

**10. Matters referred from the Fire Fighter Advisory Committee (FFAC), including but not limited to:**

**A. Discussion and possible final adoption on proposed amendments, new sections, repeals, and rule reviews as follows:**

- 1. Proposed amendments to 37 TAC Chapter 421, Standards for Certification, including, but not limited to §421.5 and §421.17.**

# CHAPTER 421

## STANDARDS FOR CERTIFICATION

### §421.5. DEFINITIONS

The following words and terms, when used in this standards manual, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(42) No Change.

(43) Years of experience--For purposes of higher levels of certification or fire service instructor certification:

(A) Except as provided in subparagraph (B) of this paragraph, years of experience is defined as full years of full-time, part-time or volunteer fire service while holding:

(i)-(iii) No change.

(iv) for fire service instructor eligibility only, a State Firemen's and Fire Marshals' Association Level II Instructor Certification **received prior to June 1, 2008 or Instructor I received on or after June 1, 2008** or an equivalent instructor certification from the Texas Department of State Health Services (DSHS) or the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Documentation of at least three years of experience as a volunteer in the fire service shall be in the form of a non self-serving sworn affidavit.

### §421.17. Requirement to Maintain Certification.

(a)-(b) No change.

**(c) An individual whose certificate has been expired for one year or longer may not renew the certificate that was previously held. To obtain a new certification, an individual must meet the requirements in Chapter 439 of this title (relating to Examinations for Certification).**

~~(d)~~ (e) The commission will provide proof of current certification to individuals whose certification has been renewed.

**10. Matters referred from the Fire Fighter Advisory Committee (FFAC), including but not limited to:**

- A. Discussion and possible final adoption on proposed amendments, new sections, repeals, and rule reviews as follows:**
  - 2. Proposed amendments to 37 TAC Chapter 427 Training Facility Certification including, but not limited to §§427.201, 427.303 and 427.305.**

## Chapter 427

### TRAINING FACILITY CERTIFICATION

#### SUBCHAPTER B

##### DISTANCE TRAINING PROVIDERS

#### §427.201. Minimum Standards for Distance Training Provider.

(a)-(b) No change.

(b) A distance training provider must seek certification as a training facility in each discipline it intends to instruct.

(c) In order to become a commission-approved distance training provider; the provider must submit a completed commission training facility application with supporting documentation and ~~fees~~[fee]. Such application will include descriptions and addresses of where the distance training provider will have their course delivery and materials. A distance training provider must provide documentation of its ability to meet all minimum requirements for each discipline for which it seeks certification. The documentation must also identify how students and instructors will access resources as identified in the curriculum.

**(d)[(e)]A distance training provider that applies for certification as a training facility in a discipline that includes skills training shall comply with Subchapter A of this chapter concerning minimum standards, facilities, apparatus, protective clothing, equipment, and live fire training utilized to teach and test the required skills.**

~~(d) All training for certification must be submitted to the commission for approval at least 20 days prior to the proposed starting date of the training. Approved courses are subject to audit by commission staff any time during the approved schedule. Any deviation in the approved course schedule or content must be reported to the commission within three business days of the deviation. The academy coordinator will:~~

~~(1) — attest to the fact that the training meets the competencies in the applicable Commission Curriculum and/or NFPA Standards;~~

~~(2) — submit a testing schedule for all academy periodic, final, or skills examinations as required in §427.305 of this title; and~~

~~(3) — notify the Commission of any changes in instructor staff and/or field examiners.~~

**(e)[(f)]** A distance training provider certified for the first time by the commission will receive, at no charge, one Commission Certification Curriculum and Standards Manual on CD to be utilized by the certified distance training provider's instructors. The distance training provider is responsible for ensuring that all subjects are taught as required by the curricula. Additional CD copies may be purchased from the commission or downloaded from the agency web site. Distance training providers that renew their certification will receive appropriate updates at no charge.

#### SUBCHAPTER C

##### TRAINING PROGRAMS FOR ON-SITE AND DISTANCE TRAINING PROVIDERS

#### §427.303. Training Approval Process for On-Site and Distance Training Providers.

(a)-(c) No change.

(d) Approved courses are subject to audit by commission staff at any time during the approved schedule. Any deviation in the approved course schedule, content, field examiners, or the substitution of one instructor for another (**this does**

~~not apply to~~ the addition of an instructor to the roster of instructors already approved **for the course** by the commission) must be reported to the commission within three business days of the deviation.

**§427.305. Procedures for Testing Conducted by On-Site and Distance Training Providers.**

(a)-(c) No change.

