Texas Occupations Code Chapter 2154 Regulation of Fireworks & Fireworks Displays

and

28 TAC §§ 34.800 The Fireworks Rules

Texas Department of Insurance

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SUBTITLE D. OTHER AMUSEMENTS AND ENTERTAINMENT
CHAPTER 2154. REGULATION OF FIREWORKS AND FIREWORKS DISPLAYS

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CHAPTER 2154. REGULATION OF FIREWORKS AND FIREWORKS DISPLAYS

SUBCHAPTER A. GENERAL PROVISIONS

§ 2154.001. Definitions

In this chapter:

(1) "Commissioner" means the commissioner of insurance of Texas.

(2) "Department" means the United States Department of Transportation.

(3) "Distributor" means a person who:

(A) imports fireworks into this state; or

(B) sells fireworks to:

(i) a jobber, retailer, or other distributor for resale; or

(ii) a holder of a single public display permit, a multiple public display permit, or another fireworks permit.

(4) "Fire prevention officer" means a chief of a fire department, a fire marshal, a county fire marshal, a sheriff, a constable, another local enforcement officer primarily responsible for fire prevention, or, if there is no local fire authority, the state fire marshal.

(5) "Fireworks" means a composition or device:

(A) designed for entertainment to produce a visible or audible effect by combustion, explosion, deflagration, or detonation; and

(B) defined by 49 C.F.R. Section 173.56(j) (1996).

(6) "Fireworks 1.3G" means a large fireworks device:

(A) primarily designed to produce visible or audible effects by combustion, deflagration, or detonation; and

(B) classified as a 1.3G explosive by the department in 49 C.F.R. Part 173 (1996).

(7) "Fireworks 1.4G" means a small fireworks device:

(A) primarily designed to produce visible or audible effects by combustion, deflagration, or detonation;

(B) that complies with the construction, labeling, and chemical composition requirements of the United States Consumer Product Safety Commission in 16 C.F.R. Part 1507 (1996), or the most recently adopted version of that rule; and

(C) that is classified by the department in 49 C.F.R. Part 173 (1996).

(8) "Illegal fireworks" means a fireworks device manufactured, distributed, or sold in violation of this chapter.

(9) "Indoor or proximate display" means a pyrotechnic display involving the ignition of Fireworks 1.3G or Fireworks 1.4G for public amusement where an audience is closer to the pyrotechnic devices than permitted by NFPA 1123 Code of Fireworks Display. The term does not include the use of Fireworks 1.4G by a retail consumer for private or personal amusement.

(10) "Insurance agent" means:

(A) a person, firm, or corporation licensed under Article 1.14-2 or 21.14, Insurance Code;

(B) a salaried, state, or special agent; and

(C) a person authorized to represent an insurance fund or pool created by a city, county, or other political subdivision of the state under Chapter 791, Government Code.

(11) "Jobber" means a person who purchases fireworks only for resale to retailers.

(12) "Manufacturer" means a person, firm, corporation, or association who makes fireworks.

(13) "Person" means an individual or entity, including an owner, manager, officer, employee, or occupant.

(14) "Public display" means the igniting of Fireworks 1.3G for public or private amusement.

(15) "Pyrotechnic operator" means an individual who, by experience, training, and examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising public displays of Fireworks 1.3G or Fireworks 1.4G.

(16) "Pyrotechnic special effects operator" means an individual who, by experience, training, and examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising proximate displays of Fireworks 1.3G or Fireworks 1.4G.

(17) "Retailer" means a person who purchases fireworks for resale only to the general public.

(18) "Sale" means selling or offering for sale merchandise, equipment, or service, at wholesale or retail, to the public or to any person, for an agreed sum of money or other consideration.

(19) "State fire marshal" means the chief law enforcement officer of the state charged with the responsibility of fire prevention.

§ 2154.002. Exemptions

This chapter does not apply to:

(1) a toy pistol, toy cane, toy gun, or other device that uses paper or plastic caps in sheets, strips, rolls, or individual caps that contain not more than an average of 25 hundredths of a grain of explosive composition per cap and that is packed and shipped under 49 C.F.R. Part 173 (1996);

(2) a model rocket or model rocket motor designed, sold, and used to propel recoverable aero models;

(3) a propelling or expelling charge consisting of a mixture of sulfur, charcoal, and potassium nitrate;

(4) novelties or trick noisemakers;

(5) the sale, at wholesale, of any type of fireworks by a resident manufacturer, distributor, importer, or jobber if the fireworks are intended for shipment directly out of state under department regulations;

(6) the sale or use of, in emergency situations, pyrotechnic signaling devices or distress signals for marine, aviation, or highway use;

(7) the use of a fusee or a railway torpedo by a railroad;

(8) the sale of blank cartridges for:

(A) use in a radio, television, film, or theater production;

(B) a signal or ceremonial purpose in an athletic event; or

(C) an industrial purpose; or

(9) the use of a pyrotechnic device by a military organization.

§ 2154.003. Permissible Fireworks

(a) Except as provided by Subsection (b), Fireworks 1.4G are permissible fireworks.

(b) The following are not permissible fireworks:

(1) sky rockets or "bottle rockets" with:

(A) a total propellant charge of less than four grams;

(B) a casing size of less than five-eighths of an inch for the outside diameter and less than 3 1/2inches in length; and

(C) an overall length, including stick, of less than 15 inches; and

(2) other fireworks determined not acceptable by the United States Consumer Product Safety Commission.

(c) The term "bottle rocket" may not be used in association with the advertisement or sale of fireworks.

(d) In addition to the items described by Subsection (b), pop rockets with a propellant casing length of less than five inches, an exterior diameter of less than three-fourths of an inch, and an overall total rocket length of less than 26 inches are not permissible fireworks. *Paragraph (d) takes effect January 2, 2008.*

§ 2154.004. Effect of Chapter on Local Regulation

(a) A municipal or county ordinance, order, or rule in effect on January 2, 1986, is not invalidated by this chapter.

(b) This chapter does not limit or restrict the authority of a county, where specifically authorized by law, or municipality to enact an ordinance or order prohibiting or further regulating fireworks.

SUBCHAPTER B. COMMISSIONER'S POWERS AND DUTIES

§ 2154.051. Commissioner's Powers and Duties

(a) The commissioner shall:

(1) determine reasonable criteria and qualifications for licenses and permits;

(2) set license and permit fees;

(3) determine the qualifications and examination requirements for pyrotechnics operators; and

(4) establish a procedure for reporting and processing complaints.

(b) The commissioner may, after notice and opportunity for hearing, increase or decrease the limits of insurance coverage.

§ 2154.052. Rules

(a) The commissioner:

(1) shall administer this chapter through the state fire marshal; and

(2) may issue rules to administer this chapter in compliance with Section 2154.054.

(b) The commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for 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.

(c) The commissioner shall adopt rules for applications for licenses and permits.

(d) In adopting a rule, the commissioner may use standards recognized by federal law or regulation and standards published by a nationally recognized standards-making organization.

(e) A rule may not be adopted under this chapter that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

§ 2154.053. Rules Restricting Advertising or Competitive Bidding

(a) The commissioner may not adopt rules restricting advertising or competitive bidding by a license or permit holder under this chapter except to prohibit false, misleading, or deceptive practices.

(b) The commissioner may not include in the rules to prohibit false, misleading, or deceptive practices a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the holder's personal appearance or the use of a holder's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the holder; or

(4) restricts the holder's advertisement under a trade name.

§ 2154.055. Fireworks Safety and Education Program

(a) The commissioner shall establish a fireworks safety and education program.

(b) The program:

(1) shall provide information relating to the proper and safe use of fireworks and the dangers of the improper use of fireworks; and

(2) may include any method of communicating the need for safe use of fireworks and the dangers of improper use.

(c) The program shall be administered by the advisory council established under Section 2154.054. The commissioner must approve a program that the advisory council proposes to present.

(d) To fund the program, in addition to any other license or permit fees:

(1) the holder of a retail permit issued under Section 2154.202 shall pay, on issuance or renewal of the permit, a fee in the amount of $10; and

(2) the holder of a manufacturer's, distributor's, or jobber's license issued under Section 2154.151, 2154.152, or 2154.153 shall pay, on issuance or renewal of the license, a fee in the amount of $250.

(e) Money collected under Subsection (d) may be used only by the commissioner for the purposes of this section.

SUBCHAPTER C. LICENSE REQUIREMENT

§ 2154.101. General Requirements

(a) A person must obtain an appropriate license to:

(1) engage in the business of manufacturing, distributing, jobbing, or importing fireworks to be sold or used in this state; or

(2) supervise or conduct public fireworks displays.

(b) A person who is younger than 21 years of age may not be issued a pyrotechnic operator's license. The minimum age of a person issued another license under Subchapter D is 18 years of age.

(c) A person may not:

(1) transfer a license; or

(2) obtain or attempt to obtain a license by fraudulent representation.

(d) A person may not alter or deface a license. An altered or defaced license is void.

§ 2154.102. Waiver of Examination Requirement

The commissioner may waive an examination requirement for an applicant with a valid license from another state if, in the commissioner's opinion, the license requirements of the other state are substantially equivalent to those of this state.

§ 2154.1025. State Fire Marshal's Authority Regarding Examinations; Rules

(a) The state fire marshal shall establish the scope and type of an examination required under this chapter.

(b) The state fire marshal may administer the examination or may enter into an agreement with a testing service.

(c) The state fire marshal shall adopt rules as necessary to implement examination requirements under this chapter.

§ 2154.1026. Use of Testing Service for Examination

(a) If a testing service is used, the state fire marshal may contract with the testing service regarding requirements for the examination required by this chapter, including examination development, scheduling, site arrangements, grading, reporting, analysis, or other administrative duties.

(b) The state fire marshal may require the testing service to:

(1) correspond directly with an applicant regarding the administration of the examination;

(2) collect a reasonable fee from an applicant for administering the examination; or

(3) administer the examination at a specific location or time.

§ 2154.103. Examination Results

(a) The state fire marshal shall notify each examinee of the results of the examination not later than the 30th day after the date an examination is administered.

