

SUBCHAPTER G. FIRE SPRINKLER RULES
28 TAC §§34.716 and 34.726

1. INTRODUCTION. The Commissioner of Insurance adopts amendments to §34.716, concerning the inspection, test and maintenance service of certain fire protection sprinkler systems, and new §34.726, concerning the establishment of the Fire Sprinkler Advisory Council to advise the State Fire Marshal regarding practices in the fire protection sprinkler system industry and the rules necessary to implement and administer Article 5.43-3 of the Insurance Code. The new and amended sections are adopted without changes to the proposed text published in the December 14, 2007 issue of the *Texas Register* (32 TexReg 9255).

2. REASONED JUSTIFICATION. The adopted amendment to §34.716(c) is necessary to extend the deadline from January 1, 2008, to January 1, 2009, as the date upon which an individual, performing the inspection, test and maintenance on a fire protection sprinkler system, except a system for a one- and two-family dwelling or an underground fire main, must hold an RME-General Inspector or RME-General license. The extension, recommended by the Texas Fire Sprinkler Contractor's Association and other registered fire sprinkler firms, is necessary because a sufficient number of individuals will not be licensed by the date currently specified in the rule. The time frame of one year and nine months allowed in the initial rule proved insufficient because the third party administering the required National Institute for Certification in Engineering Technologies (NICET) test to obtain the license only offered the test four times a year in twelve locations in Texas and restricted applicants that failed any part from retaking that

part of the test for 120 days. Also, some applicants scheduled to take the NICET test were refused because of insufficient space at some test locations. In addition, the non-sprinkler sections of the test proved challenging and training classes, sponsored by the sprinkler trade association, were only recently conducted to assist the applicants to study for these sections. Without the extension for the requirement that only individuals holding a current RME-General Inspector or RME-General license may perform the inspection, test and maintenance on certain fire protection sprinkler systems, only a few individuals are appropriately licensed to conduct these inspections on and after the original January 1, 2008 deadline. This license was not previously required. The extension will result in the uninterrupted regular inspection and testing of the fire sprinkler systems in buildings until a sufficient number of individuals are issued a current RME-General Inspector or RME-General license.-

Adopted new §34.726 is necessary to establish a Fire Sprinkler Advisory Council pursuant to the Insurance Code Article 5.43-3, §6 and the Government Code Chapter 2110. Article 5.43-3 §6 specifies the duties and composition of the advisory council. Article 5.43-3 §6 is adopted as Insurance Code §§6003.101 and 6003.102 in the nonsubstantive revision of the Insurance Code, 80th Legislature, HB 2636, effective April 1, 2009. Government Code §§2110.0012, 2110.005, and 2110.008 require state agencies to adopt rules to establish a state agency advisory council and to specify the advisory council's purpose, tasks, reporting requirements, and duration. Section 2110.0012 of the Government Code provides that for purposes of Chapter 2110 a state agency has established an advisory committee if state or federal law has specifically

created the committee to advise the agency or the agency has created the committee under state or federal law to advise the agency. In accordance with the Government Code Chapter 2110, the adopted new §34.726 creates the Fire Sprinkler Advisory Council and specifies the council's purpose and tasks, membership composition and terms of council members, reporting requirements, and period of duration of the council.

The Department received many comments in support of the proposed amendment to §34.716(c) to extend the deadline for requiring individuals to hold an RME-General Inspector or RME-General license to perform the inspection, test and maintenance on a fire protection sprinkler system, except a system for a one- and two-family dwelling or an underground fire main, and several comments in opposition to the proposed extension. The Department, however, did not make any changes to the proposed amendment to §34.716(c) as a result of the comments. The Department did not receive any comments concerning proposed §34.726 establishing the Fire Sprinkler Advisory Council.

3. HOW THE SECTIONS WILL FUNCTION. The amendment to §34.716 extends the date from January 1, 2008, to January 1, 2009, upon which an individual, performing the inspection, test and maintenance on a fire protection sprinkler system, except a system for a one- and two-family dwelling or an underground fire main, must hold an RME-General Inspector or RME-General license. New §34.726 establishes a Fire Sprinkler Advisory Council pursuant to the Insurance Code Article 5.43-3 §6 and the Government Code Chapter 2110. New §34.726(a) states the purpose and scope of the section.

New §34.726(b) creates the Fire Sprinkler Advisory Council. New §34.726(c) outlines the purpose and tasks of the council. New §34.726(d) specifies the membership composition and terms of the council. New §34.726(e) specifies the reporting requirements of the council. New §34.726(f) specifies a duration of eight years for the council, from the effective date of the adoption of the new section, unless abolished earlier or extended to a later date by the Commissioner of Insurance.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

§34.716(c). Support for amendment to extend licensing deadline.

