

The Texas Board of Professional Geoscientists (TBPG) adopts amendments to 22 TAC §§851.10, 851.20, 851.23, 851.25, 851.30, 851.80, 851.157, and 851.203; adopts the repeal of §851.158; and adopts new rules §§851.158, 851.159, and 851.220 concerning the licensure and regulation of Professional Geoscientists. The amendments to §§851.10, 851.20, 851.23, 851.25, 851.30, 851.80, 851.157, and 851.203; the repeal of §851.158; and new rules §851.159 and §851.220 are adopted without changes to the proposed text as published in the July 7, 2017 issue of the *Texas Register* (42 TexReg 3549), and will not be republished. New rule §851.158 is adopted with changes to the proposed text and is republished below. The repeal of §851.158 will be effective as of the date the new §851.158 takes effect.

Adopted amendments to §851.10 and §851.30 clarify the definition and role of an "Authorized Official of a Firm" (AOF). Adopted amendments to §851.80 amend language to establish a proctored review of a Texas Geophysics Examination for a fee, and provide a reduction of the renewal fee to half price for a person who has a medical disability. Adopted amendments to §851.20 clarify that an applicant who is not a citizen of the United States must provide a copy of a current visa or something equivalent. Adopted amendments to §851.23 provide an alternate process for applicants who cannot provide a professional reference to verify qualifying work experience. Adopted amendments to §851.25 re-sequence elements of the existing rule so that the rule is consistent with the Texas Geoscience Practice Act, and provide that, by rule, the Board has determined that a person has satisfied "other equivalent education, as determined by the Board," if the applicant has a four year college or university degree and has the appropriate number of total hours of geoscience coursework and in upper level courses. The adopted change also provides that the Appointed Board could still determine whether an applicant's education is equivalent after review of the applicant's credentials. Adopted revisions to §851.157, along with the repeal of current §851.158 and the addition of new §851.158 and §851.159, reorganize the rules in current §851.157 and §851.158, and provide that the default for not responding to a Notice of Alleged Violation or a scheduled informal settlement conference may be to a Board Order instead of the current default of scheduling a hearing with the State Office of Administrative Hearings (SOAH), and provide certain clarifying language regarding the procedures by which complaints are investigated and adjudicated. Current §851.158 is repealed because these provisions are provided for in TOC Chapter 1002, Subchapters J and K, making the rule redundant and, therefore, unnecessary. An adopted amendment to §851.203 adds provisions to the default process that is followed when a respondent does not appear at a SOAH hearing. Adopted new rule §851.220 provides a procedure for judicial review of a default or contested Board Order by a respondent.

The Board received no comments regarding the adoption of the amendments, the repeal, and the new rules. However, upon further review, the Board further clarified §851.158 upon adoption. No substantive changes were made.

The Board adopted new rule §851.158 with changes to include the addition of subsection (I) under (1)(A), which now specifies the staff action of "dismissing complaints that are administrative, meritless, or non-jurisdictional (with or without advisement)." Additional language to (3)(A) was added to show that the notice of alleged violation will state "the authority of the TBPG to enforce the Act and take disciplinary action." In subsection (3)(B), it now reads, "The notice of alleged violation will provide three options," and combines item (iv) with item (i), which now reads, "Accept the proposed findings and proposed disciplinary action, "and waive the right to an informal conference, contested-case hearing, and judicial review," by signing and returning the enclosed proposed Board order."

The adopted amendments are authorized by the Texas Occupations Code §1002.151 which provides that the Board shall adopt and enforce rules consistent with the Texas Geoscience Practice Act (the Act); by Occupations Code §1002.154 which provides that Board shall enforce the Act; by Occupations Code §1002.351, which authorizes temporary licenses.

The adopted amendments implement the Texas Occupations Code, §§1002.151, 1002.154, and 1002.351.

### **§851.10. Definitions**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

- (1) Act--Texas Occupations Code, Chapter 1002, cited as the Texas Geoscience Practice Act.
- (2) Accredited institutions or programs--An institution or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council for Higher Education Accreditation (CHEA) or other appropriate accrediting entity accepted by the Appointed Board.
- (3) Address of record--In the case of an individual or firm licensed, certified, or registered by the Texas Board of Professional Geoscientists (TBPG), the address which is filed by the licensee with the TBPG.
- (4) Advertising or Advertisement--Any non-commercial or commercial message, including, but not limited, to verbal statements, bids, web pages, signage, provider listings, and paid advertisement which promotes the services of a licensee.
- (5) Applicant--An individual making application for a geoscience license or Geoscientist-in-Training (GIT) certification; a firm and/or the Authorized Official of a Firm making application for a Geoscience Firm registration.
- (6) Application--The forms, information, attachments, and fees necessary to obtain a license as a Professional Geoscientist, the registration of a firm, or a certification as a Geoscientist-in-Training (GIT).
- (7) Appointed Board--Those persons who are appointed by the Governor and confirmed by the Senate and qualify for office who may deliberate, vote, and be counted as a member in attendance of the Texas Board of Professional Geoscientists.
- (8) ASBOG®--National Association of State Boards of Geology. ASBOG® serves as a connective link among the individual state geologic registration licensing boards for the planning and preparation of uniform procedures and the coordination of geologic protective measures for the general public. One of ASBOG®'s principal services is to develop standardized written examinations for determining qualifications of applicants seeking licensure as professional geologists. State boards of registration are provided with uniform examinations that are valid measures of competency related to the practice of the profession.
- (9) Authorized Official of a Firm (AOF)--The individual designated by a Geoscience Firm to be responsible for the process of submitting the application for the initial registration of the firm with the TBPG; ensuring that the firm maintains compliance with the requirements of registration with the TBPG; ensuring that the firm renews its registration status as long as the firm offers or provides professional geoscience services; ensuring that the geoscientist is a currently licensed P.G.; and communicating with the TBPG regarding any matter.
- (10) Board staff--The Executive Director and all other staff employed by the Texas Board of Professional Geoscientists (administrative, investigative, and other support staff, etc.).
- (11) Certificant--An individual holding a certificate as a Geoscientist-in-Training.
- (12) Cheating--Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception.

