

**SUBCHAPTER E. FIRE EXTINGUISHER RULES**  
**28 TAC §§34.510, 34.511, 34.514, and 34.515**

**SUBCHAPTER F. FIRE ALARM RULES**  
**28 TAC §§34.610, 34.613, 34.614, 34.616, and 34.622**

**SUBCHAPTER G. FIRE SPRINKLER RULES**  
**28 TAC §§34.710, 34.713, and 34.714**

**SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS**  
**28 TAC §§34.808, 34.811, 34.814, and 34.817**

**INTRODUCTION.** The Texas Department of Insurance proposes to amend 28 TAC Subchapter E, Fire Extinguisher Rules §§34.510, 34.511, 34.514, and 34.515; Subchapter F, Fire Alarm Rules, §§34.610, 34.613, 34.614, 34.616, and 34.622; Subchapter G, Fire Sprinkler Rules, §§34.710, 34.713, and 34.714; and Subchapter H, Storage and Sale of Fireworks, §§34.808, 34.811, 34.814, and 34.817. These amendments are necessary to clarify the intent of the regulations, efficiently administer the respective statutes, and provide for the safety of regulated persons and their customers.

**EXPLANATION.** The proposal includes amendments relating to the state fire marshal. Additional nonsubstantive edits have been made to the rule text to conform to agency style and for consistency across the rules.

**SUBCHAPTER E. FIRE EXTINGUISHER RULES.** The purpose of Insurance Code Chapter 6001 is to safeguard lives and property by regulating the leasing, selling, installing, and servicing of portable fire extinguishers and the planning, certifying, installing, and servicing of fixed fire extinguisher systems. The following proposed amendments to Subchapter E are necessary to implement the statute and to safeguard lives and property.

**Section 34.510. Certificates of Registration.**

The department proposes to add a clarification to §34.510(d) to require that the business location indicated on the certificate of registration is an actual physical address. In the course of fulfilling their duties, State Fire Marshal's Office investigators may need to go to the actual location

of a registered firm. A mailing address or P.O. box on a certificate of registration does not support this. Including a physical location on a certificate of registration ensures that the State Fire Marshal's Office staff can locate and inspect the business site and efficiently provide for the safety and wellness of all persons by ensuring the registered firm is complying with applicable statutes and rules. This change is not expected to impact regulated persons. Regulated persons must already provide the specific business location. The proposed amendment is intended to eliminate any ambiguity in the rule. Regulated persons would provide a physical address on renewal or if requested by agency staff, but they are not otherwise expected to file documents with the State Fire Marshal's Office as a result of the proposed amendment.

**Section 34.511. Fire Extinguisher Licenses.**

The department proposes to remove license Type R. Only three licenses of this type were ever issued, and the last Type R license issued in Texas expired on April 7, 2017, and was not renewed. The State Fire Marshal's Office has not received any applications for a Type R license since that time. The type R license was created by rule in 2006 and intended to address a perceived need for regulation related to a specific type of range-top fire suppression device. Over time, the product evolved to a mail-order and direct sales item installed by the end user, as opposed to a device sold and installed by a third party. The need for licensing related to sales and installation of the devices no longer exists. There will be no impact to anyone by eliminating the Type R license as there are no current licensees, and elimination of the obsolete and outdated Type R license will provide for more efficient administration of Insurance Code Chapter 6001.

**Section 34.514. Applications.**

The department proposes to amend the requirement that corporations applying for certificates of registration provide proof that their franchise tax is in "active status" rather than the outdated "Certificate of Good Standing." This amendment reflects a change in the state comptroller's office procedures and terminology and is not expected to substantively impact regulated persons.

The department proposes to add a requirement that new applications for apprentice permits must be accompanied by a criminal history report from the Texas Department of Public

Safety. This requirement is expected to add costs to affected applicants, but it is necessary to protect the public.

**Section 34.515. Fees.**

The department proposes to amend the fee procedure requirements in §34.515(a) to allow for alternative online payment of fees as those options become available. This change will allow for more efficient administration of the statute and rules.

**SUBCHAPTER F. FIRE ALARM RULES**

Insurance Code Chapter 6003 charges the state fire marshal with the protection and preservation of life and property in controlling the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems. The following proposed amendments to Subchapter F are necessary to implement the statute and to safeguard lives and property.

**Section 34.610. Certificate of Registration.**

The department proposes to add a clarification to §34.610(a) to require an actual physical address of registered firms on their certificate of registration. The State Fire Marshal's Office staff may, in the course of fulfilling their duties, have cause to go to the actual location of a registered firm. A mailing address or P.O. Box on a certificate of registration does not support this. Including a physical location on a registered firm's certificate of registration ensures that the State Fire Marshal's Office can locate and inspect a business site and more efficiently provide for the safety and wellness of all persons by ensuring the registered firm is complying with applicable statutes and rules. This change is not expected to impact regulated persons. Regulated persons would simply provide a physical address on renewal or if requested by agency staff but they are not otherwise expected to file documents with the State Fire Marshal's Office as a result of the proposed amendment.

**Section 34.613. Applications.**

The department proposes to amend the requirement that corporations applying for certificates of registration provide proof that their franchise tax is "in active status" rather than the outdated "Certificate of Good Standing." This amendment reflects a change in the state

comptroller's procedures and terminology and is not expected to substantively impact regulated persons.

**Section 34.614. Fees.**

The department proposes to amend the fee procedure requirements in §34.614(a) to allow for alternative online payment methods as those alternatives become available. This change will allow for more efficient administration of the statute and rules.

