by reference certain standards and recommendations of the National Fire Protection Association (NFPA), is amended to adopt the 2012 NFPA 1 Fire Code. The NFPA is a nationally recognized standards-making association.

The adoption of NFPA 1 Fire Code is necessary to provide State Fire Marshal's Office inspectors with a more comprehensive standard than is currently adopted in §34.303. NFPA 1 Fire Code is a comprehensive consensus fire code produced by NFPA that is recognized as a national consensus code and standard-making entity. NFPA 1 Fire Code references other NFPA standards to facilitate broad references to other standards that go into more depth than what NFPA 1 Fire Code could possibly include in one document. NFPA 1 Fire Code is similar to the International Fire Code that most municipalities in Texas use. NFPA 1 Fire Code allows all the systems and components in the building to be reviewed for compliance with best practices to prevent a fire, and, if a fire occurs, NFPA 1 requirements for extinguishing, confining, egress of occupants, and code requirements that minimize risk exposure for people in the structure and in the surrounding community. This standard allows a fire inspector to inspect the sufficiency of fire sprinklers, egress of occupants, compliance with electrical standards, need for fire extinguishers, and the storage of products that cause increased fire hazards.

HB 1951, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011, amends Government Code §417.0081 to modify the fire safety examination duties of the state fire marshal. The broad range of occupancies the state fire marshal inspects includes residential dormitories, health facilities, laboratories, warehouses, and other occupancies that contain fire protection dangers not adequately addressed by only NFPA 101 Life Safety Code. Generally, NFPA 101 Life Safety Code provides standards related to the safety of occupants. NFPA 1 Fire Code is a more comprehensive standard focusing on property protection.

The proposed amendment does not create a statewide building code. The proposed amendment does not authorize the state fire marshal to assess fines, require building plan review, or grant permits.

A copy of the standard is available for public inspection in the State Fire Marshal's Office. The NFPA also makes available standards for read-only inspection online through their website at www.nfpa.org. To view NFPA standards on the NFPA website, users must create a free account and agree to certain terms and conditions.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Mark Lockerman, director, State Fire Marshal's Office, has determined that, for each year of the first five years the proposed section is in effect, there may be measurable fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. The cost analysis in the Public Benefit And Cost Note part of this proposal is applicable to these local and state governments should the state fire marshal conduct an examination and order the correction of a dangerous condition identified as a result of enforcing the proposed NFPA standard. Mr. Lockerman does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Lockerman also determined that for each year of the first five years the proposal is in effect, the anticipated public benefit as a result of the proposal is the use of thorough and recent fire standards for the inspection of buildings. The proposed NFPA 1 Fire Code fire protection standards will be applied to examine whether conditions exist that are dangerous or are likely to cause or promote fire or create danger for fire

fighters, occupants, or buildings or structures. This means that examinations conducted by the state fire marshal applying these most recent nationally recognized standards for detection of potential fire dangers will result in better protection of individual citizens, fire fighters, and buildings and structures. In order to properly protect life and property, it is necessary that the current nationally recognized standards for inspection of buildings and premises be used. This is consistent with Government Code §417.008(e), which authorizes the adoption of “any appropriate standard developed by a nationally recognized standards-making association.” The standards adopted by the state fire marshal do not apply in a geographic area under the jurisdiction of a local government that has adopted fire protection ordinances.

Cost of purchasing NFPA standards. There will be nominal costs to persons and entities wanting to purchase the updated standards. The estimated cost to purchase the proposed updated NFPA 1 Fire Code is approximately \$89.00 and will be the same cost for all persons and entities. NFPA 1 Fire Code refers to other NFPA codes, so persons and entities may want to acquire copies of related NFPA codes. Additional NFPA codes range from \$54.00 to \$172.00 each. An interested person or entity can purchase an NFPA all-access online plan for \$1,295.00 per year.

Cost of remediating dangerous conditions. Businesses and individuals may face higher costs to meet the updated code standards. Costs for compliance with the updated standards is the result of Government Code §417.008, which grants authority to the state fire marshal to enter and examine buildings and premises in the state to examine whether conditions exist that are dangerous or are liable to cause or promote fire or create danger for fire fighters, occupants, or buildings or structures. The application of the new standards will provide inspectors with additional technical knowledge to identify dangerous conditions that may not be identified when only applying NFPA 101 Life Safety Code. Not every violation of NFPA 1 Fire Code is a sufficient public safety hazard to allow the state fire marshal to order correction of the condition. The adoption of new standards does not create new dangerous conditions. To the extent that the usage of additional standards will assist the state fire marshal’s identification of, and order to correct dangerous conditions, some buildings and premises may be more likely to receive an order to remediate dangerous conditions. These costs will vary based on the individual circumstances of each dangerous condition. Some dangerous conditions can be remedied through negligible costs, including revising operations, storage of certain materials in other

places, testing safety devices, and unlocking barriers to egress. Other dangerous conditions may cost tens of thousands of dollars or more to comply with a state fire marshal order.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that the adoption of new standards may have an adverse economic effect or a disproportionate economic impact on small or micro businesses.