(13) Complainant--Any individual who has submitted a complaint to the TBPG, as provided in this chapter.

(14) Complaint--An allegation or allegations of wrongful activity related to the practice or offering of professional geoscience services in Texas. A complaint is within the TBPG's jurisdiction if the complaint alleges a violation of statutes or rules applicable to the public practice of geoscience or the requirements of licensure of a Professional Geoscientist (P.G.) or registration by an individual, firm, or other legal entity.

(15) Council of Soil Scientist Examiners (CSSE)--The purpose of the Council of Soil Science Examiners is to create, score and maintain examinations for State Soil Scientists licensing programs. CSSE develops professional criteria to confirm that individuals meet and exceed minimum qualifications to practice the profession.

(16) Default--The failure of the Respondent to respond in writing to a notice or appear in person or by legal representative on the day and at the time set for hearing in a contested case or informal conference, or the failure to appear by telephone, e-mail, fax or other electronic media in accordance with the notice of hearing or notice of informal conference. Default results in the actions being taken that were described in the notice of the hearing for a contested case or informal conference in the event of a failure to appear.

(17) Direct supervision--Critical watching, evaluating, and directing of geoscience activities with the authority to review, enforce, and control compliance with all geoscience criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of: exertion of significant control over the geoscience work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised individual(s).

(18) Discipline--One of three recognized courses of study under which an individual may qualify for a license as a Professional Geoscientist. Geoscience is comprised of the following disciplines: geology, geophysics, and soil science.

(19) Executive Director--The individual appointed by the Appointed Board who shall be responsible for managing the day to day affairs of the board, in accordance with the Act.

(20) Filed date--The date that the document has been received by the TBPG or, if the document has been mailed to the TBPG, the postmark date of the document.

(21) Geology--The discipline of geoscience that addresses the science of the origin, composition, structure, and history of the Earth and its constituent soils, rocks, minerals, fossil fuels, solids, fluids and gasses, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the Earth, and is applied with judgment to develop ways to utilize, economically, those natural and introduced agents, forces, and processes for the benefit of mankind. There are many subdivisions of geology, which include, but are not limited to, the following: historical geology, physical geology, economic geology, mineralogy, paleontology, structural geology, mining geology, petroleum geology, physiography, geomorphology, geochemistry, hydrogeology, petrography, petrology, volcanology, stratigraphy, engineering geology, and environmental geology.

(22) Geophysics--Refers to that science which involves the study of the physical Earth by means of measuring its natural and induced fields of force, and its responses to natural and induced energy or forces, the interpretation of these measurements, applied with judgment to benefit or protect the public.

(23) Geoscience--The science of the Earth and its origin and history, the investigation of the Earth's environment and its constituent soils, rocks, minerals, fossil fuels, solids, and fluids, and

the study of the natural and introduced agents, forces, and processes that cause changes in and on the Earth as applied with professional judgment to develop ways to utilize, economically, those natural and introduced agents, forces, and processes for the benefit of the public.

(24) Geoscience Firm--Any entity that engages in or offers to engage in the practice of professional geoscience before the public in the State of Texas. This term includes a sole practitioner registered with TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization.

(25) Geoscience services (also professional geoscience services, and professional geoscience)--Services which must be performed by or under the direct supervision of a Professional Geoscientist and which meet the definition of the practice of geoscience as defined in the Texas Occupations Code, §1002.002(3). A service shall be conclusively considered a professional geoscience service if it is delineated in that section; other services requiring a Professional Geoscientist by contract, or services where the adequate performance of that service requires a geoscience education, training, or experience in the application of special knowledge or judgment of the geological, geophysical or soil sciences to that service shall also be conclusively considered a professional geoscience service. These services may include consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work, and the responsible supervision of those tasks.

(26) License--The legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and this chapter.

(27) License certificate--Any certificate issued by the TBPG showing that a license, registration, or certificate has been granted by the TBPG. A certificate is not valid unless it is accompanied by a card issued by the TBPG which shows the expiration date of the license, registration or certification.

(28) License status--The status of a Professional Geoscientist license, Geoscience Firm registration, or GIT certification is one of the following:

(A) Current license--A license, registration, or certification that has not expired.

(B) Expired license--A Professional Geoscientist license that has been expired for less than three years and is therefore renewable, or a Geoscience Firm registration or GIT certification that has been expired for less than one year and is therefore renewable.

(C) Permanently expired license--A license, registration, or certification that is no longer renewable.

(29) Licensee--An individual or other entity holding a current Professional Geoscientist license, GIT certificate, or firm registration.

(30) Person--Any individual, firm, partnership, corporation, association, or other legal public or private entity, including a state agency or governmental subdivision.

(31) Professional Geoscientist or P.G.--An individual who holds a license as a Professional Geoscientist issued by the TBPG.

(32) Practice for the public--

(A) Providing professional geoscience services:

(i) For a governmental entity in Texas;

(ii) To comply with a rule established by the State of Texas or a political subdivision of the State of Texas; or

- (iii) For the public or a firm or corporation in the State of Texas if the practitioner accepts ultimate liability for the work product; and
- (B) Does not include services provided for the express use of a firm or corporation by an employee or consultant if the firm or corporation assumes the ultimate liability for the work product.
- (33) The Public--Any individual(s), client(s), business or public entities, or any member of the general population whose normal course of life might reasonably include an interaction of any sort with or be impacted by professional geoscience services.
- (34) Registered firm--A firm that is currently registered with the TBPG.
- (35) Registrant--An individual whose sole-proprietorship is currently registered with the TBPG or a firm that is currently registered with the TBPG.
- (36) Respondent--Any individual or firm, licensed or unlicensed, who has been charged with violating any provision of the Act or a rule or order issued by the Appointed Board.
- (37) Responsible charge--The independent control and direction of geoscience services or the supervision of geoscience services by the use of initiative, skill, and independent judgment.
- (38) Rule or Board Rule--State agency rules adopted by the Appointed Board and as published in the Texas Administrative Code, Title 22, Part 39, Chapters 850 and 851.
- (39) Soil Science--Soil science means the science of soils, their classification, origin and history, the investigation and interpretation of physical, chemical, morphological, and biological characteristics of the soil including, among other things, their ability to produce vegetation and the fate and movement of physical, chemical, and biological contaminants.
- (40) Sole-proprietorship--A single owned Professional Geoscientist's geoscience business that has no separate legal existence from its owner.
- (41) TBPG--The Texas Board of Professional Geoscientists, as used in this chapter, is a reference to the whole or any part of the entity that is the Texas Board of Professional Geoscientists.