**Section 34.616. Sales, Installation, and Service.**

The department proposes to amend the provisions related to fire detection and fire alarm devices or systems other than residential single station in §34.616(b)(3) to delete the mention of the installation of fire sprinkler or fire extinguishers systems "other than inspection and testing of detection or supervisory devices." The provision is not intended to allow for a blanket exception to the fire extinguisher and fire sprinkler licensing statutes. Should operation of fire extinguisher or fire sprinkler systems be necessary and a properly licensed person is unavailable, a property owner may operate the fixtures that they own. This change will allow for more efficient administration of the statute and rules.

**Section 34.622. Inspections/Test Labels.**

The department proposes to amend the requirement for inspection/test labels in §34.622(d) by deleting "...at the time the system was installed." The amended sentence is, "If, during any inspection or test, the system does not comply with applicable standards adopted, or has a fault condition or is impaired from normal operation, the owner or the owner's representative and the local authority having jurisdiction (AHJ) 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." On older systems, it is often difficult to determine when the alarm system was installed and what standards were in place at the time. In 2014, similar amendments were made to §34.623 and §34.721. The notification requirement is critical in protection and preservation of life and property.

**SUBCHAPTER G. FIRE SPRINKLER RULES**

Insurance Code Chapter 6003 charges the state fire marshal with the protection and preservation of life and property in controlling the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems. The following proposed amendments to Subchapter G are necessary to implement the statute and preserve life and property.

**Section 34.710. Certificates of Registration.**

The department proposes to add a clarification to §34.710(a) to require the actual physical address of the business location to be indicated on the certificate of registration. The State Fire Marshal's Office may, in the course of fulfilling their duties, have cause to go to the actual location of a registered firm. A mailing address or P.O. Box does not support this. A physical location on a registered firm's certificate of registration ensures that the State Fire Marshal's Office can locate and inspect the business site and efficiently provide for the safety and wellness of all persons by ensuring the registered firm is complying with applicable statutes and rules. This change is not expected to impact regulated persons. Regulated persons would provide a physical address on renewal or if requested by agency staff but they are not otherwise expected to file documents with the State Fire Marshal's Office as a result of the proposed amendment.

**Section 34.713. Applications.**

The department proposes to amend the requirement that corporations applying for certificates of registration provide proof that their franchise tax is "in active status" rather than the outdated "Certificate of Good Standing." This amendment reflects a change in the state comptroller's procedures and terminology and is not expected to substantively impact regulated persons. In addition, citations related to evidence of public liability insurance in §34.713(a)(3) are corrected to refer to the proper statutory requirement in Insurance Code Chapter 6003.

**Section 34.714. Fees.**

The department proposes to amend the fee procedure requirements in §34.714(a) to allow for alternative online payment methods as those options become available. This change will allow for more efficient administration of the statute and rules.

**SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS**

Occupations Code Chapter 2154 charges the state fire marshal with the protection, safety, and preservation of life and property, including rules regulating: (1) the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state; (2) the conduct of public fireworks displays; and (3) the safe storage of Fireworks 1.3G and Fireworks 1.4G. The following proposed amendments to Subchapter H are necessary to implement the statute and for the protection, safety, and preservation of life and property.

**Section 34.808. Definitions.**

The department proposes to add a new definition: "authorized retail location." The newly defined term will clarify that the location indicated in a permit for a retail location must be consistent with statute and rules and must be in a location where such sales are allowed by local ordinance. In the past, permits have been sought for locations where the local municipality does not allow fireworks sales. The State Fire Marshal's Office encourages its licensees to cooperate with local authorities. This amendment will also clarify that a retail permit does not mean local regulations do not apply. This clarification is consistent with statute and longstanding State Fire Marshal Office policy and is not expected to result in additional costs to regulated persons. Other definitions are renumbered, as appropriate.

**Section 34.811. Requirements, Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and Flame Effects Operator License.**

The department proposes to add a requirement that new applicants for Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and the Flame Effects Operator License submit with the application a criminal history report from the Texas Department of Public Safety. This requirement is expected to add costs to affected applicants but it is necessary to protect the public.

**Section 34.814. Fees.**

The department proposes to amend the fee procedure requirements in §34.814(a) to allow for alternative online payment methods as those alternatives become available. This change will allow for more efficient administration of the statute and rules.

**Section 34.817. Retail Sales General Requirements.**

The department proposes to amend §34.817(q) as follows: "Shipping information, invoices, and bills of lading related to the inventory at each retail stand must be available for inspection on request." The new proposed requirement will help the State Fire Marshal's Office personnel better administer Occupations Code Chapter 2154 and the adopted rules. Checking the shipping information will enable licensing investigators to determine if fireworks have been purchased from a licensed distributor. Generally, these invoices are specific to each particular retail stand, and provide highly useful information that can make inspections more efficient. The invoice makes determining compliance with other statutory requirements, such as the limit of a maximum of 500 cases of Fireworks 1.4G under §34.817(b). The department expects regulated persons will incur minimal costs from this amendment, as they will be required to keep the documents. Regulated persons are not expected to generate new reports or documents, merely retain for later inspection those that they already receive.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Ernest McCloud, assistant state fire marshal, has determined that for each year of the first five years the proposed amended sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of this proposal.

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.** For each year of the first five years the proposed amendments are in effect, Mr. McCloud expects that administering the proposed amendments will have the public benefit of protecting the health, safety, and welfare of the residents of this state and allow State Fire Marshal's Office personnel to more efficiently administer the regulations.

Mr. McCloud expects that the proposed amendments to 28 TAC §§34.510, 34.511, 34.610, 34.613, 34.616, 34.622, 34.710, 34,713, and 34.808 will have no impact on costs incurred by regulated persons. However, other proposed amendments may result in increased costs.

Proposed amendments to §§34.514, 34.711, and 34.811 add new requirements for a criminal history report not previously required; a background check currently costs \$37.00, not including a small convenience fee.