(d) If performance skill evaluations are part of the applicable curriculum, performance testing ~~shall be done and~~ records **shall be** kept in accordance with §427.301 of this title. This will ensure that each trainee has demonstrated an ability to competently and carefully perform all tasks and operations associated with the training, both individually and as a member of a team.

(e) **During the course of instruction, the provider of training shall test for competency all performance skills listed in the applicable curriculum. This applies only for curricula in which performance standards have been developed. Skill evaluations may take place at any time during the academy but must take place after all training on the identified subject area has been completed. The number of opportunities to successfully complete particular performance skill objectives evaluated during an academy is at the discretion of the designated training officer. Retests must be conducted prior to the administration of the Commission designated performance evaluations. All skills must be demonstrated in the presence of a Commission-approved field examiner.** ~~Performance testing should be used to the maximum extent practical. The performance skills contained in the applicable curriculum shall be used to satisfy performance skills requirements. Each trainee shall be prepared to demonstrate any performance skill in the presence of a commission representative as required in Chapter 439 of this title.~~

**10. Matters referred from the Fire Fighter Advisory Committee (FFAC), including but not limited to:**

- A. Discussion and possible final adoption on proposed amendments, new sections, repeals, and rule reviews as follows:**
  - 3. Proposed amendments to 37 TAC, Chapter 433, Minimum Standards for Driver/Operator-Pumper including, but not limited to §433.5.**

## Chapter 433

### MINIMUM STANDARDS FOR DRIVER/OPERATOR-PUMPER

#### §433.5. Examination Requirements.

- (a) ~~The written~~ Examination requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive driver/operator-pumper certification.
- (b) Individuals will be permitted to take the Commission examination for driver/operator-pumper by documenting unless the individual documents, as a minimum, completion of the NFPA 1001 Fire Fighter I training, and completing a Commission-approved driver/operator-pumper curriculum. Performance skills must meet the requirements in Chapter 439.**
- ~~[(c) No individual will be permitted to take the commission examination for driver/operator-pumper unless the individual documents, as a minimum, completion of the NFPA 1001 Fire Fighter I training.]~~

**10. Matters referred from the Fire Fighter Advisory Committee (FFAC), including but not limited to:**

**A. Discussion and possible final adoption on proposed amendments, new sections, repeals, and rule reviews as follows:**

- 4. Proposed amendments to 37 TAC Chapter 437, Fees including, but not limited to §§437.3, 437.5 and 437.13.**

## CHAPTER 437

### FEES

#### §437.3. Certification Fees.

(a) A **\$35.00** [~~\$20~~] non-refundable application fee is required for each certificate issued by the **Commission**[commission]. If a certificate is issued within the time provided in §401.125 of this title (relating to Processing Periods), the fee will be applied to certification. If the certificate is denied the applicant must pay a new certification application fee to file a new application.

#### §437.5. Renewal Fees.

(a) A **\$35.00** [~~\$25~~] non-refundable annual renewal fee shall be assessed for each certified individual and certified training facility. If an individual or certified training facility holds more than one certificate, the **Commission**[commission] may collect only one **\$35.00** [~~\$25~~] renewal fee which will renew all certificates held by the individual or certified training facility.

(l) All certification renewal fees received from one to 30 days after the renewal date posted on the renewal notice will cause the individual or entity responsible for payment to be assessed a non-refundable **\$17.50** [~~\$10~~] late fee in addition to the renewal fee for each individual for which a renewal fee was due.

(m) All certification renewal fees received more than 30 days after the renewal date posted on the renewal notice will cause the individual or entity responsible for payment to be assessed a non-refundable **\$35.00** [~~\$20~~] late fee in addition to the renewal fee for each individual for which a renewal fee was due.

(p) An individual, upon returning from activation to military service, whose certification has expired, must notify the **Commission**[commission] in writing. The individual will have any normally associated late fees waived and will be required to pay a **\$35.00** [~~\$25~~] renewal fee.

#### §437.13. Processing Fees for Test Application, Basic Certification Examination Fees.

(a) A non-refundable **application** processing fee of **\$35.00** [~~\$15~~] shall be charged for each [~~written or performance skill~~] examination[~~administered by the Commission~~].

(b) [~~Academy testing~~] Fees will be paid in advance with the [~~students'~~] application **or the provider of training may be invoiced or billed if previous arrangements have been made with the Commission.** [ ~~to test or be billed after the state testing has been completed. The exceptions to this rule are: ]~~

[(1) — individual walk-ins; and ]

[(2) — retesting of a failed skill administered the same day.]

