

**SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL INSPECTIONS**  
**28 TAC §34.302**

**SUBCHAPTER E. FIRE EXTINGUISHER RULES**  
**28 TAC §§34.510, 34.514, 34.517, 34.521, and 34.524**

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**SUBCHAPTER G. FIRE SPRINKLER RULES**  
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**SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS**  
**§§34.808, 34.818, 34.823, 34.832, and 34.833**

**~~[SUBCHAPTER J. STOVETOP FIRE SUPPRESSION DEVICE APPROVAL~~**  
**~~§§34.1001 - 34.1004]~~**

**SUBCHAPTER M. SCHEDULED ADMINISTRATIVE PENALTIES**  
**§34.1302**

**INTRODUCTION.** The Texas Department of Insurance proposes amendments to 28 Texas Administrative Code Chapter 34, Subchapter C, Standards and Fees for State Fire Marshal Inspections §34.302; Subchapter E, Fire Extinguisher Rules §§34.510, 34.514, 34.517, and 34.521; Subchapter F, Fire Alarm Rules §§34.609, 34.615, 34.616, and 34.622 - 34.624; Subchapter G, Fire Sprinkler Rules §§34.713, 34.716, 34.721, and 34.722; Subchapter H, Storage and Sale of Fireworks §§34.808, 34.818, 34.823, and 34.832; Subchapter M, Scheduled Administrative Penalties §34.1302; the repeal of Subchapter J, Stovetop Fire Suppression Device Approval §§34.1001 - 34.1004; and new §34.524 in Subchapter E, §34.631 in Subchapter F, §34.726 in Subchapter G, and §34.833 in Subchapter H. These amendments, repeals, and new sections are necessary to implement statutory changes made by HB 1150 84th Legislature (2015), SB 807, 84th Legislature (2015), and SB 1307, 84th Legislature (2015); clarify the intent of the regulations; revise tags, labels, and stamps; require certain conduct; prohibit certain other conduct; and to amend penalty schedules.

**EXPLANATION.** This proposal includes amendments, new sections, and repeals to various subchapters relating to the state fire marshal.

Throughout the proposed amendments nonsubstantive changes are proposed. These changes change "shall" to the more precise "must," "may," or "is." Other nonsubstantive changes include the addition of oxford commas, changes in capitalization, removing unnecessary "the" before code references, the substitution of other punctuation for semicolons, and the removal of "and/or" in favor of simply "or." These changes are done for purposes of matching agency style, consistency, and to improve readability. None of these nonsubstantive changes alter the meaning of the rules.

### **SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL INSPECTIONS**

#### **Section 34.302.**

The department adds a definition to §34.302, to clarify the meaning of the term "authority having jurisdiction" with respect to state fire marshal inspections.

The definition clarifies that these are the standards adopted by a nationally recognized standards-making association for fire protection and the standards under which the state fire marshal will inspect, as contemplated in Government Code §417.008. Typically, the entity performing an inspection is also the entity with the authority to adopt a local fire code. But since state fire marshal inspectors conduct examinations of dangerous conditions statewide, including areas with locally adopted fire codes, the authority having jurisdiction may not be the inspecting entity. The proposed definition clarifies this relationship.

### **SUBCHAPTER E. FIRE EXTINGUISHER RULES**

#### **Section 34.510.**

The proposed amendment to §34.510, relating to Certificates of Registration, establishes what constitutes an adequately equipped business vehicle to ensure that licensees are properly equipped for the services they provide. The amendment parallels the equipment requirements for certain activities already described in the section. The adopted NFPA standard NFPA 10 specifically requires that the business vehicle be equipped with the applicable service manual when the licensee or licensed firm is servicing certain equipment. Failure to have these reference materials available in the field harms the licensee's or licensed firm's ability to adequately service life-saving fire extinguishing devices.

#### **Section 34.514.**

The proposed amendment to §34.514, relating to Applications, adds a requirement for the applicant to furnish, along with the application for a license, a copy of the applicant's criminal history report. Under the current rules, the department requests the applicant's criminal history report after it receives the application, which causes delays in processing the application. Requiring the applicant to provide their own criminal history report will expedite application processing. Some individuals, primarily those living outside of Texas, may need to have fingerprints taken by the Texas Department of Public Safety's vendor and then processed.

**Section 34.517.**

The proposed amendment to §34.517, relating to Installation and Service, clarifies the requirements for fixed fire extinguisher systems. The amendment adds language that allows installation and servicing to comply with a standard adopted by the political subdivision in which the system is installed. In general, the state fire marshal adopts National Fire Protection Association (NFPA) standards, or other standards, when those standards are revised. Local governments may lag behind. This change provides greater flexibility in allowing licensed persons to perform services consistent with the standards adopted by the political subdivision where the system is installed. Another proposed change requires that the service tag indicates temperature and quantity for fusible metal alloy fixed-temperature sensing elements; this will help ensure the safe maintenance and service of these systems. New subsection (k) is added to address pre-engineered dry chemical fixed fire extinguishing systems requirements. This provision was previously in the section, but had been inadvertently deleted in an earlier rule adoption.

**Section 34.521.**

The proposed amendment to §34.521, relating to Red Tags, requires notification to the authority having jurisdiction (AHJ) when a tag is corrected. The rules already require the licensee or licensed firm to notify the AHJ when they identify a problem, but this amendment will help AHJs follow up with building owners or representatives to determine when they have fixed an unsafe condition. The proposed notification requirement is similar to the existing requirement for licensees or licensed firms to notify an AHJ of a tagged device, and it is consistent with NFPA 17A Standard for Wet Chemical Extinguishing Systems.

**Section 34.524.**

New §34.524, relating to Military Service Members, Military Veterans or Military Spouses reflects the statutory protections as provided in Occupations Code Chapter 55 and as amended by SB 807 and SB 1307. The proposed amendment puts all military-related waivers and exemptions in one section so that affected persons are on notice that the provisions may apply to them. Subsection (a) implements SB 807, and provides for waiver of application and examination fees for certain military service members, military veterans, and military spouses. Subsection (b) implements SB 1307, Section 8, and provides specific credit for verified military service with respect to apprentice requirements. Subsection (c) implements SB 1307, Section 4, and provides for the extension of license renewal deadlines for certain military service members. Subsection (d) implements SB 1307, Section 5, and provides for waiver of license prerequisites for certain military service members, military veterans, and military spouses. Other benefits, exemptions, or waivers that are due to military service members, military veterans, and military spouses as provided in state or federal law may also apply.

**SUBCHAPTER F. FIRE ALARM RULES**

**Section 34.609.**

The proposed amendment to §34.609, relating to Approved Testing Organization, includes the fire marshal's recognition of another approved testing organization, the Electronic Security Association (ESA), as a testing standards organization for testing license applicants. Insurance Code §6002.156 provides that the state fire marshal may adopt rules as necessary to implement examination requirements. Insurance Code §6002.158 provides that training schools must be approved by the state fire marshal. The state fire marshal has reviewed ESA's application, course, and testing curriculum and has determined that it is an approved organization for purposes of the Fire Alarm Rules. The ESA materials and course for the residential alarm license provides an acceptable level of training.

**Section 34.613.**

The proposed amendment to §34.613, relating to Applications, adds a requirement for the applicant to furnish, along with the application for a license, a copy of the applicant's criminal history report. Under the current provisions, the department requests the criminal history from the Texas Department of Public Safety after receiving an application, which delays the application approval process. Requiring that applicants provide their criminal history report with their application will

expedite the application approval process. The criminal history report process may require some applicants, primarily those living outside of Texas, to have fingerprints taken by the Texas Department of Public Safety's vendor and then processed. Proposed §34.613(b)(1) includes additional language that specifies the general content for the qualifying test as part of a training school for a residential fire alarm technical license. The change clarifies an ambiguity that existed in the content of the residential fire alarm technician training school instruction. Other changes are proposed to accommodate ESA as a testing standards organization, and for consistency with the proposed changes to §34.609.

**Section 34.615.**

The proposed amendment to §34.615, relating to Test, are in conjunction with the approval of ESA in §34.609, and add ESA to the list of organizations that may conduct technical qualifying tests.

**Section 34.616.**

The proposal amends §34.616, relating to Sales, Installation, and Service. The amendments to §34.616(b)(1) specify that the licensee who plans fire detection and fire alarm devices or systems must be licensed under the primary registered firm. This amendment is congruent with the structure of the fire alarm licensing under Insurance Code Chapter 6002. The amendments to paragraph §34.616(b)(4) add servicing to the list of functions that must be done in accordance with the adopted standards. The amendments also delete the provision related to the Tentative Interim Amendment published by the NFPA and allow for system planning, installation, and servicing if it complies with a more recent standard adopted by the political subdivision in which the system is installed. This change allows greater flexibility in allowing licensed persons to perform services consistent with the standards adopted by the political subdivision. The amendments to §34.616(c) establish a two-year record keeping requirement for firms. This requirement is consistent with the adopted NFPA 72 requirements. Additionally, the amendment specifies that the state fire marshal or the state fire marshal's representative can examine the operation records for service, maintenance, testing, and certification. The requirements for storage and access of these records will assist the state fire marshal with fair, thorough, and consistent regulation of licensed firms.

**Section 34.622.**

The proposed amendment to §34.622, relating to Inspection/Test Labels, creates two new subsections for licensees and licensed firms to provide notice to AHJs when a new system is installed or a problem is corrected. The change will help AHJs follow up with building owners or representatives. Section 34.622(c) specifies that an inspection/test label may be applied only after an AHJ has approved the new installation. Section 34.622(e) requires notice to the AHJ when a fault or impairment has been corrected.

The department amends §34.622(h) to clarify the size of the adhesive inspection/test label. The amendment to Figure 28 TAC §34.622(k) provides for indicating the name and address of the business where the inspection occurred. This will assist local AHJs with monitoring the inspections done in their jurisdiction.

**Section 34.623.**

The proposed amendment to §34.623, relating to Yellow Labels, requires the inspector or service provider to notify the AHJ when a tag is corrected. The rules already require the licensee or registered firm to notify the AHJ when a problem is identified. This change will help AHJs follow up with building owners or representatives to determine whether they have fixed an unsafe condition. This submission of the revised status of a yellow label is similar to the existing requirement to notify an AHJ of a tagged device.

**Section 34.624.**

The proposed amendment to §34.624(d), relating to Red Labels, requires notification to the AHJ when a tag is corrected. The rules already require the licensee or registered firm to notify the AHJ when a problem is identified. This change will help AHJs follow up with building owners or representatives to determine whether they have fixed an unsafe condition. Submission of the revised status of a red label is similar to the submission of the existing requirement to notify an AHJ of a tagged device.

**Section 34.631.**

New §34.631 reflects the statutory protections for military service members, military veterans, and military spouses as provided in Occupations Code Chapter 55, and as amended by SB 807 and SB 1307. The proposed section puts all military-related waivers and exemptions in one section so that applicable persons are on notice that the provisions may apply to them. Section 34.631(a)

implements SB 807, and provides for waiver of application and examination fees for certain military service members, military veterans, or military spouses. Section 34.631(b) implements SB 1307, Section 8, and provides specific credit for verified military service with respect to apprentice requirements. Section 34.631(c) implements SB 1307, Section 4, and provides for the extension of license renewal deadlines for certain military service members. Section 34.631(d) implements SB 1307, Section 5, and provides for waiver of license prerequisites for certain military service members, military veterans, and military spouses. Other benefits, exemptions, or waivers that are due to military service members, military veterans, and military spouses as provided in state or federal law may also apply.

### **SUBCHAPTER G. FIRE SPRINKLER RULES**

#### **Section 34.713.**

The proposed amendment to §34.713 deletes requirements to submit the examination test score. Proof of National Institute for Certification in Engineering Technologies (NICET) certification at Level II demonstrates sufficient training and knowledge. The proposed change also eliminates a potential redundancy for applicants who already have a Responsible Managing Employee (RME) General license, because RME general licensees already have demonstrated knowledge at a NICET Level III, which means they have demonstrated competency at least equivalent to NICET Level II. The proposed amendment to §34.713 also adds a requirement for the applicant to furnish, along with the application for a license, a copy of the applicant's criminal history report. Under the current provisions, the department requests the criminal history from the Texas Department of Public Safety after receiving the application, which delays the application approval process. Requiring that applicants provide their criminal history report with their application will expedite the application approval process. Some individuals, primarily those living outside of Texas, may need to have fingerprints taken by the Texas Department of Public Safety's vendor and then processed.

#### **Section 34.716.**

The proposed amendment to §34.716, relating to Installation, Maintenance, and Service deletes language so that the system planning, installation, and servicing to comply with a standard adopted by the political subdivision in which the system is installed, and provides that it is consistent with similar provisions in this chapter. This change provides greater flexibility at the local level by allowing licensees

to perform services consistent with the standards adopted by the political subdivision in which the system is installed. The amendments to §34.716(c) establish a record keeping requirement for firms. This requirement is consistent with the NFPA 13 requirements.

**Section 34.721.**

The proposed amendments to §34.721, relating to Yellow Tags, adds that the licensee or licensed firm is required to notify the AHJ when a tag is corrected. The rules already require the licensee or licensed firm notify the AHJ when a problem is identified. This change will help AHJs follow up with building owners or representatives to determine whether they have fixed an unsafe condition. Submitting the notification of a revised status of a tag is similar to the existing requirement to notify an AHJ of a tagged device.

**Section 34.722.**

The proposed amendment updates Figure 28: TAC §34.722(h) to provide for new exemplar years. The proposed amendment includes a specification that the inspection/test label be approximately three-inches high and three-inches wide.

**Section 34.726.**

New §34.726, Relating to Military Service Member, Military Veterans or Military Spouses reflect the statutory protections for military service members, military veterans, and military spouses as provided in Occupations Code Chapter 55 and as amended by SB 807 and SB 1307. The proposed amendment puts all military-related waivers and exemptions in one section so that applicable persons are on notice that the provisions may apply to them. Section 34.726(a) implements SB 807, and provides for waiver of application and examination fees for certain military service members, military veterans, or military spouses. Section 34.726(b) implements SB 1307, Section 8, and provides specific credit for verified military service with respect to apprentice requirements. Section 34.726(c) implements SB 1307, Section 4, and provides for the extension of license renewal deadlines for certain military service members. Section 34.726(d) implements SB 1307, Section 5, and provides for waiver of license prerequisites for certain military service members, military veterans, and military spouses. Other benefits, exemptions, or waivers due to military service members, military veterans, and military spouses as provided in state or federal law may also apply.



#### **SUBCHAPTER H. FIREWORKS RULES (formerly STORAGE AND SALE OF FIREWORKS)**

The proposed name of the subchapter changes from "Storage and Sale of Fireworks" to the more concise "Fireworks Rules." This nonsubstantive change conforms the title of the subchapter to the similar Fire Extinguisher Rules, Fire Alarm Rules, and Fire Sprinkler Rules elsewhere in the chapter and is intended to improve clarity and organization of the rules.

##### **Section 34.808.**

The proposed amendments to §34.808, Definitions, add a definition of "immediate family member," as a family member that specifically includes the spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchild, and stepsibling; and a relationship established by adoption, as provided in Occupations Code §2154.254, relating to Employment of Minors. Cousins, aunts, uncles, nieces, and nephews are not included in the definition of immediate family member. These individuals could work at an owner's retail sales location, but would not fall under the specific allowance for individuals aged 12 to 15. Section 34.808 also amends the definition of "retail fireworks site" to include other structures, vehicles, or surrounding area subject to care and control of the retailer, owner, supervisor, or operator of the retail location. A related proposed change is made for §34.832, relating to fire safety hazards near the site. By amending the term to include those areas, retail fireworks site safety is more effectively ensured.

##### **Section 34.818.**

The proposed amendment to §34.818, relating to Specific Requirements for Retail Fireworks Stands, adds a requirement for the minimum distance between fireworks and the front of the customer counter and to the back side of the fireworks stand; and it prohibits fireworks from being displayed on the customer counter or in any manner that allows the customer to handle fireworks without the assistance of an employee. This additional requirement ensures that customers cannot endanger themselves or others. Customers may still examine and handle fireworks if an attendant is assisting the customer.

##### **Section 34.823.**

The proposed amendment to §34.823, relating to Bulk Storage of Fireworks 1.4G, establishes a requirement for a fire sprinkler system if a fireworks storage facility's floor space exceeds 12,000 square feet, and it allows for additional or more restrictive fire protections that may be adopted by a political subdivision. This proposed requirement will reduce the potential danger inherent in large fireworks storage facilities. Fire sprinklers can slow or stop small fires (reducing the likelihood of detonating the large quantities of explosive materials in fireworks storage facilities), giving the occupants additional time to exit the building and potentially providing emergency responders with additional time to reach the scene. The proposed change is consistent with the NFPA 1 Fire Code paragraph 13.3.2.23.1(2).