(b) If the examination is conducted, graded, or reviewed by a testing service, the state fire marshal shall notify the examinee of the result of the examination not later than the 14th day after the date the state fire marshal receives the result from the testing service.

(c) If the notice of the examination result will be delayed for longer than 90 days after the examination date, the state fire marshal shall notify the examinee of the reason for the delay before the 90th day.

(d) If requested in writing by a person who fails the licensing examination, the state fire marshal shall send the person an analysis of the person's performance on the examination.

(e) The state fire marshal may require a testing service to notify a person of the results of the person's examination.

§ 2154.104. Duplicate License; License Changes

A person must be charged a fee in an amount not to exceed $20 for a duplicate license issued by the commissioner and for any requested change to a license.

§ 2154.105. License Expiration Date

(a) The commissioner by rule may provide for different expiration dates for the various types of licenses.

(b) If the expiration date of a license is less than one year from the date of its issuance or anniversary date, the license fee shall be prorated on the basis of the number of months during which the license is valid. The total annual fee is payable each time the license is renewed.

§ 2154.106. License Renewal

(a) A license holder may renew an unexpired license by paying the required renewal fee to the state fire marshal any time before the license expires.

(b) Not later than the 30th day before the expiration date of a license, the state fire marshal shall send written notice of the impending license expiration to the license holder at the license holder's last known address.

(c) A person whose license has been expired for 90 days or less may renew the license by paying to the state fire marshal the required annual fee and an additional amount equal to one-half of the original license fee.

(d) A person whose license has been expired for more than 90 days but less than two years may renew the license by paying to the state fire marshal all unpaid annual fees and an additional amount equal to the original license fee.

(e) A person may not renew a license that has been expired for two years or more. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(f) This section does not prevent the state fire marshal from denying or refusing to renew a license for any reason provided by law or the rules of the commissioner.

SUBCHAPTER D. TYPES OF LICENSES

§ 2154.151. Manufacturer's License

(a) A person manufacturing, storing, possessing, and selling fireworks constructed by that person must have a manufacturer's license.

(b) The commissioner shall set and collect an annual manufacturer's license fee in an amount not to exceed $1,000.

(c) A licensed manufacturer may sell:

(1) Fireworks 1.4G only to a licensed distributor or jobber; and

(2) Fireworks 1.3G only to a licensed distributor or pyrotechnic operator, or to a fireworks public display permit holder for use in public fireworks displays in this state.

(d) A licensed manufacturer may manufacture, store, possess, and sell an item other than a permissible firework if the item is only for sale and delivery to authorized persons in a state in which the item is permissible.

(e) A licensed manufacturer may be required to submit samples of all fireworks to the state fire marshal for approval.

§ 2154.152. Distributor's License

(a) A person must be a licensed distributor if the person:

(1) imports into this state or stores, possesses, and sells Fireworks 1.3G to a licensed pyrotechnic operator or distributor or to a single public display, multiple public display, or agricultural, industrial, and wildlife control fireworks permit holder; or

(2) imports or stores, possesses, and sells Fireworks 1.4G to a licensed jobber, retailer, or distributor in this state.

(b) The commissioner shall set and collect an annual distributor's license fee in an amount not to exceed $1,500.

§ 2154.153. Jobber's License

(a) A person must be a licensed jobber if the person stores, possesses, and sells Fireworks 1.4G only to retailers in this state.

(b) The commissioner shall set and collect an annual jobber's license fee in an amount not to exceed $ 1,000.

§ 2154.154. Pyrotechnic Operator's License

(a) A person must be a licensed pyrotechnic operator if the person assembles, conducts, and supervises public fireworks displays using Fireworks 1.3G.

(b) The commissioner shall set and collect an annual pyrotechnic operator's license fee in an amount not to exceed $100.

(c) To qualify for a pyrotechnic operator's license, a person must take and pass an examination, if required, conducted by the commissioner through the state fire marshal's office.

(d) Unless the examination is administered by a testing service, a person shall be charged a nonrefundable initial examination fee in an amount not to exceed $50. Unless the reexamination is administered by a testing service, a person shall be charged a nonrefundable fee in an amount not to exceed $20 for each reexamination.

§ 2154.155. Pyrotechnic Special Effects Operator's License

(a) A person must be a licensed pyrotechnic special effects operator if the person assembles, conducts, and supervises proximate displays using Fireworks 1.3G or Fireworks 1.4G as defined in NFPA 1126 Standard of the Use of Pyrotechnics Before a Proximate Audience.

(b) The commissioner shall set and collect an annual pyrotechnic special effects operator's license fee in an amount not to exceed $100.

(c) To qualify for a pyrotechnic special effects operator's license, a person must take and pass an examination, if required, conducted by the commissioner through the state fire marshal's office.

(d) Unless the examination is administered by a testing service, a person shall be charged a nonrefundable initial examination fee in an amount not to exceed $50. Unless the reexamination is administered by a testing service, a person shall be charged a nonrefundable fee in an amount not to exceed $20 for each reexamination.

§ 2154.156. Flame Effects Operator’s License

(a) A person must be a licensed flame effects operator if the person assembles, conducts, or supervises flame effects under Section 2154.253.

(b) The commissioner shall set and collect an annual flame effects operator’s license fee in an amount not to exceed $100.

(c) To qualify for a flame effects operator’s license, a person must take and pass an examination and comply with any other requirements set by the commissioner through the state fire marshal’s office.

(d) A person shall be charged a nonrefundable initial examination fee in an amount not to exceed $30. A person shall be charged a nonrefundable fee in an amount not to exceed $20 for each reexamination.

SUBCHAPTER E. PERMIT REQUIREMENTS

§ 2154.201. General Requirements

(a) A person who is younger than 21 years of age may not be issued a public fireworks display permit. A person who is younger than 18 years of age may not be issued another permit under this subchapter.

(b) A person may not:

(1) transfer a permit issued under this subchapter; or

(2) obtain or attempt to obtain a permit under this subchapter by fraudulent representation.

(c) A person may not alter or deface a permit. An altered or defaced permit is void.

§ 2154.202. Retail Fireworks Permit

(a) A person selling fireworks directly to the public must annually obtain a nonrenewable retail fireworks permit for each retail location.

(b) The commissioner shall set and collect a retail fireworks permit fee in an amount not to exceed $20.

(c) A retail fireworks permit may be purchased from a licensed manufacturer, distributor, or jobber or from the state fire marshal's office.

(d) A licensed manufacturer, distributor, or jobber may obtain retail fireworks permits from the commissioner at any time. The commissioner shall provide permits in books containing 20 permits each. Each permit must be clearly printed with the year, date, and permit number. The manufacturer, distributor, or jobber shall keep a record of all permits issued and shall submit the record to the commissioner through the state fire marshal in the manner required by the commissioner.

(e) A retail fireworks permit expires on January 31 each year and is not renewable.

(f) An outdated permit may be exchanged for a current permit only in the year following the permit's expiration.

(g) Except as provided by Subsection (h), a retail fireworks permit holder may sell fireworks only to the public, and only during periods:

(1) beginning June 24 and ending at midnight on July 4;

(2) beginning December 20 and ending at midnight on January 1 of the following year; and

(3) beginning May 1 and ending at midnight on May 5 if the fireworks are sold at a location that is not more than 100 miles from the Texas-Mexico border and that is in a county in which the commissioners court of the county has approved the sale of fireworks during the period.

(h) In addition to the periods during which the sale of fireworks is authorized under Subsection (g), the commissioners court of a county by order may allow a retail fireworks permit holder to sell fireworks in that county only to the public and only during one or more of the following periods:

(1) beginning February 25 and ending at midnight on March 2;

(2) beginning April 16 and ending at midnight on April 21; and

(3) beginning the Wednesday before the last Monday in May and ending at midnight on the last Monday in May.

§ 2154.203. Agricultural, Industrial, and Wildlife Control Permit

(a) The commissioner shall set and collect a permit fee in an amount not to exceed $50 for a permit to use Fireworks 1.3G for agricultural, industrial, or wildlife control purposes.

(b) The applicant must specify the exact purpose for which the fireworks are to be used before a permit may be issued.

(c) A permit expires one year from the date of issuance and is not renewable.

§ 2154.204. Public Display Permit

(a) The commissioner shall set and collect a permit fee in an amount not to exceed $50 for a Fireworks 1.3G single public display permit. The permit shall be obtained from the commissioner through the state fire marshal.

(b) A single public fireworks display permit is valid for only one public fireworks display to be held during the hours and on the date or alternate date, if provided, stated on the permit and is not renewable.

(c) A person conducting multiple fireworks displays at a single location may be issued a multiple public display permit. The commissioner shall set and collect an annual multiple public display permit fee in an amount not to exceed $400.

(d) The holder of a multiple public display permit is not required to obtain a single public display permit. A multiple public display permit is valid for one year from the date of issuance and is not renewable.

(e) This chapter does not limit the authority of the state fire marshal to inspect the location of the display or to require appropriate fire protection measures.

(f) The commissioner shall adopt by reference the provisions of:

(1) NFPA 1123, Code for Fireworks Display, 1995 Edition, as rules governing public displays; and

(2) NFPA 1126, Standards for the Use of Pyrotechnics Before a Proximate Audience, 1996 Edition, as rules governing indoor displays.

§ 2154.205. Insurance Requirement for Public Display Permit

(a) In addition to any other requirements, an applicant for a public display permit must submit to the state fire marshal evidence of a general liability insurance policy in an amount of not less than $500,000 unless the commissioner increases or decreases the amount under Section 2154.051. A multiple public display permit or single public display permit may not be issued without evidence of general liability insurance as required by this section.

(b) The policy shall be conditioned to pay the amount of money the insured becomes obligated to pay as damages because of bodily injury and property damage caused by an occurrence involving the insured or the insured's servant, officer, agent, or employee in the conduct of a public fireworks display.

(c) Evidence of the liability insurance policy required by this section must be in the form of a certificate of insurance issued by an insurer authorized to do business in this state and countersigned by an insurance agent licensed in this state.

(d) A certificate of insurance for surplus lines coverage obtained under Article 1.14-2, Insurance Code, through a licensed Texas surplus lines agent resident in this state may be filed with the commissioner as evidence of coverage required by this section.

