

CHAPTER 34, SUBCHAPTER B. FIRE SUPPRESSION RATINGS OVERSIGHT

28 TAC §§34.201 - 34.204

INTRODUCTION. The Texas Department of Insurance proposes new 28 TAC Chapter 34, Subchapter B, §§34.201 - 34.204, relating to oversight of fire suppression ratings. These new sections are necessary to implement Government Code §417.0083 and to specify by rule the state fire marshal's procedures to perform oversight of fire suppression ratings as directed by the commissioner.

EXPLANATION.

History of fire ratings.

Until 1991, key rate inspections were conducted by TDI and its predecessors. In 1991, the inspection duty was transferred to the Texas Commission on Fire Protection (TCFP) and performed by the state fire marshal. From 1991 to 1998, the state fire marshal conducted inspections of local fire department facilities as part of a process to establish key rates. The state fire marshal was part of the TCFP until the legislature transferred the state fire marshal to TDI.

Key rates were part of a formula used to determine fire insurance premiums for individual properties in cities, towns, and districts. The Texas State Archives maintains copies of key rate analyses, reports, correspondence, maps, proposed key rate schedules, city ordinances, city codes, photographs, water and wastewater master plans, clippings, lists, notes, and blueprints from 1893 for cities and towns in Texas for fire protection and insurance purposes. The TCFP conducted key rate inspections and recommended a key rate to the (former) State Board of Insurance for the board's final approval. If the key rate was not approved, the board would inform TCFP of the reason and recommend another key rate. Effective January 1, 1997, all existing key rates for cities, towns, and districts were frozen. Texas was the last state to continue using a key rate schedule.

In 1916 an industry standard was produced, the Standard Grading Schedule of Grading Cities and Towns. Texas adopted an evaluation process in 1918, based on the 1916 standards, to establish a methodology for establishing fire insurance key rates for individual properties and communities. The majority of the 1916 key rate schedule did not change for the next 80 years. Items evaluated to determine the key rates included the fire department's method for receiving

and handling of fire alarms, the capability of the fire department to fight fires, and the capability of the community's existing water supply to fight fires. The more proficient a community was in fighting fires, the lower the key rate, resulting in lower fire insurance premiums for the individual properties within that community.

Commissioner's Order No. 96-1377 (November 25, 1996), repealed the existing Texas Key Rate Schedule used for grading public fire protection of cities, towns, and districts in Texas. The Commissioner's Order also adopted the Fire Suppression Rating Schedule and Texas Addendum; the Public Protection Classification system for cities, towns, and districts in Texas, effective January 1, 1997; and specified procedures for state fire marshal oversight of property protection classifications. Insurance Services Office, Inc (ISO) a private organization, has produced the detailed reports of inspection since 1998.

Analysis

The ISO is a licensed advisory organization under Insurance Code Chapter 1805, and currently submits fire ratings to TDI, based on its fire suppression and mitigation grading schedule. Section 1805.053 provides that an advisory organization may file with the commissioner prospective loss costs, supplementary rating information, and policy forms. A filing made by an advisory organization is subject to the provisions of the Insurance Code and other laws of this state governing rate filings. A fire suppression and mitigation grading schedule is supplementary rating information. Insurance Code §2251.101 specifies that all rates, as well as supplementary rating information, must be filed as required by the commissioner by rule.

This proposed subchapter does not alter or amend the filing requirements under Insurance Code Chapter 2251 or §38.002. The proposed new subchapter specifies the procedure for monitoring the application of fire suppression and mitigation grading schedules in determining fire ratings for communities, fire districts, or other jurisdictions.

Government Code §417.0083 provides that the state fire marshal will perform duties as directed by the commissioner relating to TDI's fire suppression ratings schedule. Commissioner's Order 96-1377 directs the state fire marshal to continue to exercise the responsibilities under the Government Code as it exercised under TDI's key rate schedule, including recommending the grading for individual municipalities for approval. These proposed rules codify the procedures and responsibilities of the state fire marshal pertaining to oversight of fire ratings.

Government Code §417.005 provides that the commissioner may adopt necessary rules to guide the state fire marshal in the performance of duties for the commissioner.

The Insurance Code contains two provisions relating to providing additional credit for certain improved fire protection methods. Insurance Code §2003.003 provides that the commissioner may give a locality, municipality, or other political subdivision credit for the reduction of fire hazards, for improvements that tend to reduce fire hazards, and for a good fire record. Insurance Code §2003.004 provides that the commissioner may require an insurer to give credit to a policyholder for the reduction of fire hazards through a policyholder credit. To implement these two sections, the commissioner directs the state fire marshal to exercise oversight related to fire ratings. The proposed new subchapter ensures that the credit created by §2003.003 and §2003.004 is maintained in the application of any fire suppression ratings schedule.

Proposed Subchapter

Section 34.201 of the subchapter specifies that the applicability of the subchapter is for an advisory organization or other filer that determines a fire rating based on a fire suppression and mitigation grading schedule. The filing of a fire suppression and mitigation grading schedule is a filing that a filer must make in accordance with Insurance Code Chapter 2251, and is not the subject of this subchapter. ISO has filed a fire suppression and mitigation rating schedule. Other advisory organizations or insurers could enter the marketplace to provide fire ratings. The proposed subchapter would apply to all fire suppression and mitigation grading schedules where a filer recommends a fire rating.