**Section 34.832.**

Section 34.832 relates to Specific Requirements for Retail Fireworks Sites Other Than Stands. The proposed amendment to §34.832(8) modifies the requirement for business owners to provide written notification to the local fire department and county fire marshal about the location of a building that sells or stores fireworks. HB 1150, 84th Legislature (2015), added additional dates during which fireworks can be sold. Some of these additional sales periods are other than the July Fourth sales period. So the proposed amendment removed the June 14 notice date and instead requires the licensee or licensed fireworks retailer to notify the AHJ about its intention to store or sell fireworks before the time period fireworks will be stored or sold. This amendment will allow local first responders and fire safety officials to continue to have timely notice about when and where fireworks are sold.

The proposed amendment to §34.832(11) provides that extension cords may not be plugged in to a power strip. Power strips are temporary wiring and are not designed to safely provide power to extension cords. This temporary wiring is not intended to be plugged in to one another, and doing so creates a dangerous fire hazard (NFPA 1, paragraph 11.1.6.2). The proposed amendment to §34.832(20) provides that an indoor fireworks retail site must not display fireworks on the customer counter or in any manner that allows the customer to handle fireworks without an attendant directly assisting the customer.

**Section 34.833.**

New §34.833, relating to Military Service Members, Military Veterans and Military Spouses reflects the statutory protections for military service members, military veterans, and military spouses as provided in Occupations Code Chapter 55 and as amended by SB 807 and SB

1307. The proposed section puts all military-related waivers and exemptions in one section so that applicable persons are on notice that the provisions may apply to them. Section 34.833(a) implements SB 807 and provides for waiver of application and examination fees for certain military service members, military veterans, or military spouses. Section 34.833(b) implements SB 1307, Section 8, and provides specific credit for verified military service with respect to apprentice requirements. Section 34.833(c) implements SB 1307, Section 4, and provides for the extension of license renewal deadlines for certain military service members. Section 34.833(d) implements SB 1307, Section 5, and provides for waiver of license prerequisites for certain military service members, military veterans, and military spouses. Other benefits, exemptions, or waivers that are due to military service members, military veterans, and military spouses as provided in state or federal law may also apply.

#### **SUBCHAPTER J. STOVETOP FIRE SUPPRESSION DEVICE APPROVAL §§34.1001 - 34.1004**

The subchapter is proposed for repeal. SB 14, 78th Texas Legislature (2003), repealed Insurance Code Articles 5.33A and 5.33C, providing for certificates used for premium credits and discounts on insurance rates, including credits or discounts for certain stovetop fire suppression devices.

#### **SUBCHAPTER M. SCHEDULED ADMINISTRATIVE PENALTIES**

##### **Section 34.1302**

The proposed amendment to §34.1302 amends the previous penalty schedules and creates a new penalty schedule. The amendment to the penalty schedule for fire sprinkler violations corrects the description for two listed violations. The existing penalty schedules in Figure §34.1302(a), Figure §34.1302(b), and Figure §34.1302(c) are amended to include additional violations. The current department penalty schedules, in effect since 2013, have promoted efficient and timely resolution of minor administrative violations. The new schedule, Figure §34.1302(e), provides similar penalties for minor violations of statute and rules related to fireworks distributors.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Ernest McCloud, director, State Fire Marshal's Office, has determined that for each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. The proposed amendments require the licensee or licensed firm to notify AHJs about the correction of certain yellow- and red-tagged or labelled systems.

These additional notifications are not expected to add additional costs to AHJs. Mr. McCloud 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. McCloud also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit as a result of the proposal is the preservation of public health and safety through clarified regulations, better notice to AHJs of fire protection tag and label corrections, requirements for certain conduct, prohibitions on other certain conduct, and amended penalty schedules.

*Cost of amendments to Subchapter C. Standards and Fees for State Fire Marshal Inspections.* The department does not expect additional costs of compliance because of the proposed definition.

*Cost of amendments to Subchapter E. Fire Extinguisher Rules.* The department does not expect additional costs for affected persons to comply with the proposed amendment in §34.510, relating to Certificates of Registration, to adequately equip business vehicles. The department expects that licensees already have the tools and reference materials required to provide the services that licenses are contracted to perform. But, for those licensees who do not have adequately equipped vehicles, the department expects licensees to incur costs from \$500 to \$1,000 for tools and \$500 to \$1,000 for the adopted standards and reference materials. Each licensee can decide whether to provide hard copies of the adopted standards and other reference materials, or whether an electronic device to access to the standards is most cost effective and appropriate.

The department estimates that costs for affected persons to comply with the proposed amendment to §34.514, relating to Applications, will be approximately \$5 per application. The Department of Public Safety provides a mechanism for individuals to order their own criminal history report. The cost of that criminal history report is \$3 plus an added fee, the amount of which depends on the payment method the applicant uses. Applicants can determine the exact amount of the additional fee by logging on to the Department of Public Safety website, clicking on "purchase credits" under the criminal history section, and selecting a payment method. Currently, applicants who pay by credit card will pay an additional 2.25 percent of the order plus \$0.25. Individuals living outside of Texas may be required by the Texas Department of Public Safety to have their fingerprints taken by the Texas Department of Public Safety's vendor. Currently, that vendor is MorphoTrust USA, and that entity charges approximately \$40 to process fingerprints.

The department expects no additional costs for affected persons to comply with the proposed amendment to §34.517, relating to Installation and Service. The proposed amendment adds flexibility to allow system installation and servicing to conform to standards adopted by the political subdivision in which the system is installed. This flexibility will not add to the costs to affected persons, and may reduce them. The proposed amendment to indicate on the service tag the temperature and quantity for fusible metal alloy elements will require minimal additional time by licensed personnel. Licensees already complete the tag information, and recording the additional information should not require substantially more time. The proposed amendment also adds back a safety requirement related to pre-engineered dry chemical fixed fire extinguisher systems. The department expects that affected persons are already complying with the requirement, or they can alter their operations without additional costs.

The department expects that costs for affected persons to comply with the proposed amendments to §34.521, relating to Red Tags, to be approximately \$5. Licensees already submit red tags to the AHJ when they identify a problem. Licensees should be able to estimate the costs of submitting the notice of correction of the problem to the AHJ, as required by the proposed amendment, based on the costs associated with the current requirement to submit the tags to the AHJ. The department estimates that most licensees will require approximately 10 minutes per corrected tag notification. It is not feasible for the department to determine the actual employee costs for filing entities; however, the United States Department of Labor, Bureau of Labor Statistics' May 2012, *Occupational Employment Statistics* report indicates that the hourly mean wages for professions in Texas, as referenced in this cost analysis, are \$26.15 for office and administrative workers. Therefore, the department estimates the cost of complying with the proposed amendments to §34.521 to be approximately \$5. The department estimates the cost of making an electronic submission to the AHJ will be minimal and it is impossible to pinpoint the exact cost; and the cost of a mail submission will be less than \$5 in aggregate for postage, envelope, paper, and mail preparation.

The department does not expect new costs for affected persons to comply with the proposed amendments to §34.524, relating to Military Service Members, Military Veterans, or Military Spouses. The proposed new section restates the existing statutory provisions of Occupations Code Chapter 55. The proposal will reduce costs for military service members, military veterans, and military spouses to obtain a license because it waives costs and other requirements for them.

*Cost of amendments to Subchapter F. Fire Alarm Rules.*

The department does not expect additional costs for affected persons to comply with the proposed requirements in §34.609, relating to Approved Testing Organizations, or §34.615, relating to Test. The amendments to these two sections allow for ESA as a testing standards organization for testing license applicants. As a result of the proposed amendments, an additional testing standard organization is recognized.

The department expects that costs for affected persons to comply with the proposed amendment to §34.613, relating to Applications, will be approximately \$5 per application. The Department of Public Safety provides a mechanism for individuals to order their own criminal history report. The cost for the report is \$3 plus an added fee, the amount of which depends on the payment method the applicant uses. Applicants can determine the exact amount of the additional fee by logging on to the Department of Public Safety's website, clicking on "purchase credits" under the criminal history section, and selecting a payment method. Currently, applicants who pay with a credit card will incur a fee equaling 2.25 percent of the order plus \$0.25. Individuals living outside of Texas may be required by the Texas Department of Public Safety to have their fingerprints taken by the Texas Department of Public Safety's approved vendor. Currently, that vendor is MorphoTrust USA, and that entity charges approximately \$40 to process fingerprints. The other amendments to §34.613 are nonsubstantive clarifications and are not expected to create additional costs of compliance to licensees.

The department expects additional costs for affected persons to comply with the proposed amendment to §34.616, relating to Sales, Installation, and Service, but does not expect additional costs to comply with the proposed amendments to §34.616(b), which are substantive and nonsubstantive clarifications of existing requirements. The proposed amendments in this section also add flexibility to allow system installation and servicing to conform to standards adopted by the political subdivision in which the system is installed. This flexibility will not add to the costs to affected persons, and may reduce them.

The department expects that there may be costs for affected persons to comply with the proposed amendment to §34.616(d) regarding record keeping. The proposed two-year record keeping requirement for firms is consistent with NFPA standards, but is newly specified in the proposed rule. The department expects that firms may incur additional costs related to the administrative work of organizing and maintaining the records. It is not feasible for the department to determine the actual employee costs for these entities. As stated in the cost associated with §34.521, the hourly mean wages for office and administrative workers is \$26.15, and the department estimates the proposed

requirement will be 25 to 50 additional hours per year. The cost of complying with the proposed amendment to §34.521 could be \$650 to \$1,310. But many affected firms already have records retention policies consistent with this requirement, and will not incur additional costs.

The department expects that there may be costs for affected persons to comply with the proposed amendment to §34.622, relating to Inspection Test Labels, but does not expect a cost associated with the proposed new subsection (b-2), since the requirement only alters the timing of the placement of the inspection/test label. The department does expect administrative costs associated with affected persons complying with new proposed subsection (c)(1). The proposed new subsections require licensees to send notices to AHJs with respect to the correction of a fault or impairment. Licensees should be able to estimate the costs of submitting the notice of correction to an AHJ, as required by the proposed amendment, based on the costs associated with the current requirement to submit tags to the AHJ. Most licensees will require approximately 10 minutes per corrected tag notification. It is not feasible for the department to determine the actual employee costs for these entities. As stated in the cost estimate associated with §34.521, the hourly mean wages for office and administrative workers is \$26.15, so the department estimates the cost of complying with the proposed amendment to §34.521 to be approximately \$5. The department estimates the cost of making an electronic submission to be minimal and impossible to reasonably estimate, and the cost of a mail submission will be less than \$5 in aggregate for postage, envelope, paper, and mail preparation.

The department does not expect any additional costs associated with the proposed inspection/test adhesive label in §34.622. Affected persons may use their current supplies of adhesive labels, and additional inspection/test labels of the appropriate size will not cost substantially more. The proposed amendments also require recording the name and address of the business where the inspection occurred on the tag in Figure: 28 TAC §34.622(i). Licensees already complete the tag information, so recording the additional information will not require substantially more time.

The department expects that there may be costs for affected persons to comply with the proposed amendments to §34.623, relating to Yellow Labels, and §34.624, relating to Red Labels. The proposed amendments require the licensee to send notices of correction of a fault or impairment to the AHJ. Licensees should be able to estimate the costs of submitting the notice of correction to an AHJ, as required by the proposed amendment, based on the costs associated with the current requirement to submit tags to the AHJ. The department estimates that most licensees will require approximately 10 minutes per corrected tag notification. It is not feasible for the department to determine the actual

employee costs for filing entities. As stated in the cost estimated associated with §34.521, the hourly mean wages for office and administrative workers is \$26.15, so the department estimates the cost of complying with the proposed amendments to §34.521 will be approximately \$5. The department estimates the cost of making an electronic submission to be minimal and impossible to reasonably estimate, but the cost of a mail submission will be less than \$5 in aggregate for postage, envelope, paper, and mail preparation.

The department does not expect costs for affected persons to comply with the proposed amendment to §34.631, relating to Military Service Members, Military Veterans, and Military Spouses. The proposed new section restates the existing provisions of Occupations Code Chapter 55. The proposal will reduce costs for military service members, military veterans, and military spouses to obtain a license because it waives costs and other requirements for them.

*Cost of amendments to Subchapter G. Fire Sprinkler Rules.*

The department expects that there may be costs for affected persons to comply with the proposed amendments to §34.713, relating to Applications. The proposed change to delete the requirement to submit the examination test score will not result in additional costs. The department expects that costs to comply with the proposed amendment to §34.713(b)(1) requiring applicants to submit a criminal history report with an application to cost approximately \$5 per application. The Department of Public Safety provides a mechanism for individuals to order a criminal history check. The cost is \$3 plus an added fee, the amount of which depends on the payment method the applicant uses. Applicants can determine the exact amount of the added fee by logging on to the Department of Public Safety's website, clicking on "purchase credits" under the criminal history section, and selecting a payment method. Currently, applicants who pay with a credit card will incur a fee equaling 2.25 percent of the order plus \$0.25. Individuals living outside of Texas may be required by the Texas Department of Public Safety to have their fingerprints taken by the Texas Department of Public Safety's vendor. Currently, that vendor is MorphoTrust USA, and that entity charges approximately \$40 to process fingerprints.

The department does not expect costs for affected persons to comply with the proposed amendment to §34.716, relating to Installation, Maintenance, and Service. The proposed amendment adds flexibility to allow system planning, installation, and servicing to conform to standards adopted by



the political subdivision in which the system is installed. This flexibility will not add to the costs to affected persons, and may reduce them.

The department expects that there may be costs for affected persons to comply with the proposed amendments §34.721, relating to Yellow Tags, and §34.722, relating to Red Tags. The proposed amendments require the licensee to send notices of a correction of a fault or impairment to the AHJ. Licensees should be able to estimate the costs of submitting the notice of correction to an AHJ based on the costs associated with the current requirement to submit tags to the AHJ. Most licensees will require approximately 10 minutes per corrected tag notification. It is not feasible for the department to determine the actual employee costs for filing entities; however, as stated in the cost estimated associated with §34.521, the hourly mean wages for office and administrative workers is \$26.15. Therefore, the department estimates that the cost of complying with the proposed amendment to §34.521 should be approximately \$5. The department has determined that the cost of making an electronic submission to be minimal and impossible to reasonably estimate, and the cost of a mail submission will be less than \$5 in aggregate for postage, envelope, paper, and mail preparation.

The department does not expect a cost for affected persons as a result of the proposed amendment to §34.722, which updates Figure: 28 TAC §34.722(h) to provide for new exemplar years. "Exemplar" is the example date that is filled in on the tags, but the actual tags can be modified for the current year. The department does not expect costs for affected persons to comply with the proposed amendment to §34.726, relating to Military Service Members, Military Veterans, or Military Spouses. This proposed new section restates the existing statutory provisions of Occupations Code Chapter 55. The proposal will reduce costs for military service members, military veterans, and military spouses to obtain a license because it waives costs and other requirements for them.

*Cost of amendments to Subchapter H. Storage and Sale of Fireworks.*

The department does not expect costs for affected persons to comply with the proposed amendment to rename Subchapter H to Fireworks Rules.

The department does not expect affected persons to incur costs to comply with the proposed amendment to §34.808, relating to Definitions. The proposed amendment provides new definitions for what constitutes a retail fireworks site and who is an immediate family member, and so it will not create additional costs of compliance to licensees.

The department does not expect additional costs for affected persons to comply with the proposed amendment to §34.818, relating to Specific Requirements for Retail Fireworks Stands. The proposed amendment provides clarification on the minimum distance of fireworks displayed in a fireworks stand from the front of the customer counter to the back of the stand. The amendment also includes a requirement that fireworks must not be displayed on the customer counter or in any manner that allows the customer to handle fireworks without an attendant directly assisting the customer. The department expects that additional monitoring of customers will not require additional staffing or labor costs, and can be accomplished with reasonable planning in the display of fireworks during each sales period.

The department expects that there may be costs for affected persons to comply with the proposed amendments §34.823, relating to Bulk Storage of Fireworks 1.4G. The proposed amendment to §34.823(h) requires a fire sprinkler system if a fireworks storage facility's floor space is greater than 12,000 square feet, or additional or more restrictive fire protection requirements as adopted by an AHJ. The cost of a fire sprinkler system varies based on the size and location of the storage facility. Larger facilities, or facilities requiring supplementary water for supplying a fire sprinkler system, will increase the costs associated with a fire sprinkler system. The department expects that some fireworks storage facilities already have fire sprinkler systems. Because of the potential for costs to vary by facility size and location, the department cannot accurately estimate a specific range of potential costs; however, the department is aware that fire sprinkler systems can be costly. Cost for the installation of a new fire sprinkler system in an existing building can cost tens or hundreds of thousands of dollars.

The department does not expect costs for affected persons to comply with the proposed amendment to §34.832, relating to Specific Requirements for Retail Fireworks Sites Other Than Stands. The proposed amendment to clarify the timing of the notification of the local fire department and the county fire marshal in writing should not alter the costs of compliance with the section. The department also does not expect additional costs for affected persons to comply with the specific prohibition of plugging an extension cord into a power strip. Most fire codes already prohibit these unsafe practices. Affected persons can comply with the amended subsection and avoid the hazard of temporary wiring by rearranging the temporary wiring, or by rearranging the devices powered by the temporary wiring.