(e) An insurer may not cancel a certificate of insurance issued under this section unless the insurer gives the state fire marshal notice of intent to cancel as required by the commissioner.

(f) This section may be satisfied by a city, county, or other political subdivision presenting proof of its participation in a self-insurance fund or other fund created under Chapter 791, Government Code, covering the liability requirements under this chapter.

§ 2154.206. Inspection of Public Fireworks Display

(a) In this section, "appropriate fire prevention officer" means a person with fire prevention authority in a particular jurisdiction.

(b) A person planning to make a public fireworks display shall submit, under rules adopted by the commissioner, a written application to the state fire marshal for a permit.

(c) An appropriate fire prevention officer, as designated or approved by the state fire marshal, shall make a site investigation to determine whether a proposed fireworks display is of a nature or in a location that may be hazardous to property or dangerous to any person. The officer may, in the exercise of reasonable discretion, approve or disapprove the display site and may impose reasonable conditions on the display.

(d) After inspecting the proposed display site, the fire prevention officer shall notify the state fire marshal of the results of the inspection, and the state fire marshal shall determine if a permit is to be issued.

§ 2154.207. Insurance Requirement

(a) In addition to any other requirements, an applicant for a permit under Section 2154.253 must submit to the authority having jurisdiction evidence of a general liability insurance policy in an amount of not less than $1 million unless the commissioner decreases the amount under Section 2154.051. The permit may not be issued without evidence of insurance as required by this section.

(b) The general liability insurance policy required by this section shall be conditioned to pay the amount of money the insured becomes obligated to pay as damages because of bodily injury and property damage caused by an occurrence involving the insured or the insured’s servant, officer, agent, or employee in the conduct of a display of pyrotechnics and flame effects.

(c) Evidence of the general liability insurance policy required by this section must be in the form of a certificate of insurance issued by an insurer authorized to do business in this state and countersigned by an insurance agent licensed in this state.

(d) A certificate of insurance for surplus lines coverage obtained under Article 1.14-2, Insurance Code, through a licensed Texas surplus lines agent resident in this state may be filed with the commissioner as evidence of coverage required by this section.

(e) An insurer may not cancel a certificate of insurance issued under this section unless the insurer gives the authority having jurisdiction notice of intent to cancel.

(f) This section may be satisfied by a city, county, or other political subdivision presenting proof of its participation in a self-insurance fund or a fund created under Chapter 791, Government Code, covering the liability requirements under this chapter.

SUBCHAPTER F. PROHIBITED ACTS

§ 2154.251. Prohibited Use of Fireworks

(a) A person may not:

(1) explode or ignite fireworks within 600 feet of any church, a hospital other than a veterinary hospital, an asylum, a licensed child care center, or a public or private primary or secondary school or institution of higher education unless the person receives authorization in writing from that organization;

(2) sell at retail, explode or ignite fireworks within 100 feet of a place where flammable liquids or flammable compressed gasses are stored and dispensed;

(3) explode or ignite fireworks within 100 feet of a place where fireworks are stored or sold;

(4) ignite or discharge fireworks in or from a motor vehicle;

(5) place ignited fireworks in, or throw ignited fireworks at, a motor vehicle;

(6) conduct a public fireworks display that includes Fireworks 1.3G unless the person is a licensed pyrotechnic operator;

(7) conduct a proximate display of fireworks that includes Fireworks 1.3G or Fireworks 1.4G as defined in NFPA 1126 Standards for the Use of Pyrotechnics Before a Proximate Audience unless the person is a licensed pyrotechnic special effects operator and has the approval of the local fire prevention officer; or

(8) sell, store, manufacture, distribute, or display fireworks except as provided by this chapter or rules adopted by the commissioner under this chapter.

(b) A person may not manufacture, distribute, sell, or use fireworks in a public fireworks display or for agricultural, industrial, or wildlife control purposes without an appropriate license or permit. Fireworks manufactured, distributed, sold, or used without an appropriate license or permit are illegal fireworks.

§ 2154.252. Certain Sales of Fireworks Prohibited

(a) Unless the fireworks conform to the standards of the United States Consumer Product Safety Commission and the department, a person in this state may not:

(1) sell the fireworks at retail;

(2) offer the fireworks for retail sale;

(3) possess the fireworks for retail sale in this state; or

(4) transport, use, or explode the fireworks in this state.

(b) A person may offer for sale to the general public Fireworks 1.4G only at authorized retail locations. All mail order sales of Fireworks 1.4G are prohibited.

(c) Fireworks may not be sold or offered for sale to children under 16 years of age or to an intoxicated or incompetent person. A person selling fireworks at retail shall make a reasonable effort to determine that potential purchasers of fireworks are of the minimum age required by this subsection.

(d) A licensed manufacturer, distributor, jobber, or importer may not sell fireworks to a person who does not hold a license or permit.

§ 2154.253. Use of Flame Effects or Pyrotechnics

(a) Definitions. In this section:

(1) "Authority having jurisdiction" means the fire marshal of a political subdivision. If the political subdivision has no fire marshal, the chief executive of the local fire protection district or emergency services district shall be the authority having jurisdiction. The state fire marshal or the state fire marshal's designee shall be the authority having jurisdiction if the political subdivision has no fire marshal, local fire protection district, or emergency services district.

(2) "Flame effects" means a stationary or hand-held device of solid, liquid, or gas, designed specifically to produce an open flame when ignited to display a thermal, physical, visual, or audible phenomenon as defined in NFPA Standard 160. Such devices include paraffin wax candles, LPG candles, torches, and LPG burners.

(3) "NFPA Standard 1126" means the edition of the National Fire Protection Association, Standard 1126, "Standard for the Use of Pyrotechnics before a Proximate Audience," as adopted and amended by the commissioner.

(4) "NFPA Standard 160" means the edition of the National Fire Protection Association, Standard 160, "Standard for Flame Effects Before an Audience," as adopted and amended by the commissioner.

(5) "Pyrotechnics" means an explosive composition or device designed for entertainment to produce a visible or audible effect by combustion, explosion, deflagration, or detonation as defined by NFPA Standard 1126.

(b) The use of flame effects or pyrotechnics for entertainment, exhibition, demonstration, or simulation before an assembly of 50 people or more, except for public safety demonstrations, must comply with NFPA Standard 160 and NFPA Standard 1126 and the following standards and requirements:

(1) if flame effects or pyrotechnics are used inside a building, the building must contain a complete operational fire-sprinkler system or provide personnel to implement a standby fire watch acceptable to the authority having jurisdiction;

(2) before flame effects or pyrotechnics are used inside a building, an announcement to the assembly must be made giving verbal instruction regarding the location and use of available exits and information about the building fire protection and fire alarm systems; a determination by the authority having jurisdiction that an exit door is locked or obstructed constitutes a violation of this section;

(3) the plan required by NFPA Standard 1126 or NFPA Standard 160 detailing the criteria for use and display of pyrotechnics and flame effects must be provided to the local authority having jurisdiction;

(4) at least one Texas pyrotechnic special effects operator's licensee must be present on-site at all times where pyrotechnics are used, discharged, or ignited;

(5) at least one Texas flame effects operator's licensee must be present on-site at all times where flame effects are used, discharged, or ignited;

(6) the on-site licensee shall be responsible for complying with this section;

(7) the licensee or the licensee's employer must obtain a permit from the local authority having jurisdiction before the use, discharge, or ignition of a flame effect or pyrotechnics; and

(8) the applicant for the permit must provide with the application the evidence of insurance required by Section 2154.207.

(c) The requirements provided by Subsection (b) do not apply to traditional, nontheatrical public displays such as:

(1) use of lighted candles in restaurants or during religious services;

(2) fireplaces in areas open to the public;

(3) restaurant cooking visible to the public;

(4) the outdoor use of consumer fireworks by the general public; or

(5) an outdoor public display permitted under Section 2154.204.

(d) The authority having jurisdiction may adopt regulations governing the issuance of permits for the use of flame effects or pyrotechnics and may charge a fee to recover its costs.

(e) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor. Each day a violation occurs or continues constitutes a separate offense. Venue under this section is in the county in which the offense is committed or in Travis County.

(f) A municipal or county ordinance, order, or rule in effect on September 1, 2003, is not invalidated by this chapter.

(g) This section does not limit or restrict the authority of a county, where specifically authorized by law, or municipality to enact an ordinance or order prohibiting or further regulating flame effects or pyrotechnics.

§ 2154.254. Employment of Minors

(a) Except as provided by Subsection (c), a person may not employ or allow a person younger than 16 years of age to manufacture, distribute, sell, or purchase fireworks in the course of the person's business.

(b) Except as provided by Subsection (c), a person may not employ a person 16 years of age or older but younger than 18 years of age to sell fireworks at a retail sales location unless the person selling fireworks at that location is accompanied by another person who is at least 18 years of age.

(c) An owner of a retail sales location may employ a person who is otherwise prohibited from engaging in that activity by Subsection (a) or (b) to sell fireworks at the owner's retail sales location if the person employed is:

(1) a member of the owner's immediate family;

(2) 12 years of age or older; and

(3) accompanied by another person who is at least 18 years of age while the person is engaged in selling fireworks at that location.

SUBCHAPTER G. DISCIPLINARY ACTIONS; PENALTIES

§ 2154.301. Disciplinary Powers of Commissioner

(a) The commissioner may, through the state fire marshal, suspend, revoke, or refuse to issue or renew a license or permit if the commissioner finds that any provision of this chapter, or any rule adopted under this chapter, has been violated.

(b) A person who has a license or permit revoked may not reapply for the license or permit earlier than one year from the date of revocation. A person reapplying under this subsection must request a public hearing on the reissuance of the license or permit and has the burden of proving that a license or permit should be granted.

§ 2154.302. Disciplinary Hearing

(a) If the state fire marshal proposes to suspend, revoke, or refuse to renew a person's license or permit, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Disciplinary proceedings are governed by Chapter 2001, Government Code.

(c) Rules of practice adopted by the commissioner applicable to the disciplinary proceedings may not conflict with the rules adopted by the State Office of Administrative Hearings.

§ 2154.303. Penalties

(a) A person commits an offense if the person violates Section 2154.101(b), (c)(2), or (d), 2154.151(e), or 2154.201(a), (b)(2), or (c) or Subchapter F.

