

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

INTRODUCTION. The Texas Department of Insurance adopts amendments to 28 Texas Administrative Code §34.303, concerning adopted standards for inspections by the state fire marshal. The amendments are adopted with changes to the proposal published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 9801).

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 of insurance 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.

TDI published an informal draft of the proposed rules on July 24, 2014. The proposal was published in the December 19, 2014 issue of the *Texas Register*. On January 20, 2015, TDI held a hearing on the proposal. There were no commenters appearing at the hearing. TDI received four written comments on the proposal.

REASONED JUSTIFICATION.

The adoption of the NFPA 1 Fire Code is necessary to provide state fire marshal inspectors with a more comprehensive standard than is currently adopted in §34.303. The NFPA 1 Fire Code is a comprehensive fire code produced by NFPA, a nationally recognized

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standard-making association. The NFPA 1 Fire Code references other NFPA standards to provide a comprehensive set of standards to guide inspectors, so it is similar to the International Fire Code that most municipalities in Texas use. The NFPA 1 Fire Code allows all the systems and components in a building to be reviewed for compliance with best practices to prevent a fire, and, if a fire occurs, provides requirements for extinguishing and confining a fire, egress of occupants, and requirements to minimize risk exposure for people in the structure and in the surrounding community. The standard allows fire inspectors to assess the sufficiency of fire sprinklers, egress of occupants, compliance with electrical standards, need for fire extinguishers, and 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 the NFPA 101 Life Safety Code, which has been the standard preceding this adoption. Generally, the NFPA 101 Life Safety Code is limited to standards related to the safety of occupants, but the NFPA 1 Fire Code is a more comprehensive set of standards focusing on property protection, as well as occupant safety.

The adopted amendments do not create a statewide fire code nor do they authorize the state fire marshal to assess fines, require building plan reviews, or grant permits.

A copy of the NFPA 1 Fire Code is available for public inspection in the State Fire Marshal's Office. The NFPA also makes the Code available online 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.

TDI has made changes to the proposed amendments to clarify which chapters of the NFPA 1 Fire Code are not applicable for use by the state fire marshal. Because the state fire marshal does not conduct plan reviews, issue permits, or take administrative actions relating to

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land development, those sections have been specifically excluded from this adoption order.

The nonsubstantive changes clarify what was already true of the proposed amendment

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

TDI received four written comments and no oral comment. The commenters were International Code Council, Travis County Fire Marshal, Texas Association of Builders, and University of Texas System. One commenter was for the adoption of the rule. Two commenters were for adoption of the rule with changes. One commenter was against the adoption of the rule.

Comment on Benefits of Adopting a Fire Code. One commenter states that fire prevention is important for the citizens of Texas and that having a recognized and enforceable standard across the state will create a safer environment for businesses, the public, and firefighters. The commenter also states that some businesses seek to avoid municipal fire codes and have located outside of incorporated areas to avoid an adopted code for fire prevention.

Agency Response. TDI appreciates the comment. TDI emphasizes that the adopted fire code is for use with examinations that state fire marshal inspectors conduct. The adopted fire code does not establish a statewide fire code, and the State Fire Marshal's Office does not conduct plan review or issue building permits.

Comments on Adopting the International Fire Code (IFC). Two commenters express support for the adoption of a comprehensive fire code for State Fire Marshal Office examinations, but would prefer the adoption of the IFC. Both commenters state that IFC is a well-developed fire code to ensure fire protection. One commenter reminds TDI that the Local Government Code requires the adoption of the International Residential Code (IRC) and the International Building Code (IBC) if a municipality adopts a building code. The commenter also reminds TDI of the use of the IFC by counties with a sufficient population to adopt a fire code. Both commenters state

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the benefit of adopting a fire code that is part of the "I-code family." The IRC, IBC, and IFC have been drafted to minimize issues and conflicts in building code construction requirements and fire code requirements. Both commenters state that there may be higher cost implications with adopting the NFPA 1 Fire Code instead of the IFC.