The department does not expect additional costs for affected persons to comply with the proposed amendment to §34.833, relating to Military Service Members, Military Veterans, or Military Spouses. The proposed new section restates the existing statutory provisions of Occupations Code

Chapter 55. The proposal will reduce costs for military service members, military veterans, and military spouses to obtain a license because it waives costs and other requirements for them.

*Cost of amendments to Subchapter J. Stovetop Fire Suppression Device Approval.* The department does not expect additional costs of compliance for affected persons because of the proposed subchapter repeal.

*Cost of amendments to Subchapter M. Scheduled Administrative Penalties.* The amended penalty schedule and additional administrative penalty schedule may result in some additional costs to owners or operators of fire alarm, fire extinguisher, fire sprinkler, and fireworks firms. The anticipated costs are similar to those administrative costs proposed in the February 8, 2013, issue of the *Texas Register* (38 TexReg 627) and include costs related to responding to and correcting the alleged violation, and costs relating to the administrative penalty that will be paid.

Each time a penalty notice is sent, the costs to comply with existing §34.1301, relating to Schedule of Administrative Penalties, would be a separate, nonrecurring expense. The department estimates that each written response to accept the administrative penalty; request an opportunity to show compliance with the requirements of all applicable law and rules; or make a written request for a hearing to the state fire marshal on a determination, as required by Subchapter M, would cost between \$14 and \$16. The cost estimate includes an estimate of 30 minutes of the licensee's time to retrieve and print or copy the proof document or documents (with costs of between \$.08 and \$1.20 for printing or copying the proof document or documents), to be less than \$3 for first class postage and an appropriately sized envelope. As stated in the cost estimate associated with §34.521, the hourly mean wage for office and administrative workers is \$26.15, so the department estimates that the cost of complying with each written request would be approximately \$15. Licensees electing to send documents through certified mail will incur additional charges. Total annual costs for compliance will vary based on the number of administrative penalty responses that the licensee submits.

Costs relating to the administrative penalty paid are as specified in the penalty schedule. Total annual costs for compliance will vary based on the amount and number of administrative penalties that the licensee pays.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO**

**BUSINESSES.** Government Code §2006.002(c) requires that if a proposed rule may have an adverse economic impact on small businesses, state agencies must prepare an economic impact statement that assesses the potential impact of the proposed rule on small businesses. State agencies must also prepare a regulatory flexibility analysis that considers alternative methods to achieve the purpose of the rule. Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. Government Code §2006.001(1) defines a micro business similarly to a small business, but specifies that a micro business may not have more than 20 employees. Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined under Government Code §2006.002(b) - (d).

As required by Government Code §2006.002(c), the department has determined the proposal may have an adverse economic impact on small or micro businesses resulting from the costs to comply with the proposed amendments.

Based on data requested by its applicants, the department estimates that there are about 700 individuals and firms in Texas engaged in the business of fire extinguishers, including the leasing, selling, installing, and servicing of portable fire extinguishers; and the planning, certifying, installing, and servicing of fixed fire extinguisher systems. The Census Bureau has established the NAIC code 423990 (other miscellaneous durable goods merchant wholesalers) for use with fire extinguisher sales combined with rental or service, and merchant wholesalers. And based on data from the Census Bureau's 2012 Survey of Business Owners, approximately 89 percent of these firms in Texas employ fewer than 100 employees and have less than \$6 million in annual gross receipts.

Based on data requested by its applicants, the department estimates that there are about 1400 individuals and firms in Texas engaged in the business of fire alarms, including the planning, certifying, leasing, selling, servicing, installing, monitoring, and maintaining of fire detection and fire alarm devices and systems. And based on data from the Census Bureau's 2012 Survey of Business Owners, approximately 86 percent of these firms in Texas employ fewer than 100 employees and have less than \$6 million in annual gross receipts.

Based on data requested by its applicants, the department estimates that there are about 600 individuals and firms in Texas engaged in the business of fire sprinklers, including the relating to the

business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems. And based on data from the Census Bureau's 2012 Survey of Business Owners, approximately 80 percent of these firms in Texas employ fewer than 100 employees and have less than \$6 million in annual gross receipts.

Based on data requested by its applicants, the department estimates that there are about 60 individuals and firms in Texas engaged in the business of fireworks and pyrotechnics, including the manufacturing, selling, storing, possessing, or transporting fireworks; and the conduct of public fireworks displays. And based on data from the Census Bureau's 2012 Survey of Business Owners, approximately 86 percent of these firms in Texas employ fewer than 100 employees and have less than \$6 million in annual gross receipts. For 2014, approximately 4000 fireworks permits were used by retail fireworks stands and indoor sites. It is likely that every fireworks permit is used by a small or micro business.

This proposal implements statutory changes; clarifies the intent of the regulations; revises tags, labels, and stamps; requires certain conduct; prohibits certain other conduct; and amends penalty schedules. All affected small or micro businesses in Texas will be required to comply with the proposed new requirements. The cost analysis in the Public Benefit and Cost Note part of this proposal is also applicable to these small and micro businesses.

In accordance with Government Code §2006.002, the department has considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses. The other regulatory methods the department has considered include: (i) not proposing the amendments; (ii) proposing different requirements for small and micro businesses; and (iii) excluding small and micro businesses from applicability under the amendments and new sections included in this proposal.

*Not proposing the amendments.*

The purpose of this rule proposal is the preservation of public health and safety through clarified regulations, better notice to AHJs of fire protection tag and label corrections, requiring certain conduct, prohibiting other certain conduct, and amending penalty schedules.

Without the proposal and adoption of amended rules, affected persons would not benefit from clarifications and the public would not benefit from improved public health and safety requirements. Failure to propose and adopt new rules would also frustrate the purpose of Government Code §417.008,

Insurance Code Chapters 6001, 6002, and 6003, and Occupations Code Chapters 55 and 2154. For these reasons, the department has rejected this option.

*Proposing different requirements for small and micro businesses.*

The department believes that proposing different standards for small and micro business than those included in this proposal would not provide a better option for these businesses. The department believes that the potential for public harm resulting from lessening regulatory requirements for small and micro businesses would outweigh the potential benefit to small or micro businesses. The proposed rule amendments increase public health and safety requirements, and regulations protecting the public are also important to achieving the regulatory purpose of the proposal. For these reasons, the department has rejected this option.

*Excluding small and micro businesses from applicability under the new sections included in this proposal.*

As addressed in the Public Benefit and Cost Note portion of this proposal, anticipated costs under the proposal are the result of the rule amendments. If the department excluded small and micro businesses under the amended sections, they would not incur the anticipated costs. But if the department excluded small and micro businesses under the new sections, the department would lack predictable and uniformly enforced public safety regulations. The department believes that the potential for lack of compliance with these provisions would create potential harm for affected persons, insureds, and the public that would outweigh the potential benefit to small or micro businesses. For this reason, the department has rejected this option.

*Protection of Public Health and Safety*

Government Code §2006.002(c-1) 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 amendments to Subchapters C, E, F, G, H, J, and M protect the health and safety of fire fighters, citizens, and structures in Texas through the efficient administration of Government Code

§417.008, Insurance Code Chapters 6001, 6002, and 6003, and Occupations Code Chapters 55 and 2154. In order to protect life and property in this state, it is necessary that all businesses, regardless of size, comply with minimum safety requirements. Therefore, the department has determined, in accordance with Government Code §2006.002(c-1), that because the proposed amendments ensure the health, safety, and environmental and economic welfare of the state, there are no regulatory alternatives to the amendments to Subchapters C, E, F, G, H, J, and M in this proposal that will sufficiently protect the safety of fire fighters, citizens, and structures in this state.

**TAKINGS IMPACT ASSESSMENT.** The department 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.** The department invites the public and affected persons to comment on this proposal. Submit your written comments on the proposal no later than 5 p.m., Central time, on April 18, 2016, 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](mailto:chiefclerk@tdi.texas.gov). Simultaneously submit a second copy of the comments to the Texas Department of Insurance, Ernest McCloud, Director, State Fire Marshal's Office, Mail Code 112-FM, P.O. Box 149104, Austin, Texas 78714-9104; or by email to [ernest.mccloud@tdi.texas.gov](mailto:ernest.mccloud@tdi.texas.gov). Requests for a public hearing on this proposal must be submitted to the department separately. To request a hearing, submit the request to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, written comments and public testimony presented at the hearing will be considered.

## **SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL INSPECTIONS**

### **28 TAC §34.302**

**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 must 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

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

(1) Authority having jurisdiction (AHJ)--An organization, office, or individual responsible for enforcing the requirements of a code or standard.

(2) [(4)] Commissioner--The Commissioner of Insurance.

(3) [(2)] NFPA--The National Fire Protection Association, a nationally recognized standards making organization.

#### SUBCHAPTER E. FIRE EXTINGUISHER RULES

##### 28 TAC §§34.510, 34.514, 34.517, 34.521, and 34.524

**STATUTORY AUTHORITY.** The amendment is proposed under Government Code §417.005 and §417.008, and Insurance Code §§6001.051, 6001.052, 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 §6001.051(a) specifies that the department administers 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 must 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 must [~~shall~~] prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

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.** Insurance Code Chapter 6001 is implemented by this rule.

## TEXT

### **§34.510 Certificates of Registration.**

(a) Required. Each firm and each branch office engaged in the business must obtain a certificate of registration from the state fire marshal.

(b) Properly equipped licensed person. Before engaging in the business, each registered firm must have at least one licensed person who must ~~[shall]~~ be properly equipped to perform the act or acts authorized by its certificate.

(c) Types of certificates. The business activities authorized by the certificate is limited to the business activities authorized under the license of its employees. A separate Type C registration is required to engage in the business of hydrostatic testing of U.S. Department of Transportation (U.S. DOT) ~~[DOT]~~ specification fire extinguisher cylinders.

(d) Business location. Each registered firm must maintain a [A] specific business location ~~[must be maintained by each registered firm]~~, and the business [the] location [of which] must be indicated on the certificate.

(e) Shop. A registered firm must establish and maintain a shop, whether at a specific business 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 maintain the following:

- (1) a copy of the most recently adopted edition of NFPA 10;
- (2) a copy of the most recently adopted Insurance Code Chapter 6001 and this chapter;
- (3) a list of manufacturers ~~[and/]~~ or types of portable extinguishers serviced with their respective manuals ~~[and/]~~ or part lists;
- (4) portable ~~[weight]~~ scale to accurately measure extinguisher gross weights;
- (5) seals or tamper indicators;
- (6) temporary fire extinguishers replacements;
- (7) if performing annual maintenance on carbon dioxide extinguishers, at a minimum,

the following additional items are required:

- (A) conductivity tester, and
- (B) conductivity test label.

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

- (A) appropriate tools to remove and reinstall a valve head;
- (B) charging adapters;
- (C) Teflon tape, silicone grease, solvent, or other lubricant used;

- (D) supply of spare parts for respective manufacturers and type of fire extinguishers serviced;
- (E) appropriate recharge agents;
- (F) agent fill funnels;
- (G) light designed to be used for internal inspections;
- (H) dry chemical closed recovery system or sufficient new dry chemical;
- (I) leak test equipment;
- (J) dry nitrogen cylinders, regulator and calibrated gauges for pressurizing cylinders;
- (K) verification collar rings; and
- (L) six-year [~~six-year~~] maintenance labels.

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

- (A) working hydrostatic test pump<sub>[7]</sub> with flexible connection, check valves, and fittings;
- (B) protective cage or barrier;
- (C) calibrated gauges;
- (D) drying equipment;
- (E) hydrostatic test log; and
- (F) hydrostatic test labels.

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

- (A) a current Type C registration issued by [~~through~~] the State Fire Marshal's Office; and
- (B) verification of registration through the U.S. [~~US~~] DOT.

(11) if installing or servicing a fixed fire extinguisher system, at a minimum, the following additional items are required:

- (A) a copy of the latest adopted edition of applicable NFPA standards with respect to the type of system installed or serviced;

(B) applicable manufacturer's service manuals for the type of system; and

(C) any special tools or parts as required by the manufacturer's manual.

(f) Business vehicles. All vehicles used regularly in installation, service, maintenance, testing, or certification activities must prominently display the company name, telephone number, and certificate of registration number. The numbers and letters must be at least one inch in height and permanently affixed or magnetically attached to each side of the vehicle in a color contrasting with the background color of the vehicle. The certificate-of-registration number must be designated in the following format: TX ECR-number. A business vehicle must be adequately equipped for the type of service that is being provided.

(g) Branch office initial certificate of registration fees and expiration dates [~~Office Initial Certificate of Registration Fees and Expiration Dates~~]. The initial fee for a branch office certificate of registration is \$100 and is not prorated. Branch office certificates of registration expire and renew on the same date as the certificate of registration for the registered firm's main office.

(h) Change of ownership.

(1) The total change of a firm's ownership invalidates the current certificate. To ensure continuance of the business, the new owners must submit an application for a new certificate to the state fire marshal 14 days prior to the change.

(2) A partial change in a firm's ownership will require a revised certificate if it affects the firm's name, location, or mailing address.

(i) Change of corporate officers. Any change of corporate officers must be reported in writing to the state fire marshal within 14 days. This change does not require an application for a new or revised certificate.

(j) Duplicate certificates. A certificate holder must obtain a duplicate certificate from the state fire marshal to replace a lost or destroyed certificate. The certificate holder must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(k) Revised certificates. The change of a firm's name, location, or mailing address requires a revised certificate. Within 14 days after the change requiring the revision, the registered firm must submit written notification of the necessary change accompanied by the required fee to the State Fire Marshal's Office.

(l) Nontransferable. A certificate is neither temporarily nor permanently transferable from one firm to another.

(m) Initial alignment of the expiration and renewal dates of existing branches [~~Alignment of the Expiration and Renewal Dates of Existing Branches~~]. For branch offices in existence as of the effective date of this rule, branch office certificates of registration will expire and renew on the same date as the certificate of registration issued to the main office for that firm. All fees associated with the initial alignment of expiration and renewal dates for the branch office certificate of registration will prorate accordingly.

**§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 Insurance Code Chapter 6001 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. The application must also include written authorization by the applicant permitting the state fire marshal or the state fire marshal's 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 Insurance Code Chapter 6001 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's office.

(4) Applications for Type C certificates must be accompanied by a copy of the U.S. DOT letter registering the applicant's facility [~~which~~] and that [awards] issues a registration number to the facility.

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

(A) The state fire marshal must not issue a certificate of registration under this subchapter unless the applicant files a proof of liability insurance with the State Fire Marshal's Office ~~[state fire marshal's office]~~ proof of liability insurance. The insurance must include products and completed operations coverage.

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's Office ~~[state fire marshal's office]~~ the certificate of insurance as required.

(C) Evidence of public liability insurance, as required by Insurance Code §6001.154, must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state.

(D) If a certificate of registration is to be issued in the name of a corporation, the corporate name must be used on the applicable insurance forms. If the corporation is obtaining a certificate of registration in an assumed name, the insurance must be issued to the corporation doing business as (dba) the assumed name. Example: XYZ Corporation dba XXX Extinguisher Service.

(E) Insurance issued for a partnership must be issued to the name of the partnership or to the names of all the individual partners.

(F) Insurance for a proprietorship must be issued to the individual owner. If an assumed name is used, the insurance must be issued to the individual doing business as (dba) the assumed name. Example: William Jones dba XXX Extinguisher Service.

(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 a criminal history report from the Texas Department of Public Safety, and by all other information required by Insurance Code Chapter 6001 and this subchapter.

(2) Applications for Type A and Type K licenses must be accompanied by a written statement from the certificate holder (employer) certifying that the applicant meets the minimum requirements of §34.511(f)(4) of this title ~~[subchapter]~~ (relating to Fire Extinguisher Licenses) and is competent to install or service fixed systems.

(3) Applications for Type PL licenses must be accompanied by one of the following documents to evidence technical qualifications for a license:

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

(B) a copy of NICET's (National Institute for Certification in Engineering Technologies) notification letter regarding the applicant's successful completion of examination requirements for certification at Level III for Special Hazard Systems Layout or Special Hazard Suppression Systems.

(4) All applications must indicate if the individual is an employee or agent of the registered firm.

(A) If the individual is an employee of the registered firm, the State Fire Marshal's Office may request from the registered firm verification of employment of the individual.

(B) If the individual is an agent of the fire extinguisher firm, the State Fire Marshal's Office may request the firm to provide a letter or other document acceptable to the State Fire Marshal's Office issued by the firm's insurance company, verifying the policy number and that the acts of the individual are covered by the same insurance policy required by this subchapter to obtain the firm's registration. If required, the verifying document must be submitted to the State Fire Marshal's Office before a license will be issued or when there is a change in the licensee's registered firm. Unless otherwise required by the State Fire Marshal's Office, renewal of a license does not require insurance verification unless there has been a change in the insurance carrier.

(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 accompanied a criminal history report obtained through the Texas Department of Public Safety and by all other information required by Insurance Code Chapter 6001 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~~].