Comment: A number of commenters agreed with the proposal to amend §34.716(c) to extend the deadline for requiring individuals to hold an RME-General Inspector or RME-General license to perform the inspection, test and maintenance on a fire protection sprinkler system, except a system for a one- and two-family dwelling or an underground fire main. Their reasons included: (i) the NICET (National Institute for Certification in Engineering Technologies) test was offered in four cycles per year, which limited the number of times it could be taken resulting in an extended period of time (six months) for individuals to retake and pass all the elements of the test, thereby prohibiting them from obtaining the license within the required time frame; (ii) in addition to the limited number of times the test was offered, on occasion the applicant was not permitted to take the test on the selected day in the cycle due to limited space at the test facility and as a result, had to wait until the next cycle; (iii) the limited offering of the NICET test resulted in not enough time for individuals to pass the NICET test; (iv) without the

deadline extension, there will be an insufficient number of licensed employees to meet the demand for the commissioning and inspection of fire sprinkler systems; and (v) property owners would see a considerable extra cost to inspect their sprinkler systems and may forgo the inspection because of the insufficient number of licensees. Two commenters agreed with the proposal to amend §34.716(c) but specified no reason.

Agency Response: The Department appreciates the supportive comments and agrees that these are sufficient reasons to support extending the licensing deadline.

Comment: Several commenters agreed with the proposal to amend §34.716(c) stating that sending applicants out of town, to avoid the delay of waiting for the next cycle due to limited space at the local test facility, proved prohibitively expensive. In some cases this expenditure was made but there still was insufficient time to comply with the January 1, 2008 deadline.

Agency Response: The Department understands the commenters' concerns. At the time of the 2006 adoption of the rule that specified January 1, 2008 as the deadline to obtain the license, the Department was not aware that an applicant might have to incur substantial time and travel costs in order to comply with the deadline.

Comment: One commenter agreed with the proposal to amend §34.716(c) because the NICET test, required to obtain the license, included certain "obscure" elements that have minimal practical relevance to sprinkler inspection. The commenter stated that failure of these elements required the applicant to retake the test several times.

Another commenter agreed with the proposal to amend §34.716(c) because, in the commenter's opinion, the test is very comprehensive, proving to be difficult for some individuals and requiring more than the allotted time to study and pass the material to obtain the license.

Agency Response: The Department agrees that some elements of the test may be difficult and/or not directly related to sprinkler inspection and may require extra time and study but believes that all of the elements are relevant to the overall capabilities of the applicant to perform the task. The Department agrees in part that the time frame allowed to obtain the license may have been insufficient due to the large number of applicants for the license and that the test is challenging. However, the NICET test was developed nationally and selected because it represents a minimum level of knowledge and training that is needed for individuals to reasonably inspect fire sprinkler systems.

§34.716(c). Opposition to amendment to extend licensing deadline.

Comment: Several commenters expressed opposition to the proposal to amend §34.716(c), stating that the time to pass the NICET test was sufficient for their firm and should have been sufficient for all others. These commenters stated that it is unfair to punish those that spent the time and money to comply by providing additional time for those that procrastinated.

Agency Response: The Department commends those applicants for their efforts in complying with the original time frame, but feels it is necessary to extend the date for other applicants that tried to comply but due to circumstances outside their control, such

as the limited space available at the test centers, were not permitted to complete the NICET test. Many who supported the extension felt they made an honest effort to meet the time frame, passed many of the elements of the test, and were very close to completing the test requirements except for a few elements. The time and effort spent by those who obtained the license within the original time frame will not be lost since the license will still be required on and after January 1, 2009. As explained previously in this adoption, the Department's reasons for extending the licensing deadline are: (i) a sufficient number of individuals will not be licensed by the January 1, 2008 date currently specified in the rule; (ii) the time frame of one year and nine months allowed in the initial rule proved insufficient because the third party administering the required test to obtain the license only offered the test four times a year in twelve locations in Texas and restricted applicants that failed any part from retaking that part of the test for 120 days which due to the limited offering of the test, four times a year at a specific location, is effectively 180 days; (iii) some applicants scheduled to take the test were refused because of insufficient space at some test locations; (iv) the non-sprinkler sections of the test proved challenging and training classes, sponsored by the sprinkler trade association, were only recently conducted to assist the applicants to study for these sections; and (v) the extension will result in the uninterrupted regular inspection and testing of the fire sprinkler systems in buildings until a sufficient number of individuals are issued a current RME-General Inspector or RME-General license.-

Comment: Two commenters stated that the justification for the proposed rule to amend

§34.716(c) stated that NICET required six months before permitting a re-test of failed elements when in fact NICET only requires 120 days. In addition the test is offered nationwide and the applicant could have traveled to other states to expedite the process.