Proposed amendment to §34.817 may result in minimal additional costs to fireworks retail locations with respect to requiring shipping information to be retained for the duration of that fireworks sales period. The actual cost of this requirement cannot be estimated at this time but it is expected to be low or have no additional costs.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** The department has determined that the proposed amendments may have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses and rural communities.

For Fiscal Year 2017, there were 896 firms with fire extinguisher registrations and 3,229 individuals with fire extinguisher licenses. The Census Bureau has established the North American Industry Classification Code System (NAICS) code 423990 (other miscellaneous durable goods merchant wholesalers) for use with fire extinguisher sales combined with rental or service, and merchant wholesalers. Based on data from the Texas Comptroller of Public Accounts website, which provides online information to assist agencies in determining a proposed rule's potential adverse economic effect on small businesses (<https://fmx.cpa.state.tx.us/fmx/legis/ecoeffect/>), approximately 92 percent of these firms in Texas employ fewer than 100 employees and have less than \$6 million in annual gross receipts. The department expects that nearly all of those firms and individuals are likely to be small or micro businesses.

For Fiscal Year 2017, there were 1,666 firms with fire alarm registrations and 8,891 individuals with fire alarm licenses. Based on data from the comptroller's website, approximately 92 percent of these firms in Texas employ fewer than 100 employees and have less than \$6 million in annual gross receipts. The department expects that nearly all of those firms and individuals are likely to be small or micro businesses.

For Fiscal Year 2017 there were 712 firms with fire sprinkler registrations and 1,939 individuals with fire sprinkler licenses. Based on data from the comptroller's website, approximately 92 percent of these firms in Texas employ fewer than 100 employees and have less than \$6 million in annual gross receipts. The department expects that nearly all of those firms and individuals are likely to be small or micro businesses.

For Fiscal Year 2017 there were 74 firms with fireworks related registrations and 1,127 individuals with fireworks related licenses. The NAICS code 423920 (merchant wholesale distribution of games, toys, fireworks, playing cards, hobby goods and supplies, and/or related goods) covers fireworks-related businesses. Based on data from the comptroller's website (<https://fmx.cpa.state.tx.us/fmx/legis/effect/>), approximately 92 percent of these firms in Texas employ fewer than 100 employees and have less than \$6 million in annual gross receipts. In addition, for 2017 there were 5,085 fireworks retail permits and 677 pyrotechnic display permits issued. It is likely that nearly all fireworks retail permits and pyrotechnic display permits are used by small or micro businesses.

The department estimates that the proposed amendments will affect some individuals and firms operating in the estimated 1,100 rural communities in Texas. The department notes that many fireworks permit holders operate in rural communities and unincorporated areas. In fact, fireworks retail sales are often banned by local ordinances in urban municipalities. None of the proposed rules are expected to specifically have an adverse economic effect directly on rural communities.

The primary objectives of this proposal are to clarify the rules, efficiently administer the respective statutes, and provide for the safety of regulated persons and their customers. The department considered the following alternatives to minimize any adverse impact on small and micro businesses and rural communities while accomplishing the proposal's objectives:

- (1) not proposing the amendments;
  - (2) proposing a different requirement for small and micro businesses or rural communities;
- and
- (3) exempting small or micro businesses or rural communities from the proposed requirement that could create the adverse impact.

*Not proposing the amendments.* The purpose of this rule proposal is to clarify the intent of the regulations, efficiently administer the respective statutes, and provide for the safety of regulated persons and their customers. Without the proposal and adoption of amended rules for these subchapters, 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 Insurance Code Chapters 6001, 6002, and 6003, and Occupations Code Chapters 2154. For these reasons, the department has rejected this option.

*Proposing different requirements for small and micro businesses and rural communities.* The department believes that proposing different standards for small and micro business and rural communities 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 and rural communities 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 and rural communities from applicability under the amendments is not practical, and does not make sense.

*Excluding small and micro businesses and rural communities 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 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 E, F, G, and H protect the health, safety, and welfare of the residents, and buildings in Texas, through the efficient administration of Insurance Code Chapters 6001, 6002, and 6003, and Occupations Code Chapter 2154. To protect life and property in this state, it is necessary that all businesses and communities, 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 E, F, G, and H in this proposal that will sufficiently protect the safety of the public.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** The department has determined that some of the amendments in this proposal do impose a cost on regulated persons. The department has determined that these amendments are necessary to protect the health, safety, and welfare of the residents of this state. In addition, these rules are necessary to administer rules for the protection and preservation of life and property, as contemplated by Insurance Code §§6001.001, 6001.052, 6002.001, 6003.054, and Occupations Code §2154.052. Therefore, Government Code §2001.0045(c)(6) and (9) does not require the department to repeal or amend a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule.

**GOVERNMENT GROWTH IMPACT STATEMENT.** During the first five years that the proposed rule amendments would be in effect, the amendments would not create or eliminate a government program, except for the elimination of fire extinguisher license Type R. The proposed amendments would not require the creation of new employee positions or the elimination of existing employee positions. The proposed rule amendments would not require an increase or decrease in future legislative appropriations to the agency. The proposed amendments would not directly increase or decrease fees paid to the agency. The proposed amendments would not create a new regulation. The proposed amendments may slightly expand, limit, or repeal an existing regulation. The proposed amendments are not expected to increase or decrease the number of individuals subject to the rules' applicability. And the proposed amendments should not positively or adversely affect the Texas economy.

**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.** Comments on the proposal must be received by the department no later than 5:00 p.m., central time, on April 8, 2019. Send one copy either by email to ChiefClerk@tdi.texas.gov; or by mail to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, by email to ChiefClerk@tdi.texas.gov; or by mail to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

**SUBCHAPTER E. FIRE EXTINGUISHER RULES**  
**28 TAC §§34.510, 34.511, 34.514, and 34.515**

**STATUTORY AUTHORITY.** The department proposes amendments to 28 TAC §§34.510, 34.511, 34.514, and 34.515 under Government Code §417.005 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.

