

DRAFT 10/10/2016

§9.29. Political Subdivision Application for More Restrictive LP-Gas Safety Rule or Standard.

(a) A municipality, county, or other political subdivision in Texas may file an application with the director of AFS ("the director") for permission to promulgate an LP-gas rule or standard that is more restrictive than a rule or standard adopted by the Commission. To apply for permission, a political subdivision shall file with the director LPG Form 26, along with the following information:

- (1) the section number of the current Commission LP-gas safety rule or the adopted standard to which the application relates, if any;
- (2) the complete text of the applicant's proposed rule or standard;
- (3) evidence showing why the Commission's current rule or adopted standard does not adequately protect public safety, including, but not limited to, facts and documents related to incidents involving LP-gas fires, explosions, injuries, fatalities, property damage, or other statistical data;
- (4) additional information including, but not limited to, engineering studies or other statistical documents showing how the proposed rule or standard will enhance public safety; and
- (5) a copy of the notice required in subsection (c)(4) of this section.

(b) The director will forward the application to the Commission's executive director. The executive director may deny an application that does not include all the requirements in subsection (a) or may request that the applicant provide additional information that the executive director considers necessary to evaluate the application.

(c) Notice of political subdivision application for an LP-gas safety rule or standard.

(1) At the same time the application is submitted to the Commission, the applicant shall send a copy of the entire application by certified mail, return receipt requested, or hand-delivery to all affected persons specified in subparagraphs (A) - (C) of this paragraph:

(A) the city council and/or fire marshal of each municipality that has within its jurisdiction a stationary installation or mobile equipment to which the proposed rule or standard would apply;

(B) the county commission, if the proposed rule or standard would apply to a stationary installation or mobile equipment within the county's jurisdiction; and

(C) any person with a Category D, E, I, or J license and any person registered with the Commission under §9.13 of this title (relating to General Installers and Repairman Exemption) to conduct LP-gas activities that may be affected by the proposed rule or standard.

(2) The applicant shall file copies of all certified mail receipts with the director as proof that affected persons have been properly notified.

(3) If an affected person is notified by hand delivery, the applicant shall submit proof acceptable to the director that the person received notice, such as a signed and dated document from the affected person acknowledging receipt.

(4) The applicant shall include a notice to the affected persons that an objection to the proposed rule or standard must be filed with the director within 18 calendar days of the date on the certified mail receipt or hand delivery. The notice shall include a reference to this section.

(d) Objections to the application shall be in writing, filed with the director within 18 calendar days of the date on the certified mail receipt, or of the date of hand delivery, and shall explain how the proposed rule or standard fails to enhance public safety and/or explain how the proposed rule or standard would cause a financial burden. The Commission may decline to consider objections based solely on claims of diminished property or esthetic appearance.

(e) The director shall review the application within 21 business days of receipt of the application.

(1) If the director does not receive any objections from any affected persons as defined in subsection (c) of this section, the executive director may administratively approve the application if the executive director determines the proposed rule or standard would enhance public safety. The director shall notify the applicant in writing by the end of the 21-day review period and, if approved, the political subdivision may immediately implement the proposed rule or standard.

(2) If the executive director denies the application, the director shall notify the applicant in writing and shall state the reasons for the denial and any specific deficiencies in the application. The

applicant may modify the application to correct deficiencies and resubmit the application, or may request a hearing on the matter. To be granted a hearing, the applicant must file a written request for hearing with the director within 14 calendar days of receiving a notice that the application has been denied.

(f) A hearing shall be held when the director receives an objection from an affected person as set out in subsection (e) of this section, or when a timely request for hearing is filed by the applicant following an administrative denial. The director shall mail the notice of hearing to the applicant and all objecting persons by certified mail, return receipt requested, at least 21 calendar days prior to the date of the hearing.

(g) After a hearing, the Commission may approve the application if the Commission finds that approving the application would enhance public safety.

(h) An applicant who intentionally submits incorrect or misleading information is subject to penalties set out in the Texas Natural Resources Code §91.143, and the filing of incorrect or misleading information shall be grounds for dismissing the application with prejudice.

(i) An application shall expire if it is inactive for three months after the date of a letter from the director notifying the applicant that the application is incomplete as submitted. The applicant may resubmit an expired application under the requirements for submitting a new application described in subsection (a) of this section.