

SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL INSPECTIONS
28 TAC §34.303**SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS**
28 TAC §34.832

INTRODUCTION. The commissioner of insurance adopts amendments to 28 TAC §34.303, relating to Adopted Standards, and §34.832, relating to Specific Requirements for Retail Fireworks Sites Other Than Stands. The amendments are adopted without changes to the proposed text published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8506).

REASONED JUSTIFICATION. The amendments to §34.303 are necessary to implement Government Code §417.008 and to provide State Fire Marshal Office's inspectors with an update to the currently adopted standard in §34.303. The amendments to §34.832 are necessary to implement Occupations Code Chapter 2154 and to efficiently provide for the necessary protection, safety, and preservation of life and property.

Adopted Standards for State Fire Marshal Inspections.

Government Code §417.008 authorizes the state fire marshal, on the complaint of any person, to enter 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 2015 NFPA 1 Fire Code (NFPA 1) and the 2015 NFPA Life Safety Code 101 (NFPA 101). The NFPA is a nationally recognized standards-making association. The adoption of 2015 NFPA 1 and NFPA 101 is necessary to provide State Fire Marshal Office's inspectors with an update to the currently adopted standard in §34.303. The 2015 editions reflect revised provisions to best protect property and lives. Adoption of the current standard is a best practice and alleviates problems created when other agencies adopt new companion codes, such as the NFPA 70E Standard for Electrical Safety in the Workplace. For example, failure to adopt the newer

code creates discrepancies between construction practices of state universities, which have already adopted the newer code, and fire marshal inspections conducted on university campuses.

NFPA 1 references other NFPA standards to facilitate broad, comprehensive references to other standards that provide more detail to the standards in the NFPA 1. NFPA 1 is similar to the International Fire Code that most municipalities in Texas use. NFPA 1 allows for review of all the systems and components in the building to ensure compliance with best practices to prevent a fire. If a fire occurs, NFPA 1 requirements for extinguishing, confining, egress of occupants, and code requirements 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.

2015 NFPA 1 Fire Code

The NFPA revised the fire alarm system requirements in order to coordinate with the NFPA 101. Approximately 100 pages of the 650-page NFPA 1 are excerpted from NFPA 101. The NFPA revised mandatory fire hydrant locations and water supply requirements. The NFPA also created a comprehensive set of provisions relating to the placement and number of water supply fixtures in new construction. The 2015 revision includes changes to Chapter 60 of the NFPA 1 that mirror NFPA 400 Hazardous Materials code, although §34.303 specifically excludes application of that chapter to laboratories and laboratories in health care occupancies. Another Chapter 60 change specifies size and locations of alcohol based hand stations. Note that this would not be applicable to laboratories and laboratories in health care occupancies.

NFPA 1 adds a new requirement to address the dangers of combustible dusts. One of the changes the NFPA made that is applicable to existing buildings gives an authority having jurisdiction the ability to permit the removal of existing occupant-use fire hose. NFPA 1 also further elaborates on its instruction for cleaning and purging of gas lines. NFPA 1 offers new provisions for cooking oil storage tank systems in commercial kitchens, and expanded ammonia refrigeration system maintenance and testing requirements.

2015 NFPA Life Safety Code 101

The 2015 revisions to NFPA 101 include a variety of changes that may affect buildings inspected by the State Fire Marshal's Office. For example, NFPA 101 adds a new requirement for required real-time video monitoring of high-rise stairwells in buildings with more than 4,000 occupants. A new procedural requirement is an annual inspection of door openings, and related documentation for the inspection, testing, and maintenance intervals.

The NFPA 101 2015 edition includes new provisions for applying a code requirements hierarchy where a provision in one chapter conflicts with a provision in another chapter. NFPA 101 revised or added guidance on: means-of-egress provisions relative to rooms opening directly onto an exit enclosure, door opening threshold height for spaces not normally occupied, door encroachment on egress width, existing door frames without labels, security access turnstiles, handrail orientation on flaring-width stairs, horizontal exit stacking, horizontal exit exterior wall extensions, elevators in towers, occupant evacuation elevators, and occupant load factors for ambulatory health care and concentrated business use. NFPA 101 now permits atrium walls to serve as part of the separation for creating separated occupancies on a story-by-story basis.