(b) Except as provided by Subsection (c), an offense under this section is a Class B misdemeanor.

(c) A violation of Section 2154.251(a)(1), (2), (3), (4), (5), or (8) that results in property damage in an amount of less than $200 and does not result in bodily injury or death, or a violation of Section 2154.254(a) or (b), is a Class C misdemeanor.

(d) Each day a violation occurs or continues constitutes a separate offense.

(e) Venue under this section is in the county in which the offense is committed or in Travis County.

(f) If the commissioner determines that a violation of this chapter creates a threat to the public safety, the commissioner may bring suit in the district court of the county in which the person who committed the offense resides or has an office to enjoin the person from engaging in the prohibited activity. The commissioner is not required to give bond as a condition to the issuance of injunctive relief.

§ 2154.304. Seizure of Illegal Fireworks

(a) The state fire marshal, a fire chief, a fire marshal, their deputies, or a peace officer may seize illegal fireworks. Fireworks seized in the enforcement of this chapter shall be kept in the custody of the seizing agent or the sheriff of the county in which the fireworks were seized.

(b) The owner of the seized fireworks may file an action contesting the seizure in a district court in the county in which the fireworks were seized.

(c) Not later than the 30th day after the hearing on the seizure, the court may authorize the return of part or all of the confiscated fireworks. The court shall order any fireworks not returned to be destroyed. If an action contesting the seizure is not filed by the 30th day after the seizure, the seizing agent or the sheriff shall destroy the fireworks.

Acts 1985, 69th Leg., ch. 924, § 1, eff. Jan. 2, 1986; Amended by Acts 1987, 70th Leg., ch. 267, §§26 to 30, eff. June 5, 1987; Acts 1989, 71st Leg., ch. 823, §§ 10 to 12, eff. June 14, 1989; Acts 1991, 72nd Leg., ch. 628, §§ 17, 18, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 865, § 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1172, § 4.13, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch 1014, §§ 7 to 10, eff. June 20, 2003; Acts 2003, 78th Leg., ch 872, §§ 1 to 3, eff. Sept. 1, 2003; Acts 2007, 80th Leg., ch 1179, § § 2 to 6 eff. June 15, 2007 and § 1 eff. January 2, 2008; Acts 2015, 84 Leg., ch. 710, eff. Sept. 1, 2015.

Sections amended September 1, 2015 are marked with a vertical line in the margin.

Substantive Sections Amended June 23, 2016,
Are Marked With A Vertical Line In The Margin.

TEXAS ADMINISTRATIVE CODE
TITLE 28. INSURANCE

Part I. Texas Department of Insurance
Chapter 34. State Fire Marshal
Subchapter H. Storage and Sale of Fireworks

§34.801. ***Purpose.***
The purpose of the rules set forth in this subchapter is to regulate the sale, distribution, and use of certain fireworks in the interest of protecting and preserving lives and property pursuant to the Occupations Code Chapter 2154. These rules should be read in conjunction with Occupations Code Chapter 2154 for a complete understanding of the regulation of this subject matter.

§34.802. ***Title.***
The rules set forth in this chapter shall be known and may be cited as the Fireworks Rules.

§34.803. ***Applicability of Rules.***
These sections shall apply to all firms and persons engaged in the business.

§34.804. ***Exemptions.***
The exemptions of the Occupations Code §2154.002 are applicable to this subchapter.

§34.805. ***Notices.***
All notices by the state fire marshal required by any statutory provision or by these sections must be given by personal service or mailed, postage prepaid, to the person's residence or business address as it appears on the records in the Office of the State Fire Marshal.

§34.806. ***Restrictive Use.***
No license or permit holder is authorized to enforce or attempt to enforce any section of the Occupations Code Chapter 2154 or this subchapter.

§34.807. ***Administration.***
(a) The State Fire Marshal is charged with the duty to administer this subchapter, the orders of the commissioner and the enforcement of the Occupations Code Chapter 2154.
(b) Violations of these sections alone do not subject legally possessed fireworks to seizure or confiscation.

§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) Bare wiring--Any electrical cable or cord any part of which has the insulating cover broken or removed, exposing bare wire.
(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.
(5) Barricade, artificial--An artificial mound or revetted wall of earth of a minimum thickness of one foot.
(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.
(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, 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.

(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.

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

(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.

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

(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.

(13) Commissioner--The Commissioner of Insurance.

(14) Department--The Texas Department of Insurance.

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

(16) DOT--The United States Department of Transportation.

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

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

(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.

(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.

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

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

(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.

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

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

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

(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.

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

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

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

(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.

(32) Open flame--Any flame that is exposed to direct contact.

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

(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.

(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.

(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.

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

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

(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.

(40) Selling opening--An open area including the counter, through which fireworks are viewed and sold at retail.

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

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

(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.

§34.809. ***General Requirements, Licenses and Permits.***

(a) Each firm or person engaged in the manufacture, transportation, storage, wholesale or retail sales of fireworks, public displays utilizing Fireworks 1.3G, pyrotechnic special effects operators, flame effects operators, and pyrotechnic operators shall have an applicable license or permit issued by the state fire marshal.

(1) Licenses by type:

(A) distributor;
(B) jobber;
(C) manufacturer;
(D) pyrotechnic operator;
(E) pyrotechnic special effects operator, and
(F) flame effects operator.

(2) Permits by type:

(A) retailer;
(B) single public display;
(C) agricultural;
(D) industrial;
(E) wildlife control; and
(F) multiple public display.

(b) Each license or permit shall indicate the act or acts authorized.

(c) All required licenses and permits shall be made available for inspection at the facility for which it was issued. The original permit shall be posted at all retail locations for which such permit was issued.

(d) License and permit holders shall take every reasonable precaution to protect their license or permit documents from loss, theft, defacement, destruction, or unauthorized duplication or use. Unauthorized use or duplication shall be reported immediately to the state fire marshal.

(e) All holders of licenses or permits who bulk store fireworks shall have storage and other facilities which conform to these sections.

(f) Each licensee or permittee shall notify the state fire marshal of every location where storage or manufacturing facilities are maintained in Texas.

(g) A specific business location shall be maintained by each licensee or permittee which shall be indicated on the license or permit document.

(h) A person engaging in the business using or storing Fireworks 1.3G must obtain a federal license or permit if required by Title XI, Regulation of Explosives of the Crime Control Act (18 United States Code, Chapter 40).

(i) Licensees and permittees shall have adequate storage facilities which comply with appropriate provisions of §34.822 and §34.823 of this title (relating to Storage of Black Powder and Fireworks 1.3G at Other Than Display Sites; Bulk Storage of Fireworks 1.4G).

(j) Licensees and permittees shall comply with the applicable transportation requirements of §34.825 of this title (relating to Distribution and Transportation).

§34.810. ***Requirements, Licensees.***

(a) Licensees shall keep a record of all fireworks sales.

(b) The change of a nonincorporated firm's ownership invalidates the current license. A change of ownership must be reported to the state fire marshal within 14 days of such change.

(c) Any change of corporate officers must be reported in writing to the state fire marshal at the time of license renewal. This change does not require a revised license document.

(d) A duplicate license document must be obtained from the state fire marshal to replace a lost or destroyed document. The licensee must submit written notification of the loss or destruction without delay.

(e) The change of a licensee's name, business location, residence, or mailing address requires a revised license document. Licensees must submit written notification within 14 days of the change.

§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 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.

§34.812. ***Expiration, License, and Permit.***

(a) A license shall be valid for a period of one year from the date of issuance.

(b) Permits expire depending on permit type.

(1) Retail permits expire on January 31 each year.

(2) Public display permits expire at midnight on the date stated on the permit.

(3) Agricultural, industrial, and wildlife control permits expire one year from the date of issuance.

§34.813. ***Applications for Licenses and Permits.***

(a) Applications for a license or permit to engage in the business, other than retail permits, shall be on forms provided by the state fire marshal, and shall be accompanied by the appropriate fee and documentation as may be required.

(b) Applications must be signed by the sole proprietor, by each partner of a partnership, or by an officer of a corporation or association. Applications from foreign and out of state corporations shall be accompanied by evidence of authority to conduct business in this state granted by the Texas secretary of state and where applicable, the applicant shall evidence compliance with the Assumed Business or Professional Name Act, Texas Business and Commerce Code, Chapter 36.

(c) Applications for a public display permit shall include the following information:

(1) the name, address, and telephone number of the applicant;

(2) a copy of the site inspection report from the fire prevention officer;

(3) the location or alternate location for the display;

(4) the name and license number of the pyrotechnic operator who is to supervise the display;

(5) the size and estimated number of fireworks to be discharged, the number of set pieces, and other items;

(6) the manner and place of storage of such fireworks prior to and during the display;

(7) a diagram of the grounds on which the display is to be held indicating the:

(A) area meeting appropriate distance regulations which outlines the parameters within which the particular site may be adjusted on the day of the proposed display to address safety concerns or wind changes from which fireworks will be discharged;

(B) distance from exposure to discharge point;

(C) distance from spectators to discharge point; and

(D) method of spectator restraint;

(8) evidence of public liability insurance, as required by the Occupations Code §2154.205;

(9) the name and license number of the manufacturer or distributor licensed in Texas who is to supply the fireworks; and

(10) applications for a display permit shall include the date, time, and the alternate date and time of the display.

(d) A completed application for a public display permit shall be received by the state fire marshal before the display is to be conducted. A facsimile or other photocopy of the application received by the state fire marshal during normal working hours prior to the date of the display and determined to be in compliance with the provisions of this section, along with the appropriate fee, shall be acceptable for purposes of this section. An applicant issued a permit under the facsimile provisions of this section shall maintain original documentation of the application for a period of one year and shall provide such original materials to the state fire marshal on request.

(e) An additional public display permit shall be required for each site separated from the permitted site by over 1,000 feet measured horizontally.