## **§851.20. Professional Geoscientist Licensing Requirements and Application Procedure.**

### **(a) Requirements for licensure:**

- (1) Passing score on an examination or examinations required by the Texas Board of Professional Geoscientists (TBPG) covering the fundamentals and practice of the appropriate discipline of geoscience documented as specified in §851.21 of this chapter;
- (2) A minimum of five years of qualifying work experience during which the applicant has demonstrated being qualified to assume responsible charge of geoscience services documented and verified through professional references as specified in §851.23 of this chapter and Texas Occupations Code (TOC) §1002.256;
  - (A) A total of one year of qualifying work experience credit may be granted for each full-time year of graduate study in a discipline of geoscience, not to exceed two years;
  - (B) The Appointed Board may accept qualifying work experience in lieu of the education requirement as provided in TOC §1002.255;
- (3) Good moral character as demonstrated by the submission of a minimum of five reference statements submitted on behalf of the applicant attesting to the good moral and ethical character of the applicant as specified in §851.24 of this chapter or as otherwise determined by the Appointed Board;

(4) Academic requirements for licensure as specified in TOC §1002.255 and §851.25 of this chapter; and

(5) Supporting documentation of any license requirement, as determined by Board staff or the Appointed Board, relating to criminal convictions as specified in §851.108 of this chapter; relating to substance abuse issues as specified in §851.109 of this chapter; and relating to issues surrounding reasons the Appointed Board may deny a license as specified in the Geoscience Practice Act at TOC §1002.401 and §1002.402.

(b) An applicant may request a waiver of any licensure requirement by submitting a Waiver Request (Form VI) and any additional information needed to substantiate the request for waiver with the application. If the Appointed Board determines that the applicant meets all the other requirements, the Appointed Board may waive any licensure requirement except for the payment of required fees.

(c) An application is active for one year including the date that it is filed with the Appointed Board.

(d) Professional Geoscientist application procedure. To be eligible for a Professional Geoscientist license under this chapter, an applicant must submit or ensure the transmission (as applicable) of the following to the TBPG:

(1) A completed, signed, notarized application for licensure as a Professional Geoscientist;

(2) Documentation of having passed an examination as specified in §851.21 of this chapter;

(3) Documentation of having met the experience requirements as specified in §851.23 of this chapter;

(4) A minimum of five (5) reference statements as specified in §851.24 of this chapter;

(5) Official transcript(s), as specified in §851.25 of this chapter;

(6) The application/first year licensing fee as specified in §851.80(b) of this chapter;

(7) Verification of every license, current or expired, in any regulated profession related to the public practice of geoscience in any jurisdiction; and

(8) Any written explanation and other documentation as required by instructions on the application or as communicated by Board staff, if applicable.

(e) Any transcripts, evaluations, experience records or other similar documents submitted to the TBPG in previous applications may be included in a current application provided the applicant requests its use in writing at the time the application is filed and the Executive Director authorizes its use.

(f) An application may be forwarded to the Appointed Board at the Executive Director's discretion.

(g) Obtaining or attempting to obtain a license by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(h) An applicant who is a citizen of another country and is physically present in this country shall show sufficient documentation to the TBPG to verify the immigration status for the determination of their eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In most cases, a copy of a current visa or something equivalent will be sufficient. For applicants from countries that have a standing trade agreement with the US that specifically and adequately addresses professional licensure, such as NAFTA or AUSFTA, a copy of a visa is not required; however, the applicant must identify the

trade agreement under which the applicant would be working in the US, and must establish the applicant has the required legal status to work in Texas.

(i) Applications are not reviewed until the application and fee have been received in the TBPG office. Applicants are initially notified of any deficiencies in the application within approximately thirty (30) days after the receipt of the application and fee.

(j) An applicant should respond to a deficiency notice within forty-five (45) days from the date of notification for applicants to correct deficiencies. If an applicant does not respond to a deficiency notice or does not ensure that necessary documents are provided to the TBPG office, the application will expire as scheduled one year after the date it became active.

(k) Upon receipt of all required materials and fees and satisfying all requirements in this section, the applicant shall be licensed and a unique Professional Geoscientist license number shall be assigned to the license. A new license shall be set to expire at the end of the calendar month occurring one year after the license is issued. Board staff shall send a new license certificate, initial license expiration card, and an initial wallet license expiration card as provided in subsection (p) of this section.

(l) An original license is valid for a period of one year from the date it is issued. Upon the first timely renewal of a license, the renewal period shall be from the date the license is renewed until the last day of the next birth month for the licensee. A license that is renewed late (one day after the expiration date of the license through the end of the 36th month past the expiration date of the license) is renewed in accordance to the rules set forth in §851.28 of this chapter.

(m) A license number is not transferable.

(n) Any violation of the law or the rules and regulations resulting in disciplinary action for one license may result in disciplinary action for any other license.

(o) Altering a license wall certificate, certificate expiration card, or wallet expiration card in any way is prohibited and is grounds for a sanction and/or penalty.

(p) The Professional Geoscientist license is the legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and this chapter. When a license is issued, a license wall certificate, the first license certificate expiration card, and the first wallet license card are provided to the new licensee.