Agency Response. The majority of examinations the state fire marshal inspectors conduct are in state-owned buildings. The state does not require these buildings to be built to either IRC or IBC standards, because state buildings are exempted from most local land use regulations. The State Fire Marshal's Office does not routinely conduct examinations of private property unless another regulatory requirement exists for a state fire marshal inspection, such as licensed childcare facilities where no local authority has jurisdiction to provide the necessary inspection. Where code violations are found, the state fire marshal will require remedial action. Inspectors look for conditions that are dangerous or likely to cause or promote a fire, or conditions that create danger for fire fighters, occupants, or other buildings or structures.

State fire marshal inspectors are familiar with inspecting premises within a jurisdiction that has adopted one or more parts of the "I-code family" for building and fire code purposes. The State Fire Marshal's Office examines state-leased facilities, which sometimes fall within the jurisdiction of local government. In these instances, state fire marshal inspectors have experience applying the state-adopted fire standards (currently the NFPA 101 Life Safety Code) to structures built to IRC or IBC standards and that are located within a jurisdiction that has adopted the IFC as its fire code. The standards adopted by the State Fire Marshal for inspections are not building codes, and are not meant to replace land use regulation by local governments. State fire marshal inspectors' training in NFPA codes is compatible with the other applicable codes. The kinds of threats to life and property that state fire marshal inspectors are trying to mitigate and prevent are recognized as hazards under both NFPA and IFC codes.

The State Fire Marshal's Office has significant experience in applying the NFPA 101 Life Safety Code, and adopting the related NFPA 1 Fire Code will require less training and less

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expense to TDI. The state fire marshal prefers adoption of the NFPA 1 Fire Code because the inspectors are already trained and familiar with the NFPA 101 Life Safety Code. The NFPA 1 Fire Code and NFPS 101 Life Safety Code are mutually referencing, and are designed to be used together. The move to the more comprehensive NFPA 1 Fire Code requires less inspector training because the inspectors are already familiar with the closely related NFPA 101 Life Safety Code. The state fire marshal has already adopted other NFPA codes for specific fire protection life-safety licensing issues for fire extinguisher, fire alarm, fire sprinkler, and fireworks regulations. These rules can be found in 28 TAC Chapter 34, Subchapter E, F, G, and H, respectively. In addition, several state university systems and campuses have already adopted the NFPA 1 Fire Code for internal use. By also adopting the NFPA 1 Fire Code, the State Fire Marshal's Office may realize efficiency gains in having its inspectors and licensing investigators familiar with the same family of codes.

The state fire marshal is only able to order corrections of dangerous conditions or other remedial actions for hazards to life or property. In these instances, the differences between the IFC and NFPA 1 Fire Code are unlikely to be meaningful. It is also unlikely that a premises that is fully compliant with the IRC, IBC, and IFC would require the state fire marshal to order the correction of a dangerous condition. If a situation arose where the NFPA 1 Fire Code and IRC, IBC, or IFC conflict, the adopted NFPA 1 Fire Code provides the necessary flexibility through allowing equivalencies, alternatives, and modifications. The adoption of the NFPA 1 Fire Code allows inspectors to use their experience and discretion to allow reasonable equivalencies, alternatives, and modifications. This use of discretion mitigates the potential cost discrepancy between the NFPA 1 Fire Code and other similar fire or building codes. In many instances, full compliance with IFC, IBC, IRC, or other fire codes provide persuasive evidence that the conditions are sufficient to provide for adequate public safety. At this time, and for the reasons stated above, TDI adopts the NFPA 1 Fire Code.

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Comments on Implications of Adopting NFPA 1 Fire Code in University Facilities. One commenter expressed concern over the adoption of the NFPA 1 Fire Code without additional discussion and analysis. The commenter stated that it has concerns over compliance for university laboratories and health care facilities, particularly with respect to the retroactivity of the standards related to new equipment. The commenter stated that it is routine for laboratories to acquire and install new equipment on a continual basis, and that if these changes triggered a retroactive application, the complexity and cost of complying with the proposed standard could be significant. The commenter also expressed concern with how the state fire marshal inspectors would interpret the NFPA 1 Fire Code Chapter 60 Hazardous Materials requirements for working laboratories. The commenter expressed concern with other NFPA 1 Fire Code chapters, including Chapters 16, 18, 21, 23, 25, 28, 29, 30, 32, 34, 35, and 36. The commenter stated the need for additional time and further discussion before TDI adopts the NFPA 1 Fire Code as the standard.