This proposal specifies code standards for fire hazard management. All small or micro businesses in Texas will be required to comply with the proposed requirement. The cost analysis in the Public Benefit And Cost Note part of this proposal is also applicable to these small and micro businesses. The estimated cost for the purchase of NFPA 1 Fire Code from the NFPA is \$89.00. Any other costs that result from small and micro businesses' compliance with the updated standards are the result of Government Code §417.008, which grants authority to the state fire marshal to enter and examine buildings and premises in the state to determine whether conditions exist that are dangerous or likely to cause or promote fire or create danger for fire fighters, occupants, or buildings or structures.

In the event that the proposal does have an adverse economic effect on small businesses or micro-businesses that are required to comply with the proposal, the proposal does not require the statutorily mandated regulatory flexibility analysis specified by the Government Code §2006.002(c)(2). Section 2006.002(c)(2) requires that a state agency, before adopting a rule that may have an adverse economic effect on small businesses, prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory flexibility analysis "consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The purpose of Government Code §417.008 is to ensure compliance with the most recent standards of safety for fire and related hazards for the purpose of protecting life and property in this state. The proposed amendment establishes the 2012 NFPA 1 Fire Code as a minimum standard for fire hazard management.

The purpose of this proposal is to protect the health and safety of the fire fighters, individual citizens, and buildings and structures of Texas through the adoption of safety standards. In order to protect life and property in this state, it is necessary that all businesses, regardless of size, comply with the minimum safety requirements. The requirements in this proposal are consistent with Government Code §417.008, which specifies that on the complaint of any person, the state fire marshal is entitled to enter any building or premises in Texas at any reasonable time for the purpose of examination for dangerous conditions.

The department has determined, in accord with Government Code §2006.002(c-1), that because the purpose of this proposal and the authorizing statute is to protect the safety of life and property in this state, there are no regulatory alternatives to the requirements in this proposal that will sufficiently protect the safety of people, buildings, and structures in this state.

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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal, you must do so no later than 5 p.m., Central time, on January 20, 2015. TDI requires two copies of your comments. Send one copy by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Send the other copy by mail to the Texas Department of Insurance, Mark Lockerman, Assistant State Fire Marshal, Mail Code 112-FM, P.O. Box 149104, Austin, Texas 78714-9104; or by email to mark.lockerman@tdi.texas.gov. A public hearing has been scheduled for 1 p.m., Central time, on January 20, 2015, in Room 100 of the William P. Hobby

Jr. State Office Building, 333 Guadalupe Street, Austin, Texas, under Docket No. 2777. The commissioner will consider written comments and public testimony presented during the public hearing.

STATUTORY AUTHORITY. The amendment is proposed under Government Code §417.005 and §417.008, and Insurance Code §36.001. 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 in the performance of other duties for the commissioner. Government Code §417.008(e) provides that the commissioner may adopt by rule any appropriate standard related to fire danger 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 department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Government Code §417.008 is implemented by this rule.

TEXT.

SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL

§34.303. Adopted Standards.

(a) The commissioner adopts by reference:

(1) NFPA Fire Code 1-2012, except for

(A) Chapter 30 Motor Fuel Dispensing Facilities and Repair Garages to the extent it conflicts with standards adopted in Subchapter A of this chapter and Health and Safety Code Chapter 753, and;

(B) Chapter 65 Explosives, Fireworks, and Model Rocketry to the extent it conflicts with Subchapter H of this chapter and Occupations Code Chapter 2154;

(2) NFPA Life Safety Code 101-2012;

(b) These copyrighted standards and recommendations are adopted for inspections performed under Government Code §417.008, except to the extent they are in conflict with sections of this chapter or any Texas statutes or federal law. The standards are published by and are available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269. A copy of the standards [~~standard~~] is available for public inspection in the State Fire Marshal's Office.

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

Issued in Austin, Texas, on December 5, 2014.



Sara Waitt, General Counsel
Texas Department of Insurance