(1) The license wall certificate shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the individual is licensed, and the date the license was originally issued.

(2) The license wall certificate is not valid proof of licensure unless the license certificate expiration card is accompanying the license certificate and the date on the license certificate card is not expired.

(3) The license certificate expiration card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, and the date the license will expire, unless it is renewed.

(4) The wallet license card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the individual is licensed, and the date the license will expire, unless it is renewed.

(q) Once the requirements for licensure have been satisfied and the new license and license certificate have been issued, within sixty (60) days of notification the new licensee must then:

(1) Obtain a seal and submit TBPG Seal Submission (Form X) to the TBPG; and

- (2) Register as a Geoscience Firm, if appropriate, as described in §851.30 of this chapter.
- (r) An applicant who is a military service member, military veteran or a military spouse is directed to TBPG rule §851.26 of this chapter for additional licensing provisions.

### **§851.23. Qualifying Experience Record.**

- (a) Applicants shall complete the Qualifying Experience Record on Application Form A and provide supplemental information to demonstrate the dates qualifying experience began and ended.
- (b) The experience record shall be written by the applicant, shall clearly describe the geoscience work that the applicant personally performed in each setting, and shall delineate the role of the applicant in any group geoscience activity.
- (c) The experience record should provide an overall description of the nature and scope of the work with emphasis on detailed descriptions of the geoscience work personally performed by the applicant.
- (d) Professional geoscience references must be provided to verify enough of the experience record to cover at least the minimum amount of time needed by the applicant for issuance of a license. If an applicant cannot obtain a reference that verifies qualifying work experience needed to cover the minimum amount of time needed to demonstrate having met the experience requirement, the applicant shall work with TBPG staff to identify some alternate form of verification of the work experience.
- (e) Parts of the experience record that are to be verified by references shall be written in sufficient detail to allow the Board staff to document the minimum amount of experience required and to allow the reference provider to recognize and verify the quality and quantity of the experience claimed.
- (f) The experience record must demonstrate evidence of the applicant's competency to be placed in responsible charge of geoscience services of a similar character.
- (g) Experience is qualifying if the applicant's duties and responsibilities included the performance of geoscience tasks or is acceptable to the TBPG.

### **§851.25. Education.**

- (a) An applicant must have graduated from a course of study from an accredited university or program in one of the following disciplines of geoscience that consists of at least four years of study and includes at least 30 semester hours or 45 quarter hours of credit in geoscience, of which at least 20 semester hours or 30 quarter hours of credit must be in upper-level college courses in that discipline:
- (1) Geology or sub-discipline of geology including but not limited to engineering geology, petroleum geology, hydrogeology, and environmental geology;
  - (2) Geophysics; or
  - (3) Soil science.
- (b) An applicant who has not met the education requirement as set forth in subsection (a) of this section may satisfy the education requirement by having satisfactorily completed other equivalent educational requirements as determined by the Appointed Board.
- (1) An applicant has satisfactorily completed other equivalent educational opportunities if the applicant has obtained a four year college or university degree or higher in any field and has



completed at least 30 semester hours or 45 quarter hours of credit in geoscience, of which at least 20 semester hours or 30 quarter hours of credit is in upper-level college courses in geoscience.

(2) The Appointed Board may also determine that an individual applicant has satisfactorily completed other equivalent educational requirements after reviewing the applicant's educational credentials.

(c) An official transcript (including either grades or mark sheets and proof that the degree was conferred) shall be provided for the degree(s) utilized to meet the educational requirements for licensure. Official or notarized copies of transcripts shall be submitted to the TBPG. Official transcripts shall be forwarded directly to the TBPG office by the respective registrars. The applicant is responsible for ordering and paying for all such transcripts. Additional academic information including but not limited to grades and transfer credit shall be submitted to the TBPG at the request of the Executive Director.

(d) If transcripts cannot be transmitted directly to the TBPG from the issuing institution, the Executive Director may recommend alternatives to the Appointed Board for its approval. Such alternatives may include validating transcripts in the applicant's possession through an Appointed Board-approved commercial evaluation service.

(e) Degrees and coursework earned at foreign universities shall be acceptable if the degree conferred and coursework have been determined by a member of the National Association of Credential Evaluation Services (NACES) to be equivalent to a degree conferred by or coursework completed in an accredited institution or program. It is the applicant's responsibility to have degrees and coursework so evaluated. The commercial evaluation of a degree shall be accepted in lieu of an official transcript only if the credential evaluation service has indicated that the credential evaluation was based on a verified official academic record or transcript.

(f) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs, bulletins, syllabi, or by other means.

(g) The Board staff shall accept no coursework which an applicant's transcript indicates was not completed with a passing grade or for credit.

(h) In evaluating two or more sets of transcripts from a single applicant, the Board staff shall consider a quarter hour of academic credit as two-thirds of a semester hour.

### **§851.30. Firm Registration.**

(a) Registration required. Unless an exemption applies, as outlined in Texas Occupations Code §1002.351(b), a firm or corporation may engage in the public practice of geoscience only if the firm is currently registered with the TBPG; and

(1) The geoscience services are performed by, or under the supervision of, a Professional Geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(2) The business of the firm includes the public practice of geoscience as determined by TBPG rule and a principal of the firm or an officer or director of the corporation is a Professional Geoscientist and has overall supervision and control of the geoscience services performed in this state. As provided in §851.10(24) of this chapter, the term firm includes a sole practitioner registered with TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or

other business organization. For the purposes of this section, the term public includes, but is not limited to, political subdivisions of the state, business entities, and individuals. This section does not apply to an engineering firm that performs service or work that is both engineering and geoscience.

(b) Unless registered by the TBPG or exempt from registration under Texas Occupations Code §1002.351 or elsewhere in this section, an individual or firm may not represent to the public that the individual or firm is a Professional Geoscientist or is able to perform geoscience services or prepare a geoscientific report, document, or other record that requires the signature and seal of a license holder under Texas Occupations Code §1002.263(b).