Agency Response. TDI agrees that university working laboratories and other facilities require individual analyses to determine their compliance with the NFPA 1 Fire Code, particularly as new laboratory equipment is installed. The state fire marshal has worked with various university systems to analyze the potential effect of the NFPA 1 Fire Code on university buildings and structures. In response to comment, the adoption of the NFPA 1 Fire Code includes an exception that Chapter 60 Hazardous Materials will not be applied to university and health care facility laboratories. TDI declines to make further changes or delay the adoption of the NFPA 1 Fire Code. However, the state fire marshal stresses that the NFPA 1 Fire Code includes provisions that allow inspectors to use their experience, judgment, and experience to allow for reasonable accommodations through equivalencies, alternatives, and modifications. These provisions allow for flexibility to accommodate the unique circumstances of university and health care laboratory environments, while keeping in mind public health and safety standards and adhering to Government Code §417.008.

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The standards adopted with the NFPA 1 Fire Code provide additional information about retroactively applying the Code to existing conditions. NFPA 1 Fire Code retroactivity is the same as the already adopted NFPA 101 Life Safety Code, and the codes complement each other in how they prescribe the minimum requirements to establish a reasonable level of protection from fire, life safety, and property protection hazards. The State Fire Marshal's Office has been applying the NFPA 101 Life Safety Code, including its retroactivity provisions, in its inspections. Retroactivity only applies where specifically required by the adopted fire code. For example, NFPA 101 Life Safety Code Chapter 1.3.2.4.1 provides that "where specified by a reference standard for existing occupancies, conditions, or systems, the provisions of the referenced standards shall be retroactive." Similarly, NFPA 1 Fire Code Chapter 1.3.2.4.2 provides that "facilities, equipment, structures, and installations, installed in accordance with a reference standard, shall be maintained in accordance with the edition of the standard in effect at the time of installation." As with other specific requirements, NFPA 1 Fire Code Chapter 1.4, Equivalencies, Alternatives, and Modifications provides that the state fire marshal, as the relevant authority having jurisdiction, can allow reasonable accommodations.

With respect to rehabilitation or remodeling, the state fire marshal can assist property owners and operators with finding reasonable equivalencies, alternatives, and modifications to achieve rehabilitation and meet the requirements and intent of the adopted code. Where there are practical difficulties that prevent the university's facilities management from carrying out the provisions of the NFPA 1 Fire Code during rehabilitation or remodeling, the state fire marshal can provide information to allow for flexibility while still providing reasonable protections. The state fire marshal is committed to working closely with staff at the state's universities to ensure safe conditions by applying adopted standards in a reasonable manner.

With respect to other occupancies, the state fire marshal intends to interpret provisions of the NFPA 1 Fire Code as adopted, while also allowing for equivalencies, alternatives, and modifications as necessary.

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Business Occupancies – New and existing business occupancies, which constitute the majority of university academic buildings, must comply with NFPA 1 Fire Code, Chapter 20.13 and NFPA 101 Life Safety Code. NFPA 101 Life Safety Code, Chapter 38/39.3.2.1 refers to 8.7 and NFPA 45, Standard on Laboratories Using Chemicals.

Health Care Occupancies – New and existing health care occupancies must comply with NFPA 1 Fire Code, Chapter 20.4.1; NFPA 101 Life Safety Code; and NFPA 99, Health Care Facilities Code. NFPA 101 Life Safety Code, Chapter 18/19.3.2.2 refers to the NFPA 99, Health Care Facilities Code.

Chapter 16, Safeguarding Construction, Alteration and Demolition – NFPA 101 Life Safety Code, Chapter 4.6.10 provides for equivalent safeguards in comparison to the NFPA 1 Fire Code for buildings undergoing construction and alterations.

Chapter 18, Fire Department Access and Water Supply – The intent is for universities to reach out to local fire officials and work together to determine any particular requirements for fire department access and water supply, and that they find mutual solutions to resolve any specific issues.

Chapter 21, Airports and Heliports – Refers compliance to the NFPA 101 Life Safety Code and applicable sections of Chapter 40 and Chapter 42.

Chapter 23, Cleanrooms – Refers compliance to NFPA 318 Standard For The Protection Of Semiconductor Fabrication Facilities with exceptions.

