

CHAPTER 34. STATE FIRE MARSHAL
SUBCHAPTER E. FIRE EXTINGUISHER RULES
28 TAC §§34.511, 34.512, and 34.516

SUBCHAPTER F. FIRE ALARM RULES
28 TAC §34.611

SUBCHAPTER G. FIRE SPRINKLER RULES
28 TAC §34.710

SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS
28 TAC §34.811

INTRODUCTION. The Commissioner of Insurance adopts amendments to 28 TAC Subchapter E, §§34.511, 34.512, and 34.516; Subchapter F, §34.611; Subchapter G, §34.710; and Subchapter H, §34.811, concerning fire protection pocket licenses and firework retail permit distribution channels. Sections 34.511, 34.512, 34.516, 34.710, and 34.811 are adopted without changes to the proposed text published in the February 12, 2021, issue of the *Texas Register* (46 TexReg 1022). The proposed text of §34.611(a)(3) is adopted with a change to correct a non-substantive error.

REASONED JUSTIFICATION. The amendments are necessary to provide fire protection licensees additional flexibility by allowing them to show proof of licensure on a mobile device, in addition to continuing to allow them to show proof with a paper document. The amendments also remove references to an obsolete license type.

The amendments to Subchapters E, F, G, and H (1) implement Insurance Code Chapters 6001, 6002, and 6003, and Occupations Code Chapter 2154; (2) clarify the intent of the regulations and efficiently administer the respective statutes; (3) protect, safeguard,

and preserve lives and property; and (4) provide for the safety of the public, regulated persons, and regulated persons' customers.

Descriptions of the adopted amendments follow.

Section 34.511. Fire Extinguisher Licenses. Amendments to §34.511(b) update the catchline and change the requirement that a licensee carry a pocket license to say that a licensee must be able to show proof of licensure while engaged in business activities.

Section 34.512. Apprentice Permit. Amendments to §34.512(a) update the catchline and change the requirement that a permit holder carry a pocket license to say that the permit holder must be able to show proof of licensure while engaging in the business.

Section 34.516. Tests. The amendments delete §34.516(a)(5), which relates to Type R licenses, because this license is no longer issued. Type R licenses were eliminated by amendments published in the August 23, 2019, edition of the *Texas Register* (44 TexReg 4481).

Section 34.611. Licenses and Approvals. Amendments to §34.611(b) update the catchline and change the requirement that a licensee carry a pocket license to say that the licensee must be able to show proof of licensure while engaged in business activities. The adopted amendments include a change to the text as proposed to eliminate the superfluous phrase "single- or two-family residences" from proposed text of §34.611(a)(3).

Section 34.711. Responsible Managing Employee (RME) License. Amendments to §34.711(b) update catchline and change the requirement that a licensee carry a pocket license to say that the licensee must be able to show proof of licensure while engaged in activities of a responsible managing employee.

Section 34.811. Requirements, Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and Flame Effects Operator License. The amendments to §34.711(i) change the requirement that a licensee carry a pocket license to say that a licensee must be able to show proof of licensure while engaged in activities of the business.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: The Texas Department of Insurance (TDI) received one written comment from an individual against the proposal.

Comment: The commenter states that, given the amount of fraud and deception, requiring proof of licensure is important and that retaining the pocket license requirement achieves this goal.

Agency Response: TDI agrees that requiring proof of licensure is an important goal, but clarifies that the amendments do not eliminate this requirement. Rather, the amendments allow licensees to provide licensure proof by other methods in addition to paper licensure, such as on a mobile device. TDI is not aware of any evidence that such alternate means of licensure proof are more susceptible to fraud or deception than paper licensure. However, TDI will monitor the implementation of the rule amendments, and if TDI receives evidence of increased fraud or deception relating to the alternate means of providing licensure proof, may consider further changes to the requirements.

SUBCHAPTER E. FIRE EXTINGUISHER RULES.**28 TAC §§34.511, 34.512, and 34.516**

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §§34.511, 34.512, and 34.516 under Insurance Code §§6001.051(b), 6001.052, and 36.001.

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 adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding (1) 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; (2) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (3) 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 prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under Insurance Code Chapter 6001.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

TEXT.

§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.

