

**SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS**  
**28 TAC §§34.813, 34.814, and 34.831**

**1. INTRODUCTION.** The Texas Department of Insurance proposes amendments to §§34.813, 34.814, and 34.831, concerning applications for licenses and permits, fees, and the advisory council established to assist the Commissioner of Insurance in the administration of the Occupations Code Chapter 2154 governing fireworks and fireworks displays (Fireworks Advisory Council). The proposed amendments are necessary to update obsolete statutory citations, reflect current Department policy on acceptance of cash payments, and to specify a new expiration date for the Fireworks Advisory Council established pursuant to the Occupations Code §2154.054.

The proposed amendment to §34.831(f) is necessary to assign a new expiration date for the Fireworks Advisory Council established pursuant to the Occupations Code §2154.054. Existing §34.831(f) specifies that the Fireworks Advisory Council shall automatically terminate on December 31, 2004, unless, before its termination, the commissioner extends its duration. The Occupations Code §2154.054 requires that the Commissioner establish an advisory council to assist in the administration of the Occupations Code Chapter 2154, but does not establish the duration of the advisory council. The Government Code §2110.008(a) specifies that a state agency that has established an advisory committee may designate by rule the date on which the committee will automatically be abolished, 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 Government Code §2110.008(d) specifies that §2110.008 does not apply to an advisory committee that has a specific duration prescribed by statute.

The proposed amendment to §34.831(f) specifies that the expiration date of the Fireworks Advisory Council is December 31, 2018. The proposed amendment also clarifies that if the Commissioner extends the duration of the Fireworks Advisory Council such extension shall be done by rule. This proposed amendment is necessary to clarify that any extension of the duration of the Fireworks Advisory Council will be effected pursuant to the requirements of the Government Code §2110.008(a).

The proposed amendment to §34.814(a) is necessary to reflect the Department's policy on acceptance of cash payments. Effective August 1, 2009, the Department no longer accepts cash payments for fees, assessments, fines, or debts. A statement of this policy is posted at the Department's cashier's office. The proposed amendment to §34.814 eliminates cash as an acceptable method of payment for fees payable to the Department and required by the Occupations Code Chapter 2154 and 28 Texas Administrative Code Chapter 34, Subchapter H.

The proposed amendment to §34.813(b) is necessary to update an obsolete statutory citation to the Assumed Business or Professional Name Act, formerly codified in the Business and Commerce Code Chapter 36. The Business and Commerce Code Chapter 36 was repealed in the nonsubstantive Business and Commerce Code revision, Acts 2007, 80th Legislature, Chapter 885, §2.47, effective April 1, 2009. The Business and Commerce Code Chapter 36 was re-adopted as the Business and Commerce Code Chapter 71 in the same nonsubstantive Business and Commerce Code revision.

**2. FISCAL NOTE.** Paul Maldonado, State Fire Marshal, has determined that for each

year of the first five years the proposed amendments are in effect, there will be no fiscal implications to state or local government as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

**3. PUBLIC BENEFIT/COST NOTE.** Mr. Maldonado also has determined that for each year of the first five years the proposed sections are in effect, the anticipated public benefit from enforcing and administering the sections is the efficient regulation of fireworks and fireworks displays, resulting in the enhancement of the safety of the citizens of Texas. The Occupations Code §2154.054(a) specifies that the Commissioner shall establish an advisory council to assist the Commissioner in administering the Occupations Code Chapter 2154. The Occupations Code §2154.052(b) specifies that 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. The Government Code §2110.008(a) specifies 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. Therefore, to effectively administer the Occupations Code Chapter 2154, it is necessary to specify a new expiration date of the Fireworks Advisory Council. Mr. Maldonado has also determined that the amendment to §38.414 eliminating the option of paying fees by cash is