Chapter 25, Grandstands, Bleachers, Tents and Membrane Structures – Refers compliance to the NFPA 101 Life Safety Code. Specific provisions are referenced in Chapter 11, Chapter 12 and Chapter 13.

Chapter 28, Marinas, Boatyards, Marine Terminals, Piers, Wharves – Compliance prescribed per occupancy chapter, NFPA 101 Life Safety Code. Chapter 11 has provisions related to piers.

Chapter 29, Parking Garages – Refers compliance to NFPA 101 Life Safety Code, Section 42.8 and NFPA 88-A Standard for Parking Structures.

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Chapter 30, Motor Fuel Dispensing Facilities and Repair Garages – Compliance is within scope of the NFPA 30 Flammable and Combustible Liquids Code and NFPA 30-A Code For Motor Fuel Dispensing Facilities and Repair Garages as adopted by state fire marshal rules under Health and Safety Code Chapter 753.

Chapter 32, Motion Picture and Television Production Studios, Soundstages, and Approved Production Facilities – Compliance prescribed per occupancy chapter and reference to the NFPA 140 Standard On Motion Picture And Television Production Studio Soundstages, Approved Production Facilities, and Production Locations as applicable.

Chapter 34, General Storage – Compliance prescribed per occupancy chapter. Typical university storage occupancies do not contain the type of commodities referenced in this chapter and in most cases already meet compliance with NFPA 101 Life Safety Code, Chapter 42.

Chapter 35, Animal Housing Facilities – Compliance is prescribed per reference to the NFPA 150 Standard On Fire And Life Safety In Animal Housing Facilities as applicable for existing buildings.

NFPA 150 Standard On Fire And Life Safety In Animal Housing Facilities, Chapter 1.3.3 – This standard also applies to existing facilities in which any one of the following conditions exists: (1) a change of use or occupancy classification occurs where animals are introduced; (2) a change is made in the sub-classification or category of the animals housed; (3) a renovation, modification, reconstruction, or addition is made; (4) a building or structure with an animal housing facility is relocated; (5) a building with an animal housing facility is considered damaged, unsafe, or a fire hazard; (6) a property line that affects compliance with any provision of this standard is created or relocated.

NFPA 150 Standard On Fire And Life Safety In Animal Housing Facilities, Chapter 1.4.1 – Unless otherwise specified, the provisions of this standard do not apply to facilities, equipment, structures, or installations that existed or were approved for construction or installation prior

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to the effective date of the standard. Where specified, the provisions of this standard are retroactive.

Chapter 36, Telecommunication Facilities and Information Technology Equipment – Compliance prescribed per occupancy chapter and reference to the NFPA 75 Standard For The Fire Protection Of Information Technology Equipment as applicable.

The state fire marshal recognizes that cases may arise that can present unusual or extraordinary circumstances and challenges for compliance with certain provisions of the code. In these cases, it is the intent the state fire marshal to determine an acceptable solution that offers a reasonable but equivalent method of compliance for the particular condition.

STATUTORY AUTHORITY. The amendment is adopted under Government Code §§417.005, 417.008, 417.0081, and Insurance Code §36.002 and §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 §36.002 provides that the commissioner may adopt reasonable rules that are appropriate to accomplish the purposes of a provision of Government Code §417.008. 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.

TEXT.

SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL

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§34.303. Adopted Standards.

(a) The commissioner adopts by reference:

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

(A) Chapter 1 Administration, to the extent that subsections 1.6 Enforcement, 1.7 Authority, 1.8 Duties and Powers of the Incident Commander, 1.9 Liability, 1.10 Fire Code Board of Appeals, 1.11 Records and Reports, 1.12 Permits and Approvals, 1.13 Certificates of Fitness, 1.14 Plan Review, and 1.16 Notice of Violations and Penalties do not apply to State Fire Marshal inspections;

(B) 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;

(C) Chapter 60 Hazardous Materials, to the extent it will not be applied to laboratories and laboratories in health care occupancies; and

(D) 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 is available for public inspection in the State Fire Marshal's Office.

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

Issued at Austin, Texas, on June 15, 2015.



Sara Waitt
General Counsel
Texas Department of Insurance

The commissioner adopts the amendment of 28 TAC §34.303.



David C. Mattax
Commissioner of Insurance

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