(b) Proof of licensure. A licensee must be able to show proof of licensure 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.

§34.512. Apprentice Permit.

(a) Proof of licensure. A permit holder must be able to show proof of licensure while engaging in the business.

(b) Duplicate permit. A duplicate permit must be obtained from the state fire marshal to replace a lost or destroyed permit. The permit holder and his employer must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(c) Revised permits. The change of a permittee's employer, home address, or mailing address requires a revised permit. Within 14 days after the change requiring the revision, the permit holder or registered firm must submit written notification to the State Fire Marshal's Office of the necessary change accompanied by the required fee.

(d) Nontransferable. A permit is neither temporarily nor permanently transferable from one person to another.

(e) Apprentice. An individual holding a current apprentice permit may, under the direct supervision of the licensee, assist in all respective services of the licensee; however, the licensee must sign all documents requiring the licensee's signature.

§34.516. Tests.

(a) Applicants for licenses are required to take a test and obtain a grade of at least 70 percent on the test. Tests may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The test content, frequency, location, and outsource testing service must be designated by the state fire marshal.

(1) The Type B license test will include questions on the following:

- (A) this subchapter and Insurance Code Chapter 6001; and
- (B) installing and servicing of portables.

(2) The Type A license test will include questions on the following:

- (A) this subchapter and Insurance Code Chapter 6001;
- (B) installing and servicing of portables;
- (C) fixed systems; and
- (D) installing and servicing pre-engineered fixed fire extinguisher

systems for the protection of cooking areas.

(3) The Type K license test will include questions on the following:

- (A) this subchapter and Insurance Code Chapter 6001;
- (B) installing and servicing of portables; and

(C) installing and servicing pre-engineered fixed fire extinguisher systems for the protection of cooking areas.

(4) The Type PL license test will include questions on the following:

(A) this subchapter and Insurance Code Chapter 6001; and

(B) a technically qualifying test to be conducted through NICET.

(b) The standards used in the tests will be adopted by the State Fire Marshal's Office.

(c) Examinees who fail any topic on the test must file a retest application accompanied by the required fee.

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

(e) An examinee who is scheduled for a test to be conducted on a religious holy day by the State Fire Marshal's Office and who wishes to observe the religious holy day may request the rescheduling of the test to an alternate date.

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

(g) 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, except for testing conducted through NICET; otherwise, the test is voided and the individual will have to pass the test again.

SUBCHAPTER F. FIRE ALARM RULES.**28 TAC §34.611**

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §34.611 under Insurance Code §§6002.051(b), 6002.052(b), and 36.001.

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.

TEXT.**§34.611. Licenses and Approvals.**

(a) Types of licenses and approvals. The following licenses and approvals are issued by the State Fire Marshal's Office according to Insurance Code Chapter 6002 and this subchapter. As required by Insurance Code Chapter 6002, an individual or entity must be licensed or approved to lawfully perform the functions for which the license or approval is issued.

(1) Fire alarm technician license--For installing, inspecting, servicing, testing, maintaining, monitoring, and certifying fire alarm or fire detection devices and systems.

(2) Fire alarm monitoring technician license--For the monitoring of fire alarm or fire detection devices and systems.

(3) Instructor approval--For providing training at an approved training school in installing, certifying, inspecting, and servicing fire alarm or detection systems in single-family or two-family residences.

(4) Residential fire alarm superintendent single station license--For planning, installing, certifying, inspecting, testing, servicing, and maintaining single station smoke or heat detectors which are not a part of or connected to any other detection device or system in single-family or two-family residences.

(5) Residential fire alarm superintendent license--For planning, installing, certifying, inspecting, testing, servicing, monitoring, and maintaining fire alarm or fire detection devices and systems in single-family or two-family residences. A residential fire alarm superintendent may act as a fire alarm technician.

(6) Fire alarm planning superintendent license--For planning, installing, certifying, inspecting, testing, servicing, monitoring, and maintaining fire alarm or fire detection devices.

(7) Residential fire alarm technician license--For installing, certifying, inspecting, and servicing, but not planning, fire alarm or fire detection devices and systems in single-family or two-family residences.

(8) Training school approval--For conducting required training necessary for obtaining a residential fire alarm technician license.

