

**SUBCHAPTER B. FLAMMABLE LIQUIDS EQUIPMENT TESTING LABORATORY
RULES**

28 TAC §§34.201 – 34.208

SUBCHAPTER D. TESTING LABORATORY RULES

28 TAC §§34.404 – 34.406

**SUBCHAPTER E. FLAMMABLE LIQUIDS EQUIPMENT TESTING LABORATORY
RULES**

28 TAC §34.524

1. INTRODUCTION. The Texas Department of Insurance proposes the repeal of 28 TAC §§34.201 – 34.208, §§34.404 – 34.406, and §34.524. The repeal of §§34.201 – 34.208, concerning the flammable liquids equipment testing laboratory rules, is necessary to consolidate testing laboratory rules under one subchapter. The repeal of §§34.404 – 34.406, concerning the testing laboratory certification process, is necessary to simplify the process for becoming an approved testing laboratory and to eliminate unnecessary provisions. The repeal of §34.524, concerning yellow tags for fire extinguisher inspections for commercial cooking areas, is necessary because the section became obsolete after January 1, 2008. In compliance with Government Code §2001.039, Chapter 34 was subject to a rule review published in the *Texas Register* (37 TexReg 10259). In this notice, the General Counsel division reviewed and considered all the sections in Chapter 34 for readoption, revision, or repeal. The finding of the review was that repeal is necessary because the rules in Chapter 34 are obsolete or no longer consistent with current procedures and practices of TDI. In conjunction with this proposed repeal, TDI is amending §§34.401 and 34.403, also published in this issue of

the *Texas Register*. The amendments to §§34.401 and 34.403 will include flammable liquids equipment testing as part of the Subchapter D testing laboratory rules.

2. FISCAL NOTE. Mark Lockerman, director of the State Fire Marshal's Office, has determined that during each year of the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Mr. Lockerman has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of repealing these sections will be elimination of obsolete provisions. There is no anticipated economic cost to persons who are affected by or required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In compliance with Government Code §2006.002(c), TDI has determined that this proposed repeal will not have an adverse economic effect on small or micro businesses because it is a repeal of an obsolete rule. Because there are no adverse economic effects, TDI is not required to prepare a regulatory flexibility analysis.

5. TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, so, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal you must do so in writing no later than 5:00 pm on November 25, 2013. Send comments to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comments to Mark Lockerman, Director, State Fire Marshal's Office, Mail Code 112-FM, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104. You must submit any request for a public hearing separately to the Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If a hearing is held, you may submit written and oral comments for consideration at the hearing.

7. STATUTORY AUTHORITY. The repeal of §§34.201 – 34.208 is proposed to comply with Health and Safety Code §753.003, Government Code §417.005, and Insurance Code §36.001. TDI proposes the repeal of §§34.404 – 34.406 to comply with Government Code §417.005 and Insurance Code §36.001, §6001.054, Chapter 6002,

and §6003.054. TDI proposes the repeal of §34.524 to comply with Government Code §417.005 and Insurance Code §§36.001 and §6001.052(b).

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 of insurance 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. Health and Safety Code §753.003 provides that the department, through the state fire marshal, shall adopt rules for the safe storage, handling, and use of flammable liquids at retail service stations. Insurance Code §6001.054 provides that the department shall evaluate the qualifications of a firm seeking approval as a testing laboratory for fire extinguishers. Insurance Code Chapter 6002 provides that fire alarm and fire detection devices must carry a label of approval or listing by a testing laboratory approved by the department. Insurance Code §6003.054 provides that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property. Insurance Code §6001.052(b) specifies that the commissioner shall 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.

8. CROSS REFERENCE TO STATUTE. The proposed repeal affects the following statutes:

<u>Rule</u>	<u>Statute</u>
28 TAC §§34.201 – 34.208	Health and Safety Code Chapter 753
28 TAC §§34.404 – 34.406	Insurance Code Chapters 6001, 6002, and 6003
28 TAC §34.524	Insurance Code Chapter 6001

9. TEXT.

SUBCHAPTER B. FLAMMABLE LIQUIDS EQUIPMENT TESTING LABORATORY

RULES

§34.201. Purpose.

§34.202. Title.

§34.203. Applicability of Chapter.

§34.204. Definitions.

§34.205. Testing Laboratory Approval.

§34.206. Alternate Method for Approval.

§34.207. Applications.

§34.208. Severability.

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§34.404. Notice.

§34.405. Definitions.

§34.406. Requirements for Approval.

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§34.524. Yellow Tags.

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

Issued at Austin, Texas, on October 9, 2013.



Sara Waitt
General Counsel
Texas Department of Insurance