The 2015 edition provides for revised inspection instructions for door assemblies to address both fire-rated doors and nonrated egress doors. NFPA 101 expands the table addressing minimum fire protection ratings for opening protectives. The NFPA added provisions for alcohol-based hand-rub dispensers and now references these provisions by occupancy chapters. The NFPA expanded provisions on high-rise buildings to include remote video monitoring of exit stair enclosures, as were the assembly occupancy life safety evaluation provisions. NFPA 101 contains revised daycare and residential board-and-care occupancy provisions to permit consideration of more than one floor level for egress.

The NFPA further revised the health care occupancy provisions to permit facilities such as nursing homes to be more "home like," including a reduction in the allowable width of nursing home minimum corridors and the clarification of permitted smoke alarm placement for kitchens that are open to the corridor. The revisions permit health care occupancy doors that are subject to locking in specialty treatment units, such as units for patients with dementia, to be disguised with murals. NFPA 101 allows smoke barriers permitted to be omitted on a non-health-care floor below a health care floor. And the NFPA revised the ambulatory health care occupancy chapters so they are self-contained, removing the need to reference the business occupancy chapters.

As previously stated, the proposal does not create a statewide building code. The proposal does not authorize the state fire marshal to assess fines, require building plan review, or grant permits. The commissioner has routinely adopted revised fire protection standards for use by the State Fire Marshal's Office as those standards are updated.

Copies of the NFPA 1 and NFPA 101 standards are available for public inspection in the State Fire Marshal's Office. The NFPA also makes available the published standards for read-only inspection online through its 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. A video summarizing the changes to NFPA 1 is available online at www.youtube.com/watch?v=8vyiFxFJKmec.

Specific Requirements for Retail Fireworks Sites Other Than Stands

The amendment to §34.832(5) deletes the requirement for sales display areas to include a continuous durable restraint around displayed fireworks separating the customers from all merchandise. Retail fireworks sites other than stands may continue to operate with a continuous durable restraint around displayed fireworks. This section was added in 2002 as a response to the increased presence of nonstand retail fireworks sales. In practice, the existence of the continuous durable restraint only marginally reduces the handling of fireworks by consumers. Industry stakeholders have suggested that the continuous durable restraint itself may be a hazard during the emergency egress of the building.

Even after the amendment, §34.832(5) requires that fireworks sales display areas must be sufficiently designed to prevent customers from handling fireworks, unless an attendant is directly assisting the customer. Insufficient staffing and unmonitored customer handling would constitute a violation of §34.832(5). Even with the change, the requirement in §34.832(5) provides for the necessary protection, safety, and preservation of life and property.

The amendment also includes nonsubstantive changes for purposes of matching agency writing style, consistency, and to improve readability. None of these nonsubstantive changes alter the meaning of the rules.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received written comments from seven individuals. There were six commenters in support of the proposal, and one commenter in support of the proposal with changes.

Comment on §34.832(5).

Several commenters support the removal of the requirement for a continuous durable restraint around displayed fireworks separating the customers from all merchandise, because the amended section will give customers and employees a safer environment with less obstructions.

Agency Response to Comment on §34.832(5).

TDI appreciates the supportive comments.

Comment on §34.832(5).

One commenter suggested a change to §34.832(5) to delete the requirement that an attendant "directly" assist a customer. Instead, they suggest "sales display areas must be sufficiently designed to prevent customers from handling fireworks, unless an attendant is available to assist the customer." The commenter stated that the suggested language would provide the necessary protection and safety for the preservation of life and property. The commenter further stated that the change would be in the best interest of the owner, and the customers would be monitored and assisted as needed. The commenter also stated that other states have similar regulations that allow customers to shop without being directly assisted and still maintain excellent safety records.

Agency Response to Comment on §34.832(5).

TDI disagrees with the comment and declines to make the suggested amendments. The amended provision is less restrictive than the prior requirement, but does not go as far as the commenter suggests. TDI will monitor compliance with the adopted provision, and at a later date may address further changes to tighten or loosen the requirement, as needed. The state fire marshal is concerned that unattended access to fireworks in a retail setting can pose a danger where consumers have criminal intent. On June 15, 2016, a person intentionally set fire to a fireworks display in an Arizona Walmart. TDI hopes that such an event would not be possible where sufficient attendants are available to directly assist customers at indoor fireworks retail sites, but the instance demonstrates the potential harm from inadequate supervision.

