

**SUBCHAPTER A. FLAMMABLE LIQUIDS
28 TAC §34.5****SUBCHAPTER D. TESTING LABORATORY RULES
28 TAC §§34.401, 34.403, and 34.407**

1. INTRODUCTION. The Texas Department of Insurance adopts amendments to 28 TAC §34.5, concerning the safe storage, handling, and use of flammable liquids at retail service stations, and §§34.401, 34.403, and 34.407, concerning approval of testing laboratories. The amendments are adopted without changes to the proposed text published in the October 25, 2013, issue of the *Texas Register* (37 TexReg 7414) and will not be republished.

2. REASONED JUSTIFICATION. The amendments to §34.5 are necessary to incorporate updates to the National Fire Protection Association (NFPA) Flammable and Combustible Liquids Code 30-2012 and NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A-2012. Health and Safety Code §753.003 directs the department, through the state fire marshal, to adopt rules for the standards for safe storage, handling, and use of flammable liquids at retail service stations. The department last updated the adopted Flammable and Combustible Liquids Code and the NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages (formerly the Automotive and Marine Service Station Code) in 1990. The NFPA is a nationally recognized standards-making organization.

Amendments to §34.5 adopt the most recent version of the NFPA Flammable and Combustible Liquids Code 30 and Code for Motor Fuel Dispensing

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Facilities and Repair Garages 30A for retail service stations. The new NFPA codes would become effective September 1, 2014. The intent of Flammable and Combustible Liquids Code 30-2012 is to reduce hazards to a degree consistent with reasonable public safety, without undue interference with public convenience and necessity of operations that require the use of flammable and combustible liquids. The intent of NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A-2012 is to reduce the hazards of motor fuels to a degree consistent with reasonable public safety, without undue interference with public convenience and necessity. In compliance with Health and Safety Code §753.003(d), a rule adopted under this chapter does not prohibit or permit the prohibition of an unattended self-service gasoline station operation.

NFPA Flammable and Combustible Liquids Code 30-2012 incorporates requirements previously found in NFPA 11A, Standard for Medium- and High-Expansion Foam and adds a new chapter to address compressed air foam systems. The updated standard revises some chapters to accommodate the incorporation of medium- and high-expansion foam systems previously regulated by NFPA 11A. The code also modifies and updates other requirements for purposes of providing safeguards to reduce the hazards associated with storage, handling, and use of flammable and combustible liquids.

NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A-2010 includes revised safety requirements. Many of the chapters have been renumbered.

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The code includes updates and revisions since the 1990 edition and provides specialized guidelines to avoid serious hazards at service stations.

The proposed revised standards, to the extent they are in conflict with sections of this subchapter or any Texas statutes or federal law, will not apply. The following chapters of the proposed revised standards do not apply to retail service stations: (i) NFPA Flammable and Combustible Liquids Code 30, Chapter 22.4.1, relating to the Location of Aboveground Storage Tanks; (ii) NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A, Chapter 22.4.1, related to the Location of Aboveground Storage Tanks; (iii) NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A, Chapter 4.3.2.3, relating to Tank Size & Aggregate Capacity; (iv) NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A, Chapter 6.2.1, relating to Dispensing Device set backs; and (v) NFPA Code for Motor Fuel Dispensing Facilities and Repair Garages 30A, Chapter 11, related to Marine Fueling.

Copies of both standards are available for public inspection in the State Fire Marshal's Office. The NFPA also makes available codes for read-only inspection online through their website at www.nfpa.org. To view the NFPA codes, users must create a free account on the NFPA website and agree to certain terms and conditions.

The amendments to Subchapter D, Testing Laboratory Rules, are necessary to include the former substantive functions of Subchapter B, Flammable Liquids Equipment Testing Laboratory rules with Subchapter D, proposed for repeal in a companion rule adoption, also published in this issue of the *Texas Register*. The two testing laboratory rules impose similar requirements for approval by the state fire

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marshal. Adding testing laboratories that conduct testing for flammable liquids to these rules will simplify and condense rules under Chapter 34.

Amendments to §34.407 in this rule adoption, and the related repeal of sections within Subchapter D in the companion rule repeal, make substantive changes to the testing laboratory approval process. Previously, testing laboratories could apply to the state fire marshal directly for approval of certification programs. The existing rule has always extended approval to testing laboratories approved by the Occupational Safety and Health Administration (OSHA), as nationally recognized testing laboratories. The existing Subchapter B, Flammable Liquids Equipment Testing Laboratory, and Subchapter D, Testing Laboratory Rules provide a means to become an approved testing laboratory outside of the OSHA testing laboratory certification process. However, in practice no laboratory has applied to the state fire marshal, nor does the State Fire Marshal's Office have the staff expertise to adequately and fairly review an application. For these reasons, the department proposes to delete the option to apply directly to the state fire marshal to obtain approval as a testing laboratory. Further, the three testing laboratories specified in §34.407(f) are all OSHA certified, nationally recognized testing laboratories.