Agency Response: The Department agrees in part. NICET only requires 120 days before re-taking the test. However, since the test is offered in four cycles (usually 90 days between each test) at any one location, the next available test date, after the initial test, at the same local test site as the initial test would be in 90 days, 180 days, 270 days or 360 days. Therefore, after the applicant waits the required 120 days after the initial test the next closest test date that could be scheduled to re-take the test would be 180 days after the initial test. Although the applicant has the option to re-take the test at a different test site from the initial test, which would have to be either in another major city in Texas or out of state, in a shorter period than the 180 days, the Department did not anticipate or intend applicants to incur substantial time and travel expenses to take or re-take the test when the January 1, 2008 deadline date was adopted.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

Against §34.716(c): Eight individuals.

For §34.716(c): Twenty-two individuals and the Texas Fire Sprinkler Contractors Association.

6. STATUTORY AUTHORITY. The amendments to §34.716 and new §34.726 are adopted under the Government Code §§2110.005 and 2110.008 and the Insurance Code Article 5.43-3, §6 and §3(a), and §36.001. The Government Code §2110.005 requires a state agency that is advised by an advisory committee to adopt rules that state the purpose and tasks of the committee and that describe the manner in which the committee will report to the agency. Section 2110.008(b) of the Government Code provides that unless a state agency designates a different date for automatic abolition of the committee, the committee is automatically abolished on the later of September 1, 2005 or the fourth anniversary of the date of its creation. The Government Code §2110.008(a) provides that a state agency that has established an advisory committee may designate the date on which the committee will automatically be abolished, that the designation must be by rule, and that the committee may continue in existence after that date only if the agency amends the rule to provide for a different abolishment date. The Insurance Code Article 5.43-3 §6 specifies the duties and composition of the advisory council, and provides that the State Firemen's and Fire Marshals' Association of Texas may, on request by the Commissioner, recommend a volunteer fire fighter for appointment to the advisory council. The Insurance Code Article 5.43-3 §3(a) authorizes the Commissioner to adopt rules as necessary to administer Article 5.43-3. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws in this state.

7. TEXT.

§34.716. Installation, Maintenance, and Service.

(a) All fire protection sprinkler systems installed under the Insurance Code, Article 5.43-3, must be installed under the supervision of the appropriate licensed responsible managing employee.

(1) An "RME-General" may supervise the installation of any fire protection sprinkler system including one- and two-family dwellings.

(2) An "RME-Dwelling" may only supervise the installation of a fire protection sprinkler system in one- and two-family dwellings.

(3) An "RME-Underground Fire Main" may only supervise the installation of an assembly of underground piping or conduits, that conveys water with or without other agents, used as an integral part of any type of fire protection sprinkler system.

(b) Upon completion of the installation, the licensed responsible managing employee shall have affixed a contractor's material and test certificate for aboveground and/or underground piping on or near the system riser. If the adopted installation standard does not require testing, all other sections except the testing portion of the contractor's material and test certificate must still be completed. The contractor's material and test certificate shall be obtained from the state fire marshal's office. The certificate shall be distributed as follows:

(1) original copy kept at the site after completion of the installation;

(2) second copy retained by the installing company at its place of business in a separate file used exclusively by that firm to retain all "Contractor's

Material and Test Certificates.” The certificates shall be available for examination by the state fire marshal or the state fire marshal's representative upon request. The certificates shall be retained for the life of the system; and

(3) third copy to be sent to the local authority having jurisdiction within 10 days after completion of the installation.

(c) Service, maintenance, or testing, when conducted by someone other than an owner, must be conducted by a registered firm and in compliance with the appropriate adopted standards. After January 1, 2009, the inspection, test and maintenance service of a fire protection sprinkler system, except a one- and two-family dwelling or an underground fire main, must be performed by an individual holding a current RME-General Inspector or RME-General license. A visual inspection not accompanied by service, maintenance, testing, or certification does not require a certificate of registration. (in (d) and (e) below, need to have two spaces after periods)

(d) Complete records shall be kept of all service, maintenance, testing, and certification operations of the firm. The records shall be available for examination by the state fire marshal or his representative.

(e) All vehicles used in service, maintenance, testing, or certification activities shall prominently display the company name, telephone number, and certificate of registration number. The numbers and letters must be at least two inches in height and must be permanently affixed or magnetically attached to a side panel and/or front door panel in a color contrasting with the background color of the vehicle. The certificate of

registration number shall be designated as: Texas Fire Sprinkler Registration (number) or it may be abbreviated to Tex: SCR (number).