Comment on §34.832(13).

One commenter suggested that an amendment be made to §34.832(13) so that the requirement that trashcans be metal or heavy plastic remain, but to remove the requirement for a 10-foot distance from any displayed or stored fireworks. The commenter states that this requirement is not necessary for the disposal of cigarettes, since the rules do not allow smoking in the buildings and require "No Smoking" signs. Additionally, the commenter states that it can be difficult to place a trashcan 10 feet from displayed or stored fireworks. Absent convenient trashcans, the commenter states that disposed packaging can be slip and fall hazards.

Agency Response to Comment on §34.832(13).

TDI disagrees with the comment and declines to make the suggested amendment to paragraph §34.832(13). With respect to the disposal of cigarettes, notwithstanding the prohibition of smoking and the requirement to post "No Smoking" signs, it is good practice to plan for contingencies where the public isn't as wise to fire dangers as the staff of a retail fireworks site. The inconvenience resulting by the placement restrictions are reasonably necessary to reduce the potential of fire hazards. The speed at which a fire in a fireworks retail site can put lives and property at risk necessitates taking extra precautions.

SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL INSPECTIONS**28 TAC §34.303.****DIVISION 1. GENERAL PROVISIONS**

STATUTORY AUTHORITY. The commissioner adopts the amendments to the section under Government Code §417.005 and §417.008, Occupations Code §2154.051 and §2154.052, 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 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.

Occupations Code §2154.051 states the commissioner will determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays. Section 2154.052 states that the commissioner will adopt and the state fire marshal must administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property.

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.**§34.303. Adopted Standards.**

(a) The commissioner adopts by reference:

(1) NFPA 1-2015 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 101-2015;

(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, or by calling 1-800-344-3555. A copy of the standards is available for public inspection in the State Fire Marshal's Office.

SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

28 TAC §34.832

STATUTORY AUTHORITY. The commissioner adopts the amendments to the section under Government Code §417.005, Occupations Code §2154.051 and §2154.052, 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.

Occupations Code §2154.051 states the commissioner will determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays. Section 2154.052 states that the commissioner will adopt and the state fire marshal must administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property.

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.

TEXT.

§34.832. Specific Requirements for Retail Fireworks Sites Other Than Stands.

Indoor retail fireworks sites must comply with the following requirements:

(1) The retail fireworks sales building must be a free-standing durable structure with only one story of space accessible to the public. It must not be a tent, boat, or mobile vehicle. The fireworks sales area must not be part of a multi-use or multi-tenant building.

(2) The following distance requirements apply to an indoor retail fireworks site owned or leased by a fireworks licensee, which had a fireworks retail permit or a building permit in effect or

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was under construction on or before November 18, 2002, and stores or displays over 500 cases of Fireworks 1.4G in the building.

(A) The fireworks sales building must be a minimum distance of 60 feet from any inhabited building;

(B) The fireworks sales building must be a minimum distance of 30 feet from the property line.

(C) The fireworks sales building must meet the distance requirements of §34.824 Table 1 of this title (relating to Distance Tables), or have a minimum one-hour fire rated exterior wall with minimum three-fourths-hour fire rated protected openings.

(D) An office area used for the operation of the site, separated by a one-hour fire-rated wall from the fireworks sales or storage area, may be exempt from the distance requirements after it is reported to and reviewed by the state fire marshal.

(3) The following distance requirements must apply to an indoor retail fireworks site owned or leased by a fireworks licensee that did not have a fireworks retail permit or a building permit in effect or was not under construction on or before November 18, 2002, and that stores or displays over 500 cases of Fireworks 1.4G in the building.

(A) The fireworks sales building must be a minimum distance of 60 feet from any inhabited building.

(B) The fireworks sales building must be a minimum distance of 30 feet from the property line.

(C) The fireworks sales building must meet the distance requirements of §34.824 Table 1 of this title, or have a complete automatic fire sprinkler system installed in accordance with NFPA 13 Standard for the Installation of Sprinkler Systems.