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(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 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 be properly equipped to perform the act or acts authorized by its certificate.

(c) Types of certificates. The business activities authorized by the certificate are ~~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) specification fire extinguisher cylinders.

(d) Business location. Each registered firm must maintain a specific business location, and the business location must be indicated on the certificate. The business location must be a physical address, not a mailing address or P.O. Box.

(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 or types of portable extinguishers serviced with their respective manuals or part lists;
- (4) portable 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; ~~;~~ ~~]~~
  - (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 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 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 the State Fire Marshal's Office;

and

(B) verification of registration through the U.S. 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. 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 before [~~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. 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.

#### **§34.511. Fire Extinguisher Licenses.**

(a) Types of licenses. Each license must be identified by type, which indicates the business activity authorized under the license.

(1) Type PL--For planning, supervising, certifying, installing, or servicing of all fixed systems other than pre-engineered systems. A system planning licensee may also perform, supervise, or certify the installation or servicing of all pre-engineered fixed systems and portable fire extinguishers.

(2) Type A--For certifying or servicing the installation of all fixed fire extinguisher systems, other than pre-engineered systems; or for installing, certifying, or servicing all pre-engineered fixed fire extinguisher systems, and certifying and servicing of portable extinguishers.

(3) Type B--For servicing, certifying, and low-pressure hydrostatic testing of portables.

(4) Type K--For installing, certifying, or servicing pre-engineered fixed fire extinguisher systems for the protection of cooking areas, and certifying and servicing portable extinguishers.

~~[(5) Type R--For installing, certifying, or servicing pre-engineered fixed residential range top fire extinguisher systems.]~~

(b) Pocket license. A licensee must carry a pocket license for identification while engaged in the activities of the business.

(c) Duplicate license. A duplicate license must be obtained from the state fire marshal to replace a lost or destroyed license. The license holder or registered firm must submit written notification of the loss or destruction, accompanied by the required fee.

(d) Revised license. The change of a licensee's registered firm or mailing address requires a revised license. Within 14 days after the change requiring the revision, the license holder or registered firm must submit written notification of the necessary change accompanied by the required fee.

(e) Restrictions.

(1) A licensee must not engage in any act of the business unless employed by a registered firm and holding an unexpired license.

(2) A license is neither temporarily nor permanently transferable from one person to another.

(3) A registered firm must notify the state fire marshal within 14 days after termination of employment of a licensee.

(4) A Type A or Type K license will not be issued to an individual unless the individual has held an apprentice permit or a Type B license for at least six months or has held a license to service fixed extinguisher systems for at least six months from another state.

~~[(5) It will not be necessary for the applicant of a Type R license to hold an apprentice permit prior to the issuance of a Type R license.]~~

**§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 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 from the State Comptroller's Office showing it is in active status [~~"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 and that issues a registration number to the facility.

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

(A) The state fire marshal will 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 [~~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 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" [~~(dba)~~] followed by 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 by 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 (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 the National Institute for Certification in Engineering Technologies (NICET) [~~(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 that 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 and accompanied by 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.

(d) Timely filed. A license or registration expires ~~[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 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, accompanied by a criminal history report from the Texas Department of Public Safety, and accompanied by the required application fee.

(g) Complete applications. The application form for a license or registration must be accompanied by the required application 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 6001 and this subchapter, or a new application must be submitted, including all applicable fees.

#### **§34.515. Fees.**

(a) Except for fees specified in subsection (d) of this section, all fees payable must ~~[shall]~~ be submitted by check or money order made payable to the Texas Department of Insurance or the State Fire Marshal's Office, or by online payment ~~[if the license is renewable over the internet, where the renewal application is to be submitted under the Texas OnLine Project, in which case fees shall be submitted as directed by the Texas OnLine Authority]~~. Should the department authorize other online or electronic original applications or other transactions, applicants must ~~[persons shall]~~ submit fees with the transaction as directed by the department, ~~[or]~~ the Texas

OnLine Authority, or other online provider. Except for overpayments resulting from mistakes of law or fact, all fees are nonrefundable.

(b) Fees are as follows.

(1) Certificates of registration:

(A) initial fee--\$450;

(B) renewal fee (for two years)--\$600;

(C) renewal late fee (expired 1 day to 90 days)--\$225 plus \$50 for each branch office operated by the registered firm;

(D) renewal late fee (expired 91 days to two years)--\$450 plus \$100 for each branch office operated by the registered firm;

(E) branch office initial fee--\$100;

(F) branch office renewal fee (for two years)--\$200.

(2) Certificate of registration (Type C):

(A) initial fee--\$250;

(B) renewal fee (for two years)--\$300;

(C) renewal late fee (expired 1 day to 90 days)--\$125;

(D) renewal late fee (expired 91 days to two years)--\$250.

(3) Fire extinguisher license (Type A, B, [R] and K):

(A) initial fee--\$70;

(B) renewal fee (for two years)--\$100;

(C) renewal late fee (expired 1 day to 90 days)--\$35;

(D) renewal late fee (expired 91 days to two years)--\$70.

(4) Fire extinguisher license (Type PL):

(A) initial fee--\$70;

(B) renewal fee (for two years)--\$100;

(C) renewal late fee (expired 1 day to 90 days)--\$35;

(D) renewal late fee (expired 91 days to two years)--\$70.

(5) Apprentice permit fee--\$30.

(6) Duplicate or revised certificates, licenses, permits, or other requested changes to certificates, licenses, or permits--\$20.

(7) Initial test fee (if administered by the SFMO)--\$20.

(8) Retest fee (if administered by the SFMO)--\$20.

(c) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(d) Late fees are required of all certificate or license holders who fail to submit complete renewal applications before the expiration of the certificate or license.

