

SUBCHAPTER F. FIRE ALARM RULES
28 TAC §34.616

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §34.616, relating to fire detection sales, installation, and service standards. These amendments clarify the intent of the regulations, efficiently administer the respective statutes, and provide for the safety of regulated persons and their customers.

EXPLANATION. Chapter 6002 authorizes the State Fire Marshal's Office to safeguard lives and property by regulating the planning, certifying, leasing, selling, servicing, installing, monitoring, and maintaining of fire detection and fire alarm devices and systems. The proposed amendments clarify existing rules to eliminate confusion some regulated industry and local authorities have with respect to fire protection planning, installation, and servicing standards.

The proposed amendments to §34.616 clarify that as long as all related tasks are done by licensed parties, the fire protection licensee responsible for planning the fire protection system can be different from the licensee installing the system. In addition, the amendments allow local governments more flexibility in determining the standard required for planning, installing, and servicing fire protection services by allowing the use of standards previously adopted by the local political jurisdiction as well as the currently adopted standard found in §34.607. The proposed amendments also correct punctuation errors and include nonsubstantive editorial changes for readability.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Ernest McCloud, assistant state fire marshal, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state or local governments as a result of enforcing or administering the sections.

Mr. McCloud does not anticipate any measurable effect on local employment or local economies 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 ensuring that TDI's rules conform to Insurance Code Chapter 6002 and make existing rules easier to understand, apply, and process.

Mr. McCloud expects that the proposed amendments will not increase the cost of compliance with Insurance Code Chapter 6002 because the amendments clarify the department's longstanding interpretation of existing rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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. 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. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m. Central time, on February 22, 2021. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, 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 to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m. Central time, on February 22, 2021. If TDI has a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §34.616 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. Section 34.616 implements Insurance Code §6002.051 and §6002.052.

TEXT.

§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 Alarm Certificate of Registration (ACR) number of the [primary] registered firm responsible for the planning. The certifying licensee, who is [must be] licensed under the ACR number of the [primary] registered firm responsible for the installation, [and] must be present for the final acceptance test prior to certification. The registered firm responsible for the planning of the fire devices or system can be different from the firm responsible for the installation.

(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, 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 an ~~[a more recent]~~ edition of the standard that has been previously 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 a repair. The equipment replaced must comply with the currently adopted standards but the entire system is not automatically required to be modified to meet the applicable adopted code. The local authority having jurisdiction (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 §6002.251.

(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.

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 January 8, 2021.

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Allison Eberhart
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Allison Eberhart, Deputy General Counsel
Texas Department of Insurance