

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Office of the State Fire Marshal

Fire-Resistant Material Applicators (LAC 55:V.Chapter 34)

Notice is hereby given that the Louisiana Office of State Fire Marshal is adopting an emergency rule enacting LAC Title 55, Part V, Chapter 34, §3401 through §3429. The law which prompted the promulgation of these rules (La. R.S. 40:1603) was adopted in the 2019 Legislative session. It is necessary to have rules in place for the enforcement and penalties associated with Fire-resistant material applicators for the protection and safety of the public and to establish accuracy concerning heat and flame protection. These rules also explain the training and certification process for a person seeking a certificate of registration as a fire-resistant material applicator as required in R.S. 40:1603. These rules ensure that those people conducting fire-resistant material application activities are properly trained, certified and registered which assures that the work was properly performed. The emergency adoption of these rules will further safeguard the citizens and visitors present in commercial structures by ensuring that they are safe from fires. As such, the Office of State Fire Marshal finds that an imminent peril to the public safety and welfare requires adoption of this Rule upon shorter notice than that provided in R.S. 49:953(A), as provided in R.S. 49:953(B)(1)(a). This Emergency Rule is being proposed pursuant to the authority of the Office of State Fire Marshal contained in R.S. 40:1563 and R.S. 40:1603.

This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 953(B)(1) et seq., and becomes effective upon signature of the Undersecretary of the Louisiana Department of Public Safety and Corrections, September 28, 2020, and shall remain in effect for 120 days, unless rescinded, renewed or until the permanent rules become effective.

Title 55

PUBLIC SAFETY

Part V. Fire Protection

Chapter 34. Fire-resistant Material Applicators

§3401. Purpose

A. The provisions of this Chapter are to establish the training, registration and certification requirements for fire-resistant material applicators. The requirements for the enforcement of these provisions are established by this chapter in the interest of protecting and preserving lives pursuant to authority of R.S. 40:1603.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

§3403. Administration

A. The Office of State Fire Marshal, which administers the provisions of R.S. 40:1603, relating to fire-resistant material applicators, is located at 8181 Independence Blvd., Baton Rouge, Louisiana 70806.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

§3405. Applicability of Rules

A. These rules shall apply to all persons engaged in the activity of fire-resistant material application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

§3407. Exceptions

A. These rules shall not apply to firms that employ persons engaging in the activity of fire-resistant material application. The requirements only apply to the individual fire-resistant material applicators.

These rules do not apply to any persons or firms engaged in the application of fire-stopping material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

§3409. Notices by the State Fire Marshal

A. Any notice required to be given by the Office of State Fire Marshal by any provision of law or these rules shall be provided as follows:

1. personal or domiciliary service or mailed, postage prepaid, to the person's residence and/or firm address as it appears on the records in the Office of State Fire Marshal. It is the responsibility of the person involved to ensure that the Office of State Fire Marshal has a correct address for the person and firm; or

2. electronic transmission or electronic mail (email) if the electronic transmission or email is retrievable in a perceivable form and the office and recipient have consented in writing to the use of such form of electronic transmission or email for purposes of notice or communication between the parties. It is the responsibility of the applicant or registered individual to ensure that the Office of State Fire Marshal has a correct email address for the person and firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

§3411. Definitions

A. The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

Certificate of Registration—that document issued by the Office of State Fire Marshal to a person authorizing him or her to engage in fire-resistant material activity, certifying that he or she has obtained the appropriate training as required in R.S. 40:1603 and these rules.

Digital Registration Identification—that electronic document provided by the Office of State Fire Marshal to a person registered to engage in fire-resistant material activity, with the ability to be displayed on a phone or other electronic device bearing a photographic image of the person and his or her name, evidencing the Office of State Fire Marshal's authorization of the person to engage in the activities as defined by these rules.

Fireproofing—the act of rendering an object, such as a structure or material, resistant to fire or incombustible via the application of a listed and approved fire-resistant material.

Fire-Resistant Material—includes cementitious, fibrous and intumescent materials that are sprayed or applied onto a surface to provide fire-resistant protection of the substrate.

Fire-Resistant Material Activity—the application or the act of applying fire-resistant material onto a surface to provide fire-resistant protection of the substrate.

Fire-Resistant Material Applicator—an individual who applies fire-resistant material.

Firestops or Fire-stopping material—a listed and approved material used as a form of passive fire protection that is utilized for sealing around openings and penetrations in fire-rated walls or flooring. The purpose of the utilization of firestops and/or fire-stopping material is to impede the spread of fire and smoke from one room or area to an adjacent room or area. Fire-resistant material is not included in this definition.

Firm—a sole proprietorship, partnership, corporation, limited liability company, or any other entity that employs the individual fire-resistant material applicators.

Office—the Office of State Fire Marshal.

Person—a natural individual.

Pocket Registration Card—that document issued by the Office to a person registered to engage in fire-resistant material activity, in pocket size and bearing a photographic image of the person and his or her name, evidencing the Office of State Fire Marshal's authorization of the person to engage in the activities as defined by these rules.