(d) Timely filed. A license or registration will 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 have 30 days from the time the applicant is notified by the State Fire Marshal's Office [~~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 Insurance Code Chapter 6001 and this subchapter:

(1) a letter of certification from the licensing entity of another state certifying the applicant holds a valid license in that state; and

(2) additional information from the state detailing material content of any required examination used to qualify for license, including NFPA or other standards, if applicable.

(f) Apprentice permits. Each person employed as an apprentice by a firm engaged in the business must make application for a permit on a form provided by the state fire marshal and accompanied by the required fee.

(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 State Fire Marshal's Office [department] of the initial application, be complete and accompanied by all other information required by Insurance Code Chapter 6001 and this subchapter, or a new application must be submitted, including all applicable fees.

#### **§34.517 Installation and Service.**

(a) The following requirements are applicable to all portable extinguishers.

(1) Portable extinguishers must be installed, serviced, and maintained in compliance with the manufacturer's instructions and with the applicable standards adopted in this subchapter except when the installation or servicing complies with a standard that has been adopted by the political subdivision in which the system is installed.

(2) A service tag certifying the work the licensee performed must be securely attached to the portable extinguisher on completion of the work.

(3) When requested in writing by the owner, a portable fire extinguisher of the type described in subparagraphs (A), (B), or ~~and~~ (C) of this paragraph may be serviced according to the requirement of this subchapter, regardless of whether it carries the label of approval or listing of a testing laboratory approved according to this subchapter.

(A) All portable fire extinguishers serviced according to the requirements of the United States Coast Guard and installed for use in foreign shipping vessels;

(B) all portable carbon dioxide fire extinguishers serviced according to the requirements of the United States Department of Transportation; or



(C) cartridge-actuated [~~cartridge-actuated~~] portable fire extinguishers used exclusively by employees of the firm owning the extinguishers.

(4) A licensee who services portable fire extinguishers according to paragraph (3) of this subsection, must comply with the following:

(A) The] back of the service tag must be plainly marked with the words "No Listing Mark."

(B) All missing markings, code symbols, instructions, and information required by the applicable performance standard and fire test standard specified in §34.507(1) of this title [~~subchapter~~] (relating to Adopted Standards), except for the approving or listing mark of the testing laboratory, must be affixed to each extinguisher in the form of a label designated in the standard.

(b) The following requirements are applicable to all fixed fire extinguisher systems.

(1) Fixed systems must be planned, installed, and serviced in compliance with the manufacturer's installation manuals and specifications or the applicable standards adopted in this subchapter, except when the installation or servicing complies with a standard that has been adopted by the political subdivision in which the system is installed.

(2) On completion of the installation of a pre-engineered fixed fire extinguisher system, a licensee authorized to certify pre-engineered fixed fire extinguishing systems under the provisions of this subchapter must place an installation label on the system to certify that the system was installed in compliance with the manufacturer's installation manuals and specifications or standards adopted by the commissioner in this subchapter. The licensee whose signature appears on the installation label must be present for the final test of the system prior to certification.

(3) On completion of the installation of a fixed fire extinguisher system other than a pre-engineered system, a Type A or Type PL licensee must place an installation label on the system to certify that the system was installed in compliance with the manufacturer's installation manuals and specifications, plans developed by a Type PL licensee or professional engineer, or standards adopted by the commissioner in this subchapter. The licensee whose signature appears on the installation label must be present for the final test of the system prior to certification.

(4) A service tag certifying the work the licensee performed must be securely attached to the system on completion of the work.

(c) Pre-engineered fixed fire extinguisher systems must be installed and serviced by a licensee authorized to install or service pre-engineered fixed fire extinguishing systems under the provisions of this subchapter.

(d) A pre-engineered fixed fire extinguisher system, except those covered by subsection (f) of this section, which ~~that~~ has been previously installed in one location may be reinstalled in another location if:

- (1) the system is of the size and type necessary to protect all hazards;
- (2) all parts and equipment, when installed, will function as designed by the manufacturer; and
- (3) the system complies ~~must comply~~ with all applicable adopted standards.

(e) Fixed fire extinguisher systems other than pre-engineered systems must be planned, installed, or serviced by a Type PL licensee or professional engineer. Installation and servicing of these ~~such a~~ systems ~~system~~ may also be performed by or supervised by a Type A licensee. An employee of the registered firm may install these ~~such~~ systems, under the direct supervision of a Type A or PL licensee, without obtaining a license or permit.

(f) All pre-engineered fixed fire extinguishing systems, installed or modified after July 1, 1996, according to NFPA 17 or NFPA 17A or NFPA 96 of the adopted standards~~,~~ for the protection of commercial cooking areas, must meet the minimum requirements of Underwriters Laboratories, Inc., Standard 300, "Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Area" (UL 300). After January 1, 2008, all existing pre-engineered fixed fire extinguishing systems, installed in accordance with ~~according to~~ NFPA 17 or NFPA 17A or NFPA 96 of the adopted standards, for the protection of commercial cooking areas, must meet the minimum requirements of UL Standard 300, "Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Area" (UL 300) or a red tag must be attached following the procedures in §34.521 of this title ~~subchapter~~ (relating to Red Tags).

(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 a fire sprinkler system other than the installation and servicing of mechanical or pneumatic detection or actuation devices in connection with the fire extinguishing system, the licensing requirements of the appropriate Insurance Code Chapters 6002 or 6003 must be satisfied.

(h) The fixed-temperature [~~fixed temperature~~] sensing elements of the fusible metal alloy type, replaced while servicing a kitchen hood fire extinguishing system, must bear the manufacturer's date stamp, which must be within one year of the date of the replacement. The year of manufacture, temperature, and quantity for new fusible links must be listed on the service tag under service performed.

(i) The disposable actuation cartridge, replaced while servicing a kitchen hood fire extinguisher system, must bear the date of replacement.

(j) After operating the pull pin or locking device during maintenance of a portable fire extinguisher, the flag of the new tamper seal must bear the year it was attached. The date must be imprinted or embossed on the flag of the new tamper seal. Dates applied with a marker are not allowed.

(k) All pre-engineered dry chemical fixed fire extinguishing systems, installed in new, remodeled, or relocated protected areas after January 1, 2006, must meet the minimum requirements of the second edition (1996) or more recent edition of Underwriters Laboratories, Inc., Standard 1254, Pre-engineered Dry Chemical Extinguishing System Units.

#### **§34.521 Red Tags.**

(a) If impairments exist that [~~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. The registered firm must notify the owner or the owner's representative immediately and must also notify the local authority having jurisdiction (AHJ) when available within 24 hours by phone, fax, or email describing the impairments or deficiencies. A copy of the written notice to the owner must be submitted to the AHJ within three 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 is replaced and the extinguisher or fire extinguisher system re-inspected [~~reinspected~~] and found to be in good operating condition. The local AHJ must be notified when corrections are made and a red tag is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the removal of the red tag.

(b) Red tags must be the same size as service tags.

(c) Red tags must bear the following information in the format of the tag shown in subsection (e) of this section:

- (1) "DO NOT REMOVE--EQUIPMENT IMPAIRED" (all capital letters, at least 10-point boldface type);
- (2) firm's name and address;
- (3) firm's certificate-of-registration number;
- (4) licensee's name and license number;
- (5) licensee's signature (a stamped signature is prohibited);
- (6) date;
- (7) list of impairments; and
- (8) name and address of owner or occupant.

(d) A red tag may be removed only by an authorized employee of a registered firm who has corrected the impairments and certified the service, an employee of the State Fire Marshal's Office [~~state fire marshal's office~~], or an employee of another governmental agency with regulatory authority.

(e) Red tag:

Figure: 28 TAC §34.521(e)

<p>○</p> <p><b>DO NOT REMOVE EQUIPMENT IMPAIRED</b></p> <p><i>Name, Address, &amp; Telephone Number of Fire Protection Firm</i></p> <p>_____ Certificate of Registration Number</p> <p>_____ Name of Licensee</p> <p>_____ Signature</p> <p>_____ License Number</p> <p>_____ Date</p>	<p>○</p> <p>OWNER'S NAME and ADDRESS:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>LIST of IMPAIRMENTS:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
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**§34.524 Military Service Members, Military Veterans, or Military Spouses.**

(a) Waiver of licensed application and examination fees. The department will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation will be credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years' additional time to complete any continuing education requirements and any other requirements related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member, military veteran, or military spouse that:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

#### **SUBCHAPTER F. FIRE ALARM RULES**

**28 TAC §§34.609, 34.615, 34.616, 34.622 – 34.624, 34.631**

**STATUTORY AUTHORITY.** The amendment is proposed under Government Code §417.005 and §417.008, and Insurance Code §§6002.051, 6002.052, 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 §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 §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 §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.** Insurance Code Chapter 6002 is implemented by this rule.

**§34.609 Approved Testing Organization.** The commissioner approves the following testing organizations as a testing standards organization for testing license applicants:

(1) National Institute for Certification in Engineering Technologies (NICET); and ~~[as a testing standards organization for testing license applicants.]~~

(2) Electronic Security Association (ESA)

**§34.613. Applications.**

(a) Approvals and certificates of registration ~~[Certificates of Registration]~~.

(1) Applications for approvals, certificates, and branch office certificates must be submitted on the forms adopted by reference in §34.630 of this title ~~[subchapter]~~ (relating to Application and Renewal Forms) and be accompanied by all fees, documents, and information required by ~~[the]~~ Insurance Code Chapter 6002 and this subchapter. An application will not be deemed complete until all required forms, fees, 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 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. The application must also include written authorization by the applicant permitting the state fire marshal or the state fire marshal's representative ~~[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 6002 and this subchapter.

(3) For corporations, the application must also include the name of each shareholder owning more than 25 percent of the shares issued by the corporation; the corporate taxpayer identification number; the charter number; a copy of 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; and a copy of the corporation's current franchise tax certificate of good standing issued by the comptroller.

(4) A registered firm must employ at least one full-time licensed individual at each location of a main or branch office.

(5) Insurance is required as follows.

(A) The state fire marshal will not issue a certificate of registration under this subchapter unless the applicant files with the State Fire Marshal's Office evidence of an acceptable general liability insurance policy.

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's Office a certificate of insurance identifying the insured and the exact nature of the business insured. In identifying the named insured, the certificate of insurance must include either an assumed name or the name of the corporation; [;] partners, if any; [;] or sole proprietor, if applicable.

(6) A firm billing a customer for monitoring is engaged in the business of monitoring and must comply with the insurance requirements of this subchapter for a monitoring firm.

(7) Applicants for a certificate of registration who engage in monitoring must provide the specific business locations where monitoring will take place and the name and license number of the fire alarm licensees at each business location. A fire alarm licensee may not serve in this capacity for a registered firm other than the firm applying for a certificate of registration. In addition, the applicants must provide evidence of listing or certification as a central station by a testing laboratory approved by the commissioner and a statement that the monitoring service is in compliance with NFPA 72 as adopted in §34.607 of this title [subchapter] (relating to Adopted Standards).

(8) Applicants for a certificate of registration--single station must provide a statement, signed by the sole proprietor, a partner of a partnership, or by an officer of the corporation, indicating that the firm exclusively engages in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining single station devices.

(b) Fire alarm licenses [~~Alarm Licenses~~].

(1) 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, a criminal history report from the Texas Department of Public Safety, and information required by Insurance Code Chapter 6002 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 and the Fire Alarm Rules as designated by the State Fire Marshal's Office. The qualifying test, given as part of the training for residential fire alarm technician license, must include questions regarding Insurance Code Chapter 6002 and the Fire Alarm Rules.

(2) Applicants for fire alarm technician licenses must:

(A) furnish notification from NICET (National Institute for Certification in Engineering Technologies) or ESA (Electronic Security Association), confirming the applicant's successful completion of the test requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(3) Applicants for a fire alarm monitoring technician license must successfully complete a technical qualifying test as designated by the State Fire Marshal's Office, or provide evidence of current registration in Texas as a registered engineer.

(4) Applicants for a residential fire alarm superintendent (single station) license must successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(5) Applicants for a residential fire alarm superintendent license must:

(A) furnish notification from NICET or ESA confirming the applicant's successful completion of the test requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(6) Applications for a fire alarm planning superintendent license must be accompanied by one of the following documents as evidence of technical qualifications for a license:

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

(B) a copy of NICET's or ESA notification letter confirming the applicant's successful completion of the test requirements for NICET or ESA certification at Level III for fire alarm systems.

(7) An applicant for a residential fire alarm technician license must provide evidence of the applicant's successful completion of the required residential fire alarm technician training course from a training school approved by the State Fire Marshal's Office.

(c) Instructor and training school approvals [~~Training School Approvals~~].

(1) Instructor approvals. An applicant for approval as an instructor must:

(A) hold a current fire alarm planning superintendent~~[-s]~~ license, residential fire alarm superintendent license, or fire alarm technician license issued by the State Fire Marshal's Office;

(B) submit a completed Instructor Approval Application, Form No. SF247, signed by the applicant, that is accompanied by all fees; and

(C) furnish written documentation of a minimum of three years of experience in fire alarm installation, service, or monitoring of fire alarm systems~~[,]~~ unless the applicant has held a fire alarm planning superintendent~~[-s]~~ license, residential fire alarm superintendent license, or fire alarm technician license for three or more years.

(2) Training school approvals.

(A) An applicant for approval of a training school must submit a completed Training School Approval Application, Form No. SF 246, to the State Fire Marshal's Office. To be complete, the application must be:

(i) signed by the applicant, the sole proprietor, by each partner of a partnership, or by an officer of a corporation or organization as applicable;

(ii) accompanied by a detailed outline of the proposed subjects to be taught at the training school and the number and location of all training courses to be held within one year following approval of the application; and

(iii) accompanied by all required fees.

(B) After review of the application for approval for a training school, the state fire marshal will approve or deny the application within 60 days following receipt of the materials. A letter of denial will state the specific reasons for the denial. An applicant that is denied approval may reapply at any time by submitting a completed application that includes the changes necessary to address the specific reasons for denial.

(d) Renewal applications [~~Applications~~].

(1) In order to be complete, renewal applications for certificates, licenses, instructor approvals, and training school approvals must be submitted on the forms adopted by reference in

§34.630 of this title ~~[subchapter]~~ and be accompanied by all fees, documents, a criminal history report from the Texas Department of Public Safety, and information required by the Insurance Code Chapter 6002 and this subchapter. A complete renewal application deposited with the United States Postal Service is deemed to be timely filed, regardless of actual date of delivery, when its envelope bears a postmark date that [which] is before the expiration of the certificate or license being renewed.

(2) A licensee with an unexpired license who is not employed by a registered firm at the time of the licensee's renewal may renew that license; however, the licensee may not engage in any activity for which the license was granted until the licensee is employed and qualified by a registered firm.

(e) Complete applications ~~[Applications]~~. The application form for a license, registration, instructor approval, and training school approval must be accompanied by the required fee and must, within 180 days of receipt by the State Fire Marshal's Office of the initial application, be complete and accompanied by all other information required by Insurance Code Chapter 6002 and this subchapter, or a new application must be submitted including all applicable fees.

#### **§34.615 Test**

(a) Each applicant for a license must pass the appropriate tests. Tests may be supplemented by practical tests or demonstrations necessary to determine the applicant's knowledge and ability.

(1) The license test will include a section on this subchapter, ~~[and the]~~ Insurance Code Chapter 6002, and a technical qualifying test to be conducted by:

- (A) the State Fire Marshal's Office;
- (B) NICET (National Institute for Certification in Engineering Technologies); ~~[or]~~
- (C) ESA (Electronic Security Association); or
- (D) an outsource testing service.

(2) The standards used in tests will be those adopted in §34.607 of this title (relating to Adopted Standards).

(b) Examinees who fail the test must file a retest application accompanied by the required fee in order to be retested on the next scheduled test date.

(c) A person whose license has been expired for two years or longer who makes application for a new license must take and pass another test. No test is required for a licensee whose license is renewed within two years of expiration.

(d) An applicant may only schedule each type of test three times within a 12-month ~~[twelve-month]~~ period.

(e) 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.

### **§34.616 Sales, Installation, and Service**

(a) Residential alarm (single station) ~~[Alarms (Single Station)]~~.

(1) Registered firms may employ persons exempt from the licensing provisions of ~~[the]~~ Insurance Code §6002.155(10) to sell, install, and service residential, single station alarms. Exempted persons must be under the supervision of a residential fire alarm superintendent (single station), residential fire alarm superintendent, or fire alarm planning superintendent.

(2) Each registered firm that employs persons exempt from licensing provisions of ~~[the]~~ Insurance Code §6002.155(10) is required to maintain documentation to include lesson plans and annual test results demonstrating competency of those ~~[said]~~ employees regarding the provisions of ~~[the]~~ Insurance Code Chapter 6002, adopted standards, and this subchapter applicable to single station devices.

(b) Fire detection and fire alarm devices or systems other than residential single station ~~[Detection and Fire Alarm Devices or Systems Other than Residential Single Station]~~.