(f) When an application for a permit is required by the Occupations Code §2154.253 for the use of flame effects or pyrotechnics before an assembly of fifty people or more and is submitted to the state fire marshal, as the authority having jurisdiction because the political subdivision has no fire marshal, local fire protection district, or emergency services district, the application shall be on the form provided by the state fire marshal and include the following information:

(1) the name, address, and telephone number of the applicant;

(2) the date, time, and the alternate date and time of the event;

(3) the location or alternate location for the event;

(4) the names and license numbers of the pyrotechnic operator and the flame effects operator who will be on-site at all times and who will supervise the event;

(5) the plan and information required by NFPA 1126 and NFPA 160;

(6) evidence of general liability insurance, as required by the Occupations Code §2154.207;

(7) name and employer of person who will give verbal instruction regarding the location and use of available exits and information on the building fire protection system as required by §2154.253, Occupations Code; and

(8) whether the building contains a complete operational sprinkler system or personnel that will implement a stand-by fire watch.

(g) Complete applications. The application form for a license or permit 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 the Texas Occupations Code 2154 and this subchapter, or a new application must be submitted including all applicable fees.

§34.814. ***Fees.***

(a) Fees payable to the department and required by the Occupations Code Chapter 2154 and this subchapter, shall be paid by cash, money order, or check. Money orders and checks 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 and non-transferable.

(b) Fees payable to the department 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 shall be as follows:

(1) manufacturer license:

(A) initial fee $1,000;

(B) renewal fee (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 (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 (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 (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 (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 (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 (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 which have been expired for less than two years cannot be issued new licenses.

§34.815. ***Retail Permits.***

(a) A retail permit is required for each retail stand or other retail sales location.

(b) Retail permits may be obtained at any time from any participating manufacturer, distributor, or jobber holding a valid license to do business in Texas or from the state fire marshal, and must be signed by the applicant prior to the permit becoming effective.

(1) A retail permittee must purchase Fireworks 1.4G only from a distributor or jobber licensed in this state.

(2) Bulk storage of Fireworks 1.4G by a retail permittee must be in compliance with §34.823 of this title (relating to Bulk Storage of Fireworks 1.4G).

(3) Fireworks 1.4G must be sold to the general public only at legally permitted retail fireworks sites and during the legal selling periods defined in the Occupations Code §2154.202.

(4) A copy of Occupations Code Chapter 2154 and the fireworks rules, or a condensed version thereof, must be provided to the purchaser of a retail permit by the participating licensee at the time the permit is issued. Copies of Occupations Code Chapter 2154 and the fireworks rules will be made available through the State Fire Marshal's Office.

(5) Prior to the issuance of a retail permit, the applicant must present evidence of a valid current sales tax permit issued by the state comptroller, and the sales tax permit number must be entered on the retail fireworks permit by the person issuing the permit.

(6) Retail permits may only be issued to individuals or groups engaged in the retail sales of fireworks.

(c) Any licensee purchasing books of permits for sale to retail operators shall properly account for all permits received.

(1) The licensee who issues retail permits shall return books containing duplicate copies of each issued permit to the State Fire Marshal's Office within a week from the time the last permit in each book has been issued. All used and unused permits shall be returned no later than March 1 of each year.

(2) The returned copies in each book are considered the official record of retail permits sold.

(3) A licensee may exchange any unissued retail permit which has not been voided or otherwise rendered unusable for a new permit at the end of each year following expiration.

§34.816. ***Agricultural, Industrial, and Wildlife Control Permits.***

(a) Applicants shall:

(1) describe the type of fireworks to be used;

(2) indicate the specific purpose for which fireworks are to be used; and

(3) state the exact location where fireworks are to be used.

(b) Duplicate permits shall not be issued.

(c) Permits shall be available for inspection at the firm's business location.

(d) Fireworks 1.3G for agricultural, industrial, or wildlife control purposes shall be purchased only from distributors licensed in this state.

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

(a) A supervisor, 18 years of age or older, shall be on duty during all phases of operation. It 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 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 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 shall have a fire extinguisher rated not less than 2-A. An extinguisher shall be located within 75 feet walking distance from any point in the building, and each extinguisher shall cover a floor area not greater than 1000 square feet per unit of "A" rating.

(e) An unobstructed pathway to walk doors 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 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 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 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 shall be required for each retail fireworks site offering fireworks for sale during selling season and 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 shall be kept free of high grass, empty cardboard boxes and trash.

(n) Fireworks 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 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 shall be required for the labeling of items offered for sale in Texas.

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

§34.818. ***Specific Requirements for Retail Fireworks Stands.***

A retail fireworks stand must comply with the following requirements:

(1) The fireworks stand in which Fireworks 1.4G are held for retail sale must be constructed of wood, metal, masonry, or concrete, or combinations thereof.

(2) Each stand of less than 16 feet in length must have at least one walk door that opens outward. Stands measuring 16 feet or longer must have at least two walk doors, one in each end, that open outward.

(3) A minimum of combustible material such as posters, signs, and decorations may be used on interior walls.

(4) A minimum distance of six feet must be maintained from the front of the customer counter to the back side of the stand. Fireworks must not be displayed on the customer counter or in any manner that allows the customer to handle fireworks without an attendant directly assisting the customer.

(5) Electrical service to the stand must be installed at least eight feet above ground or buried underground according to standards acceptable to the local authority having jurisdiction (AHJ).

(6) Each stand that uses electricity must have a point of power interruption, either inside or outside the stand, (switch or switches) located near a walk door that interrupts all electric supply to devices and equipment located inside and on the stand.

(7) All electrical wiring, equipment, and devices, both inside and outside the stand, must be UL approved, be securely mounted to the structure, and be installed and maintained to prevent electrical hazards. Splices in electrical wiring servicing equipment and devices inside the stand must be enclosed in junction boxes. Light fixtures and wiring used for illumination inside and outside of the stand must be installed and maintained to prevent accidental contact by the general public and employees.

(8) Drop cords with lights, extension cords, or bare wiring must not be used in any manner inside a retail stand.

(9) In stands where generator-created power is used, the generator must be located in an area free from grass, trash, and other flammable materials and at least 10 feet from the stand. Reserve fuel for the generator must be stored in an approved safety container and a portable fire extinguisher rated to at least 6 BC must be provided.

(10) Fireworks stands must not be illuminated or heated by any device that requires open flame or exposed heating elements. Electric heaters must be equipped with a switching device to stop the flow of current should the heater be tipped over.

(11) If the fireworks stand is used for the overnight storage of Fireworks 1.4G, it must be equipped with suitable locking devices to prevent unauthorized entry.

§34.819. ***Records and Reports.***

(a) A licensee shall keep a record of all transactions or operations involving fireworks manufacturing, explosive materials, and devices for one year. Such records shall be made available to the authorities having jurisdiction upon request.

(b) Invoices, sales slips, delivery tickets or receipts, bills of lading, or similar papers representing individual transactions will satisfy the recordkeeping requirement, provided they include the signature and license number of both the seller and buyer.

(c) The loss, theft, or unlawful removal of black powder and Fireworks 1.3G shall be reported immediately to the state fire marshal.

(d) Licensees and permittees shall report in writing any unauthorized incident of explosion or fire involving fireworks to the state fire marshal within 10 days after the occurrence. Incidents resulting in injury or death shall be reported immediately. Reports shall include:

(1) a brief account of the cause of injury to any person and such person's name and address; and

(2) a brief account of the fire or explosion.

§34.820. ***Requirements for Manufacturing, Bulk Storage, and Magazine Facilities.***

All manufacturing and bulk storage facilities shall comply with the applicable provisions of the Occupations Code Chapter 2154 and this subchapter.

§34.821. ***Manufacturing Operations.***

(a) Building site security.

(1) All fireworks manufacturing plants shall be completely surrounded by a substantial fence having a minimum height of six feet. All openings in the fence shall be equipped with suitable gates which shall be kept securely locked at all times when not in actual use. The main gate may be left open during the regular hours of operation while in plain view of authorized responsible employees or guards. Conspicuous signs indicating "Warning," "No Smoking," and "No Trespassing" shall be posted.

(2) No person other than authorized employees or representatives of departments of federal, state, or political subdivisions of the state governments having jurisdiction shall be allowed in any fireworks manufacturing plants, except by special permission from the plant office.

(3) All manufacturing process buildings shall be separated from inhabited buildings, public highways, and passenger railways in accordance with Table 1 in §34.824 of this title (relating to Distance Tables).

(4) The distance between process buildings shall be in accordance with provisions of Table 2 in §34.824 of this title (relating to Distance Tables).

(5) Distance between nonprocess buildings, process buildings, and magazines shall be in accordance with Table 2 in §34.824 of this title (relating to Distance Tables).

(6) Magazines storing Fireworks 1.3G, black powder, and salutes shall be separated from inhabited buildings, highways, or other magazines containing black powder or salutes in accordance with Table 3 in §34.824 of this title (relating to Distance Tables).

(7) Permissible bulk storage of Class I flammable liquids (such as gasoline) and flammable compressed gases at fireworks manufacturing and/or storage facilities shall:

(A) be located at least 100 feet from processing, storage buildings, or magazines; or flammable liquid tanks may be located below ground; and

(B) provide that dispensing units and ventilation pipes be located at least 100 feet from processing or storage buildings or magazines.

(b) Building construction.

(1) Process buildings, except buildings in which customers' orders are prepared for shipment, shall embody breakaway construction. The exterior of process buildings shall be constructed of materials no more combustible than painted wood.

(2) No building shall have a basement or be more than one story high. Interior surfaces shall be finished to discourage the accumulation of dust.

(3) Mixing and pressing buildings shall have conductive flooring, properly grounded.

(c) Heat, light, electrical equipment.

(1) No stoves, exposed flames, or electrical heaters shall be used in any part of a process or mixing building. Heating shall be by means of steam, indirect hot air radiation, hot water, or any other means approved by the state fire marshal. Unit heaters located inside buildings shall be equipped with motors and switches suitable for use in Class II, Division 1 locations found in National Electrical Code, 1984, Article 502.

(2) Where artificial lighting is required in fireworks processing buildings, it shall be by electricity. Temporary or loose electrical wiring shall not be used.

(3) All wiring in mixing and pressing buildings shall be in rigid metal conduit or by Type MI cable. The wiring, lighting fixtures, and switches shall comply with the requirements for Class II, Division 1 locations in the National Electrical Code, 1984, Article 502.