Substrate—an underlying material or layer of materials upon which other materials are applied, such as a fire-resistant coating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

§3413. Registration Required

A. Any person engaged in fire-resistant material activity shall be registered in accordance with these rules prior to conducting any such activity in this state. Each person who is registered with the Office shall receive a certificate of registration and a pocket registration card or a digital registration identification.

B. Any person described in Subsection A of this Section who has not registered with the Office shall immediately cease such fire-resistant material activities. The Office may take any steps necessary to enforce an order to cease and desist such activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

§3415. Required Training and Certification

A. Required Certification

1. Applicants for fire-resistant material applicator registration are required to meet the certification requirements pursuant to R.S. 40:1603 and these rules.

B. Training and certification(s) acceptable to the Office shall include:

1. training provided by the manufacturer(s) of the fire-resistant spray materials specific to those that the applicator(s) will be utilizing. The applicant shall submit a copy of all relevant documentation, including training completion and certifications, to the office for verification of training provided by the manufacturer(s). If an individual

applies fire-resistant spray material from multiple and/or varying manufacturers, the individual must have training and certification from each manufacturer. If an individual applies fire-resistant material of a manufacturer for which he or she has not received training and certification, that individual is considered unregistered and/or operating outside his certificate of registration and in violation of R.S. 40:1603 and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

§3417. Initial Registration; Annual Renewals

A. Applicants for individual initial registration are required to meet the initial registration requirements. As such, applications shall provide the following information:

1. name;
2. address;
3. phone number;
4. email address;
5. firm name (if any);
6. firm address;
7. firm phone number; and
8. copies of manufacturers' training and/or certifications.

B. Annual registration renewals required. On or before the expiration date, which is displayed on the certificate of registration, each person shall submit an application for the renewal of their certificate.

C. Initial and renewal applications for certificates of registration shall be submitted on forms provided the Office of State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

§3419. Certificate of Registration

A. Every person must obtain from the Office a certificate of registration as provided for by R.S. 40:1603, before engaging in fire-resistant material activity.

B. The following shall apply to certificates of registration.

1. Duplicates. A duplicate certificate or pocket registration card must be obtained from the Office to replace a lost or destroyed certificate or card. The certificate holder must submit written or electronic notification of the loss or destruction of the certificate within 10 days from the date of loss.

2. Revisions/Changes. The change of a person's name, mailing address, firm, firm address, phone number or email address requires a revision of the certificate of registration. Certificates requiring changes must be surrendered to the Office within 10 calendar days after the change requiring the revision. The person must submit written notification of the change with the surrendered certificate.

3. Non-Transferability. A certificate of registration is not transferable from one person to another.

4. Validity. A certificate of registration is valid for one year and shall be renewed annually. For a certificate of registration to remain valid, the person must provide current documentation of required information and training, as established by the Office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

§3421. Alteration of Certificates of Registration.

A. Any alteration of a certificate of registration or pocket registration card renders both invalid and such alteration shall be the basis for administrative action in accordance with penalties set forth in R.S. 40:1603 and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

§3423. Enforcement; Investigations

A. The state fire marshal or his/her designated representative shall investigate all complaints of alleged violations of R.S. 40:1603 and these rules. Complaints of alleged violations shall be made in writing to the Office of State Fire Marshal. The Office shall make available a complaint form to be used as needed. Penalties shall be administered to those persons found to have violated these laws and/or rules. Proposed administrative penalty letters provided to violators in accordance with these rules shall act as official notification of alleged violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

§3425. Administrative Actions

A. The State Fire Marshal may refuse the issuance or renewal of, suspend, or revoke a certificate of registration and impose administrative penalties, if, after notice and hearing, as provided for by the Administrative Procedure Act, it is found that a person failed to comply with the provisions of R.S. 40:1603 or these rules.

1. Offenses

a. Any person applying fire-resistant material who is not registered with the Office shall be fined up to \$250 per violation.

b. Any person who does not receive the required training and/or does not obtain a certificate of registration in accordance with R.S. 40:1603 and these rules shall be fined up to two hundred-fifty (\$250.00) per violation.

c. Any person who continues to engage in fire resistant material activity and fails to annually register, herein referred to as renewing, shall be fined up to \$250 per violation.

d. Any person subject to R.S. 40:1603 who fails to maintain his or her registration in accordance with R.S. 40:1603 and these rules shall be fined up \$250 per violation.

B. Fines shall be made payable to the Office of State Fire Marshal.

C. The Office is empowered to issue an order to any person or firm engaged in any activity, conduct, or practice constituting a violation of any provision of R.S. 40:1603, directing such person or firm to cease and desist from such activity, conduct, or practice without a certificate of registration. Such order shall be issued in the name of the state of Louisiana under the official seal of the State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

§3427. Severability

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

§3429. Miscellaneous Provisions

A. Nothing in these rules shall prevent an appropriately-registered person from conducting the activity of fire-resistant material application.

B. Service Invoices. All service invoices shall reflect all fire-resistant material application activity, date the work was performed, the name of the employing firm and the name of the certified person(s) who performed the work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1603.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 46:

Lt. Col. Jason Starnes
Chief Administrative Officer

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