(c) A currently licensed P.G. who offers services as an unincorporated sole proprietor is exempt from the firm registration requirements in this section. A P.G. who is exempt from the firm registration requirements under this section and who offers services under an assumed name must report the assumed name to the TBPG. A P.G. who is otherwise exempt from the firm registration requirements under this section may choose to register as a Geoscience Firm and pay the current Geoscience Firm registration fee.

(d) Registration requirements. In order to be eligible to register as a Geoscience Firm, the firm must:

(1) Affirm and demonstrate that the firm is an unincorporated sole-proprietorship or another business entity that offers or performs work that includes the public practice of geoscience;

(2) Identify an Authorized Official of a Firm who shall be responsible for submitting the application for the initial registration of the firm with the TBPG; ensuring that the firm maintains compliance with the requirements of registration; ensuring that the firm renews its registration status as long as the firm offers or provides professional geoscience services; ensuring that the geoscientist is a currently licensed P.G.; and communicating with the TBPG regarding any other necessary matter;

(3) Operate under a business model such that:

(A) The geoscience services are performed by, or under the supervision of, a licensed Professional Geoscientist who is in responsible charge of the work and who ensures that the firm complies with all laws, codes, rules, and standards applicable to the public practice of geoscience and who signs and seals all geoscientific reports, documents, and other records as required by this chapter and ensures that all geoscientific reports, documents, and other records are signed and sealed by a licensed Professional Geoscientist; or

(B) The principal business of the firm is the public practice of geoscience as determined by TBPG rule and a principal of the firm or an officer or director of the corporation is a licensed Professional Geoscientist and has overall supervision and control of the geoscience services performed in this state;

(4) Identify the business model and the Professional Geoscientist who fulfills the role of the licensed Professional Geoscientist in paragraph (3) of this subsection;

(5) Unless the firm is an unincorporated sole-proprietorship, a firm seeking registration with the TBPG must register the firm with the Office of the Secretary of State (SOS) and obtain a certificate of authority. If the firm operates under a name other than that which is filed with the SOS, an Assumed Name Certificate must be filed with the County Clerk. A firm's SOS certificate of authority number and all Assumed Name Certificate instrument numbers must be provided to the TBPG upon initial application. If the firm is a sole-proprietorship and the firm operates under a name that does not include the last name of the individual sole proprietor, the firm shall file an Assumed Name Certificate with the County Clerk;

(6) Submit an Initial Firm Registration Application (Form C), in accordance to the procedures outlined in subsection (e) of this section;

(7) Upon initial application, affirm that the licensed Professional Geoscientist performing or supervising the geoscience services for a Geoscience Firm is an employee. A Geoscience Firm shall provide evidence of employment status upon request of the Board staff or an Appointed Board Member.

(e) Firm Registration Application Process.

(1) The Authorized Official of a Firm shall complete and submit, along with the required application fee, the form furnished by the TBPG which includes, but is not limited to, the following information listed in subparagraphs (A) - (E) of this paragraph:

(A) The name, address, and phone number of the firm offering to engage or engaging in the practice of professional geoscience for the public in Texas;

(B) The name, position, address, and phone numbers of each officer or director;

(C) The name, address and current active Texas Professional Geoscientist license number of each employee performing geoscience services for the public in Texas on behalf of the firm;

(D) The name, location, and phone numbers of each subsidiary or branch office offering to engage or engaging in the practice of professional geoscience for the public in Texas, if any; and

(E) A signed statement attesting to the correctness and completeness of the application.

(2) Upon receipt of all required materials and fees and having satisfied requirements in this section, the firm shall be registered and a unique Geoscience Firm registration number shall be assigned to the firm registration. The new firm registration shall expire at the end of the calendar month occurring one year after the firm registration is issued.

(3) An application is active for one year including the date that it is filed with the TBPG. After one year an application expires.

(4) Obtaining or attempting to obtain a firm registration by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(5) Applications are not reviewed until the application and fee have been received in the TBPG office. Applicants are initially notified of any deficiencies in the application.

(6) Applicants should respond to a deficiency notice within forty-five (45) days from the date of notification for applicants to correct deficiencies. If an applicant does not respond to a deficiency notice or does not ensure that necessary documents are provided to the TBPG office, the application will expire as scheduled one year after the date it became active.

(f) The initial certificate of registration shall be valid for a period of one year from the date it is issued, plus any days remaining through the end of that month. A renewed firm registration is valid for a period of one year from the expiration date of the firm registration being renewed.

(g) A Geoscience Firm's completed and approved registration is the legal authority granted the holder to actively offer or practice professional geoscience upon meeting the requirements as set out in the Act and TBPG Rules. When a firm registration is issued, a firm registration wall certificate, the first firm registration certificate expiration card, and the first portable firm registration card is provided to the new Geoscience Firm. The firm registration wall certificate shall bear the name of the firm, the firm's unique Geoscience Firm registration number, and the date the firm registration was originally issued. The firm registration wall certificate is not valid

proof of current registration as a firm, unless it is accompanied by the firm registration certificate expiration card and the date on the firm registration certificate card is not expired. The firm registration certificate expiration card shall bear the name of the firm, the firm's unique firm registration license number, and the date the firm registration will expire, unless it is renewed. The portable firm registration card shall bear the name of the firm, the firm's unique Geoscience Firm registration number, and the date the registration will expire, unless it is renewed.

(h) At least sixty (60) days in advance of the date of the expiration, the Board staff shall notify each registered firm of the date of the expiration and the amount of the fee that shall be required for its annual renewal. The registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the Appointed Board. It is the sole responsibility of the firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.