(4) Wiring, switches, and fixtures in storage buildings shall comply with the requirements for Class II, Division 2 locations in the National Electrical Code, 1984, Article 502.

(5) All presses and other mechanical devices shall be properly grounded.

(6) A master switch shall be provided at the point where electric current enters the plant, which will, upon being opened, immediately cut off all electric current to the plant, except that to emergency circuits.

(d) Maximum building occupancy and quantities of explosive or pyrotechnic composition.

(1) Occupants in each process building and magazine shall be limited to those conducting the operations.

(2) No more than 500 pounds of pyrotechnic and explosive composition shall be permitted at one time in any mixing building or any building in which pyrotechnic and explosive compositions are pressed or otherwise prepared for finishing and assembling.

(e) Fire, explosion prevention.

(1) All buildings shall be kept clean, orderly, and free from accumulation of dust or rubbish. Powder, or other explosive or pyrotechnic materials, when spilled, shall be immediately cleaned up and removed from the building.

(2) Rags, combustible pyrotechnic or explosive scrap, and paper shall be kept separate from each other and placed in approved marked containers. All waste and reject hazardous material shall be removed from all buildings daily and removed from the plant at regular intervals and destroyed in an appropriate manner.

(3) No smoking or carrying of lighted pipes, cigarettes, cigars, matches, lighters, or open flame is permitted within the plant fence; except that smoking may be permitted in office buildings, or buildings used exclusively as lunchrooms or restrooms and in which the presence of fireworks or any explosive composition is prohibited. Authorized smoking locations shall be established, so marked, and contain suitable receptacles for cigarette and cigar butts and pipe residue. At least one Class A fire extinguisher shall be located in this area. Persons whose clothing is contaminated with explosives, pyrotechnic, or other dangerous materials shall not be permitted in smoking locations.

(4) Matches, cigarette lighters, or other flame-producing devices shall not be brought into any process building or magazine.

(5) No person shall enter any fireworks plant in possession of liquor or narcotics, or be under the influence of liquor or narcotics, while in a fireworks plant.

(6) Each fireworks plant shall have an employee designated as safety officer. All employees of a fireworks plant, upon commencing employment and at least annually thereafter, shall be given formal instruction by the safety officer, regarding proper methods, procedures, and safety requirements for handling explosives, pyrotechnics, and fireworks.

(7) In areas where there is a danger of ignition of materials by sparks, properly maintained and nonferrous safety hand tools shall be used.

(8) In no case shall oxidizers such as nitrates, chlorates, or perchlorates be stored in the same building with combustible powdered materials such as charcoal, gums, metals, sulfur, or antimony sulfide.

(f) Testing. Testing of fireworks and components of fireworks shall be performed in an area set aside for that purpose and located a safe distance from any plant building or other structure.

(g) Fire extinguishers; emergency procedures.

(1) Fire extinguishers shall be provided in all buildings except those in which pyrotechnic mixtures are exposed.

(2) Emergency procedures shall be established for each plant which will include personnel instruction in any emergency that may be anticipated.

(3) Emergency procedures shall include instruction in the use of portable fire extinguishers and instructions on the type of fires on which they may and may not be used.

(A) The employees shall be told that if a fire is involved with or is in danger of spreading to pyrotechnic mixtures, they are to leave the building at once and follow prescribed procedures for alerting other employees.

(B) Extinguishers shall be used on fires involving ordinary combustible materials.

§34.822. ***Storage of Black Powder and Fireworks 1.3G at Other Than Display Sites.***

(a) General provisions.

(1) Fireworks 1.3G and black powder shall be stored in magazines unless they are in process of manufacture, being physically handled in the operating process, being packaged, or being transported.

(2) Black powder and Fireworks 1.3G shall be stored in a magazine meeting or exceeding the requirements for a Type 4 magazine.

(3) Magazines containing Fireworks 1.3G or black powder shall be separated from inhabited buildings, other magazines, fireworks manufacturing plant buildings, passenger railways, and public highways in accordance with Table 3 in §34.824 of this title (relating to Distance Tables).

(4) Bulk storage of Class I flammable liquids and flammable compressed gases shall comply with provisions of §34.821(a)(7) of this title (relating to Manufacturing Operations).

(b) Construction of magazines--general.

(1) Magazines shall be constructed in conformity with the provisions of this subsection, or may be of substantially equivalent construction.

(2) The ground around the magazines shall be graded for drainage of water.

(3) Magazine heating systems, if installed, shall meet the following requirements.

(A) Radiant heating coils within the building, if used, shall be installed in such a manner that the fireworks containers cannot contact the coils and air is free to circulate between the coils and the fireworks.

(B) Air heating ducts shall be installed in such a manner that the hot air discharge from the duct is not directed against the fireworks or fireworks containers.

(C) The heating device shall have controls that prevent the ambient building temperature from exceeding 130 degrees Fahrenheit.

(D) The electric fan or pump used in the heating system shall be mounted outside and separate from the wall of the magazine and shall be grounded.

(E) The electric fan motor and the controls for an electrical heating device used in heating water or steam shall have overloads and disconnects. All electrical switch gear shall be located a minimum distance of 25 feet from the magazine.

(F) The heating source for a water or steam system, if used, shall be separated from the magazine by a distance of not less than 25 feet when electric and 50 feet when fuel-fired. The area between the heating unit and the magazine shall be cleared of all combustible materials.

(G) The storage of fireworks and fireworks containers in the magazine shall allow uniform air circulation so temperature uniformity can be maintained throughout the stored materials.

(4) When lights are necessary inside the magazine, electrical safety flashlights or electric safety lanterns should be used. The authority having jurisdiction may authorize interior lighting of special design for magazines provided that adequate safety is maintained.

(5) When ventilation is required in a compartmented magazine, sufficient ventilation shall be provided to protect the stored materials as necessary in each compartment. Stored materials shall be so placed in the magazine as not to interfere with ventilation and shall be stored so as to prevent contact with masonry walls or with any steel or other ferrous metal by means of a nonsparking lattice or equivalent lining.

(c) Construction of magazines. Magazines for storage of Fireworks 1.3G and black powder shall meet or exceed the following specifications for Type 4 magazines.

(1) A Type 4 magazine shall be a permanent, portable, or mobile structure, such as a building igloo, semi-trailer, or other mobile container that is fire resistant, theft resistant, and weather resistant.

(2) A Type 4 magazine shall be constructed of masonry, wood covered with metal, fabricated metal, or a combination of these materials. The door shall be metal or solid wood covered with metal.

(3) Permanent Type 4 magazines shall be constructed in accordance with those provisions for Type 4 magazines relating to foundations, ventilation, locks, hinges, hasps, and locking hardware as required by Title 27 C.F.R. Part 55, April 1, 1997 or subsequently adopted edition.

(d) Magazine operations.

(1) Storage shall be supervised by a competent person who shall be at least 21 years of age, and who shall be held responsible for the enforcement of all safety precautions.

(2) When containing Fireworks 1.3G or black powder, the magazine shall be opened and inspected at intervals of not greater than three days to determine whether there has been an unauthorized entry or attempted entry into the magazines; or to determine whether there has been unauthorized material removal from the magazines.

(3) All doors shall be locked, except during hours of operation.

(4) Containers shall be stacked in a stable manner.

(5) Black powder in shipping containers, when stored in magazines with other explosives, shall be segregated. Black powder stored in kegs shall be stored on ends, bungs down, or on side, seams down.

(6) Open black powder containers shall be securely closed before being returned to a magazine. No black powder container without a closed lid may be stored in the magazine.

(7) Tools for opening containers of Fireworks 1.3G or black powder shall be constructed of nonsparking materials, except that metal slitters shall be used for opening fiberboard containers. A wood wedge, a fiber, rubber, or wood mallet shall be used for opening or closing wood containers of explosives.

(8) Magazine floors shall be regularly kept clean, dry, free of grit, paper, empty used packages, and rubbish. Brooms and other cleaning utensils shall not have any spark-producing metal parts. Sweepings from floors of magazines shall be properly disposed.

(9) When magazines need interior repairs, all fireworks and black powder shall be removed and the floors cleaned.

(10) When making exterior magazine repairs, the fireworks and black powder shall be removed from the magazine.

(11) When fireworks and black powder are removed from a magazine under repair they shall be placed in another magazine until repairs have been completed.

(e) Additional safety precautions.

(1) Smoking, matches, open flames, spark-producing devices, and firearms (except firearms carried by authorized guards) shall not be permitted inside of or within 50 feet of magazines.

(2) The land surrounding magazines shall be kept clear of brush, dried grass, leaves, and similar combustibles for a distance of at least 25 feet.

§34.823. ***Bulk Storage of Fireworks 1.4G.***

(a) General provisions.

(1) These provisions apply to licensees and retail storage of more than 500 cases of Fireworks 1.4G.

(2) Storage facilities containing Fireworks 1.4G must be of solid construction using sound engineering principles.

(3) Electrical installation, if used, must be in compliance with the National Electric Code, 1984. An outside electrical master switch must be provided at each storage facility location when electrical power is installed.

(4) Storage facilities containing Fireworks 1.4G must comply with the following.

(A) Storage facilities must be separated from inhabited buildings, passenger railways, and from the pavement or main travelled surface of any highway by a minimum distance of 50 feet and be in compliance with Table 1 in §34.824 of this title (relating to Distance Tables). Storage facilities in existence prior to January 1, 1986, and then conforming to existing warehouse distance separation rules for jobbers and distributors are exempt from compliance with Table 1, provided such facilities are not enlarged or expanded beyond their January 1, 1986, capacities. An office used for the operation of a storage facility or a retail/wholesale site established in conjunction with a storage facility is exempt from the distance requirements after notifying the state fire marshal. Subsequent construction by adjacent property owners or public authorities must not subject licensee to a distance regulation violation under this section, provided existing storage facilities are not enlarged or expanded after the subsequent construction.

(B) Storage facilities must not contain windows, and any other openings must be situated so that the rays of the sun do not come in contact with or shine through glass directly on fireworks stored in the facility. Skylights that diffuse sun rays are permitted.

