

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

1. INTRODUCTION. The Commissioner of Insurance adopts an amendment to §34.303, concerning standards for State Fire Marshal inspections of buildings and premises in certain geographic areas of Texas. The amendment is adopted without changes to the proposed text published in the August 21, 2009 issue of the *Texas Register* (34 TexReg 5647).

2. REASONED JUSTIFICATION. The adopted amendment is necessary to update the currently adopted Life Safety Code, which is used by the State Fire Marshal as standards for inspection of buildings and premises pursuant to Government Code §417.008. Section 417.008 authorizes the State Fire Marshal to enter, upon the complaint of any person, any building or premises in the state at any reasonable time to examine the structure for certain dangerous conditions. The Government Code §417.008 authorizes the Commissioner to adopt by rule any appropriate standard developed by a nationally recognized standards-making association under which the State Fire Marshal may enforce §417.008. The standards adopted by rule do not apply in a geographic area under the jurisdiction of a local government that has adopted fire protection ordinances that apply in the geographic area. Additionally, the Government Code §417.005 authorizes the Commissioner, after consulting with the State Fire Marshal, to adopt necessary rules to guide the State Fire Marshal and fire and arson investigators commissioned by the State Fire Marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the Commissioner.

Adopted §34.303, which adopts by reference certain standards and recommendations of the National Fire Protection Association (NFPA), is amended to update the previously adopted 2006 Life Safety Code to the 2009 version. The adoption of the most recent Life Safety Code is necessary because as the technology for fire protection and prevention develops, the minimum standards of inspection also change. The NFPA is a nationally recognized standards-making association that classifies the most recent Life Safety Code as the minimum standards for fire protection and prevention, and as such, these standards also constitute the minimum standards for inspection for potential fire dangers. This results in better protection of the public from fire by the application of the most recent standards and recommendations for inspection. Additionally, other units of government in Texas are adopting these standards, and uniformity of standards enables both the fire protection industry and the public to know what standards are applicable in all jurisdictions. The NFPA Life Safety Code 101-2009 adopts changes to the 2006 standards to (i) add provisions relating to air traffic control towers, electrically controlled egress doors, certain horizontal sliding doors, elevator lobby access door locking, door inspection and maintenance, emergency evacuations and escape devices and systems, the placement and usage of alcohol-based hand sanitizer in educational and day care settings, and door locking in settings where occupants need specialized protection; (ii) standardize the usage of certain technical terms, including *stories in height*, *finished ground level*, *grade plane*, *basement*, and *level of exit discharge*; (iii) revise the situations in which public address systems are acceptable for occupant alarm notification; and (iv) amend provisions relating to fire curtains, patient sleeping room windows in health care settings, and sprinkler requirements in high-rise health care

settings. As provided in §417.008(e) of the Government Code, these adopted changes in standards do not apply in a geographic area under the jurisdiction of a local government that has adopted fire protection ordinances that apply in the geographic area.

3. HOW THE SECTION WILL FUNCTION. The adopted section updates the currently adopted Life Safety Code, which is used by the State Fire Marshal as standards for inspection of buildings and premises pursuant to Government Code §417.008. The adopted section adopts by reference the National Fire Protection Association Life Safety Code 101-2009.

4. SUMMARY OF COMMENTS. The Department did not receive any comments on the published proposal.

5. STATUTORY AUTHORITY. The amendment is adopted pursuant to the Government Code §417.008 and §417.005 and the Insurance Code §36.001. The Government Code §417.008 authorizes the Commissioner to adopt by rule any appropriate standard developed by a nationally recognized standards-making association under which the State Fire Marshal may enforce §417.008, relating to the State Fire Marshal's right of entry and examination and correction of dangerous conditions; the standards adopted by rule do not apply in a geographic area under the jurisdiction of a local government that has adopted fire protection ordinances that apply in the geographic area. The Government Code §417.005 authorizes the


Commissioner, after consulting with the State Fire Marshal, to adopt necessary rules to guide the State Fire Marshal and fire and arson investigators commissioned by the State Fire Marshal in the investigation of arson, fire, and suspected arson and in the performance of other duties for the Commissioner. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

6. TEXT.

§34.303. Adopted Standards. The Commissioner adopts by reference: NFPA Life Safety Code 101-2009. These copyrighted standards and recommendations are adopted, except to the extent they are in conflict with sections of this chapter or any Texas statutes or federal law. The standards are published by and are available from the National Fire Protection Association, Quincy, Massachusetts.

CERTIFICATION. This agency hereby certifies that the adopted amendment has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 1, 2009.


Gene C. Jarmon
General Counsel and Chief Clerk

09-0809

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 34. State Fire Marshal

Adopted Section
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IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the amendment to §34.303 specified herein, concerning standards for State Fire Marshal inspections of buildings and premises in certain geographic areas of Texas, is adopted.

AND IT IS SO ORDERED.



MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:



Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. _____

09-0809

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