**10. Matters referred from the Fire Fighter Advisory Committee (FFAC), including but not limited to:**

**A. Discussion and possible final adoption on proposed amendments, new sections, repeals, and rule reviews as follows:**

- 5. Proposed amendments to 37 TAC, Chapter 439, Examinations for Certification including, but not limited to §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, 439.15, 439.17, 439.19, 439.203, and 439.205.**

**CHAPTER 439**

**EXAMINATIONS FOR CERTIFICATION**

**SUBCHAPTER A**

**EXAMINATIONS FOR ON-SITE DELIVERY TRAINING**

**§439.1. Requirements – General.**

- (a) No change.
- (b) Exams will be based on curricula as currently adopted in the commission's Certification Curriculum Manual. ~~The state test can consist of only a written test or it can consist of a test that contains both a written portion and a performance skills portion. If the training program is conducted in the phase format, the examination will be based on the curriculum in effect at the time of the examination.~~
- (c) ~~If performance skills are required as part of a certification examination, the entity applying for the certification examination shall be responsible for providing the required number of approved field examiners. The number of field examiners shall be determined by the commission.~~

**(cd)** Commission examinations that receive a passing grade shall expire two years from the date of the examination.

**(de)** The commission shall prescribe the content of any certification examination that tests the knowledge and/or skill of the examinee concerning the discipline addressed by the examination.

(1)-(4) No change.

**(ef)** ~~The~~**An** individual who fails to pass a commission ~~written~~ examination for state certification will be given one additional opportunity to pass the examination or section thereof. This opportunity must be exercised within 180 days after the date of the first failure. An individual who passes the applicable state certification examination but fails to pass a section thereof for an IFSAC seal(s) will be given one additional opportunity to pass the section thereof. This opportunity must be exercised within two years after the date of the first attempt. An examinee who fails to pass the examination within the required time may not sit for the same examination again until the examinee has re-qualified by repeating the curriculum applicable to that examination.

**(g)** ~~An examinee who fails a state performance skill evaluation may be allowed a retest at a time and place to be determined by the lead examiner. If the candidate fails the retest, remedial training conducted by a certified instructor who is approved to teach in that specific subject area is required for a second retest. Remedial training must be of a duration no less than the recommended curriculum instructional hours for the section in which the failed skill(s) is reflected. An examinee being retested on a performance skill must be retested on any skill, randomly selected by the lead examiner, from the same subject area as the performance skill objective that was failed. If the examinee fails the final retest as part of a state performance skill evaluation, the examinee must requalify by repeating the entire curriculum applicable to the examination.~~

**(f)** **An individual may obtain a new certificate in a discipline which was previously held by passing a Commission proficiency examination.**

**(g)** **If an individual who has never held certification in a discipline defined in §421.5 of this title, seeks certification in that discipline, the individual shall complete all certification requirements.**

**(h)** **If an individual completes an approved training program that has been evaluated and deemed equivalent**

**to a certification curriculum approved by the Commission, such as an out-of-state or military training program or a training program administered by the State Firemen's and Fire Marshals' Association of Texas, the individual must pass a Commission examination for certification status and meet any other certification requirements in order to become eligible for certification by the Commission as fire protection personnel.**

**(i) An individual or entity may petition the Commission for a waiver of the examination required by this section if the person's certificate expired because of the individual's or employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.**

**(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with Commission renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.**

**(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order, ruling or agreement restoring the applicant to employment.**

### **§439.3. Definitions.**

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

(1)-(4) No change.

(5) Endorsement of eligibility - A signed statement testifying to the fact that an individual has met all requirements specified by the commission and is qualified to take a commission examination. An endorsement of eligibility will be issued ~~when appropriate~~, by a member of the commission staff.

(6) Examination - A state test ~~administered by the commission~~ which an examinee must pass as one of the requirements for certification.

(7) No change.

(8) Field examiner - An individual authorized to evaluate performance skills in commission-approved curricula. The field examiner must possess a Fire Instructor Certification, complete the on-line commission field examiner course, and sign an agreement to comply with the commission's testing procedures. The field examiner must be approved by the commission to instruct all subject areas identified in the curriculum that he or she will be evaluating. ~~The field examiner will work under the supervision of a lead examiner during a Commission-administered examination.~~ The field examiner must repeat the examiner course every two years and submit a new Letter of Intent.

(9)-(10) No change.

### **§439.5. Procedures.**

(a) Procedures for conducting ~~written and/or performance~~ examinations are determined by the commission.