(f) A premium reduction certification inspection for one- and two-family dwellings must meet the following requirements:

(1) Only a dwelling type responsible managing employee is authorized to conduct a premium reduction certification inspection of a fire protection sprinkler system in a one- or two-family dwelling.

(2) The inspection will be conducted in accordance with the laws regulating the Texas Department of Insurance and this chapter.

(3) The system will be inspected to meet the minimum standards of the latest edition of NFPA 13D or the edition indicated in the adopted standards section of this chapter.

(g) Each registered firm must employ at least one full-time RME-General or RME-Dwelling licensee at each business office where fire protection sprinkler system planning is performed, who is appropriately licensed to conduct the business performed therein.

(h) The planning of an automatic fire protection sprinkler system shall be performed under the direct supervision of the appropriately licensed RME.

(i) The planning, installation or service of a fire protection sprinkler system must be in accordance with the minimum requirements of the applicable adopted standards in §34.707 of this subchapter (relating to Adopted Standards) except when the plan,

installation or service complies with a more recent edition of the standard that has been adopted by the political subdivision in which the system is installed.

§34.726. Advisory Council.

(a) Purpose and Scope of this Section. Adopted pursuant to the Government Code Chapter 2110, which governs State Agency Advisory Committees, the purpose of this section is to establish the Fire Sprinkler Advisory Council and specify the purpose, task, reporting requirements, membership, and duration of council.

(b) Establishment. The Fire Sprinkler Advisory Council is hereby established pursuant to the Insurance Code Article 5.43-3 §6 (re-adopted without substantive change as Insurance Code §6003.101 and §6003.102, effective April 1, 2009; this updated reference applies to all subsequent references to Article 5.43 §6 in this section) and the Government Code Chapter 2110.

(c) Purpose and Tasks of the Advisory Council. In addition to other duties delegated by the commissioner, the purpose and tasks of the Fire Sprinkler Advisory Council are to:

(1) advise the state fire marshal regarding practices in the fire protection sprinkler system industry and the rules necessary to implement and administer Article 5.43-3 of the Insurance Code; and

(2) make recommendations to the state fire marshal regarding forms and procedures for registration certificates and licenses; and

(3) periodically review the sprinkler rules and recommend rule changes to the commissioner.

(d) Membership.

(1) Composition. Pursuant to the Insurance Code Article 5.43-3 §6 the advisory council shall be composed of seven members, as follows:

(A) three members who have been actively engaged in the management of a fire protection sprinkler system business for not less than five years preceding appointment;

(B) one member who represents the engineering section of the department's property and casualty program;

(C) one member who is a volunteer firefighter; and

(D) two members who each represent a different municipal fire department in this state.

(E) Additionally, the State Firemen's and Fire Marshals' Association of Texas may, on request by the commissioner, recommend a volunteer fire fighter for appointment to the advisory council.

(2) Terms. The advisory council members shall serve at the will of the commissioner. The commissioner shall replace any member who resigns from the advisory council or whose membership is otherwise terminated.

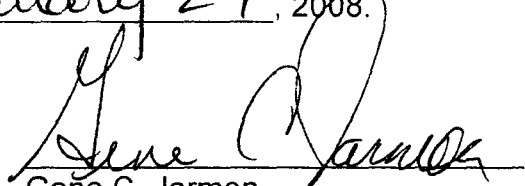
(e) Reporting Requirements for Rules. After completing review of the proposed rules and developing recommended changes to the rules, or completion of any other required or delegated duties, pursuant to the Insurance Code Article 5.43-3 §6, the

advisory council shall submit a report of its findings and recommendations to the commissioner.

(f) Duration. The advisory council is established to operate for eight years from the effective date of the adoption of this section unless abolished earlier by the commissioner of insurance or extended to a later date by the commissioner of insurance. Such abolishment or extension shall be by amendment of this section as required by the Government Code §2110.008.

CERTIFICATION. This agency hereby certifies that the adopted amendment and new section have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on February 29, 2008.



Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that amendments to §34.716, concerning the inspection, test and maintenance service of certain fire protection sprinkler systems, and new §34.726, concerning the establishment of the Fire Sprinkler Advisory Council to advise the State Fire Marshal regarding practices in

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the fire protection sprinkler system industry and the rules necessary to implement and administer Article 5.43-3 of the Insurance Code, specified herein, are adopted.

AND IT IS SO ORDERED.



MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:



Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO.

08-0179

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