

SUBCHAPTER B. FIRE SUPPRESSION RATINGS OVERSIGHT**28 TAC §§34.201 - 34.204**

INTRODUCTION. The Texas Department of Insurance adopts new 28 TAC Chapter 34, Subchapter B, §§34.201 - 34.204, relating to oversight of fire suppression ratings. The new sections are adopted without changes to the proposed text published in the March 17, 2016, issue of the *Texas Register* (41 TexReg 2087).

REASONED JUSTIFICATION. These new sections are necessary to implement Government Code §417.0083 and to specify by rule the state fire marshal's procedures to perform oversight of fire suppression ratings as directed by the commissioner.

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

Section 34.202 defines certain terms used in the subchapter.

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

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

SUMMARY OF COMMENTS.

TDI did not receive any comments on the proposed sections.

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

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

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

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

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

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

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

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

TEXT.**SUBCHAPTER B. FIRE SUPPRESSION RATINGS OVERSIGHT**

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

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

- (1) Advisory organization--An advisory organization licensed under Insurance Code Chapter 1805.
- (2) Fire rating--A rating, or evaluation of fire suppression and mitigation capabilities, for a community based on the criteria in a fire suppression and mitigation grading schedule.
- (3) Filer--An advisory organization or insurer that files fire ratings.
- (4) Fire suppression and mitigation grading schedule--A schedule with criteria for determining the fire rating for a community, fire district, or other jurisdiction. A fire suppression and mitigation grading schedule is supplementary rating information, as defined by Insurance Code §2251.002.
- (5) Community--A community, fire district, jurisdiction, or other definite geographic area.
- (6) Survey--The results of an inspection to evaluate a community's fire suppression and mitigation capabilities.

§34.203. Review of Community Fire Ratings.

- (a) Submission. A filer must submit a proposed fire rating for a community to the State Fire Marshal's Office. A submission must contain:
- (1) a recommended fire rating based on the filer's survey;
 - (2) justification for the recommended fire rating, consistent with the applicable fire suppression and mitigation grading schedule;
 - (3) identification of the fire suppression and mitigation grading schedule used to determine the fire rating;

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

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

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

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

(d) Approval.

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

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

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

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

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

(B) the filer agrees to extend the period.

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

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

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

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

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

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

§34.204. Appeal of Community Fire Rating Determination.

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

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

(c) Petition. A petition filed under this section must be in writing. The petition must identify the fire rating and specify why the approval or disapproval was inconsistent with the applicable fire suppression and mitigation grading schedule and state law and regulations. The petition must be filed with the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

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

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

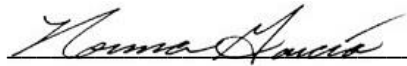
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CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on May 13, 2016.



Norma Garcia
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Texas Department of Insurance

The commissioner adopts new §§34.201 - 34.204.



David C. Mattax
Commissioner of Insurance

COMMISSIONER'S ORDER NO. **4463**