anticipated to result in a public benefit by allowing the more efficient recordkeeping of collected fees. There are no persons required to comply with the proposed amendment specifying a new expiration date for the Fireworks Advisory Council because participation on the advisory committee is voluntary. Therefore, there are no costs required for compliance with the proposed amendment relating to the expiration date of the Fireworks Advisory Council. However, individuals who choose to serve as members of the Fireworks Advisory Council must travel to attend meetings, and as a result, will incur some costs. These costs will vary depending on the length of time the member serves on the Fireworks Advisory Council, how many meetings they attend, how far the member must travel to attend meetings, what type of transportation is used, whether lodging is needed, and what choice of lodging is made. Travel costs are assumed to include transportation, meals, and lodging. The Department will not reimburse these costs. Transportation costs for each meeting are estimated to be between \$25 and \$300, and will largely depend on whether the member travels by automobile or airplane. Meal costs are estimated to range from \$25 to \$50 each day of travel, and each instance of travel relating to a meeting is estimated to be between one and two days. Lodging costs are estimated to range from \$50 to \$150 for each overnight stay. It is assumed that each instance of travel will result in no more than a single overnight stay. It is not anticipated that the amendment relating to the elimination of the acceptance of cash payment for fees will result in an additional cost, but if any costs do result from the amendment, the costs are anticipated to be minimal. The Department assumes that the large majority of individuals and businesses have checking accounts. The

Department's no-cash acceptance policy was adopted in part because of the extreme infrequency of cash payments. It is anticipated that most payors who previously paid fees in cash will now use their personal or business checking accounts to pay fees, and thus will not incur any costs as a result of the amendment. However, for individuals or businesses that do not have a checking account, the amendment will represent a cost resulting from the necessity of purchasing a money order to pay fees. Depending on their amount, United States Postal Service money orders cost between \$1.10 and \$1.50. This cost would be incurred on a biennial basis upon license renewal. All of the analyses in this cost note are equally applicable to and do not vary for small or micro businesses.

**4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** As required by the Government Code §2006.002(c), the Department has determined that the proposal will not have an adverse economic effect on small or micro businesses. The amendment specifying a new expiration date for the Fireworks Advisory Council will have no impact on small or micro businesses because membership on the Fireworks Advisory Council is voluntary. However, should an individual choose to serve on the Fireworks Advisory Council, they will incur costs as specified in the Public Benefit/Cost Note portion of this proposal. The proposed amendment relating to the Department's no-cash acceptance policy is not anticipated to result in any additional costs; however, if a small or micro business does not have a checking account, it may incur minimal costs of \$1.10 to \$1.50 on a biennial

basis as specified in the Public Benefit/Cost Note portion of this proposal. It is not anticipated that there are any additional requirements on any individual or entity, including small and micro businesses, required to comply with the existing sections as amended by the proposal. Therefore, there are no anticipated costs required to comply with the proposal for any small or micro business. In accordance with the Government Code §2006.002(c), the Department has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

**5. TAKINGS IMPACT ASSESSMENT.** The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**6. REQUEST FOR PUBLIC COMMENT.** To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 31, 2010, to Gene C. Jarmon, General Counsel & Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Paul Maldonado, State Fire Marshal, Mail Code 108-FM, Texas Department of Insurance, P.O. Box 149221, Austin, Texas 78714-9221. Any request for a public hearing should be submitted separately to the

Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

**7. STATUTORY AUTHORITY.** The amendments are proposed under the Occupations Code, the Government Code, and the Insurance Code. The Occupations Code §2154.052(a) specifies that the Commissioner shall administer Chapter 2154, relating to regulation of fireworks and fireworks displays, through the State Fire Marshal and may issue rules to administer Chapter 2154 in compliance with §2154.054. The Occupations Code §2154.054(a) specifies that the Commissioner shall establish an advisory council to assist the Commissioner in administration of Chapter 2154. The Government Code §2110.008(a) specifies that a state agency that has established an advisory committee may designate by rule the date on which the committee will automatically be abolished. The Government Code §2110.008(d) specifies that §2110.008 does not apply to an advisory committee that has a specific duration prescribed by statute. The Insurance Code §36.001 authorizes the Commissioner of Insurance to 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 of this state.

**8. CROSS REFERENCE TO STATUTE.** The following statutes are affected by this proposal:

<u>Rule Number</u>	<u>Statute</u>
§34.813	Business and Commerce Code Chapter 71

§34.814	Occupations Code §2154.052
§34.831	Occupations Code §2154.052 and §2154.054 and Government Code §2110.008

## 9. TEXT.

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

(a) (No change.)

(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 71 [36].

(c) – (g) (No change.)

### **§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) – (f) (No change.)

**§34.831. Advisory Council.**

(a) – (e) (No change.)

(f) Duration. The advisory council shall automatically terminate on December 31, 2018 [2004], unless, before its termination, the commissioner extends its duration by rule.

**10. CERTIFICATION.** This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on \_\_\_\_\_, 2010.

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