(i) A certificate of registration which has been expired for less than one (1) year may be renewed by completing a Firm Registration Renewal Application (Form D), along with an affirmation signed by the Authorized Official of a Firm indicating whether professional geoscience services were offered, pending, or performed for the public in Texas when the firm's registration was expired, and payment of a \$50 late renewal penalty. If a firm under application for late firm registration renewal has met the requirements for renewal and has indicated that the geoscience services were offered, pending, or performed for the public in Texas while the firm's registration was expired, unless certain allegations of misconduct are present, the firm's registration shall be renewed. Information regarding unregistered geoscience practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board staff. A firm registration that has been expired for more than one year is permanently expired and may not be renewed; a new application is required.

#### **§851.80. Fees.**

(a) All fees are non-refundable.

(b) P.G. Initial application and license fee--\$255.

(c) Examination processing fee--\$25.

(d) Applicable examination fees:

(1) Geology--Fundamentals and Practice as determined by the National Association of State Boards of Geology (ASBOG®).

(2) Geophysics--Texas Geophysics Examination--\$175.

(3) Soil Science--Fundamentals and Practice as determined by the Council of Soil Science Examiners (CSSE).

(e) Issuance of a revised or duplicate license--\$25.

(f) P.G. renewal fee--\$223 or as prorated under §851.28(b) of this chapter. The fee for annual renewal of licensure for any individual sixty-five (65) years of age or older, permanently disabled, or under a significant medical hardship, as determined by the Executive Director as of the renewal date shall be half the current renewal fee.

(g) Late renewal penalty--\$50.

(h) Fee for affidavit of licensure--\$15.

(i) Verification of licensure--\$15.

(j) Temporary license--\$200.

- (k) Firm registration initial application--\$300.
- (l) Firm registration renewal--\$300.
- (m) Insufficient funds fee--\$25.
- (n) Initial application for Geoscientist-in-Training certification--\$25.
- (o) Annual renewal of Geoscientist-in-Training certification--\$25.
- (p) Texas Geophysics Examination Proctored Review--\$50.

#### **§851.157. Complaints and Confidentiality.**

- (a) Who may file a complaint. A complaint may be filed with the TBPG by a member of the public, a member of the Appointed Board, or by Board staff. Also, a state agency that becomes aware of a potential violation of the Act or a rule adopted by the Appointed Board may fulfill the requirements of the Act in Texas Occupations Code, §1002.207, by filing a formal complaint with the TBPG or providing the information relating to the potential violation in writing to Board staff.
- (b) How to file a complaint. Complaints should be filed with the Secretary-Treasurer of the Appointed Board at the office of the TBPG or electronically through the TBPG's website. The TBPG provides a complaint form that should be used to file a complaint.
- (c) Whom complaints may be filed against. A complaint may be filed against any person or entity who: holds a Professional Geoscientist license issued by the TBPG, is a registered Geoscience Firm, or holds a certificate as a Geoscientist-in-Training issued by the TBPG. A complaint may also be filed against a person or firm that is not licensed or registered with the TBPG alleging that the person or firm has engaged in the unlicensed or unregistered public practice or offering of geoscience services in Texas.
- (d) A complaint must be filed within two (2) years of the event giving rise to the complaint. The event giving rise to the complaint is an event from which a concern with geoscience work completed becomes apparent. Complaints filed after the above stated period will not be acted upon by the TBPG unless the Complainant can show good cause for the late filing.
- (e) Complaints and investigations under this chapter are of two types:
  - (1) Complaints received from a member of the public; and
  - (2) Complaints and investigations that are initiated by the Board staff or an Appointed Board Member as a result of information that becomes known to the Board staff or an Appointed Board Member and that may indicate a violation.
- (f) A complaint from a member of the public must be:
  - (1) In writing;
  - (2) Sworn to by the person making the complaint; and
  - (3) Submitted to the authorized staff deputy to the Secretary-Treasurer or electronically through the TBPG's internet website.
  - (4) The Board staff shall accept a complaint regardless of whether the complaint is notarized.
- (g) A complaint that is initiated by a member of the Board staff or an Appointed Board Member must be:
  - (1) Made in writing; and
  - (2) Signed by the person who became aware of information that may indicate a violation.

(h) Confidentiality.

- (1) The TBPG shall maintain the confidentiality of a complaint from the time of receipt through the conclusion of the investigation of the complaint. Complaint information is not confidential after the date formal charges are filed, which is the date that a notice of alleged violation (NOV) is issued.
- (2) Information submitted to the TBPG that has not been filed as a complaint and the identity of the person who submits the information are not confidential.
- (3) Confidential information from other state agency. The TBPG maintains confidentiality or privilege of any confidential information submitted by a state agency under Texas Occupations Code, §1002.207. A state agency will inform the TBPG of the confidentiality or privilege provisions applicable to the information in accordance with procedures agreed upon between the agencies. If Board staff opens a complaint based on information it has received, the information becomes a part of the complaint record and is subject to the confidentiality provisions in Texas Occupations Code, §1002.202, in addition to any other confidentiality provisions that may apply.
- (4) If a complaint is determined to be frivolous or without merit, the complaint and other information related to the complaint are confidential. The information is not subject to discovery, subpoena, or other disclosure. A complaint is considered to be frivolous if the Executive Director and investigator, with Appointed Board approval, determine that the complaint:
  - (A) Was made for the likely purpose of harassment; and
  - (B) Does not demonstrate apparent harm to any person.

**§851.158. Procedures.**

Procedures generally. Except for a suspension under TOC §1002.403(3), the procedures for investigation and dispensation of complaints are as follows:

- (1) Staff action.
  - (A) Verify that the complaint meets legal requirements;
  - (B) Verify the identity of the complainant (if complaint is not notarized);
  - (C) Open complaint and set up complaint record;
  - (D) Review complaint for TBPG jurisdiction;
  - (E) Review for imminent danger to the public health, safety, or welfare;
  - (F) Prioritize complaint as required by TOC §1002.154;
  - (G) Provide acknowledgement and notification to complainant;
  - (H) Investigate complaint and complete confidential investigation report;
  - (I) Dismiss complaints that are administrative, meritless, or non-jurisdictional (with or without advisement).
- (2) Complaint review team. Review of complaint and investigation with the possible outcomes of:
  - (A) Dismissal of complaint (with or without non-disciplinary advisory or warning); or
  - (B) Issue notice of alleged violation-proposed finding of violation and proposed disciplinary action.