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

##### **28 TAC §§34.610, 34.613, 34.614, 34.616, and 34.622**

**STATUTORY AUTHORITY.** The department proposes amendments to 28 TAC §§34.610, 34.613, 34.614, 34.616, and 34.622 under Government Code §417.005 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.

Insurance Code §6002.051(a) specifies that the department will 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(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.

**TEXT.**

**§34.610. Certificate of Registration.**

(a) Business location. A specific business location must be maintained by each registered firm. The location must be indicated on the certificate. The business location must be a physical address, not a mailing address or P.O. Box.

(b) Designated Employee. Each registered firm must specify one full-time employee holding a license under this subchapter as the firm's designated employee on its ~~[their]~~ Fire Alarm Certificate of Registration Application, Form No. SF031, and on its ~~[their]~~ Renewal Application for Fire Alarm Certificate of Registration, Form No. SF084. Any change in the designated employee under this section must be submitted in writing to the State Fire Marshal's Office within 14 days of the change ~~[its]~~ occurrence. An individual may not serve as a designated employee for more than one registered firm.

(c) Business vehicles. All vehicles regularly used in installation, service, maintenance, testing, or certification activities must prominently display the company name, telephone number, and certificate number. The numbers and letters must be at least one inch high 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 ACR-number.

(d) Change of ownership.

(1) The total change of a firm's ownership invalidates the current certificate. To ensure continuance of the business, a complete application for a new certificate must be submitted to the state fire marshal at least 14 days before the ~~[prior to such]~~ change.

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

(e) 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 a revised certificate.

(f) Branch Office Initial Certificate of Registration Fees and Expiration Dates. The initial fee for a branch office certificate of registration is \$150 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.

(g) Duplicate certificates. A duplicate certificate must be obtained 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.

(h) 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 certificate holder must submit written notification of the necessary change accompanied by the required fee.

(i) Initial 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 must 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 must prorate accordingly.

### **§34.613. Applications.**

(a) Approvals and 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 (relating to Application and Renewal Forms) and be accompanied by all fees, documents, and information required by 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 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 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 from the State Comptroller's Office showing it is in active status [~~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 [~~commissioner~~] and a statement that the monitoring service complies [~~is in compliance~~] with NFPA 72, as adopted in §34.607 of this title (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.

(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 as required in [~~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 the National Institute for Certification in Engineering Technologies (NICET) [~~(National Institute for Certification in Engineering Technologies)~~] or the Electronic Security Association (ESA) [~~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's 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.

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

(A) hold a current fire alarm planning superintendent 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 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.

(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 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 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, but ~~[-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. 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.

**§34.614. Fees.**

(a) Except for fees specified in subsection (c) of this section, all fees payable must ~~[shall]~~ be submitted by check or money order made payable to the Texas Department of Insurance or the State Fire Marshal's Office, or by online payment ~~[if the license is renewable over the internet, where the renewal application is to be submitted under the Texas OnLine Project, in which case fees shall be submitted as directed by the Texas OnLine Authority]~~. Should the department authorize other online or electronic original applications or other transactions, persons must ~~[shall]~~ submit fees with the transaction as directed by the department, ~~[or]~~ the Texas OnLine Authority, or other online provider. Except for overpayments resulting from mistakes of law or fact, all fees are nonrefundable.

(b) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(c) Fees are as follows:

(1) Certificates of registration:

(A) initial ~~[Initial]~~ fee--\$500;

(B) renewal fee (for two years, subject to the exceptions specified in §34.610(i) of this subchapter (relating to Certificate of Registration) for the initial alignment of the expiration and renewal dates of existing branches)--\$1,000;

(C) renewal late fee (expired 1 day to 90 days)--\$125 plus \$37.50 for each branch office operated by the registered firm;

(D) renewal late fee (expired 91 days to two years)--\$500 plus \$150 for each branch office operated by the registered firm;

(E) branch office initial fee--\$150;

(F) branch office renewal fee (for two years)--\$300;

(2) Certificates of registration--Single Station:

(A) initial fee--\$250;

(B) renewal fee (for two years)--\$500;

(C) renewal late fee (expired 1 day to 90 days)--\$62.50;

(D) renewal late fee (expired 91 days to two years)--\$250;

(E) branch office initial fee--None;

(F) branch office renewal fee (for two years)--None;

(3) Fire alarm [~~Alarm~~] licenses (fire [~~Fire~~] alarm technician license, fire [~~Fire~~] alarm monitoring technician license, residential [~~Residential~~] fire alarm superintendent (single station) license; residential [~~Residential~~] fire alarm superintendent license, fire [~~Fire~~] alarm planning superintendent license):

(A) initial fee--\$120;

(B) renewal fee (for two years)--\$200;

(C) renewal late fee (expired 1 day to 90 days)--\$30;

(D) renewal late fee (expired 91 days to two years)--\$120;

(4) Residential fire alarm technician licenses:

(A) initial fee (for one year)--\$50;

(B) renewal fee (for two years)--\$100;

(C) renewal late fee (expired 1 day to 90 days)--\$12.50;

(D) renewal late fee (expired 91 days to two years)--\$50;

(5) Training school approval:

(A) initial fee (for one year)--\$500;

(B) renewal fee (for one year)--\$500;

(6) Instructor approval:

(A) initial fee (for one year)--\$50;

(B) renewal fee (for one year)--\$50;

(7) Duplicate or revised certificate or license or other requested changes to certificates, approvals, or licenses--\$20;

(8) Initial test fee (if administered by the State Fire Marshal's Office)--\$20;

(9) Retest fee (if administered by the State Fire Marshal's Office)--\$20.

(d) All fees are forfeited if the applicant does not appear for the scheduled test.

(e) Late fees are required of all certificate or license holders who fail to submit complete renewal applications before the expiration of the certificate or license except as provided in the Insurance Code §6002.203(g).