(1) The installation of all fire detection and fire alarm devices or systems, including monitoring equipment subject to ~~[the]~~ Insurance Code Chapter 6002 must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent, or a fire alarm planning superintendent~~[,]~~ for the work permitted by the license. The licensee responsible for the planning of all fire detection and fire alarm devices or systems, including monitoring equipment subject to Insurance Code Chapter 6002, must be licensed under the ACR number of the primary registered firm. The certifying licensee must be licensed under the ACR number of the primary registered firm and must be present for the final acceptance test prior to certification.

(2) The maintenance or servicing of all fire detection and fire alarm devices or systems must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent or a fire alarm planning

superintendent, for the work permitted by the license. The licensee attaching a label must be licensed under the ACR number of the primary registered firm.

(3) If the installation or servicing of a fire alarm system also includes installation or servicing of any part of a fire protection sprinkler system ~~[and]~~ or a fire extinguisher system other than inspection and testing of detection or supervisory devices, the licensing requirements of ~~[the]~~ Insurance Code Chapters 6001 and 6003 must be satisfied, as appropriate.

(4) The planning, ~~[and]~~ installation, and servicing of fire detection or fire alarm devices or systems, including monitoring equipment, must be performed according to standards adopted in §34.607 of this title ~~[chapter]~~ (relating to Adopted Standards) except when the planning and installation complies with a more recent edition of the standard that has been adopted by the political subdivision in which the system is installed ~~[a more recent edition of an adopted standard or a Tentative Interim Amendment published as effective by the NFPA]~~.

(5) Fire alarm system equipment replaced in the same location with the same or similar electrical and functional characteristics and listed to be compatible with the existing equipment, as determined by a fire alarm planning superintendent, may be considered repair. The equipment replaced must comply with the current adopted standards but the entire system is not automatically required to be modified to meet the applicable adopted code. The local AHJ ~~[authority having jurisdiction]~~ must be consulted to determine whether to update the entire system to comply with the current code and if plans or a permit is required prior to making the repair.

(6) On request of the owner of the fire alarm system, a registered firm must provide all passwords, including those for the site-specific software, but the registered firm may refrain from providing that information until the system owner signs a liability waiver provided by the registered firm.

(c) Monitoring requirements ~~[Requirements]~~.

(1) A registered firm may not monitor a fire alarm system located in the State of Texas for an unregistered firm.

(2) A registered firm may not connect a fire alarm system to a monitoring service unless:

(A) the monitoring service is registered under Insurance Code Chapter 6002 or is exempt from the licensing requirements of that chapter; and

(B) the monitoring equipment being used is in compliance with Insurance Code §6002.25.

(3) A registered firm must employ at least one technician licensee at each central station location. Each dispatcher at the central station is not required to be a fire alarm technician licensee.

(4) A registered firm subcontracting monitoring services to another registered firm must advise the monitoring services subscriber of the identity and location of the registered firm actually providing the services unless the registered firm's contract with the subscriber contains a clause giving the registered firm the right, at the registered firm's sole discretion, to subcontract any or all of the work or service.

(5) A registered monitoring firm, reporting an alarm or supervisory signal to a municipal or county emergency services center, must provide, at a minimum, the type of alarm, address of alarm, name of subscriber, dispatcher's identification, and call-back phone number. If requested, the firm must also provide the name, registration number, and call-back phone number of the firm contracted with the subscriber to provide monitoring service if other than the monitoring station.

(6) If the monitoring service provided under this subchapter is discontinued before the end of the contract with the subscriber, the monitoring firm, central station, or service provider must notify the owner or owner's representative of the monitored property and the local AHJ [~~authority having jurisdiction~~] a minimum of seven days before terminating the monitoring service. If the monitored property is a one- or two-family dwelling [~~two-family dwelling~~], notification of the local AHJ [~~authority having jurisdiction~~] is not required.

(d) Record keeping. The firm must keep complete records of all service, maintenance, and testing on the system for a minimum of two years. The records must be available for examination by the state fire marshal or the state fire marshal's representative.

#### **§34.622 Inspection/Test Labels.**

(a) After the inspection and testing of a fire alarm system, a fire alarm inspection/test label must be completed in detail and affixed to either the inside or outside of the control panel cover or, if the system has no panel, in a permanent location. The signature of the licensee on the inspection/test label certifies that the inspection and tests performed comply [~~complies~~] with requirements of the adopted standards.

(b) If any service or maintenance is performed under [~~pursuant to~~] the inspection or test, a service label, in addition to the inspection/test label, must [~~shall~~] be completed and attached according to the procedures in this section.

(c) For new installation, an inspection/test label may only be applied after the system has been accepted by the local AHJ [authority having jurisdiction].

(d) [(e)] If, during any inspection or test, ~~[it is observed that]~~ the system does not comply with applicable standards adopted at the time the system was installed, has a fault condition, or is impaired from normal operation, the owner or the owner's representative and the local AHJ [authority having jurisdiction] must be notified of the condition and the licensee must attach, in addition to the inspection/test label, the appropriate yellow or red label, in accordance with the procedures in this section.

(e) The local AHJ must be notified when the fault or impairment has been corrected.

(f) [(d)] Inspection/test labels must [shall] remain in place for at least five years, after which ~~[time]~~ they may be removed by a licensed employee or agent of a registered firm. An employee of the State Fire Marshal's Office or an authorized representative of a governmental agency with appropriate regulatory authority may remove excess labels at any time.

(g) [(e)] The inspection/test label must be blue ~~[in color]~~ with printed black lettering.

(h) [(f)] The inspection/test label must be approximately three inches high and three inches wide and must have an adhesive on the back that allows for label removal.

(i) [(g)] Approximately a half-inch [1/2-inch] of the adhesive on the top back of the label should be used to attach the label over the previous inspection/test label to permit viewing of the previous label and the maintaining of a brief history.

(j) [(h)] Inspection/test labels must contain the following information in the format of the inspection/test label, as set forth in subsection (k) [(i)] of this section:

- (1) DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL (all capital letters in at least 10-point bold face type);
- (2) INSPECTION/TEST RECORD (all capital letters in at least 10-point bold face type);
- (3) the registered firm's name, address, telephone number (either main office or branch office) and certificate of registration number of the firm performing the inspection/test;
- (4) the date of the inspection performed, the licensee's signature (a stamped signature is prohibited) and license number;
- (5) the type of inspection/test performed to be marked, new installation, semi-annual, quarterly or annual;
- (6) the last date of sensitivity test, if known; and

(7) the status after the inspection/test if ~~if~~ acceptable or if yellow label attached, or if red label attached.

(k) ~~(i)~~ Inspection/test label:

Figure: 28 TAC §34.622(k) ~~[Figure: 28 TAC §34.622(i)]~~

<b>DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL</b> (for at least five years) <b>INSPECTION/TEST RECORD</b>		
<i>Registered Firm's Name</i> <i>Street Address, City, State, Zip</i> <i>Phone Number</i> <b>ACR-</b> (number)		
<hr/>		
Name and Address of the Business		
<hr/>		
Date	- Licensee Signature	- License #
<i>Type of Inspection/Test Performed - NFPA 72</i>		
<input type="checkbox"/> New Installation	<input type="checkbox"/> Quarterly	
<input type="checkbox"/> Semi Annual	<input type="checkbox"/> Annual	
Last Date of Sensitivity Test, if known		
<hr/>		
<i>Status After Inspection/Test</i>		
<input type="checkbox"/> Acceptable	<input type="checkbox"/> Yellow Label	<input type="checkbox"/> Red Label
	<i>(attached)</i>	<i>(attached)</i>

**§34.623 Yellow Labels.**

(a) If, after any service, inspection, or test, a system does not comply with applicable codes and adopted standards or is not being tested or maintained according to 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) The signature of the licensee on a yellow label certifies that the conditions listed on the label cause the system to be out of compliance with applicable codes and standards.

(c) After attaching a yellow label, the licensee or the registered firm must notify the property owner, occupant or their representative, and the local AHJ [~~authority having jurisdiction~~] in writing indicating the conditions with which the system does not comply with the applicable codes and standards. The notification must be postmarked, emailed, faxed or hand delivered within five business days of the attachment of the yellow label.

(d) Yellow labels must remain in place until the conditions are corrected and a service label is attached certifying that the corrections were made. The yellow label may be removed by a licensed employee or agent of a registered firm, an employee of the State Fire Marshal's Office, or an authorized representative of a governmental agency with appropriate regulatory authority. The local AHJ must be notified when corrections are made and a yellow label is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the removal of the yellow label.

(e) Yellow labels must be approximately three inches high [~~in height~~] and three inches wide [~~in width~~] and must have an adhesive on the back that allows for label removal.

(f) Labels must be yellow [~~in color~~] with printed black lettering.

(g) Yellow labels must bear the following information in the format of the label, as set forth in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters in at least 10-point bold face type);

(2) "SYSTEM DOES NOT COMPLY WITH APPLICABLE CODES & STANDARDS" (all capital letters in at least 10-point bold face type);

(3) the registered firm's name, address, telephone number (either main office or branch office) and certificate of registration number of the firm attaching the yellow label;

(4) the date the label was attached, the licensee's signature (a stamped signature is prohibited) and license number; and

(5) a list of conditions resulting in the yellow label;

(h) Yellow label:

Figure: 28 TAC §34.623(h)  
(no change)

### **§34.624 Red Labels**

(a) If, after any service, inspection or test, a system or any part thereof is inoperable, has a fault condition, or is impaired from normal operation, excluding the area(s) of a building under construction, a completed red 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) The signature of the licensee on a red label certifies that the conditions listed on the label have caused the system to be inoperable, have a fault condition, or be impaired from normal operation.

(c) If the system is inoperable, immediately after attaching a red label<sup>[,]</sup> the licensee or the registered firm must orally notify the property owner, occupant or their representative<sub>2</sub> and the local AHJ, ~~[authority having jurisdiction]~~ where available, of all impairments and provide a written notification, emailed ~~[e-mailed]~~, faxed or hand delivered within the next business day of the attachment of the red label. If the system has a fault condition or is impaired from normal operation, after attaching a red label, the licensee or the registered firm must notify the property owner, occupant or their representative<sub>2</sub> and the local AHJ ~~[authority having jurisdiction]~~ in writing indicating the condition(s). The written notification must be postmarked, emailed ~~[e-mailed]~~, faxed or hand delivered within three business days of the attachment of the red label.

(d) Red labels must ~~[shall]~~ remain in place until the conditions are corrected and a service label is attached certifying that the corrections were made. The red label may be removed by a licensed employee or agent of a registered firm, an employee of the State Fire Marshal's Office<sub>2</sub> or an authorized representative of a governmental agency with appropriate regulatory authority. The local AHJ must be notified when corrections are made and a red label is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the removal of the red label.

(e) Red labels must be approximately three inches high ~~[in height]~~ and three inches wide ~~[in width]~~ and must have an adhesive on the back that allows for label removal.

(f) Labels must be red ~~[in color]~~ with printed black lettering.

(g) Red labels must bear the following information in the format of the label as shown in subsection (h) of this section:

- (1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all in capital letters, at least 10-point bold face type);
- (2) status of the system to be marked, inoperable or impaired or fault;
- (3) the registered firm's name, address, telephone number (either main office or branch office) and certificate of registration number of the firm attaching the red label;
- (4) the date the label was attached, the licensee's signature (a stamped signature is prohibited) and license number; and
- (5) a list of conditions resulting in the red label;

(h) Red label:

Figure: 28 TAC §34.624(h)

(no change)

**§34.631 Military Service Members, Military Veterans, or Military Spouses.**

(a) Waiver of licensed application and examination fees. The department will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation are credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years additional time to complete any continuing education requirements; and any other requirement related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member, military veteran, or military spouse that:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

## **SUBCHAPTER G. FIRE SPRINKLER RULES**

### **28 TAC §§34.713, 34.716, 34.721, 34.722, and 34.726**

**STATUTORY AUTHORITY.** The amendment is proposed under Government Code §417.005, and Insurance Code §§6003.051, 6003.052, and 6003.054, 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 must 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 §6003.051(a) specifies that the department administers 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 must 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.

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.** Insurance Code Chapter 6003 is implemented by this rule.

**§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 Insurance Code Chapter 6003 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, Business and Commerce Code Chapter 71. The application must also include written authorization by the applicant that permits ~~[permitting]~~ the state fire marshal or the state fire marshal's 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 Insurance Code Chapter 6003 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.

(4) An applicant must not designate as its full-time responsible managing employee (RME) a person who is the designated full-time RME of another registered firm.

(5) A registered firm must not conduct any business as a fire protection sprinkler contractor until a full-time RME, as applicable to the business conducted, is employed. An individual with an RME-General Inspector's license does not constitute compliance with the requirements of this subsection.

(6) A certificate of registration may not be renewed unless the firm has at least one licensed RME as a full-time employee before the expiration of the certificate of registration to be renewed. If an applicant for renewal does not have an RME as a full-time employee as a result of death

or disassociation of an RME within 30 days preceding the expiration of the certificate of registration, the renewal applicant must inform the license section of the State Fire Marshal's Office [~~state fire marshal's office~~] of the employment of a full-time RME before the certificate of registration will be renewed.

(7) Insurance required.

(A) The state fire marshal must not issue a certificate of registration under this subchapter unless the applicant files with the state fire marshal's office a proof of liability insurance. The insurance must include products and completed operations coverage.

(B) Each registered firm must maintain in force and on file in the State Fire Marshall's Office [~~state fire marshal's office~~] the certificate of insurance identifying the insured and the exact nature of the business insured. In identifying the named insured, the certificate of insurance must include either an assumed name or the name of the corporation; partners, if any; or sole proprietor, as applicable. Failure to do so will be cause for administrative action.

(C) Evidence of public liability insurance, as required by Insurance Code §6001.152, 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 Insurance Code Chapter 981, as contemplated by Insurance Code §6001.152(c).

(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, along with a criminal history report from the Texas Department of Public Safety, and accompanied by all other information required by Insurance Code Chapter 6003 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 (National Institute for Certification in Engineering Technologies) notification letter confirming the applicant's successful completion of the test requirements for certification at Level III for water-based fire protection 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 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) proof of license as an "RME-General"; or]~~

~~[(II) a copy of NICET's notification letter confirming the applicant's successful completion of the test requirements for certification at Level II for fire protection automatic sprinkler system layout and evidence of a current Texas master plumber license; or]~~

~~[(III)] a copy of NICET's notification letter confirming the applicant's successful completion of the test requirements for certification at Level II for fire protection automatic sprinkler system layout and evidence of current employment by a registered fire sprinkler contractor.~~

(C) RME-Underground Fire Main:

(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 ~~[%]~~ grade on the test covering underground fire mains for fire protection sprinkler systems, administered by the State Fire Marshal's Office or an outsource testing service.

(D) RME-General Inspector:

(i) a copy of NICET's notification letter confirming the applicant's successful completion of the examination requirements for certification at Level II for Inspection and Testing of Water-Based Systems; and

(ii) evidence of current employment by a registered fire protection sprinkler system contractor.

(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 Insurance Code Chapter 6003 and this subchapter, or a new application must be submitted including all applicable fees.

**§34.716 Installation, Maintenance, and Service.**

(a) All fire protection sprinkler systems installed under Insurance Code Chapter 6003 must be installed under the supervision of the appropriate licensed responsible managing employee.

(1) An ["]RME-General["] may supervise the installation of any fire protection sprinkler system including one- and two-family dwellings.

(2) An ["]RME-Dwelling["] may only supervise the installation of a fire protection sprinkler system in one- and two-family dwellings.

(3) An ["]RME-Underground Fire Main["] may only supervise the installation of an assembly of underground piping or conduits[,] that conveys water with or without other agents[,] and used as an integral part of any type of fire protection sprinkler system.

(b) On completion of the installation, the licensed RME [~~responsible managing employee~~] type G, D<sub>1</sub> or U (as applicable) must have affixed a contractor's material and test certificate for aboveground 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 be obtained from the State Fire Marshal's Office. The certificate must be distributed as follows:

(1) original copy kept at the site after completion of the installation;

(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 be available for examination by the state fire marshal or the state fire marshal's representative on request. The certificates must be retained for the life of the system; and

(3) third copy to be sent to the local AHJ [~~authority having jurisdiction~~] within 10 days after completion of the installation.

(c) Service, maintenance, or testing, when conducted by someone other than an owner, must be conducted by a registered firm and in compliance with the appropriate adopted standards. The inspection, test, and maintenance service of a fire protection sprinkler system, except in a one- and two-family dwelling, must be performed by an individual holding a current RME-General Inspector or RME-General license. A visual inspection not accompanied by service, maintenance, testing, or certification does not require a certificate of registration.

(d) The firm must keep complete records of all service, maintenance, testing, and certification operations. The records must be available for examination by the state fire marshal or the state fire marshal's representative.

(e) All vehicles regularly used in service, maintenance, testing, or certification activities must prominently display the company name, telephone number, and certificate of registration number. The



numbers and letters must be at least one-inch high [~~one inches in height~~] and must be permanently affixed or magnetically attached to each side of the vehicle in a color contrasting with the background color of the vehicle. The certificate of registration number must be designated in the following format TX: SCR-number.