(3) Notice of alleged violation.

(A) The notice of alleged violation will state the authority of the TBPG to enforce the Act and take disciplinary action, the facts or conduct alleged to warrant disciplinary action, identify the proposed disciplinary action, provide the opportunity for an informal conference to show compliance with all requirements of law, and provide the opportunity for a contested-case hearing.

(B) The notice of alleged violation will provide three options:

(i) Accept the proposed findings and proposed disciplinary action, and waive the right to an informal conference, contested-case hearing, and judicial review, by signing and returning the enclosed proposed Board order;

(ii) Request an informal conference and a contested-case hearing; and

(iii) Request a contested-case hearing.

(C) Waiver and default.

(i) To proceed to issue a default order, the notice of alleged violation must state the following in capital letters in at least 12-point bold-face type: **FAILURE TO TIMELY RESPOND TO THIS NOTICE BY TIMELY REQUESTING EITHER AN INFORMAL CONFERENCE AND A CONTESTED-CASE HEARING OR A CONTESTED-CASE HEARING WILL RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RECOMMENDED SANCTION BEING GRANTED BY DEFAULT. YOU MUST RESPOND AND REQUEST A HEARING IN WRITING WITHIN 30 DAYS OF RECEIPT OF THIS NOTICE OR YOU WAIVE YOUR RIGHT TO A HEARING.**

(ii) Additionally, to proceed to issue a default order, the notice of alleged violation must also state the following: If you fail to request a hearing in writing within 30 days of receipt of this notice you will be deemed to have admitted the factual allegations in this notice, waived the opportunity to show compliance with the law, waived the right to a hearing, and waived objection to the recommended sanction.

(iii) If a person fails to file a written request for a contested-case hearing within 30 days of receipt of the notice of alleged violation, the person will be deemed to have admitted the factual allegations in the notice of alleged violation, waived the opportunity to show compliance with the law, waived the right to a hearing, and waived objection to the recommended sanction.

(iv) If a person responds and waives the right to an informal conference and a contested-case hearing or fails to file a written request for either an informal conference and a contested-case hearing or a contested-case hearing within 30 days of receipt of the notice of alleged violation, the Board shall proceed to resolve the matter on an informal basis by issuing a default order.

(D) The Board may serve the notice of alleged violation by sending it to the person's last known address as shown by the Board's records.

(E) The notice of alleged violation shall be sent by first class or certified mail to the person's last known address as shown by the Board's records, and in addition should also be sent to the person's email address as shown by the Board's records.

(4) Informal conference.

(A) The informal conference will be informal and will not follow procedures for contested cases.

- (B) The informal conference panel may be composed of Board staff and Board members. The panel may limit attendance and the time allotted for the informal conference.
  - (C) The informal conference is an opportunity for a person to show compliance with law. The person may speak and provide documents for the panel's consideration.
  - (D) The informal conference panel may recommend proposed action to be taken by the Board. The proposed action may be different from that stated in the notice of alleged violation.
- (5) Contested-case hearing. If a person timely and properly requests a contested-case hearing, one shall be set at the State Office of Administrative Hearing.
- (6) Board order. Except for dismissals, the Board should resolve complaints by order. The Board may accept or reject any proposed order. If a proposed order is rejected, the Board may among other things dismiss the complaint, direct Board staff to modify an order and propose the modified order for later consideration, or direct that the matter be set for a contested-case hearing.
- (7) All disciplinary actions shall be permanently recorded. Except for private reprimands, all disciplinary actions shall be placed on the TBPGE's website and made available upon request as public information.

#### **§851.159. Sanctions.**

- (a) The Appointed Board may impose appropriate sanctions against a Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm, as applicable, for:
- (1) The practice of fraud or deceit in obtaining a Professional Geoscientist license, Geoscientist-in-Training certification, or Geoscience Firm registration;
  - (2) Incompetence, misconduct, fraud, gross negligence, or repeated incidents of negligence in the public practice of geoscience;
  - (3) Conviction of a license holder or GIT of a crime involving moral turpitude or a felony;
  - (4) The imposition of an administrative or civil penalty or a criminal fine, or imprisonment or probation instead of a fine, for a misdemeanor relating to or arising out of the public practice of geoscience;
  - (5) The issuance of a cease and desist order or a similar sanction relating to or arising out of the public practice of geoscience;
  - (6) Using the seal of another license holder or using or allowing the use of the license holder's seal on geoscientific work not performed by or under the supervision of the license holder;
  - (7) Aiding or abetting a person or firm in a violation of this chapter;
  - (8) The revocation or suspension of a license or firm registration, the denial of renewal of a license or registration, or other disciplinary action taken by a state agency, Board of registration, or similar licensing agency for Professional Geoscientists, Geoscientists-in-Training, Geoscience Firms, or a profession or occupation related to the public practice of geoscience;
  - (9) Practicing or offering to practice geoscience or representing to the public that the person or the person's firm or corporation is licensed or registered or qualified to practice geoscience if the person or firm is not licensed or registered under the Act or the person's firm or corporation does not employ a Professional Geoscientist as required under the Act; or



(10) Violating the Act, a rule adopted under the Act, including the Code of Professional Conduct, or a comparable provision of the laws or rules regulating the practice of geoscience in another state or country.