Section 34.202 defines certain terms used in the subchapter.

Section 34.203 specifies the process for submission of fire ratings, how the fire rating will be verified, the approval or disapproval of the fire rating, and appeals procedures. The section includes a 30-day deemer provision so that inaction does not delay the approval of otherwise compliant fire ratings. The review period can be extended if the filer agrees. The procedures are proposed in accordance with the authority to establish summary procedures for routine matters under Insurance Code §36.102.

Section 32.204 specifies the process for the appeal of a community fire-rating determination. The procedures are proposed in accordance with Insurance Code §36.103, concerning to Review of Action on a Routine Matter.

FISCAL NOTE. Chris Connealy, state fire marshal, has determined that for each year of the first five years the sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposed rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Connealy, has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be the accurate and consistent application of fire suppression and mitigation grading schedules. The probable economic cost to persons required to comply with the sections will be the administrative costs to submit proposed fire ratings or objections to a proposed fire rating.

The proposed subchapter's submission and review procedure are similar to those required by Commissioner's Order No. 96-1377. TDI anticipates that the proposed rule will not materially differ from existing procedure required to comply with Insurance Code §2003.003 and §2003.004.

Submission Costs

Though TDI has identified factors attributable to the administrative cost of the subchapter, it cannot estimate the total annual costs because of several nonquantifiable cost factors, including the unknown methodology required by future fire suppression and mitigation grading schedules and the unknown degree of complexity in a particular fire rating. While it is not feasible to determine the actual cost of each activity for all submitting entities, TDI has provided information about factors that will generate costs under this proposal.

For each proposed fire rating submitted to TDI, TDI estimates that each submitter will incur personnel costs. TDI anticipates compliance involves administrative and management personnel. It is not feasible for TDI to determine the actual employee costs for filing entities; however, the United States Department of Labor, Bureau of Labor Statistics' May 2012, *Occupational Employment Statistics* report indicates that the hourly mean wages for the

professions in Texas, as referenced in this cost analysis, are \$26.15 for office and administrative workers (www.bls.gov/oes/CURRENT/oes431011.htm) and \$56.85 for general and operations managers (www.bls.gov/oes/CURRENT/oes111021.htm). In New Jersey, where ISO is headquartered, the hourly mean wage for office and administrative workers is \$28.82, and the mean wage for general and operations managers is \$77.58. TDI estimates that preparation of a fire rating submission as specified in §34.203 will likely require one to two hours of administrative staff time and one to four hours of operations manager time. In 2014, the State Fire Marshal's Office processed 278 fire-rating submissions. For 2016, the state fire marshal anticipates the number of fire-rating submissions will exceed 300.

TDI estimates the cost of making an electronic submission to be minimal and impossible to reasonably estimate. TDI estimates the cost of a mail submission to be less than \$5 in aggregate for postage, envelope, paper, and mail preparation.

Appeal Costs

If a fire rating were to be appealed to a hearing, TDI estimates that each submitter will incur additional personnel costs. Additional hourly wages for office and administrative workers and general and operations managers will be required. Each hearing would be different, but TDI anticipates that preparing for a hearing would require 10 to 20 hours of time from office and administrative workers and 20 to 40 hours of time from general and operations managers. Additional labor may be required from an attorney. The United States Department of Labor, Bureau of Labor Statistics' May 2012, *Occupational Employment Statistics* report indicates that the hourly mean wage for attorneys in Texas, as referenced in this cost analysis, is \$67.91 (www.bls.gov/oes/current/oes231011.htm). TDI estimates an attorney may require between 20 and 80 hours to prepare for and attend a hearing.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), TDI has determined that the proposal will not have an adverse economic effect on small or micro businesses because the proposal does not apply to any small or micro businesses. Instead, it only relates to certain advisory organizations or filers that file supplementary rating information used as fire suppression ratings. The only currently licensed advisory organization or insurer that has filed fire suppression and mitigation grading schedules is not a small or micro business.

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

REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal you must do so in writing no later than 5 p.m., Central time, on April 18, 2016. Please send one copy of your comments to Norma Garcia, General Counsel, Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comment to Chris Connealy, State Fire Marshal, Mail Code 112-FM, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104. If you wish to request a public hearing on this proposal, you must submit your request separate from your comments to the Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If a hearing is held, written comments and public testimony presented at the hearing will be considered.

STATUTORY AUTHORITY. The new sections are proposed under Government Code §417.0083 and §417.005, and Insurance Code §§2003.003, 2003.004, 36.102, 36.103, and 36.001.

Government Code §417.0083 provides that the state fire marshal must perform duties as directed by the commissioner relating to TDI's fire suppression ratings schedule.

Government Code §417.005 provides that the commissioner may adopt necessary rules to guide the state fire marshal in the performance of duties for the commissioner.

Insurance Code §2003.003 provides that the commissioner may give a locality, municipality, or other political subdivision credit for the reduction of fire hazards, for improvements that tend to reduce fire hazards, and for a good fire record.