(f) 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 by the firm.

(g) The planning of an automatic fire protection sprinkler system must 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 performed in accordance [~~accord~~] with the minimum requirements of the applicable adopted standards in §34.707 of this title (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 applicable NFPA standards, is not being tested or maintained according to adopted standards, or found to contain equipment that has been recalled by the manufacturer, but the noncompliance or recalled equipment does not constitute an emergency impairment, 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 to indicate that corrective action is necessary.

(b) The signature of the service person or inspector on a yellow tag certifies the conditions [~~listed on the tag~~] that caused [~~cause~~] the system to be out of compliance with NFPA standards.

(c) After attaching a yellow tag, the service person or inspector must notify the building owner or the building owner's representative and the local AHJ [~~authority having jurisdiction~~] in writing of all noncompliant conditions. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the attachment of the yellow tag.

(d) A yellow tag may only be removed by an authorized employee of a registered firm or an authorized representative of a governmental agency with appropriate regulatory authority after the employee or representative completes and attaches a service tag that indicates the noncompliant

conditions were corrected. The local AHJ must be notified when corrections are made and a yellow tag is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the date on which the yellow tag is removed.

(e) Yellow tags may be printed for multiple years.

(f) Yellow tags must be the same size as service tags, and must contain the following information in the format of the tag as set forth in subsection (g) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address, and phone number;

(3) firm's certificate of registration number;

(4) license number of RME;

(5) printed name of service person or inspector;

(6) signature of service person or inspector;

(7) day, month, and year (to be punched);

(8) name and address of owner or occupant;

(9) building number, location, or system number; and

(10) list of items not compliant with NFPA standards.

(g) Sample yellow tag:

Figure: 28 TAC §34.721(g):

(no change)

### **§34.722 Red Tags.**

(a) If a fire protection sprinkler system has an impairment which constitutes an emergency impairment, as defined in the adopted edition of NFPA 25, the service person or inspector must ~~shall~~ complete and attach a red tag to the respective riser of each system to indicate corrective action is necessary.

(b) Immediately after attaching a red tag, the inspector or service person must orally notify the building owner or the building owner's representative and, where available, the local AHJ ~~[authority having jurisdiction]~~ of all impairments. The inspector or service person must also provide written notice to the building owner or the building owner's representative and, where available, the local AHJ

~~[authority having jurisdiction]~~ of all impairments, and the written notice must be postmarked, emailed ~~[e-mailed]~~, faxed, or hand delivered within 24 ~~[twenty-four]~~ hours of the attachment of the red tag.

(c) The signature of the service person or inspector on the red tag certifies the impairments listed constitute an emergency impairment.

(d) A red tag may only be removed by an authorized employee of a registered firm or an authorized representative of a governmental agency with appropriate regulatory authority after the employee or representative completes and attaches a service tag that indicates the impaired conditions were corrected. The local AHJ must be notified when corrections are made and a red tag is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the removal of the red tag.

(e) Red tags may be printed for a multiple period of years.

(f) Red tags must ~~[shall]~~ be the same size as service tags.

(g) Red tags must ~~[shall]~~ contain the following information in the format of the sample tag as set forth in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF THE TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address, and phone number;

(3) firm's certificate of registration number;

(4) license number of RME;

(5) printed name of service person or inspector;

(6) signature of service person or inspector;

(7) day, month, and year (to be punched);

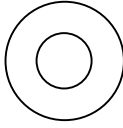
(8) name and address of owner or occupant;

(9) building number, location, or system number; and

(10) list of emergency impairments.

(h) Sample red tag:

Figure: 28 TAC §34.722(h) ~~[Figure: 28 TAC §34.722(h)]~~



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

**RED TAG**

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		
16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	

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

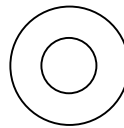
\_\_\_\_\_  
RME's License Number

\_\_\_\_\_  
Printed name of service  
person

\_\_\_\_\_  
Signature of authorized  
serviceperson / inspector

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

2020	REC
2020	INS
2019	SC
2019	FF
2018	AL
2018	TH
2017	HI
2017	MA
2016	AP
2016	MA
2015	FF
2015	TA



If the system impairments constitute an "emergency" impairment as defined in NFPA 25, attached this red tag to the applicable system riser. 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 Emergency Impairments

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**§34.726 Military Service Members, Military Veterans, or Military Spouses.**

(a) Waiver of licensed application and examination fees. The department will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation are credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years additional time to complete any continuing education requirements; and any other requirement related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member, military veteran, or military spouse that:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

**SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS**  
**28 TAC §34.808, 34.818, 34.823, 34.832, and 34.833**

**STATUTORY AUTHORITY.** The amendment is proposed 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 must 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 must 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 must 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.

**CROSS-REFERENCE TO STATUTE.** Occupations Code Chapter 2154 is implemented by this rule.

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

(1) **Acceptor building**--A building that ~~which~~ is exposed to embers and debris emitted from a donor building.

(2) **Agricultural, industrial, or wildlife control permits**--Permits authorizing the holder to use Fireworks 1.3G for specified purposes in these business activities.

(3) **Bare wiring**--Any electrical cable or cord any part of which has the insulating cover broken or removed, exposing bare wire.

(4) **Barricade**--A natural or artificial barrier that will effectively screen a magazine, building, railway, or highway from the effects of an explosion in a magazine or building containing explosives. It must ~~shall~~ be of a ~~such~~ height that a straight line from the top of any side wall of a building, or magazine containing explosives to the eave line of any magazine, or building, or to a point 12 feet above the center of a railway or highway, will pass through such natural or artificial barrier.

(5) **Barricade, artificial**--An artificial mound or revetted wall of earth of a minimum thickness of one foot.

(6) **Barricade, natural**--Natural features of ground, such as hills, or timber of sufficient density that the surrounding exposures that require protection cannot be seen from the magazine or building containing explosives when the trees are bare of leaves.

(7) **Barricade, screen type**--Any of several barriers for containing embers and debris from fires and deflagrations in process buildings that could cause fires and explosions in other buildings. Screen type barricades must ~~shall~~ be constructed of metal roofing, inch or a half-inch ~~1/2-inch~~ mesh screen or equivalent material. A screen-type ~~screen-type~~ barricade extends from the floor level of the donor building to a ~~such~~ height that a straight line from the top of any side wall of the donor building to the eave line of the acceptor building will go through the screen at a point not less than five feet from the top of the screen. The top five feet of the screen are inclined at an angle of between 30 and 45 degrees, toward the donor building.

(8) **Breakaway construction**--A general term that ~~which~~ applies to the principle of purposely providing a weak wall so that the explosive effects can be directed and minimized. The term "weak wall" as used in these sections refers to a weak wall and roof, or weak roof. The term "weak wall"

is used in a relative sense as compared to the construction of the entire building. The design strength of the weak wall will vary as to the building construction, as well as to the type and quantity of explosive or pyrotechnic materials in the building. The materials used for weak wall construction are usually light gauge metal, plywood, hardboard, or equivalent lightweight material, and the material is purposely selected to minimize the danger from flying missiles. The method [~~Method~~] of attachment of the weak wall must [~~shall~~] be constructed [~~such as~~] to aid the relief of blast pressure and fireball.

(9) Bulk storage, Fireworks 1.4G--The storage of 500 or more cases of Fireworks 1.4G.

(10) Business--The manufacturing, importing, distributing, jobbing, or retailing of permissible fireworks;[;] acting as a pyrotechnic operator;[; the] conducting [~~of~~] multiple public fireworks displays;[;] or using fireworks for agricultural, wildlife, or industrial purposes.

(11) Buyer--Any person or group of persons offering an agreed upon sum of money or other considerations to a seller of [~~sales person for~~] fireworks.

(12) CFR--The Code of Federal Regulations, a codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government. The Code is divided into 50 titles. The titles are divided into chapters, which are further subdivided into parts.

(13) Commissioner--The Commissioner of Insurance.

(14) Department--The Texas Department of Insurance.

(15) Donor building--A process building from which embers and burning debris are emitted during a fire.

(16) DOT--The United States Department of Transportation.

(17) Fireworks plant--All lands, and building thereon, used for or in connection with the manufacture processing of fireworks. It includes storage facilities used in connection with plant operation.

(18) Firm--A person, partnership, corporation, or association.

(19) Flame effects operator--An individual who, by experience, training, or examination[;] has demonstrated the skill and ability to safely assemble, conduct, or supervise flame effects in accordance with §2154.253, Occupations Code.

(20) Generator--Any device driven by an engine and powered by gasoline or other fuels to generate electricity for use in a retail fireworks stand.

(21) Highway--The paved surface<sup>[7]</sup> or, where unpaved, the edge of a graded or maintained public street, public alley, or public road.

(22) Indoor retail fireworks site--A retail fireworks site other than a retail stand that ~~which~~ sells Fireworks 1.4G from a building or structure.

(23) Immediate family member--the spouse, child, sibling, parent, grandparent, or grandchild of an individual. The term includes a stepparent, stepchild, and stepsibling and a relationship established by adoption.

(24) ~~(23)~~ License--The license issued by the state fire marshal to a person or a fireworks firm authorizing same to engage in ~~the~~ business.

(25) ~~(24)~~ Licensed firm--A person, partnership, corporation, or association holding a current license.

(26) ~~(25)~~ Magazine--Any building or structure, other than a manufacturing building, used for storage of Fireworks 1.3G.

(27) ~~(26)~~ Manufacturing--The preparation of fireworks mixes and the charging and construction of all unfinished fireworks, except pyrotechnic display items made on site by qualified personnel for immediate use when the ~~such~~ operation is otherwise lawful.

(28) ~~(27)~~ Master electric switch--Manually operated device designed to interrupt the flow of electricity.

(29) ~~(28)~~ Mixing building--A manufacturer's building used for mixing and blending pyrotechnic composition, excluding wet sparkler mixes.

(30) ~~(29)~~ Multiple public display permit--A permit issued for the purpose of conducting multiple public displays at a single approved location.

(31) ~~(30)~~ Nonprocess ~~Non-process~~ building--Office buildings, warehouses, and other fireworks plant buildings where no explosive compositions are processed or stored. A finished firework is not considered an explosive composition.

(32) ~~(31)~~ Open flame--Any flame that is exposed to direct contact.

(33) ~~(32)~~ Outsource testing service--The testing service selected by the state fire marshal to administer certain designated qualifying tests for licenses under this subchapter.

(34) ~~(33)~~ Process building--A manufacturer's mixing building or any building in which pyrotechnic or explosive composition is pressed or otherwise prepared for finishing and assembling.



(35) [(34)] Public display permit--A permit authorizing the holder to conduct a public fireworks display using Fireworks 1.3G, on a single occasion, at a designated location, and during a designated [time] period.

(36) [(35)] Retail fireworks site--The structure from which Fireworks 1.4G are sold and in which Fireworks 1.4G are held pending retail sale, and other structures, vehicles, or surrounding areas subject to the care and control of the retailer, owner, supervisor, or operator of the retail location.

(37) [(36)] Retail stand--A retail site that [which] sells Fireworks 1.4G over the counter to the general public who always remain outside the structure.

(38) [(37)] Safety container--A container especially designed, tested, and approved for the storage of flammable liquids.

(39) [(38)] School--Any inhabited building used as a classroom or dormitory for a public or private primary or secondary school[, ] or institution of higher education.

(40) [(39)] Selling opening--An open area, including the counter, through which fireworks are viewed and sold at retail.

(41) [(40)] Storage facility--Any building, structure, or facility in which finished Fireworks 1.4G are stored, but in which no manufacturing is performed.

(42) [(41)] Supervisor--A person who is 18 years or older and who is responsible for the retail fireworks site during operating hours.

(43) [(42)] Walk door--An opening through which retail stand attendants can freely move but [and] which can be secured to keep the public from the interior of the stand.

**§34.818 Specific Requirements for Retail Fireworks Stands.** A retail fireworks stand must [shall] comply with the following requirements:

(1) The fireworks stand in which Fireworks 1.4G are held for retail sale must [shall] be constructed of wood, metal, masonry, or concrete, or combinations thereof.

(2) Each stand of less than 16 feet in length must [shall] have at least one walk door that [which] opens outward. Stands measuring 16 feet or longer must have at least two walk doors, one in each end, that [which] open outward.

(3) A minimum of combustible material such as posters, signs, and decorations may be used on interior walls.

(4) A minimum distance of six feet must ~~[shall]~~ be maintained from the front of the customer counter to the back side of the stand. Fireworks must not be displayed on the customer counter or in any manner that allows the customer to handle fireworks without an attendant directly assisting the customer.

(5) Electrical service to the stand must ~~[shall]~~ be installed at least eight feet above ground or buried underground according to standards acceptable to the local AHJ ~~[authority having jurisdiction]~~.

(6) Each stand that uses ~~[utilizing]~~ electricity must ~~[shall]~~ have a point of power interruption, either inside or outside the stand, (switch or switches) located near a walk ~~[an exit]~~ door, that ~~[which]~~ interrupts all electric supply to devices and equipment located inside and on the stand.

(7) All electrical wiring, equipment, and devices, both inside and outside the stand, must ~~[shall]~~ be UL approved, be securely mounted to the structure, and be installed and maintained to prevent electrical hazards. Splices in electrical wiring servicing equipment and devices inside the stand must ~~[shall]~~ be enclosed in junction boxes. Light fixtures and wiring used for illumination inside and outside of the stand must ~~[shall]~~ be installed and maintained to prevent accidental contact by the general public and employees.

(8) Drop cords with lights, extension cords, or bare wiring must ~~[shall]~~ not be used in any manner inside a retail stand.

(9) In stands where generator-created power is used, the generator must ~~[shall]~~ be located in an area free from grass, trash, and other flammable materials and at least 10 feet from the stand. Reserve fuel for the generator must be stored in an approved safety container and a portable fire extinguisher rated to at least 6 BC must ~~[shall]~~ be provided.

(10) Fireworks stands must ~~[shall]~~ not be illuminated or heated by any device that ~~[which]~~ requires open flame or exposed heating elements. Electric heaters must ~~[shall]~~ be equipped with a switching device to stop the flow of current should the heater be tipped over.

(11) If the fireworks stand is used for the overnight storage of Fireworks 1.4G, it must be equipped with suitable locking devices to prevent unauthorized entry.

#### **§34.823 Bulk Storage of Fireworks 1.4G.**

(a) General provisions.

(1) These provisions apply to licensees and retail storage of more than 500 cases of Fireworks 1.4G.

(2) Storage facilities containing Fireworks 1.4G must ~~[shall]~~ be of solid construction using sound engineering principles.

(3) Electrical installation, if used, must ~~[shall]~~ be in compliance with the National Electric Code, 1984. An outside electrical master switch must ~~[shall]~~ be provided at each storage facility location when electrical power is installed.

(4) Storage facilities containing Fireworks 1.4G must ~~[shall]~~ comply with the following.

(A) Storage facilities must ~~[shall]~~ be separated from inhabited buildings, passenger railways, and from the pavement or main travelled surface of any highway by a minimum distance of 50 feet and be in compliance with Table 1 in §34.824 of this title (relating to Distance Tables). Storage facilities in existence prior to January 1, 1986, and then conforming to existing warehouse distance separation rules for jobbers and distributors are exempt from compliance with Table 1, provided such facilities are not enlarged or expanded beyond their January 1, 1986, capacities. An office used for the operation of a storage facility or a retail/wholesale site established in conjunction with a storage facility is exempt from the distance requirements after notifying the state fire marshal. Subsequent construction by adjacent property owners or public authorities must ~~[shall]~~ not subject licensee to a distance regulation violation under this section, provided existing storage facilities are not enlarged or expanded after the subsequent construction.

(B) Storage facilities must ~~[shall]~~ not contain windows, and any other openings must ~~[shall]~~ be situated so that the rays of the sun do ~~[shall]~~ not come in contact with or shine through glass directly on ~~[upon]~~ fireworks stored in the facility. Skylights that ~~[which]~~ diffuse sun rays are permitted.

(C) No stoves, exposed flames, or electric heaters may ~~[shall]~~ be used in any part of storage facility except in a boiler room, machine shop, office building, pump house, or lavatory. Heating of storage facilities must ~~[shall]~~ be by means of steam, indirect hot air radiation, or hot water.

(D) Exit doors other than overhead or sliding doors must ~~[shall]~~ open outward, must ~~[shall]~~ be unlocked during operating hours, and must be clearly marked. Aisles and exit doors must ~~[shall]~~ be kept free of any obstruction.

(E) At least one approved Class A fire extinguisher must ~~[shall]~~ be provided for each 1,000 square feet of floor space in a storage facility.

(F) The land surrounding storage facilities must ~~[shall]~~ be kept clear of brush, dried grass, leaves, and similar combustibles for a distance of at least 10 feet.

(G) Smoking must ~~[shall]~~ not be permitted in storage facilities. There must ~~[shall]~~ be signs conspicuously posted with the words "Fireworks--No Smoking" in letters not less than four inches high.