(b) The Appointed Board may take the following disciplinary actions:

- (1) Refuse to issue or renew a license;
- (2) Permanently revoke a license;
- (3) Suspend a license for a specified time, not to exceed three years, to take effect immediately notwithstanding an appeal if the Appointed Board determines that the license holder's continued practice constitutes an imminent danger to the public health, safety, or welfare;
- (4) Issue a public or private reprimand to an applicant, a license holder, or an individual, firm, or corporation practicing geoscience under this chapter;
- (5) Impose limitations, conditions, or restrictions on the practice of an applicant, a license holder, or an individual, firm, or corporation practicing geoscience under this chapter;
- (6) Require that a license holder participate in a peer review program under rules adopted by the Appointed Board;
- (7) Require that a license holder obtain remedial education and training prescribed by the Appointed Board;
- (8) Impose probation on a license holder requiring regular reporting to the Appointed Board;
- (9) Require restitution, in whole or in part, of compensation or fees earned by a license holder, individual, firm, or corporation practicing geoscience under the Act;
- (10) Impose an appropriate administrative penalty as provided by TOC Chapter 1002, Subchapter J for a violation of this chapter or a rule adopted under this chapter on a license holder or a person who is not licensed and is not exempt from licensure under the Act; or
- (11) Issue a cease and desist order.

(c) Allegations and disciplinary actions will be set forth in the final order and the severity of the disciplinary action will be based on the factors listed in paragraphs (1) - (9) of this subsection:

- (1) The seriousness of the acts or omissions;
- (2) The number of prior disciplinary actions taken against the respondent;
- (3) The severity of penalty necessary to deter future violations;
- (4) Efforts or resistance to correct the violations;
- (5) Any hazard to the health, safety, property or welfare of the public;
- (6) Any actual damage, physical or otherwise, caused by the violations;
- (7) Any economic benefit gained through the violations;
- (8) The economic harm to property or the environment caused by the violation; or
- (9) Any other matters impacting justice and public welfare.

(d) The Appointed Board shall consider the following factors in determining the amount of an administrative penalty assessed by the Appointed Board:

- (1) An administrative penalty shall not exceed the dollar amount specified in the Act for each violation. Each day a violation continues is a separate violation for the purposes of imposing a penalty.
- (2) The amount of an administrative penalty shall be based on:
  - (A) The seriousness of the violation, including:
    - (i) The nature, circumstances, extent, and gravity of any prohibited acts; and
    - (ii) The hazard or potential hazard created to the health, safety, or economic welfare of the public;
  - (B) The economic harm to property or the environment caused by the violation;
  - (C) The history of previous violations;
  - (D) The disciplinary action or amount of administrative penalty necessary to deter a future violation;
  - (E) Efforts or resistance to correct the violation; and
  - (F) Any other matter that justice may require.

#### **Subchapter E. Hearings – Contested Cases and Judicial Review.**

##### **§851.203. Defaults.**

- (a) The Board may serve the notice of hearing on the respondent by sending it to his or her last known address as shown by the Board's records.
- (b) Default. If the party who does not have the burden of proof fails to appear at a contested-case hearing at the State Office of Administrative Hearings, the administrative law judge may issue a default proposal for decision that can be adopted by the Board.
- (c) Failure to issue default proposal for decision. If the administrative law judge grants a default but does not issue a default proposal for decision and instead issues an order dismissing the case and returning the file to the Board for informal disposition on a default basis in accordance with section 2001.056 of the Texas Government Code, the allegations in the notice of hearing will be deemed as true and proven and the Board will issue a final order imposing a sanction requested in the notice of hearing.
- (d) Failure to prosecute. If an applicant for licensure fails to appear at a contested case hearing at the State Office of Administrative Hearings, the administrative law judge must dismiss the case for want of prosecution, any relevant application will be withdrawn, and the Board may not consider a subsequent application from the party until the first anniversary of the date of dismissal of the case at the State Office of Administrative Hearings. If the administrative law judge dismisses the case and returns the file to the Board for informal disposition on a default basis in accordance with §2001.056 of the Texas Government Code, the Board will issue a final order referring to this rule and advising the applicant that the application was withdrawn and the applicant may reapply for licensure one year after the date the Board signs the final order.
- (e) Applicants for licensure bear the burden to prove fitness for licensure.
- (f) Contesting a final order issued following a default or dismissal for failure to prosecute. In the event that the respondent or applicant wishes to contest a final order issued following a default or dismissal for failure to prosecute, the respondent or applicant must timely file a motion for rehearing as provided by Chapter 2001 of the Texas Government Code, and the motion for rehearing must show the following:

- (1) the default was neither intentional nor the result of conscious indifference;
- (2) the respondent or applicant has a meritorious case or defense;
- (3) a new hearing will not harm the Board; and
- (4) the motion for rehearing must be supported by affidavits and documentary evidence of the above and show a prima facie case in the movant's favor.

**§851.220. Judicial Review Procedures.**

- (a) A timely motion for rehearing is a prerequisite to judicial review and must be filed in accordance with chapter 2001 of the Texas Government Code.
- (b) The motion for rehearing may be filed by mail to the Board's mailing address, in person at the Board's street address, or by fax to the Board's fax number.
- (c) Standard for rehearing following a default dismissal. In the event that the respondent wishes to contest a final order issued following a default, the respondent must timely file a motion for rehearing as provided by Chapter 2001 of the Texas Government Code, and the motion for rehearing must show the following:
  - (1) the default was neither intentional nor the result of conscious indifference;
  - (2) the respondent has a meritorious defense;
  - (3) a new hearing will not harm the Board; and
  - (4) the motion for rehearing must be supported by affidavits and documentary evidence of the above and show a prima facie case for a meritorious defense.
- (d) Standard for rehearing following a dismissal for failure to prosecute. In the event that the applicant wishes to contest a final order issued following a dismissal for failure to prosecute, the respondent must timely file a motion for rehearing as provided by Chapter 2001 of the Texas Government Code, and the motion for rehearing must show the following:
  - (1) the dismissal for failure to prosecute was neither intentional nor the result of conscious indifference;
  - (2) the applicant has a meritorious application;
  - (3) a new hearing will not harm the Board; and
  - (4) the motion for rehearing must be supported by affidavits and documentary evidence of the above and show a prima facie case for a meritorious application.