(b) ~~As part of the training approval process, the designated training officer, except for a Basic Fire Suppression academy, will choose a test location and date from the list provided by the commission. The designated training officer of a Basic Fire Suppression academy may request during the training approval process to schedule the examination as soon as possible after the completion of the applicable course and at a place agreeable to the commission. The provider of training will receive from the commission an Application for Testing form with the~~

course approval notice which will reflect the tentative date, time, and location of the examination. The provider of training must have each examinee complete the Application for Testing form and return it to the commission office no later than the third day of instruction. The commission, upon receipt of the Application for Testing form, will confirm the time and place for the examination.

- ~~(be)~~ All training providers are responsible for ensuring that all **application processing** testing fees due to the commission **must be** are paid in a timely manner. In addition, all training providers of a Basic Fire Suppression academy that schedule through the commission an examination for less than ten (10) examinees must pay an examination fee equal to the amount that would be charged for ten (10) examinees.
- ~~(d)~~ If the designated training officer determines that the time and/or place of the examination as set by the commission is not acceptable for good cause, he or she may request the commission to reschedule or relocate the examination providing the request is received at least 20 days prior to the original scheduled time of the examination or the new proposed time, whichever would result in the earliest notification. The commission shall give all such requests due consideration and may reschedule or relocate the examination as necessary.
- ~~(ce)~~ Each examination must be administered by a lead examiner.
- ~~(f)~~ The lead examiner may administer the examination alone or with the assistance of field examiner(s). The field examiners shall be approved by the commission prior to the administration of the examination.
- ~~(de)~~ The lead examiner must:
- (1) ensure that the tests remain secure and that the examination is conducted under conditions warranting honest results;
  - (2) collect all examination materials from any examinee who is dismissed;
  - ~~(23)~~ monitor the examination while in progress;
  - ~~(34)~~ control entrance to and exit from the test site;
  - ~~(5)~~ permit no one in the room while the written test is in progress except examiners, examinees, and commission staff;
  - ~~(46)~~ assign or re-assign seating; and
  - ~~(57)~~ bar admission to or dismiss any examinee who fails to comply with any of the applicable provisions of this chapter.
- ~~(h)~~ Examination booklets, answer sheets, scratch paper and grade roster(s) will be delivered to the lead examiner by means specified by the commission. The lead examiner must immediately notify the commission and document any errors detected in the examination materials provided.
- ~~(i)~~ Immediately following the completion of the written examination, the lead examiner must remit to the commission all examination booklets, answer sheets and scratch paper in the return container provided by the commission.
- ~~(ej)~~ All official grading and notification must come from the **Commission or its designee**. The commission staff must make available the preliminary test results **shall be made available** within seven (7) business days after completion of the examination.

### §439.7. Eligibility.

(a)-(c) No change.

- (1) meet or exceed the minimum requirements set by the commission as a prerequisite for the specified examination;
- (2) submit a test application with documentation showing completion of a Commission-approved curriculum and any other prerequisite requirements, along with the appropriate application processing fee(s).**
- (3) receive from the Commission an “Endorsement of Eligibility” letter and provide this letter to the lead examiner.**
- ~~(2) provide the lead examiner with a copy of a Certificate of Completion for the course required for the specific examination sought or an endorsement of eligibility issued by the commission;~~
- (43) bring to the test site, and display upon request, some form of state issued identification which contains the name and a photograph of the examinee;**
- (54) report on time to the proper location; and**
- (65) comply with all the written and verbal instructions of the lead examiner.**

(d) No examinee shall be permitted to:

(1)-(10) No change.

(e) No change.

### §439.9. Grading.

(a) ~~For a score to be valid and remain valid:~~

- ~~(1) the examinee must complete the answer sheet, or otherwise record the answers, as instructed by the lead examiner; and~~
- ~~(2) If performance skills are required as a part of the examination, the examinee must demonstrate performance skill objectives in a manner consistent with performance skill evaluation forms provided by the commission. The evaluation format for a particular performance skill will determine the requirements for passage of the skill. Each performance skill evaluation form will require successful completion of one of the following formats:~~
  - (1A) all mandatory tasks; or**
  - (2B) an accumulation of points to obtain a passing score of at least 70%; or**
  - (3C) a combination of both (1) and (2).**

(b) The minimum passing score on each ~~written~~ examination or section thereof as outlined in §439.1(~~de~~) of this title shall be 70%. This means that 70% of the total possible active questions must be answered correctly. The commission may, at its discretion, invalidate any question.

- (c) If the commission invalidates an examination score for any reason, it may also, at the discretion of the commission and for good cause shown, require a retest to obtain a substitute valid test score.