(4) Subsequent construction by adjacent property owners or public authorities will not subject licensee or permittee to a distance regulation violation under this section, provided existing facilities are not enlarged or expanded after the subsequent construction.

(5) Fireworks sales display areas must be sufficiently designed to prevent customers from handling fireworks, unless an attendant is directly assisting the customer.

(6) Fireworks in the sales area must be limited to the displayed merchandise unless stored in closed cardboard boxes not accessible to the public.

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(7) Access to fireworks when stored in a separate and distinct area away from general fireworks sales must be restricted to employees only and "No Smoking" signs must be posted inside.

(8) The local fire department and the county fire marshal, if one is appointed or elected in that county, must be notified in writing annually, before beginning sales operations, of the business location, placement of fireworks in building or structure, maximum amount of fireworks in the building, and time period that fireworks will be stored or sold.

(9) Trash, rubbish, and unused boxes, except for small quantities stored in an orderly manner for reuse, must be removed from the sales, storage, and adjacent areas daily, or as often as necessary to prevent unsafe accumulation.

(10) Fireworks may not be displayed or stored behind glass through which direct sunlight can shine on the fireworks.

(11) Extension cords may not be located where the general public could walk over them. An extension cord may be used to extend power to a single appliance or single power strip. An extension cord providing power to a power strip must be of the same or greater wire gauge. Power strips used for multiple appliances must contain an internal circuit breaker. Extension cords and power strips must be protected from accidental damage. Flexible cords and cables must not be used as a substitute for the fixed wiring of a structure. An extension cord must not be plugged into a power strip.

(12) A supervisor, 18 years of age or older, must be on duty during all phases of operation. All fireworks sales personnel must be 16 years of age or older. The permit holder and the supervisor must ensure that all sales personnel comply with this subchapter.

(13) All trash containers used by the general public must be metal or heavy plastic and be located 10 feet from any displayed or stored fireworks.

(14) An outside electrical master switch must be provided at each retail location.

(15) Portable space heaters must not be permitted in retail or storage areas.

(16) A retail sales permit, for other than a retail stand, is not valid until a plan is on file at the State Fire Marshal's Office showing the following:

- (A) the address or location of the site;
- (B) the name of the person to whom the permit is issued;
- (C) the outline and length of all building exterior walls;
- (D) the floor area, location, and dimensions used for fireworks sales;

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(E) the floor area, location, and dimensions used for fireworks storage outside the sales area;

(F) the floor area, location, and dimensions used for other than fireworks sales and storage;

(G) the general location, description, and distances from the exterior walls to all buildings, fireworks storage magazines, highways, and equipment for storage or dispensing of flammable liquids or compressed gas;

(H) the location of the master electrical cut-off switch;

(I) the location and width of all building doors and paths of egress; and

(J) the maximum estimated number of cases of fireworks to be stored or displayed for sale in the site.

(17) Cooking equipment must not be used within rooms used for fireworks sales or storage.

(18) All fireworks retail sites with a sales area more than 2500 square feet must have a minimum average ceiling height of 12 feet. The sales area is the total square feet of floor area used to sell or store fireworks in an indoor retail fireworks site. Each sales area may be separated from another sales area by a fire barrier having a resistance rating of not less than one hour, with all openings protected by three-fourths-hour fire protection-rated self-closing fire door.

(19) An indoor retail fireworks site must comply with the mercantile occupancy requirements of the standards adopted in §34.303 of this title (relating to Applicability of Rules). This standard, NFPA 101 Life Safety Code, is published by and is available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts, 02269, or 1-800-344-3555.

(20) An indoor fireworks retail site must have a minimum distance of 20 feet around the perimeter of the building that is kept free of high grass, empty cardboard boxes, and trash.

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

Issued at Austin, Texas, on January 9, 2017.

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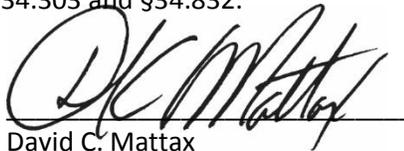
TITLE 28. INSURANCE
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Norma Garcia
General Counsel
Texas Department of Insurance

The commissioner adopts the amendments to §34.303 and §34.832.



David C. Mattax
Commissioner of Insurance

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