(H) The facility must have a fire sprinkler system if it has greater than 12,000 square feet of floor space in a sales or storage facility, or if other additional or more restrictive fire protection requirements are adopted by a local AHJ.

(5) Storage buildings must ~~[shall]~~ have fencing in compliance with §34.821(a)(1) of this title (relating to Manufacturing Operations) or one of the following:

(A) personnel on the premises 24 hours per day, and the premises remains lighted at night; or

(B) a security alarm system.

(6) Bulk storage of Class I flammable liquids (such as gasoline) and flammable compressed gases must ~~[shall]~~ comply with provisions of §34.821(a)(7) of this title (relating to Manufacturing Operations).

(b) Operation of storage facilities.

(1) Storage facilities must ~~[shall]~~ at all time during operating hours be in the charge of a competent person ~~[at all times during operating hours]~~ who is ~~[shall]~~ be at least 18 years of age and ~~[,]~~ who is ~~[shall be held]~~ responsible for the enforcement of all safety precautions.

(2) Doors must ~~[shall]~~ be kept locked, except during hours of operation.

**§34.832 Specific Requirements for Retail Fireworks Sites Other Than Stands.** Indoor retail fireworks sites must ~~[shall]~~ comply with the following requirements:

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

(2) The following distance requirements ~~[shall]~~ 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 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 ~~[shall]~~ be a minimum distance of 60 feet from any inhabited building;

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

(C) The fireworks sales building must ~~[shall]~~ meet the distance requirements of §34.824 Table 1 of this title (relating to Distance Tables), or have a minimum one-hour ~~[1-hour]~~ fire rated exterior wall with ~~[a]~~ minimum three-fourths-hour ~~[3/4-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 ~~[shall]~~ apply to an indoor retail fireworks site owned or leased by a fireworks licensee~~;~~ which 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 which stores or displays over 500 cases of Fireworks 1.4G in the building.

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

(B) The fireworks sales building must ~~[shall]~~ be a minimum distance of 30 feet from the property line~~;~~

(C) The fireworks sales building must ~~[shall]~~ 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 ~~[shall]~~ 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 ~~[shall]~~ be sufficiently designed to prevent customers from handling fireworks, unless an attendant is directly assisting the customer. Sales display areas must include a continuous durable restraint around displayed fireworks separating the customers from all merchandise. The height, weight, and stability of the restraint must be designed to prevent individuals from penetrating the barrier.

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

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

(8) The local fire department and the county fire marshal, if one is appointed or elected in that county, must ~~[shall]~~ be notified in writing annually, before beginning sales operations ~~[postmarked or faxed on or before June 14 of each year]~~, 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 ~~[shall]~~ be removed from the sales, storage, and adjacent areas daily, or as often as necessary to prevent unsafe accumulation.

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

(11) Extension cords may ~~[shall]~~ 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 ~~[shall]~~ 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 ~~[shall]~~ be protected from accidental damage. Flexible cords and cables may ~~[shall]~~ not be used as a substitute for the fixed wiring of a structure. An extension cord may not be plugged into a power strip.

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

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

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

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

(16) A retail sales permit, for other than a retail stand, is ~~[shall]~~ not ~~[be]~~ 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;
- (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 ~~shall~~ 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 ~~shall~~ 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 therein protected by a a three-fourths-hour ~~[3/4 hour]~~ fire protection-rated self-closing ~~[self closing]~~ fire doors.

(19) An indoor retail fireworks site must ~~shall~~ 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, Quincy, Massachusetts, 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.

**§34.833 Military Service Members, Military Veterans, or Military Spouses.**

(a) Waiver of licensed application and examination fees. The department will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation are credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years additional time to complete any continuing education requirements; and any other requirement related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member, military veteran, or military spouse that:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

#### **SUBCHAPTER J. STOVETOP FIRE SUPPRESSION DEVICE APPROVAL** **28 TAC §§34.1001 – 34.1004**

**STATUTORY AUTHORITY.** The repeals are proposed under SB 14, 78th Legislature, Regular Session; Government Code §417.005; and Insurance Code §36.001.

In 2003, Senate Bill (SB) 14 repealed Insurance Code Articles 5.33A and 5.33C, providing for certificates used for premium credits and discounts on insurance rates.

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.

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.** SB 14, 78th Legislature, Regular Session is implemented by this rule.

**§34.1001 Purpose and Application.**

**§34.1002 Definitions.**

**§34.1003 Product Performance Standards.**

**§34.1004 Approval.**

**SUBCHAPTER M. SCHEDULED ADMINISTRATIVE PENALTIES**

**28 TAC §§34.1302.**

**STATUTORY AUTHORITY.** The amendment is proposed under Government Code §417.005 and §417.010, 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. Section 417.010 provides that commissioner by rule must delegate to the state fire marshal the authority to take disciplinary and enforcement actions, including the imposition of administrative penalties. The commissioner must specify which types of disciplinary and enforcement actions are delegated to the state fire marshal. The commissioner must also outline the process through which the state fire marshal may impose administrative penalties or take other disciplinary and enforcement actions.

Section 417.010 also provides that the commissioner by rule must adopt a schedule of administrative penalties for violations subject to a penalty under this section to ensure that the amount of an administrative penalty is appropriate to the violation. This section requires the department to provide the schedule of administrative penalties to the public on request. The amount of an administrative penalty imposed must be based on the factors specified in §417.010(c). Section 417.010 also authorizes the state fire marshal to, instead of canceling, revoking, or suspending a license or certificate of registration, impose on the holder of the license or certificate an order directing the holder to cease and desist from a specified activity, pay an administrative penalty, or make restitution to a

person harmed by the holder’s violation of an applicable law or rule. Under §417.010, the state fire marshal may impose an administrative penalty in the manner prescribed in Subchapter B, Chapter 84, Insurance Code. The state fire marshal may impose an administrative penalty under the section without referring the violation to the department for commissioner action.

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 §417.010 is implemented by this rule.

**§34.1302 Schedule of Administrative Penalties.**

(a) The Fire Extinguisher Penalty Schedule specified as follows.

[Figure: 28 TAC §34.1302(a)] Figure: 28 TAC §34.1302(a)

Citation	Violation	Fine	Citation	Violation	Fine
	<b>License and Registration</b>		34.517(e)	Fixed system not installed or serviced by Type A or EPL	\$2,000.00
6001.152(a)	Branch office registration certificate required	\$1,000.00		<b>Installation and Service</b>	
6001.161(a)	Apprentice permit required	\$500.00	34.517(a)(1)	Portable extinguisher not installed/serviced/maintained IAW manufacturer's instructions	\$50.00- \$500.00
6001.251(a)(1)	No registration certificate (portable)	\$3,000.00	34.517(a)(2)	Service tag not attached upon completion	\$250.00
6001.251(a)(2)	No registration certificate (fixed)	\$3,000.00	34.517(b)(1)	Fixed system not planned/installed/serviced IAW manufacturer's Instructions	\$50.00- \$500.00
6001.251(a)(3)	No license	\$3,000.00	34.517(b)(2)	Installation label not affixed to system upon completion	\$250.00
34.510(e)(10)(A)	No C registration for U.S. DOT extinguishers	\$2,000.00	34.517(b)(3)	Installation label not signed and affixed to system by Type A or PL licensee (non pre-engineered)	\$500.00
34.510(e)(10)(B)	No verification of U.S. DOT registration	\$2,000.00	34.517(b)(3)	Licensee who signed label was not at final test (non pre-engineered)	\$500.00
34.510(f)	Registration information not displayed on vehicle	\$250.00	34.517(b)(4)	Service tag not attached after service completion	\$500.00
34.511(f)(1)	Licensee not employed by registered firm	\$2,000.00	34.517(f)	Pre-engineered kitchen system not UL300	\$2,000.00
34.511(f)(3)	Failure to notify SFMO of termination of employee within 14 days	\$250.00	34.517(h)	Fusible link manufacturer date not within 1 year	\$500.00
34.513	Alteration of certificates, licenses, or permits	\$3,000.00	34.517(i)	Actuation cartridge not dated	\$500.00
34.514(a)(5)(b)	Failure to maintain proof of insurance on file at SFMO	\$750.00	34.517(j)	Tamper indicator not dated	\$500.00
	<b>Adopted Standards</b>		34.518(a)	Shop drawings not on file or not given to owner	\$500.00
34.517(a)(1)	Failure to abide by adopted standards or manufacturers requirements for portable extinguishers	\$50.00 - \$500.00	34.518(c)	Shop drawings not signed by EPL	\$500.00
34.517(b)(1)	Failure to abide by adopted standards or manufacturers requirements for fixed extinguishers		34.519(a)	Service tag not completed in detail	\$250.00
	<b>Location and Business Practices</b>		34.520(b)	Service tag not completed each time service is performed	\$500.00
34.510(d)	Failure to maintain business location	\$500.00	34.521(a)	Owner not notified immediately of impaired portable or fixed extinguisher	\$500.00

34.510(e)	Failure to maintain shop	\$50.00- \$500.00		34.521(a)	AHJ not notified within 24 hrs of impaired portable or fixed extinguisher	\$500.00
6001.252(a)(3)	Misrepresentation of goods or services	\$250.00- \$1,000.00		34.521(a)	Written notice to owner; copy of written notice to AHJ within 3 days	\$500.00
34.517(c)	Pre-engineered system not installed or serviced by authorized licensee	\$2,000.00		34.521(a)	Failed to attach red tag to impaired extinguisher	\$500.00
34.517(e)	Fixed system not planned by EPL or professional engineer	\$2,000.00		34.521(a)	Service tag attached to impaired extinguisher	\$1,000.00

34.514(a)(5)(B)		Lapse of Insurance			
Months	Punitive	+	Amount saved	=	Total
0 - 1	\$200	+	\$125	=	Warning Letter
1 - 2	\$500	+	\$250	=	\$750
2 - 3	\$500	+	\$375	=	\$875
3 - 4	\$500	+	\$500	=	\$1,000
4 - 5	\$500	+	\$625	=	\$1,125
5 - 6	\$500	+	\$750	=	\$1,250
6 - 7	\$750	+	\$875	=	\$1,625
7 - 8	\$750	+	\$1,000	=	\$1,750
8 - 9	\$750	+	\$1,125	=	\$1,875
9 - 10	\$750	+	\$1,250	=	\$2,000
10 - 11	\$750	+	\$1,375	=	\$2,125
11 - 12	\$750	+	\$1,500	=	\$2,250

(b) The Fire Alarm Penalty Schedule specified as follows.

[Figure: 28 TAC §34.1302(b)] Figure: 28 TAC §34.1302(b)

6002.152(a)	Branch office registration certificate required	\$1,000.00		34.617	Failure to distribute/retain certificate	\$500.00
6002.154(a)	No licensed employee	\$1000.00		34.618	Installation inspection improperly performed/documented	\$50.00- \$500.00
6002.154(b)	No license	\$3,000.00		34.618	Installation inspection improperly documented	\$500.00
6002.154(c)	Licensee not an employee of registered firm	\$750.00		34.618	Installation inspection docs not on file for 5 yrs	\$500.00
6002.301	Engage in business w/o license or registration certificate	\$3,000.00				
	<b>Adopted Standards</b>			34.619(a)	System/modification not planned by authorized person	\$3,000.00
34.616(b)(4)	Violation of standards established by 34.607	\$50.00- \$500.00		34.619(b)	Plans not submitted to AHJ	\$500.00
34.6616(b)(4)	Violation of standards established by manufacturers requirements (NFPA 72, §10.3.2)	\$50.00- \$500.00		34.619(b)	Plans incorrectly submitted to AHJ	\$250.00
					<b>Labels</b>	
	<b>Location Business Practices</b>			34.620(a)	Installation label not affixed to inside of control panel cover	\$500.00
34.610(a)	Failure to maintain business location	\$500.00		34.620(d)	Installation label improperly formatted or incomplete	\$500.00
34.610(b)	Designated employee	\$500.00		34.620(f)	Installation label incorrectly formatted or incomplete (1 or 2 family)	\$500.00
34.610(c)	Registration information not displayed on vehicle	\$250.00		34.621(a)	Service label not affixed to control panel cover	\$500.00
34.611(f)(2)	Failure to notify SFMO of termination of employee within 14 days	\$250.00		34.621(b)	Information about yellow or red label not on service label that corrected the impairments	\$500.00

34.616(b)(1)	Installation not performed by or under direct supervision of authorized licensee	\$3,000.00		34.623(c) (yellow) 34.624(c) (red)	Owner or AHJ not notified of impairment	\$500.00
34.616(b)(1)	Certifying licensee not licensed under ACR of primary registered firm or certifying licensee not present for final acceptance test	\$1,000.00		34.621(h)	Service label improperly formatted or incomplete	\$500.00
34.616(b)(2)	Licensee attaching label not licensed under ACR of primary registered firm	\$1,000.00		34.622(a)	Inspection/test label not filled out in detail or not affixed to inside of control panel cover	\$500.00
34.616(b)(2)	Service and maintenance not performed by or under direct supervision of authorized licensee	\$3,000.00		34.622(d)	Owner or AHJ not notified of impairment	\$500.00
6002.302(a)(3)	Misrepresentation of goods or services	\$250.00- \$1,000.00		34.622(j)	Inspection/test label incorrectly formatted/incomplete	\$500.00
	<b>Monitoring</b>			34.623(a)	Completed yellow label not attached to outside of control panel of impaired system	\$500.00
34.616(c)(1)	Monitoring an alarm for an unregistered firm	\$3,000.00		34.623(g)	Yellow label incorrectly formatted/incomplete	\$500.00
34.616(c)(2)(A)	Connecting an alarm to an unregistered monitoring firm	\$2,000.00		34.624(a)	Completed red label not attached to outside of impaired system	\$1,000.00
34.616(3)	No licensed technician at central station	\$1,000.00		34.624(g)	Red label improperly formatted/incomplete	\$500.00

34.613(a)(5)(B)	<b>Lapse of Insurance</b>				
Months	Punitive	+	Amount saved	=	Total
0 - 1	\$200	+	\$125	=	Warning Letter
1 - 2	\$500	+	\$250	=	\$750
2 - 3	\$500	+	\$375	=	\$875
3 - 4	\$500	+	\$500	=	\$1,000
4 - 5	\$500	+	\$625	=	\$1,125
5 - 6	\$500	+	\$750	=	\$1,250
6 - 7	\$750	+	\$875	=	\$1,625
7 - 8	\$750	+	\$1,000	=	\$1,750
8 - 9	\$750	+	\$1,125	=	\$1,875
9 - 10	\$750	+	\$1,250	=	\$2,000
10 - 11	\$750	+	\$1,375	=	\$2,125
11 - 12	\$750	+	\$1,500	=	\$2,250

(c) The Fire Protection Sprinkler Penalty Schedule specified as follows.

[Figure: 28 TAC §34.1302(c)] Figure: 28 TAC §34.1302(c)

Citation	Violation	Fine	Citation	Violation	Fine
	<b>Certificates of Registration and Licenses</b>			<b>Planning and Installation</b>	
6003.151(a)	Engage in business w/o registration certificate	\$3,000.00	34.717(b)	Failed to maintain copy of updated plans	\$500.00
6003.153(b)	Act as responsible managing employee (RME) w/o holding license	\$3,000.00	34.717(c)	Plans do not contain required signatures/ information about firm or licensee	\$500.00
34.710(a)	Subcontracting to unregistered firm to perform work of fire protection sprinkler contractor	\$3,000.00	34.717(c)(2)	Plans not submitted to AHJ for review/permit/rating/record	\$500.00
34.711(a)	Firm's RME not licensed or license expired	\$1,000.00	34.717(c)(2)	Plans incorrectly submitted to AHJ	\$250.00
34.711(e)(1)	Licensee working not employed by registered firm	\$750.00		<b>Tags</b>	
34.711(e)(2)	Firm failed to notify SFMO of termination of employee w/in 14 days	\$250.00	34.718(a)	Installation tag not completed, not completed in detail, not attached to riser	\$500.00
	<b>Adopted Standards</b>		34.718(b)	ITM tag not attached to riser after installation/required tests and inspections	\$500.00

34.716(i)	Planning/installation/service not in accordance with adopted standards	\$50.00- \$500.00		34.719(a)	Service tag not completed and/or not attached to riser	\$500.00
	<b>Location/Business Practices</b>			34.719(c)	New service tag not attached after service	\$500.00
34.710(b)	Failure to maintain business location on certificate of registration	\$500.00		34.719(g)	Service tags improperly formatted	\$250.00
34.711(f)	Individual not licensed for work performed	\$3,000.00		34.720(a)	ITM tag not completed and/or attached to riser after scheduled inspection, testing or maintenance service	\$500.00
34.716(a)	System not installed under supervision of appropriately licensed individual	\$3,000.00		34.720(c)	New ITM tag not completed and attached after each service	\$500.00
34.716(b)	Individual did not affix material and test certificate on or near riser	\$500.00		34.720(g)	ITM tag improperly formatted	\$250.00
34.716(c)	Inspection/test/maintenance service not conducted by appropriately licensed individual	\$3,000.00		34.721(a)	Yellow tag not completed and/or attached to noncompliant system	\$500.00
34.716(d)	Records not available for examination	\$500.00		34.721(c)	Building owner/representative/AHJ not notified of noncompliant system	\$500.00
34.716(e)	Vehicles do not display co. name, tel. number and certificate of registration	\$250.00		34.721(f)	Yellow tag improperly formatted	\$250.00
34.716(g)	The planning not performed under the direct supervision of the appropriately licensed RME.	\$500.00		34.722(a)	Red tag not completed and attached to system with an emergency impairment	\$500.00
34.716(h)	Planning, installation, or service of a fire protection sprinkler system not in accord with the minimum requirements of the applicable adopted standards	\$3,000.00		34.722(b)	Owner/representative/AHJ not orally notified immediately of impairment	\$500.00
6003.252(3)	Misrepresentation	\$250.00- \$1,000.00		34.722(b)	Owner/representative/AHJ not notified in writing of impairment within 24 hours	\$500.00
	<b>Planning and Installation</b>			34.722(g)	Red tag improperly formatted	\$250.00
34.717(a)	Failed to provide as built plans to the owner	\$500.00				
34.717(a)	Failed to maintain a copy of plans	\$500.00				
34.717(b)	Failed to provide updated plans to owner	\$500.00				

34.713(a)(7)(B)		Lapse of Insurance			
Months	Punitive	+	Amount saved	=	Total
0 - 1	\$200	+	\$125	=	Warning Letter
1 - 2	\$500	+	\$250	=	\$750
2 - 3	\$500	+	\$375	=	\$875
3 - 4	\$500	+	\$500	=	\$1,000
4 - 5	\$500	+	\$625	=	\$1,125
5 - 6	\$500	+	\$750	=	\$1,250
6 - 7	\$750	+	\$875	=	\$1,625
7 - 8	\$750	+	\$1,000	=	\$1,750
8 - 9	\$750	+	\$1,125	=	\$1,875
9 - 10	\$750	+	\$1,250	=	\$2,000
10 - 11	\$750	+	\$1,375	=	\$2,125
11 - 12	\$750	+	\$1,500	=	\$2,250

(d) The Fireworks Indoor Retail Stand Penalty Schedule specified as follows.