(C) No stoves, exposed flames, or electric heaters may be used in any part of storage facility except in a boiler room, machine shop, office building, pump house, or lavatory. Heating of storage facilities must be by means of steam, indirect hot air radiation, or hot water.

(D) Exit doors other than overhead or sliding doors must open outward, must be unlocked during operating hours, and must be clearly marked. Aisles and exit doors must be kept free of any obstruction.

(E) At least one approved Class A fire extinguisher must be provided for each 1,000 square feet of floor space in a storage facility.

(F) The land surrounding storage facilities must be kept clear of brush, dried grass, leaves, and similar combustibles for a distance of at least 10 feet.

(G) Smoking must not be permitted in storage facilities. There must be signs conspicuously posted with the words "Fireworks--No Smoking" in letters not less than four inches high.

(H) The facility must have a fire sprinkler system if it has greater than 12,000 square feet of floor space in a sales or storage facility, or if other additional or more restrictive fire protection requirements are adopted by a local AHJ.

(5) Storage buildings must have fencing in compliance with §34.821(a)(1) of this title (relating to Manufacturing Operations) or one of the following:

(A) personnel on the premises 24 hours per day and the premises remains lighted at night; or

(B) a security alarm system.

(6) Bulk storage of Class I flammable liquids (such as gasoline) and flammable compressed gases must comply with provisions of §34.821(a)(7) of this title (relating to Manufacturing Operations).

(b) Operation of storage facilities.

(1) Storage facilities must at all time during operating hours be in the charge of a competent person who is at least 18 years of age and is responsible for the enforcement of all safety precautions.

(2) Doors must be kept locked, except during hours of operation.

§34.824. ***Distance Tables.***

The following distance tables shall be applicable to this subchapter except to the extent that the distances are different from less restrictive federal regulations.

Table 1

Minimum Separation Distances of Fireworks 1.4G, Processing Buildings, and Fireworks Storage Buildings from Inhabited Buildings, Passenger Railways, and Public Highways

NET WEIGHT OF FIREWORKS[1]	DISTANCE FROM PASSENGER RAILWAYS AND PUBLIC HIGHWAYS	DISTANCE FROM INHABITED BUILDINGS
Pounds	Feet	Feet
100	50	50
200	50	60
400	50	70
600	50	80
800	50	90
1,000	50	100
2,000	58	115
3,000	62	124
4,000	65	130
5,000	68	135
6,000	70	139
8,000	73	140
10,000	75	150

Note 1: Net weight in Table 1 is the weight of all pyrotechnic and explosive composition and fuse only.

Table 2

Minimum Separation Distances at Fireworks Manufacturing Plants

NET WEIGHT FIREWORK[1]	DISTANCE OF MAGAZINES AND STORAGE BUILDINGS FROM PROCESS BUILDINGS AND NONPROCESS BUILDINGS[2]		DISTANCE BETWEEN PROCESS BUILDINGS AND BETWEEN PROCESS AND NONPROCESS BUILDINGS[2]	
	Fireworks 1.4G	Fireworks 1.3G	Fireworks 1.4G	Fireworks 1.3G
Pounds	Feet	Feet	Feet	Feet
100	30	30	37	57
200	30	35	37	69
400	30	44	37	85
600	30	51	37	97
800	30	56	37	105
1,000	30	60	37	112
2,000	30	76	37	172
3,000	35	87	48	222
4,000	38	95	60	264
5,000	42	103	67	300
6,000	45	109	72	331
8,000	50	120	78	382
10,000	54	129	82	423

Note 1: Net weight is the weight of all pyrotechnic and explosive compositions and fuse only.

Note 2: For the purpose of applying the separation distances in Table 2, a process building includes a mixing building, any building in which pyrotechnic or explosive compositions are pressed or otherwise prepared for finishing and assembling, and any finishing and assembling building. Nonprocess buildings means office buildings, warehouses, and other fireworks plant buildings where no fireworks or explosive compositions are processed or stored.

Table 3

Table of Distances for Storage of Fireworks 1.3G

Pounds Over	Net Over	From inhabited building distance (feet)	From public railroad and highways distance (feet)	From above ground magazine (feet) Unbarricaded	Barricaded
0	1,000	75	75	50	36
1,000	5,000	115	115	75	61
5,000	10,000	150	150	100	78
10,000	20,000	190	215	125	98
20,000	30,000	215	215	145	112
30,000	40,000	235	235	155	124
40,000	50,000	250	250	165	135
50,000	60,000	260	260	175	145
60,000	70,000	270	270	185	155
70,000	80,000	280	280	190	165
80,000	90,000	295	295	195	175
90,000	100,000	300	300	200	185
100,000	200,000	375	375	250	285
200,000	300,000	450	450	300	385

Note: Net weight is the weight of all pyrotechnic and explosive compositions and fuse only.

§34.825. ***Distribution and Transportation.***

(a) With regard to Fireworks, Title 49 C.F.R., governing the transportation of hazardous materials, is adopted by reference as rules governing the safe distribution and transportation of fireworks as hazardous materials in Texas. These rules are subject to the following explanations and exceptions.

(1) When the term "interstate" or "foreign commerce" is used in the federal regulations, it will, for the purpose of such adoption, include all modes of transportation in Texas.

(2) When the term "department" is used in the text of the federal regulations as being the Department of Transportation, it shall, for the purpose of such adoption, mean the Texas Department of Insurance.

(b) A copy of Title 49 CFR shall be kept available for inspection in the Office of the State Fire Marshal.

§34.826. ***Preparing and Conducting Public Pyrotechnic Displays and Flame Effects.***

(a) Storage. Public display fireworks may be stored temporarily for a period not to exceed 30 days prior to display date in a locked area, in regular 1.3G shipping cartons, not accessible by the general public, and in a location approved by the local fire prevention officer.

(b) Sobriety. Licensed operators or assistants shall not be under the influence of or consume alcoholic beverages or controlled substances during the public display.

(c) Public display criteria. Public displays shall be conducted in accordance with the provisions of the National Fire Protection Association (NFPA) 1123, Code for Fireworks Display, 1995 Edition, except as modified by paragraphs (1) through (3) of this subsection. The Appendix to NFPA 1123 is not considered a part of the requirements of NFPA 1123 and should be used for informational purposes only.

(1) Equivalent material. High density polyethylene (HDPE) pipe shall be a permissible equivalent material for mortars if of sufficient strength and durability to fire aerial shells safely.

(2) Equivalent distance. The separation distance of NFPA 1123 paragraph 2-3.3.3 between mortars, buried in the ground or in a trough, shall not apply to a mortar where the mortar is 6 inches (150 mm) in diameter or less, constructed of high density polyethylene (HDPE), and shells are fired using electrical ignition.

(3) Equivalent distance. The separation distance of NFPA 1123, paragraph 2-3.3.3.2 between a mortar and the wall of a trough shall not apply to a mortar where the mortar is 6 inches (150 mm) in diameter or less and constructed of high density polyethylene (HDPE), shells are fired using electrical ignition and the adjacent trough wall is braced with sufficient strength and durability to safely fire the shells. The trough wall bracing and support shall meet or exceed the following:

(A) two exterior horizontal braces, one along the bottom of the trough, and a top brace at a distance above the bottom brace that is at least one half the length of the shortest mortar in the trough, but not exceeding its top, where bracing consists of angle iron, with a minimum dimension of one and one half inch by one and one half inch by three sixteenths of an inch, or other shaped steel of equivalent strength;

(B) a vertical brace attached between the bottom and top brace spaced no greater than four feet on center along the length of the trough, where the bracing consists of angle iron, with a minimum dimension of one and one half inch by one and one half inch by three sixteenths of an inch, or other shaped steel of equivalent strength; and

(C) a traverse support between the two walls of the trough, consisting of not less than three eighths of an inch threaded rod or equivalent material, located approximately half way up the side walls and located at least every four feet on center along the length of the trough.

(d) Firing mortars. All firing shall be done upon order or signal of the licensed pyrotechnic operator directing the public display.

(e) Public display safety precautions.

(1) A display must be conducted in accordance with all local regulations and conditions prescribed by the fire prevention officer at the time of the site inspection.

(2) During the display, at least one approved Class A type 2 1/2 gallon fire extinguisher or charged garden hose connected to a water line or equivalent means of fire protection shall be provided.

(f) Proximate audience display criteria. Public displays before a proximate audience shall be conducted in accordance with the provisions of the National Fire Protection Association (NFPA) 1126, Standards for the Use of Pyrotechnics Before a Proximate Audience, 1996 Edition. Public displays conducted in accordance with this section shall include pyrotechnic devices, including 1.3G, 1.4G, and 1.4S, as defined in NFPA 1126, and individuals conducting such displays shall be regulated by the provisions of this subchapter as pyrotechnic operators.

(g) Testing. Testing of fireworks and components of fireworks intended for public displays shall be performed in an area set aside for that purpose and located a safe distance from any plant building or other structure. Such testing shall be permitted by a licensed manufacturer, or licensed distributor, conducted under the direct on-site supervision of a licensed pyrotechnic operator, and no public display permit is required.

(h) Flame effects criteria. The use of flame effects before an assembly of 50 people or more shall be conducted in accordance with the provisions of the National Fire Protection Association (NFPA) 160, Standards for Flame Effects Before an Audience, 2001 Edition.

§34.827. ***Qualifications for Persons Assisting at Public Displays.***

Persons assisting at public displays must be:

(1) at least 18 years old; and

(2) under the direct supervision of a licensed pyrotechnic operator.

§34.828. ***Existing Facilities and Conditions.***

Existing facilities and conditions outlined in this section which do not comply with the Occupations Code Chapter 2154 and this subchapter shall come into compliance within the following time periods after the effective date of this subchapter:

(1) manufacturing facilities--five years;

(2) bulk storage facilities--three years; and

(3) individuals applying for a pyrotechnic operator license before September 1, 1986, may be issued a license if they otherwise qualify and have passed the required examination, but do not comply with the supervisory requirement of §34.811(e)(1) of this title (relating to Requirements, Pyrotechnic Operator License).

§34.829. ***Severability.***

If a provision of these sections or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these sections which can be given effect without the invalid provisions or application. To this end, all provisions of these sections are declared to be severable.