(f) Fees for certificates and licenses that [~~which~~] have been expired for less than two years include both renewal and late fees.

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

(a) Residential alarm (single station).

(1) Registered firms may employ persons exempt from the licensing provisions of 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 Insurance Code §6002.155(10) is required to maintain documentation to include lesson plans and annual test results demonstrating competency of those employees regarding the provisions of 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.

(1) The installation of all fire detection and fire alarm devices or systems, including monitoring equipment subject to 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 or a fire extinguisher system [~~other than inspection and testing of detection or supervisory devices~~], the licensing requirements of Insurance Code Chapters 6001 and 6003 must be satisfied, as appropriate.

(4) The planning, 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 (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.

(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 currently [~~current~~] adopted standards but the entire system is not automatically required to be modified to meet the applicable adopted code. The local AHJ 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.

(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 a minimum of seven days before terminating the monitoring service. If the monitored property is a one- or two- family dwelling, notification of the local AHJ 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 with requirements of the adopted standards.

(b) If any service or maintenance is performed under the inspection or test, a service label, in addition to the inspection/test label, must 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 authority having jurisdiction (AHJ) [~~AHJ~~].

(d) If, during any inspection or test, the system does not comply with applicable standards adopted or [~~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 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) Inspection/test labels must remain in place for at least five years, after which 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) The inspection/test label must be blue with printed black lettering.

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

(i) Approximately a half-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) Inspection/test labels must contain the following information in the format of the inspection/test label, as set forth in subsection (k) 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 acceptable or if yellow label attached, or if red label attached.

(k) Inspection/test label:

Figure: 28 TAC §34.622(k) (no change)

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

### **28 TAC §§34.710, 34.713, and 34.714**

**STATUTORY AUTHORITY.** The department proposes amendments to 28 TAC §§34.710, 34.713, and 34.714 under Government Code §417.005 and Insurance Code §§6003.051, 6003.052, 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.

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) 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.

**TEXT.**

**§34.710. Certificates of Registration.**

(a) Required. Each person or organization, before engaging in business in this state as an independent fire protection sprinkler contractor on or for any fire protection sprinkler system, must obtain a certificate of registration from the state fire marshal. A registered firm may not subcontract with an unregistered firm to allow the unregistered firm as an independent contractor to perform any act of a fire protection sprinkler contractor.

(b) Business location. A specific business location must be maintained by each registered firm at a location ~~that [which]~~ must be indicated on the certificate. The business location must be a physical address, not a mailing address or P.O. Box.

(c) Posting. Each certificate must ~~shall~~ be posted conspicuously for public view at the business location.

(d) Change of ownership.

(1) The total change of a firm's ownership invalidates the current certificate. To ensure ~~assure~~ continuance of the business, a new application for a new certificate should be submitted to the state fire marshal 14 days before the ~~[prior to such]~~ 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.

(e) 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 a revised certificate.

(f) Duplicate certificates. A duplicate certificate must be obtained 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.

(g) 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 certificate holder must submit written notification of the necessary change, accompanied by the required fee.

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

(i) Types.

(1) General--This certificate permits a fire protection sprinkler system contractor to conduct the planning, sales, installation, maintenance, or servicing of any fire protection sprinkler system or any part of such a system.

(2) Dwelling--This certificate permits the fire protection sprinkler system contractor to conduct the planning, sales, installation, maintenance, or servicing of a one- or two-family dwelling fire protection sprinkler system or any part of such a system.

(3) Underground Fire Main--This certificate permits a fire protection sprinkler system contractor to conduct the sales, installation, maintenance, or servicing, but not the planning, of an assembly of underground piping or conduits that conveys water with or without other agents, used as an integral part of any type of fire protection sprinkler system.

### **§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, 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, Assumed Business or Professional Name Act. The application must also include written authorization by the applicant that permits 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 so the state fire marshal can ~~[tø]~~ determine whether the applicant is in 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 from the State Comptroller's Office that shows the corporation is in active status ~~from~~ ~~[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 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 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 §6003.152 ~~§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 §6003.152(c) [~~§6001.152(e)~~].

(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 the NICET [~~National Institute for Certification in Engineering Technologies (NICET's)~~] 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 NICET [~~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 the NICET ~~[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.

**§34.714. Fees.**

(a) Except for fees specified in subsection (b) of this section, all fees payable must ~~[shall]~~ be submitted by check or money order made payable to the Texas Department of Insurance or the State Fire Marshal's Office, or by online payment ~~[if the license is renewable over the internet, where the renewal application is to be submitted under the Texas OnLine Project, in which case fees shall be submitted as directed by the Texas OnLine Authority]~~. Should the department authorize other online or electronic original applications or other transactions, applicants must ~~[persons shall]~~ submit fees with the transaction as directed by the department, ~~[or]~~ the Texas OnLine Authority, or other online provider. Except for overpayments resulting from mistakes of law or fact, all fees are nonrefundable and non-transferable.

(b) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(c) Fees are as follows:

(1) Certificates of registration:

(A) all initial applications must ~~[shall]~~ include an application fee of--\$50;

(B) initial fee--\$900;

(C) renewal fee (for two years)--\$1,800;