(b) Proof of license and approval.

(1) A licensee must be able to show proof of licensure while engaged in the activities of the business.

(2) An instructor must carry the instructor's approval while providing training in an approved training school on the installing, certifying, inspecting, and servicing of fire alarm or detection systems in single-family or two-family residences.

(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 without delay, accompanied by the required fee.

(d) Licensee responsibilities relating to revised licenses. A change in the licensee's name, the licensee's mailing address, or a new or additional registered firm employing the licensee requires a revised license. Within 14 days after the change requiring the revision, the license holder must submit written notification of the necessary change accompanied by the required fee.

(e) Registered firms' responsibilities relating to licensees. A registered firm must submit notification of any licensee employment, termination, or resignation within 14 days of its occurrence.

(f) Restrictions on licensees and registered firms.

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

(2) Each person who engages in the activities of the business must have the appropriate license issued by the state fire marshal unless excepted from the licensing provisions by Insurance Code §6002.155.

(g) Restrictions on approval holders. Approvals are not transferable.

(h) Responsibilities relating to revised approvals. A change in an instructor's name or mailing address requires a revised approval. The change in the mailing address of a fire alarm training school requires a revised approval. Within 14 days after the change requiring the revision, the approval holder must submit written notification of the necessary change, accompanied by the required fee.

SUBCHAPTER G. FIRE SPRINKLER RULES.**28 TAC §34.711**

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §34.711 under Insurance Code §§6003.051(b), 6003.054(a), and 36.001.

Insurance Code §6003.051(b) specifies that the Commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal.

Insurance Code §6003.054(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 (1) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (2) 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.

TEXT.**§34.711. Responsible Managing Employee (RME) License.**

(a) Required. Each person designated as a responsible managing employee by a registered firm must have a license issued by the state fire marshal.

(b) Proof of licensure. An RME must be able to show proof of licensure while engaged in the activities of an RME.

(c) Duplicate License. An RME must obtain a duplicate license from the state fire marshal to replace a lost or destroyed license. The license holder must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(d) Revised Licenses. The change of licensee's employer, home address, or mailing address requires a revised license. The license holder must submit written notification of the necessary change within 14 days of the 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 registered firm must notify the state fire marshal within 14 days after termination of employment of an RME.

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

(f) Types.

(1) RME-General--A license issued to an individual who is designated by a registered firm to ensure that any fire protection sprinkler system, as planned, installed, maintained, or serviced, meets the standards provided by law.

(2) RME-Dwelling--A license issued to an individual who is designated by a registered firm to ensure that the fire protection sprinkler system for a one- and two-family dwelling, as planned, installed, maintained, or serviced, meets the standards provided by law.

(3) RME-Underground Fire Main--A license issued to an individual who is designated by a registered firm to ensure that the underground fire main for a fire protection sprinkler system, as installed, maintained, or serviced, meets the standards provided by law.

(4) RME-General Inspector--A license issued to an individual who is designated by a registered firm to perform the inspection, test, and maintenance service for a fire protection sprinkler system according to the standards adopted in this subchapter.

SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS.**28 TAC §34.811**

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §34.811 under Occupations Code §2154.051 and §2154.052 and Insurance Code §36.001.

Occupations Code §2154.051 authorizes the Commissioner to determine reasonable criteria and qualifications for licenses.

Occupations Code §2154.052 provides that the Commissioner adopt, and the state fire marshal must administer, rules the Commissioner considers necessary for the protection, safety, and preservation of life and property.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

TEXT.**§34.811. 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;

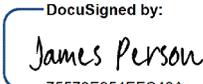
(2) be at least 21 years of age.

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

(i) A licensee must be able to show proof of licensure while engaged in the activities of the business.

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

Issued at Austin, Texas, on June 2, 2021.

DocuSigned by:

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James Person, General Counsel
Texas Department of Insurance

The Commissioner adopts amended 28 TAC Subchapter E, §§34.511, 34.512, and 34.516;
Subchapter F, §34.611; Subchapter G, §34.710; and Subchapter H, §34.811.

Commissioner of Insurance

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Doug Slape
Chief Deputy Commissioner
Tex. Gov't Code §601.002
Commissioner's Order No. 2018-5528