§34.830. ***Savings Clause.***
Each disciplinary action by the Texas Department of Insurance taken against a person or organization licensed or permitted under Occupations Code Chapter 2154 shall be taken in accordance with the statutory law, regulations and orders of the commissioner of insurance or state fire marshal in effect at the time of the regulated action for which the disciplinary action is taken.

§34.832. ***Specific Requirements for Retail Fireworks Sites Other Than Stands.***
Indoor retail fireworks sites must comply with the following requirements:

(1) The retail fireworks sales building must be a free standing durable structure with only one story of space accessible to the public. It must not be a tent, boat, or mobile vehicle. The fireworks sales area must not be part of a multi-use or multi-tenant building.

(2) The following distance requirements apply to an indoor retail fireworks site owned or leased by a fireworks licensee, which had a fireworks retail permit or a building permit in effect or was under construction on or before November 18, 2002, and stores or displays over 500 cases of Fireworks 1.4G in the building.

(A) The fireworks sales building must be a minimum distance of 60 feet from any inhabited building;

(B) The fireworks sales building must be a minimum distance of 30 feet from the property line.

(C) The fireworks sales building must meet the distance requirements of §34.824 Table 1 of this title (relating to Distance Tables), or have a minimum one-hour fire rated exterior wall with minimum three-fourths-hour fire rated protected openings.

(D) An office area used for the operation of the site, separated by a one hour fire rated wall from the fireworks sales or storage area, may be exempt from the distance requirements after it is reported to and reviewed by the state fire marshal.

(3) The following distance requirements must apply to an indoor retail fireworks site owned or leased by a fireworks licensee which did not have a fireworks retail permit or a building permit in effect or was not under construction on or before November 18, 2002, and which stores or displays over 500 cases of Fireworks 1.4G in the building.

(A) The fireworks sales building must be a minimum distance of 60 feet from any inhabited building.

(B) The fireworks sales building must be a minimum distance of 30 feet from the property line.

(C) The fireworks sales building must meet the distance requirements of §34.824 Table 1 of this title, or have a complete automatic fire sprinkler system installed in accordance with NFPA 13 Standard for the Installation of Sprinkler Systems.

(4) Subsequent construction by adjacent property owners or public authorities will not subject licensee or permittee to a distance regulation violation under this section, provided existing facilities are not enlarged or expanded after the subsequent construction.

(5) Fireworks sales display areas must be sufficiently designed to prevent customers from handling fireworks, unless an attendant is directly assisting the customer. Sales display areas must include a continuous durable restraint around displayed fireworks separating the customers from all merchandise. The height, weight, and stability of the restraint must be designed to prevent individuals from penetrating the barrier.

(6) Fireworks in the sales area must be limited to the displayed merchandise unless stored in closed cardboard boxes not accessible to the public.

(7) Access to fireworks when stored in a separate and distinct area away from general fireworks sales must be restricted to employees only and "No Smoking" signs must be posted inside.

(8) The local fire department and the county fire marshal, if one is appointed or elected in that county, must be notified in writing <u>annually, before beginning sales operations,</u> of the business location, placement of fireworks in building or structure, maximum amount of fireworks in the building, and time period that fireworks will be stored or sold.

(9) Trash, rubbish, and unused boxes, except for small quantities stored in an orderly manner for reuse, must be removed from the sales, storage and adjacent areas daily, or as often as necessary to prevent unsafe accumulation.

(10) Fireworks must not be displayed or stored behind glass through which direct sunlight can shine on the fireworks.

(11) Extension cords may not be located where the general public could walk over them. An extension cord may be used to extend power to a single appliance or single power strip. An extension cord providing power to a power strip must be of the same or greater wire gauge. Power strips used for multiple appliances must contain an internal circuit breaker. Extension cords and power strips must be protected from accidental damage. Flexible cords and cables may not be used as a substitute for the fixed wiring of a structure. <u>An extension cord may not be plugged into a power strip.</u>

(12) A supervisor, 18 years of age or older, must be on duty during all phases of operation. All fireworks sales personnel must be 16 years of age or older. The permit holder and the supervisor must ensure that all sales personnel comply with this subchapter.

(13) All trash containers used by the general public must be metal or heavy plastic and be located 10 feet from any displayed or stored fireworks.

(14) An outside electrical master switch must be provided at each retail location.

(15) Portable space heaters must not be permitted in retail or storage areas.

(16) A retail sales permit, for other than a retail stand, is not valid until a plan is on file at the state fire marshal's office showing the following:

(A) the address or location of the site;

(B) the name of the person to whom the permit is issued;

(C) the outline and length of all building exterior walls;

(D) the floor area, location and dimensions used for fireworks sales;

(E) the floor area, location and dimensions used for fireworks storage outside the sales area;

(F) the floor area, location and dimensions used for other than fireworks sales and storage;

(G) the general location, description and distances from the exterior walls to all buildings, fireworks storage magazines, highways, and equipment for storage or dispensing of flammable liquids or compressed gas;

(H) the location of the master electrical cut-off switch;

(I) the location and width of all building doors and paths of egress; and

(J) the maximum estimated number of cases of fireworks to be stored or displayed for sale in the site.

(17) Cooking equipment must not be used within rooms used for fireworks sales or storage.

(18) All fireworks retail sites with a sales area more than 2500 square feet, must have a minimum average ceiling height of 12 feet. The sales area is the total square feet of floor area used to sell or store fireworks in an indoor retail fireworks site. Each sales area may be separated from another sales area by a fire barrier having a resistance rating of not less than one hour, with all openings therein protected by a three-fourths-hour fire protection-rated self-closing fire door.

(19) An indoor retail fireworks site must comply with the mercantile occupancy requirements of the standards adopted in §34.303 of this title (relating to Applicability of Rules). This standard, NFPA 101, Life Safety Code, is published by and is available from the National Fire Protection Association, Quincy, Massachusetts, 1-800-344-3555.

(20) An indoor fireworks retail site must have a minimum distance of 20 feet around the perimeter of the building that is kept free of high grass, empty boxes, and trash.

§34.833. ***Military Service Members, Military Veterans, or Military Spouses.***

(a) Waiver of licensed application and examination fees. The department will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation will be credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years' additional time to complete any continuing education requirements and any other requirements related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member, military veteran, or military spouse that:

(1) holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

Substantive Sections Amended June 23, 2016,
Are Marked With A Vertical Line In The Margin.

TEXAS DEPARTMENT OF INSURANCE
State Fire Marshal's Office (112-FM)
333 Guadalupe, Austin, Texas 78701 ★ PO Box 149221, Austin, Texas 78714-9221
(512) 676-6800 | F: (512) 490-1063 | (800) 578-4677 | TDI.texas.gov | @TXSFMO

LICENSING INVESTIGATION COMPLAINT FORM

Upon receipt, the SFMO will give this complaint a case number and assign it to an investigator. The investigator may contact you to obtain additional information. This form may be mailed, faxed or e-mailed to the State Fire Marshal's Office.

You may request a copy of the investigation report under the Open Records Act after the investigation has been completed. A written request is necessary and may be submitted by mail, fax, e-mail or in person to the attention of the "Open Records Request".

PLEASE PRINT OR TYPE

YOUR INFORMATION			
Your name	Phone number for contact	Employer (Optional)	
Address (street address, city, state, zip code)			Date

ALLEGED VIOLATOR *(Optional)*	
Company Name of Alleged Violator (optional)	Registration Number (if known)
Individual Involved in Alleged Violation(optional)	License Number (if known)

LOCATION OF ALLEGED VIOLATION *(At least one location must be provided)*
Name of property
Location address and city
Name of contact person and phone number (If known)

BRIEF BACKGROUND/DESCRIPTION OF THE COMPLAINT *(Attach additional sheets if necessary)*

By submission of this form to the State Fire Marshal's Office, it is implied that the information herein is true and correct to the best of my knowledge.

NOTICE ABOUT CERTAIN INFORMATION LAWS AND PRACTICES
With few exceptions, you are entitled to be informed about the information that the Texas Department of Insurance (TDI) collects about you. Under sections 552.021 and 552.023 of the Texas Government Code, you have a right to review or receive copies of information about yourself, including private information. However, TDI may withhold information for reasons other than to protect your right to privacy. Under section 559.004 of the Texas Government Code, you are entitled to request that TDI correct information that TDI has about you that is incorrect. For more information about the procedure and costs for obtaining information from TDI or about the procedure for correcting information kept by TDI, please contact the Agency Counsel Section of TDI's General Counsel Division at (512) 676-6551 or visit the Corrections Procedure section of TDI's website at www.tdi.texas.gov.

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FIREWORKS INCIDENT REPORT FORM

28TAC §34.819(d) requires licensees and permittees to report in writing any unauthorized incident of explosion or fire involving fireworks to the state fire marshal within 10 days after the occurrence. Incidents resulting in injury or death shall be reported immediately. In addition, 28TAC §34.819(c) requires the loss, theft, or unlawful removal of black powder and Fireworks 1.3G shall be reported immediately to the State Fire Marshal. This form may be mailed, faxed or e-mailed to the State Fire Marshal's Office.

PLEASE PRINT OR TYPE

LICENSEE OR PERMITTEE REPORTING THE INCIDENT		
Name (Last, First)	Representing: (Firm name or Self)	Phone number
Mailing address (street or PO Box)	City & State & Zip Code	Permit/License #

INCIDENT INFORMATION	
Date and time of incident	Name of location
Location address (street & city)	
Type of incident ❑ Theft ❑ Fire ❑ Explosion ❑ Other _____	
Name(s) and address of any injured person(s):	
This occurred at or during: ❑ Fireworks 1.3 Public Display ❑ Flame Effects show ❑ Pyrotechnics before a proximate audience ❑ Fireworks sales location ❑ A fireworks storage facility ❑ Other _____	

BRIEF DESCRIPTION OF THE INCIDENT (Attach additional sheets if necessary)

_____

_____

_____

_____

_____

By submission of this form to the State Fire Marshal's Office, it is implied that the information herein is true and correct to the best of my knowledge.

Signature of licensee or permittee: _____ Date: _____

NOTICE ABOUT CERTAIN INFORMATION LAWS AND PRACTICES

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