3. HOW THE SECTIONS WILL FUNCTION. Amendments to §34.5, concerning standards for flammable liquids, adopt the revised NFPA 30-2012 Flammable and Combustible Liquids Code and 30A-2012 Code for Motor Fuel Dispensing Facilities and Repair garages, effective September 1, 2014.

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Section 34.401 amends the purpose of the Testing Laboratory Rules to include Health and Safety Code Chapter 753 and the approval of testing laboratories for flammable liquids equipment.

Section 34.403 provides that the subchapter applies to persons and laboratories engaged in testing flammable liquids equipment in addition to fire protection equipment.

Section 34.407 amends the applications section to eliminate the application of testing laboratories and preserves the designation of Nationally Recognized Testing Laboratory as approved testing laboratories.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE. The department did not receive any comments on the published proposal.

5. STATUTORY AUTHORITY. The amendments are adopted under Government Code §417.005, Health and Safety Code §753.003, 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. Health and Safety Code §753.003 provides that the department of insurance, through the state fire marshal, shall adopt rules for the safe storage, handling, and use of flammable liquids at retail service stations. Insurance Code §6001.054 provides that the department shall evaluate the qualifications of a firm seeking approval as a testing laboratory for fire extinguishers. Insurance Code Chapter 6002 provides that fire alarm and fire detection devices must

carry a label of approval or listing by a testing laboratory approved by the department.

Insurance Code §6003.054 provides that the state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property. Section 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.

7. TEXT.

SUBCHAPTER A. Flammable Liquids

§34.5 Adopted Standards

(a) The commissioner adopts by reference the following copyrighted standards and recommendations in this subsection, except to the extent they are in conflict with sections of this subchapter or any Texas statutes or federal law for use through August 31, 2014. Copies of the standards are available for public inspection in the State Fire Marshal's Office. The standards are published by and are available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts:

(1) NFPA 30-1990, Flammable and Combustible Liquids Code;

(2) NFPA 30A-1990, Automotive and Marine Service Station Code,

including the Tentative Interim Amendment (TIA Log Number 312R) adopted by the NFPA in 1991, except for §2-4.2 of the Tentative Interim Amendment concerning tank location and capacity.

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(b) The commissioner adopts by reference the following copyrighted standards and recommendations in this subsection, except to the extent they are in conflict with sections of this subchapter or any Texas statutes or federal law, for use on and after September 1, 2014. Copies of the standards are available for public inspection in the State Fire Marshal's Office. The standards are published by and are available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts:

- (1) NFPA 30-2012, Flammable and Combustible Liquids Code;
- (2) NFPA 30A-2012, Code for Motor Fuel Dispensing Facilities and

Repair Garages.

SUBCHAPTER D. TESTING LABORATORY RULES

§34.401. Purpose. The purpose of this subchapter is to administer through the state fire marshal the law set forth in the Insurance Code, Chapters 6001, 6002, and 6003, and Health and Safety Code Chapter 753 regarding approval of testing laboratories that perform standardized tests on fire protection equipment or flammable liquids equipment in the interest of safeguarding lives and property.

§34.403. Applicability and Scope. This subchapter applies to persons and laboratories engaged in testing fire protection equipment or flammable liquids equipment and not to the general public.

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

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§34.407. Approved Testing Laboratories. An organization will be considered an approved testing laboratory if it is currently accredited as a Nationally Recognized Testing Laboratory (NRTL) by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) in accord with the requirements of 29 CFR 1910.7 for that specific product or category of products.

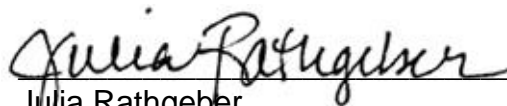
CERTIFICATION. This agency certifies that legal counsel has reviewed the adopted sections and found them to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on March 10, 2014.



Sara Waitt
General Counsel
Texas Department of Insurance

The commissioner adopts the amendments to 28 Texas Administrative Code Chapter §§34.5, 34.401, 34.403, and 34.407.



Julia Rathgeber
Commissioner of Insurance

COMMISSIONER'S ORDER NO. **3076**