- (D) renewal late fee (expired 1 day to 90 days)--\$450;
  - (E) renewal late fee (expired 91 days to two years)--\$900;
  - (2) Certificates of registration--(Dwelling or Underground fire main):
    - (A) all initial applications must ~~shall~~ include an application fee of--\$50;
    - (B) initial fee--\$300;
    - (C) renewal fee (for two years)--\$600;
    - (D) renewal late fee (expired 1 day to 90 days)--\$150;
    - (E) renewal late fee (expired 91 days to two years)--\$300;
  - (3) Responsible managing employee license (General):
    - (A) initial fee--\$200;
    - (B) renewal fee (for two years)--\$350;
    - (C) renewal late fee (expired 1 day to 90 days)--\$100;
    - (D) renewal late fee (expired 91 days to two years)--\$200;
  - (4) Responsible managing employee licenses (Dwelling, or Underground fire main):
    - (A) initial fee--\$150;
    - (B) renewal fee (for two years)--\$200;
    - (C) renewal late fee (expired 1 day to 90 days)--\$75;
    - (D) renewal late fee (expired 91 days to two years)--\$150;
  - (5) Responsible managing employee license (General Inspector):
    - (A) initial fee--\$50;
    - (B) renewal fee (for two years)--\$100;
    - (C) renewal late fee (expired 1 day to 90 days)--\$25;
    - (D) renewal late fee (expired 91 days to two years)--\$50;
  - (6) Duplicate or revised certificate or license or other requested changes to certificates or licenses--\$35;
  - (7) Test fee (if administered by the State Fire Marshal's Office)--\$50.
- (d) Late fees are required of all certificate or license holders who fail to submit renewal applications before their expiration dates.

(e) A license or registration expires [~~shall 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 [~~shall~~] have 30 days from the time the applicant is notified by the 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.

(f) Holders of certificates and licenses that [~~which~~] have been expired for less than two years cannot be issued new certificates or licenses.

(g) Fees for certificates and licenses that [~~which~~] have been expired for less than two years include both renewal and late fees.

#### **SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS**

##### **§§34.808, 34.811, 34.814, and 34.817**

**STATUTORY AUTHORITY.** The department proposes amendments to 28 TAC §§34.808, 34.811, 34.814, and 34.817 under Government Code §417.005, Occupations Code §2154.051 and §2154.052, and Insurance Code §36.001.

Government Code §417.005 states that the Commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the Commissioner.

Occupations Code §2154.051 states the Commissioner must determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays.

Occupations Code §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.

**TEXT.**

**§34.808. Definitions.**

The following words and terms, when used in this subchapter, must have the following meanings, unless the context clearly indicates otherwise.

(1) Acceptor building--A building that 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) Authorized retail location--A retail location that complies with the requirements of statute and rules and with a permit, and that is not prohibited by a local ordinance.

(4) [~~3~~] Bare wiring--Any electrical cable or cord any part of which has the insulating cover broken or removed, exposing bare wire.

(5) [~~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 be of a 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.

(6) [~~5~~] Barricade, artificial--An artificial mound or revetted wall of earth of a minimum thickness of one foot.

(7) [~~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.

(8) ~~[(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 be constructed of metal roofing, one-inch ~~[inch]~~ or ~~[a]~~ half-inch mesh screen or equivalent material. A screen-type barricade extends from the floor level of the donor building to a 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.

(9) ~~[(8)]~~ Breakaway construction--A general term that 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 of attachment of the weak wall must be constructed to aid the relief of blast pressure and fireball.

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

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

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

(13) ~~[(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.

(14) [(13)] Commissioner--The Commissioner of Insurance.

(15) [(14)] Department--The Texas Department of Insurance.

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

(17) [(16)] DOT--The United States Department of Transportation (U.S. DOT).

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

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

(20) [(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.

(21) [(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.

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

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

(24) [(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.

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

(26) [(25)] Licensed firm--A person, partnership, corporation, or association holding a current license.

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

(28) [~~(27)~~] 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 operation is otherwise lawful.

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

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

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

(32) [~~(31)~~] Nonprocess 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.

(33) [~~(32)~~] Open flame--Any flame that is exposed to direct contact.

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

(35) [~~(34)~~] 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.

(36) [~~(35)~~] 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 period.

(37) [~~(36)~~] 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.

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

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

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

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

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

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

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

**§34.811. Requirements, Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and Flame Effects Operator License.**

(a) Applicants for a pyrotechnic operator license, pyrotechnic special effects operator license or flame effects operator license must take a written test and obtain at least a passing grade of 70 percent. Written tests may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The content, frequency, and location of the tests must be designated by the state fire marshal.

(b) Examinees who fail may file a retest application accompanied by the required fee.

(c) An applicant may only schedule each type of test three times within a twelve-month period.

(d) 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.

(e) The state fire marshal may waive a test requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

(f) A licensee whose license has been expired for two years or longer and makes application for a new license must pass another test.

(g) A pyrotechnic operator license will not be issued to any person who fails to meet the requirements of subsection (a) of this section and the following:

(1) assisted in conducting at least five permitted or licensed public displays in Texas under the direct supervision of and verified in writing by a pyrotechnic operator licensed in Texas;

(2) be at least 21 years of age.

(h) The application must be accompanied by a criminal history report from the Texas Department of Public Safety.

(i) [(h)] The pocket license document issued along with the regular license document is for identification purposes only and must be carried by the licensee when engaged in the business.

#### **§34.814. Fees.**

(a) Fees payable to the department and required by the Occupations Code Chapter 2154 and this subchapter, must ~~[shall]~~ be paid by cash, money order, ~~[or]~~ check, or by online payment. Money orders and checks must ~~[shall]~~ be made payable to the Texas Department of Insurance. Except for overpayments resulting from mistakes of law or fact, or credits for unused retail fireworks permits, all fees are nonrefundable.

(b) Fees payable to the department must ~~[shall]~~ be paid at the Office of the State Fire Marshal in Austin, or mailed to an address specified by the state fire marshal. Retail permits may also be obtained through participating licensed firms. See §34.815 of this title (relating to Retail Permits).