[Figure: 28 TAC §34.1302(d)] Figure: 28 TAC §34.1302(d)

Code	GENERAL	FINE	Code	PATHWAYS/CORRIDORS OF EGRESS cont	Fine
34.817(m)	TRASH, cardboard or high grass within 10 ft of site	\$50.00	36.2.5.8	No clear exit path AROUND CHECKOUT aisle	\$250.00
34.832(12)	Supervisor less than 18 YEARS OLD (site closed until corrected)	\$500.00	7.11.5	Building has DEAD END CORRIDORS	\$150.00
34.832(12)	Individuals less than 16 YEARS OLD SELLING Fireworks	\$50.00	7.2.1.11.1	Turnstile, ropes or other DEVICES OBSTRUCT EGRESS	\$150.00
34.817(h)	Operator consuming or under influence of ALCOHOL	\$500.00		EXIT DOORS	

2154.252(c)	Fireworks sold or offered to <b>CHILDREN</b> under 16 years old or to an intoxicated or incompetent person	\$500.00		7.11.4	Less than <b>TWO</b> means of <b>EGRESS</b> if room >200 sqft	\$500.00
34.817(l)	No off highway <b>PARKING</b> provided	\$100.00		7.11.1	No <b>EXIT WITHIN 75</b> ft of any point in the building	\$150.00
34.817(g)	<b>SMOKING</b> inside the site	\$500.00		7.7.1	Exits do not <b>TERMINATE</b> in open space (i.e. blocked)	\$150.00
34.817(g)	<b>SMOKING</b> outside within 10 feet of site	\$250.00		7.2.1.2.3.2	<b>DOOR OPENINGS</b> less than 32" wide	\$150.00
2154.202(g)	Selling fireworks <b>OUTSIDE</b> selling <b>SEASON</b>	\$250.00 TO \$500.00		7.2.1.4.2	Door doesn't <b>SWING OUT</b> in direction of egress	\$250.00
	<b>FIREWORKS STORAGE</b>			7.2.1.3.1	Floor <b>ELEVATION</b> change Interior >½ or Exterior door >8"	\$100.00
34.832(6)	Stored fireworks in sales area <b>ACCESSIBLE</b> to public	\$100.00		7.2.1.3.3	<b>THRESHOLD</b> at door exceeds ½" in height	\$100.00
34.832(7)	Fireworks storage room not <b>RESTRICTED</b> to employees only	\$100.00		7.11.6	<b>DOORS</b> latch or lock not fire or <b>PANIC HARDWARE</b>	\$1,000.00
34.832(7)	" <b>NO SMOKING</b> " signs not posted in storage room	\$50.00		7.2.1.5.2	Doors have <b>KEY LOCKS</b> on egress side.	\$500.00
	<b>STORAGE (and retail sales) OVER 500 CASES</b>			7.2.1.4.1(3)	Ex (a&c) Not <b>LOCKED OPEN</b> when occupied	\$250.00
34.823(a2)	Not of <b>SOLID CONSTRUCTION</b> or sound engineering	Case		7.2.1.4.1(3)	Ex (b) No "This Door To Remain OPEN etc..." <b>SIGN</b>	\$100.00
34.823(a3)	Electrical does not meet <b>NATIONAL ELECTRIC CODE</b>	\$25.00 TO \$250.00		<b>Code</b>	<b>EXIT DOORS (cont)</b>	<b>Fine</b>
34.823(a3)	No outside <b>MASTER ELECTRICAL SWITCH</b>	\$250.00		7.2.1.4.1(3)	Ex (e) No <b>ONE PANIC</b> hardware door without a roll-up	\$500.00
34.823(a4A)	<b>LESS 50ft</b> from inhabited bldg(s) or surface of highways	\$500.00			<b>SIGNS</b>	
34.823(a4A)	Not in compliance with distances in <b>TABLE 1</b> 34.824	\$500.00		7.10.1.2.1	Not all exits have " <b>EXIT</b> " <b>SIGNS</b> . (if exit not obvious)	\$100.00
34.823(a4B)	<b>WINDOWS</b> or sunlight on fireworks not diffused	\$50.00		7.10.6.1.1	" <b>EXIT</b> " <b>SIGNS NON-COMPLIANT</b> with standard	\$50.00
34.823(a4C)	<b>STOVE</b> , exposed flame or electric heater in storage area	\$500.00		7.10.2.1	Missing <b>DIRECTIONAL SIGNS</b> to exits (if not apparent)	\$50.00
34.823(a4D)	Swing <b>EXIT DOOR</b> locked, not marked or obstructed	\$250.00		7.10.6.2.1	Directional <b>SIGNS NON-COMPLIANT</b> with standard	\$50.00
34.823(a4E)	No Class A <b>EXTINGUISHER</b> for each 1000 sqft of floor	\$100.00		7.10.8.3	Missing " <b>NO EXIT</b> " sign on doors that could be mistaken	\$250.00
34.823(a4F)	Brush, dry grass, leaves or <b>COMBUSTIBLES</b> within 10ft	\$100.00		34.817(g)	" <b>NO SMOKING</b> " sign not posted <b>OUTSIDE</b> entrance doors	\$100.00
34.823(a4G)	Missing " <b>NO SMOKING</b> " signs. (4" letters)	\$100.00		34.817(g)	" <b>NO SMOKING</b> " sign not posted <b>INSIDE</b> entrance doors	\$100.00
34.823(a5)	No fence, <b>SECURITY ALARM</b> or 24 hr. personnel on site	\$500.00		34.817(g)	" <b>NO SMOKING</b> " sign not posted <b>several location</b> inside	\$100.00
34.823(a6)	Class I <b>COMBUSTIBLES</b> (gasoline) less 100 ft from bldg	\$100.00		34.817(g)	" <b>NO SMOKING</b> " sign lettering less than 4 inches high	\$50.00
34.823(a6)	<b>CLASS I</b> dispensing or vents less than 100 ft from bldg (site closed)	\$500.00			<b>EMERGENCY LIGHTING</b> (if over 3000 sq.ft.)	
34.823(b1)	No <b>SUPERVISOR</b> at least 18 years old on duty (site closed until corrected)	\$500.00		36.2.9	No <b>EMERGENCY LIGHTING</b> provided	\$500.00
34.832(3A)	< 60ft from <b>INHABITED</b> bldg. (w/o permit before 11-18-02)	\$500.00		7.8.1.3	Emergency lighting doesn't <b>ILLUMINATE</b> paths of egress	\$250.00
34.832(3B)	< 30ft from <b>PROPERTY</b> line (w/o permit before 11-18-02)	\$250.00		7.9.2.1	Emergency lighting <b>DURATION</b> is less than 1½ hrs	\$250.00
34.832(3C)	Does not comply with <b>TABLE 1</b> or have fire sprinklers	\$500.00		7.9.3.1.1	No <b>RECORD</b> of emergency lighting inspection & <b>TEST</b>	\$100.00
	<b>PATHWAYS/CORRIDORS OF EGRESS</b>				<b>STRUCTURE</b>	
36.2.5.5	Means of <b>EGRESS/AISLES</b> less than <b>36 inches</b>	\$150.00		34.832(1)	Building is not <b>FREE STANDING</b> or durable	Case
36.2.5.10	Means of egress < <b>36" + CART LENGTH</b> (if using carts)	\$150.00		34.832(1)	Mezzanine or 2nd <b>STORY</b> accessible to the public	\$150.00
34.817(e)	Path to exit door <b>OBSTRUCTED</b>	\$250.00		34.832(1)	Selling from a <b>TENT</b> , boat, or mobile vehicle (site closed)	\$500.00
7.1.10.1	Egress not <b>CONTINUALLY FREE</b> of obstructions	\$150.00		34.817(k)	Bldg. single or multi-family <b>RESIDENTIAL STRUCTURE</b> (site closed)	\$500.00
<b>Code</b>	<b>STRUCTURE cont</b>	<b>Fine</b>		<b>Code</b>	<b>STAIRS</b>	<b>Fine</b>
34.832(1)	Sales area Multi-Use (other business) or <b>MULTI-TENANT</b> (site closed)	\$500.00		7.2.2.2.1	<b>RISER</b> not 4"-7" or <b>TREADS</b> less than 11" wide	\$100.00
34.832(18)	Sales area >2500 sqft with ave. <b>CEILING HEIGHT</b> < 12 ft	\$500.00		7.2.2.2.1.2	Less than 36" <b>WIDE</b> or < 56" wide if occupancy over 2000	\$100.00

34.832(10)	Stored behind glass with impinging direct SUNLIGHT	\$50.00		7.2.2.3.3.1	Stairs treads not SOLID	\$100.00
34.832(14)	No outside MASTER electrical switch	\$100.00		7.2.2.4.1.1	No HANDRAILS 34" to 38" high provided	\$100.00
9.1.2	Electrical WIRING and equipment APPEAR HAZARDOUS	\$25.00 TO \$250.00		7.1.8	Open stairs over 30" rise without a GUARD RAIL	\$100.00
	<b>INTERIOR</b>				<b>STAIR LANDINGS</b>	
34.832(5)	Inadequate PREVENTION of customers handling fwks	\$100.00		7.2.2.3.2.1	No LANDING at door opening	\$100.00
34.832(5)	RESTRAINT around displayed fireworks not durable	\$100.00		7.2.2.3.2.3	Landing LENGTH in direction of travel is less than width.	\$100.00
34.832(5)	Customers HANDLING fireworks w/o attendant assistance	\$50.00		7.2.2.3.3.1	Horizontal landing not SOLID (i.e. grating or see through)	\$100.00
34.832(9)	small quantities of unused BOXES in sales/storage area	\$50.00			HANDRAILS	
34.832(11)	EXTENSION CORD located where public can walk over	\$50.00		7.2.2.4.4.1	Not 34" to 38" HIGH above leading edge of tread	\$100.00
34.832(11)	EXTENSION CORD supplies > one device w/o power strip	\$50.00		7.2.2.4.4.5	Less than 2¼" CLEARANCE between rail and wall	\$100.00
34.832(11)	EXTENSION CORD unprotected from accidental damage	\$50.00		7.2.2.4.4.6	Handrails are not a CIRCULAR cross-section of 1¼" to 2"	\$100.00
34.832(11)	EXTENSION CORD used in lieu of fixed structural wiring	\$25.00		7.2.2.4.4.7	Rail is not CONTINUOUS	\$100.00
34.832(11)	Power STRIP without internal circuit breaker	\$25.00		7.2.2.4.4.6	Improper TERMINATION or EXTENSION of rail	\$100.00
34.832(13)	Trash CONTAINERS not METAL or heavy plastic	\$25.00			GUARD RAILS	
34.832(13)	Trash CONTAINERS < 10ft AWAY from fireworks	\$250.00		7.1.8	No GUARD RAIL where egress is > 30" above floor/grade	\$100.00
34.832(15)	SPACE HEATER in sales/storage areas	\$100.00		7.2.2.4.5.2	Guard RAIL is less than 42" high.	\$100.00
34.832(17)	COOKING EQUIPMENT in sales/storage areas	\$100.00		7.2.2.4.5.3	Over 4" between any point in VERTICAL RAILS up to 34" high	\$100.00
34.817(d)	No 2A EXTINGUISHER per 2,000 sqft & within 75 ft travel	\$500.00			RAMPS	
34.817(p)	Internal combustion ENGINES operating inside retail site	\$500.00		7.2.5.3.2(1).	No LANDING at top, bottom or at door openings.	\$100.00
36.3.3.2	Interior wall and ceiling FINISH is not type Class A or B	\$500.00		Tab 7.2.5.2	Single ramp in excess of a 30° RISE.	\$100.00
6.1.14.4.1	No FIREWALL -Btwn High Hazard & other occup > 200 sqft	\$500.00		Tab 7.2.5.2	SLOPE in excess of 1 in 8	\$100.00
	PAPERWORK			Tab 7.2.5.2	Less than 30" WIDE	\$100.00
34.817(j)	Original permit not posted in sales area	\$100.00		7.2.5.3.1(1)	Not permanent FIXED construction	\$100.00
34.817(j)	No permit (site closed until corrected)	\$500.00		7.2.5.3.1(4)	Not SOLID construction.	\$100.00
34.832(8)	Local FD or County FD not NOTIFIED of location in writing	\$100.00		7.2.5.4	No GUARD or HANDRAIL on ramp with rise over 6"	\$100.00
34.832(16)	PLAN not on file at SFMO office (site closed until corrected)	\$250.00			BULK MERCHANDISING >12,000 sqft	
	<b>FIREWORKS</b>			36.4.5	Violation(s) of Bulk Merchandising requirements	Case
2154.003	Illegal fireworks e.g. Bottle or Pop Rockets, M-80's	\$1,000.00			<b>OTHER NFPA LIFE SAFETY CODE</b>	
2154.003(b)	ILLEGAL fireworks (Bottle or Pop Rockets, M-80's)	\$1,000.00				
2154.251(2)	Sell <100' from storage and dispensing of flammables (closed until corrected)	\$500.00		34.832(19)	Violations of NFPA 101 the Life Safety Code®	Case
34.817(o)	Fireworks do not conform to USCPS LABELING	\$500.00		9.1.2	One or more FAULTS identified on Receptacle tester	\$25.00
34.817(i)	OTHER than fireworks or fireworks promotional items	100.00				

(e) The Fireworks Retail Site [Stand] Penalty Schedule specified as follows.

Figure: 28 TAC §34.1302(e)

(no change)

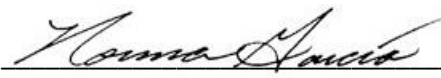
(f) The Fireworks Distributor Licensing Retailer Permit Penalty specified as follows.

Figure: 28 TAC §34.1302(f)

CODE	VIOLATION	FINE
2154.252(b)	Offering 1.4G fireworks for sale from other than an authorized retail location	\$1,000.00
2154.252(d)	Sells fireworks to person who does not hold license or permit	\$1,000.00
34.815(b)(1)	Purchase of 1.4G Fireworks from an unlicensed distributor or jobber.	\$500.00
2154.201(a)	Issue other permit to a person under 18 years old.	\$500.00
34.815(c)(1)	Failed to return permits by March 1 <sup>st</sup>	\$100.00
34.832(16)	No site plan on file with SFMO	\$1,000.00
34.809(a)	Conduct 1.3G display without a permit	\$3,000.00
34.809(a)	Conduct a display without the appropriate licensed operator	\$3,000.00
34.826(c)	Failed to conduct display in compliance with NFPA 1123	\$500.00- \$1,000.00
34.826(f)	Failed to conduct a proximate display in compliance with NFPA 1126	\$500.00- \$1,000.00
34.826(h)	Used a flame effect and failed to comply with NFPA 160	\$500.00- \$1,000.00

**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 February 29, 2016.

  
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 Norma Garcia, General Counsel  
 Texas Department of Insurance