Insurance Code §2003.004 provides that the commissioner may require an insurer to give credit to a policyholder for the reduction of fire hazards through a policyholder credit.

Insurance Code §36.102 provides that TDI may create a summary procedure for routine matters if the activity is voluminous, repetitive, believed to be noncontroversial, and of limited interest to anyone other than persons involved in or affected by the proposed TDI action.

Insurance Code §36.103 provides that the commissioner may adopt rules relating to an application for review of a routine matter taken under a summary procedure adopted under Insurance Code §36.102.

Insurance Code §36.001 provides that the commissioner of insurance 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.

CROSS REFERENCE TO STATUTE. The proposed new subchapter implements Government Code §417.0083 and Insurance Code §2003.003 and §2003.004.

TEXT.

SUBCHAPTER B. FIRE SUPPRESSION RATINGS OVERSIGHT

§34.201. Applicability. This subchapter applies to an advisory organization or other filer that determines a fire rating for a community, fire district, or other jurisdiction based on a fire suppression and mitigation grading schedule.

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

(1) Advisory organization--An advisory organization licensed under Insurance Code Chapter 1805.

(2) Fire rating--A rating, or evaluation of fire suppression and mitigation capabilities, for a community based on the criteria in a fire suppression and mitigation grading schedule.

(3) Filer--An advisory organization or insurer that files fire ratings.

(4) Fire suppression and mitigation grading schedule--A schedule with criteria for determining the fire rating for a community, fire district, or other jurisdiction. A fire suppression

and mitigation grading schedule is supplementary rating information, as defined by Insurance Code §2251.002.

(5) Community--A community, fire district, jurisdiction, or other definite geographic area.

(6) Survey--The results of an inspection to evaluate a community's fire suppression and mitigation capabilities.

§34.203. Review of Community Fire Ratings.

(a) Submission. A filer must submit a proposed fire rating for a community to the State Fire Marshal's Office. A submission must contain:

(1) a recommended fire rating based on the filer's survey;

(2) justification for the recommended fire rating, consistent with the applicable fire suppression and mitigation grading schedule;

(3) identification of the fire suppression and mitigation grading schedule used to determine the fire rating;

(4) the primary contact information, including telephone and email, for the person completing the survey; and

(5) an explanation indicating why a community did not achieve a better rating, if applicable.

(b) Verification. After receiving a completed proposed fire rating, the State Fire Marshal's Office may review the proposed fire rating for compliance with the applicable fire suppression and mitigation grading schedule and with state laws and regulations.

(c) Requests for additional information. If the state fire marshal determines that the filer's submission is incomplete or otherwise deficient, the State Fire Marshal's Office may request additional information from the filer.

(d) Approval.

(1) The State Fire Marshal's Office will approve proposed fire ratings that are:

(A) consistent with the applicable fire suppression and mitigation grading schedule; and

(B) consistent with all applicable state laws and regulations.

(2) A proposed fire rating will be deemed approved 30 days after the date it is filed only if it meets the criteria in paragraph (1) of this subsection, and is not disapproved within that 30-day period, unless:

(A) the State Fire Marshal's Office provides notice of proposed disapproval of the fire rating during the 30-day period; or

(B) the filer agrees to extend the period.

(3) The time between the date the state fire marshal requests additional information from the filer and the date the state fire marshal receives the information requested is not included in the computation of the 30-day period in paragraph (2) of this subsection.

(e) Disapproval. If a proposed fire rating is not consistent with the applicable fire suppression and mitigation grading schedule and not compliant with applicable state laws and regulations, the State Fire Marshal's Office will:

(1) notify the filer of a proposed negative action no later than the fifth day before the date the State Fire Marshal's Office proposes to take the action; and

(2) disapprove the proposed fire rating and provide a written explanation of the reasons for the disapproval.

(f) Community notification. The State Fire Marshal's Office may notify an affected community of the proposed fire rating.

(g) Notification. The State Fire Marshal's Office will notify the filer of the final approval or disapproval of a fire rating. Notification will be in the form of a letter or electronic notification and will contain the effective date of the approval or disapproval.

§34.204. Appeal of Community Fire Rating Determination.

(a) Appeal. A filer or person who does not agree with an approval or disapproval of a proposed fire rating may petition for appeal and a hearing to review the matter.

(b) Timeliness. A person must appeal an approval or disapproval not later than the 60th day after the date of the state fire marshal's approval or disapproval.

(c) Petition. A petition filed under this section must be in writing. The petition must identify the fire rating and specify why the approval or disapproval was inconsistent with the applicable fire suppression and mitigation grading schedule and state law and regulations. The


petition must be filed with the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104.

(d) Review. A person affected by the approval or disapproval of a fire rating is entitled to a review of the action under Government Code Chapter 2001.

(e) Proceeding. A hearing under this section will be conducted in accordance with the Insurance Code, the Administrative Procedure and Texas Register Act, and Chapter 1 of this title.

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

Issued at Austin, Texas, on February 26, 2016.



Norma Garcia
General Counsel
Texas Department of Insurance