(c) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(d) Fees are ~~[shall be]~~ as follows:

(1) manufacturer license:

(A) initial fee--\$1,000;

(B) renewal fee (before ~~[prior to]~~ expiration)--\$1,000;

(C) renewal late fee (expired 1 day to 90 days)--\$500;

(D) renewal late fee (expired 91 days to two years)--\$1,000;

(2) distributor license:

- (A) initial fee--\$1,500;
  - (B) renewal fee (before [~~prior to~~] expiration)--\$1,500;
  - (C) renewal late fee (expired 1 day to 90 days)--\$750;
  - (D) renewal late fee (expired 91 days to two years)--\$1,500;
- (3) jobber license:
- (A) initial fee--\$1,000;
  - (B) renewal fee (before [~~prior to~~] expiration)--\$1,000;
  - (C) renewal late fee (expired 1 day to 90 days)--\$500;
  - (D) renewal late fee (expired 91 days to two years)--\$1,000;
- (4) pyrotechnic special effects operator license:
- (A) initial fee--45;
  - (B) renewal fee (before [~~prior to~~] expiration)--\$25;
  - (C) renewal late fee (expired 1 day to 90 days)--\$22.50;
  - (D) renewal late fee (expired 91 days to two years)--\$45;
- (5) pyrotechnic operator license:
- (A) initial fee--\$45;
  - (B) renewal fee (before [~~prior to~~] expiration)--\$25;
  - (C) renewal late fee (expired 1 day to 90 days)--\$22.50;
  - (D) renewal late fee (expired 91 days to two years)--\$45;
- (6) multiple public display permit:
- (A) initial fee--\$400;
  - (B) renewal fee (before [~~prior to~~] expiration)--\$400;
- (7) retail permit--\$20;
- (8) single public display permit--\$50;
- (9) agricultural, industrial, and wildlife control permits--\$10;
- (10) flame effects operator:
- (A) initial fee--\$45;
  - (B) renewal fee (before [~~prior to~~] expiration)--\$25;
  - (C) renewal late fee (expired 1 day to 90 days)--\$22.50;

(D) renewal late fee (expired 91 days to two years)--\$45;

(11) Tests administered by the State Fire Marshal's Office:

(A) initial test fee--\$20;

(B) retest fee--\$20.

(e) A renewal application for a license accompanied by the renewal fee deposited with the United States Postal Service is deemed to be timely filed when its envelope bears a legible postmark on or before the expiration date of the license being renewed. Any renewal application postmarked after the expiration date must be accompanied by the renewal fee and the appropriate late fee.

(f) Holders of licenses that [~~which~~] have been expired for less than two years cannot be issued new licenses.

#### **§34.817. Retail Sales General Requirements.**

(a) A supervisor, 18 years of age or older, must [~~shall~~] be on duty during all phases of operation. It is [~~shall be~~] the responsibility of the permit holder as well as the supervisor to comply with or require compliance with the fireworks rules.

(b) A building with more than 350 linear feet of fireworks counter display or containing a total of 500 or more cases of Fireworks 1.4G for sales or storage by a retailer must [~~shall~~] comply with §34.823 of this title (relating to Bulk Storage of Fireworks 1.4G), except as provided by §34.832, of this subchapter (related to Specific Requirements for Retail Fireworks Sites Other Than Stands).

(c) Heat-sealing of packages within retail fireworks sites is prohibited.

(d) Each retail fireworks site determined to have fire danger external of the sales area must [~~shall~~] be provided with equipment or facilities that are capable of extinguishing small exterior fires that would threaten the retail stand. Retail sales in other than a stand must [~~shall~~] have a fire extinguisher rated not less than 2-A. An extinguisher must [~~shall~~] be located within 75 feet walking distance from any point in the building, and each extinguisher must [~~shall~~] cover a floor area not greater than 1000 square feet per unit of "A" rating.

(e) An unobstructed pathway to walk doors must ~~[shall]~~ be maintained within the retail fireworks site during selling operation.

(f) The display, offer for sale, or sales of fireworks from tents and motor vehicles is prohibited. Fireworks may not be sold or stored for future sale at any inhabited dwelling, house, apartment, or other structure used in whole or in part as a home or place of abode by any person or persons.

(g) Smoking is ~~[shall]~~ not ~~[be]~~ permitted in the retail fireworks site. The presence of lighted cigars, cigarettes, or pipes within 10 feet of any site where fireworks are sold or stored is prohibited. "Fireworks" and "No Smoking" signs in letters not less than four inches high must ~~[shall]~~ be conspicuously posted on the inside and outside of each entrance door and at several locations inside the building.

(h) The consumption or possession of alcoholic beverages in any retail fireworks site is prohibited. No retail sales personnel inside the facility or any supervisor may ~~[shall]~~ be under the influence of or consume alcoholic beverages while on duty.

(i) A retail fireworks site may only sell fireworks, fireworks promotional items and accessories and those items listed in the Occupations Code §2154.002(4). The display and offer for sale, or sales of fireworks within any structure or building where any other business or any other merchandise is sold is prohibited.

(j) A retail permit is ~~[shall be]~~ required for each retail fireworks site offering fireworks for sale during selling season and must ~~[shall]~~ be posted in the sales area.

(k) The display or offer for sale or sales of fireworks from single or multifamily residential structures is prohibited.

(l) All retail fireworks sites must furnish parking off the highway.

(m) An area of at least 10 feet in width on all sides of a retail fireworks site must ~~[shall]~~ be kept free of high grass, empty cardboard boxes and trash.

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

(o) Fireworks offered for sale to the general public in this state must ~~[shall]~~ conform to the labeling requirements of the United States Consumer Product Safety Commission and the United

States Department of Transportation. Only labeling specifications or requirements mandated by either of these agencies ~~is~~ ~~shall be~~ required for the labeling of items offered for sale in Texas.

(p) Internal combustion engines must ~~shall~~ not be operated inside a retail fireworks sales site.

(q) Shipping information, invoices, and bills of lading related to the inventory at each retail stand must be available for inspection on request.

**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 21, 2019.

/s/ Norma Garcia  
Norma Garcia, General Counsel  
Texas Department of Insurance