**§439.11. Commission-Designated Academy Administered Performance Skill Evaluations**

- (a) **The evaluation for competency of the Commission-designated skills will take place at the end of all training. The date(s), time(s) and location(s) will be provided to the Commission on the Training Prior Approval form. The evaluation will be a formal test setting supervised by the chief training officer. All evaluators must be a current field examiner with the Commission.**
- (b) **The provider of training for Commission certification courses will receive from the Commission, with the course approval notice, a set of randomly selected performance skills as outlined in §439.11(d).**
- (c) **In order to qualify for the Commission certification examination, the student must successfully complete and pass all designated skill evaluations. The student may be allowed two attempts to complete each skill. A second failure during the evaluation process will require remedial training in the failed skill area with a certified instructor before being allowed a third attempt. A third failure shall require that the student repeat the entire certification curriculum.**
- (d) **The randomly selected Commission-designated skills will be based off the following table:**

<b><u>DISCIPLINE</u></b>	<b><u>TOTAL # OF SKILL EVALUATIONS IN CURRICULUM</u></b>	<b><u>MINIMUM OF 3 OR 10% (ROUNDED UP)</u></b>
<b><u>Structure</u></b>	<b><u>129</u></b>	<b><u>13</u></b>
<b><u>FFI</u></b>	<b><u>89</u></b>	<b><u>9</u></b>
<b><u>FFII</u></b>	<b><u>20</u></b>	<b><u>3</u></b>
<b><u>AW</u></b>	<b><u>6</u></b>	<b><u>3</u></b>
<b><u>OPS</u></b>	<b><u>14</u></b>	<b><u>3</u></b>
<b><u>INSPECTOR</u></b>	<b><u>57</u></b>	<b><u>6</u></b>
<b><u>INSPECTOR I</u></b>	<b><u>21</u></b>	<b><u>3</u></b>
<b><u>INSPECTOR II</u></b>	<b><u>22</u></b>	<b><u>3</u></b>
<b><u>PLAN EXAMINER I</u></b>	<b><u>14</u></b>	<b><u>3</u></b>
<b><u>INVESTIGATOR</u></b>	<b><u>27</u></b>	<b><u>3</u></b>
<b><u>INSTRUCTOR I</u></b>	<b><u>14</u></b>	<b><u>3</u></b>
<b><u>INSTRUCTOR II</u></b>	<b><u>12</u></b>	<b><u>3</u></b>
<b><u>INSTRUCTOR III</u></b>	<b><u>15</u></b>	<b><u>3</u></b>
<b><u>FIRE OFFICER I</u></b>	<b><u>16</u></b>	<b><u>3</u></b>
<b><u>FIRE OFFICER II</u></b>	<b><u>12</u></b>	<b><u>3</u></b>
<b><u>HAZMAT TECH</u></b>	<b><u>22</u></b>	<b><u>3</u></b>
<b><u>DRIVER/OPERATOR – PUMPER</u></b>	<b><u>15</u></b>	<b><u>3</u></b>
<b><u>ARFF</u></b>	<b><u>19</u></b>	<b><u>3</u></b>

- ~~(a) — The provider of training of a Basic Fire Suppression Fire Fighter I academy will receive from the commission with the course approval notice at least seven randomly selected performance skill objectives from Section II of the Performance Evaluation Forms that each examinee must successfully complete prior to the commission examination. The provider of training of a Basic Fire Suppression Fire Fighter II academy will receive from the commission with the course approval notice at least seven randomly selected performance skill objectives from Section III of the Performance Evaluation Forms that each examinee must successfully complete prior to the commission examination. The provider of training of a Basic Fire Suppression Fire Fighter I and Fire Fighter II combined academy will receive from the commission with the course approval notice at least seven randomly selected performance skill objectives from Section II and Section III of the Performance Evaluation Forms that each examinee must~~

successfully complete prior to the Commission examination. One of the seven randomly selected skills must be a live fire skill.]

~~[(b) — The evaluation for competency to qualify for the state performance skills evaluation may occur at any time during the course of instruction but must take place after all training on the identified subject area has been completed. The number of opportunities to successfully complete particular performance skill objectives evaluated during an academy is at the discretion of the designated training officer. Retests must be conducted prior to the completion of the course. All skills must be demonstrated in the presence of a commission approved field examiner. The instructor of a particular subject may not evaluate the performance skill related to that subject unless the instructor is an approved field examiner. At the conclusion of a course at an approved training facility, the examinee must complete the state performance skill evaluation in accordance with §439.13 of this title.]~~

~~[(c) — During the course of instruction, the provider of training, except for a Basic Fire Suppression academy identified in subsection (a) of this section, shall test for competency all performance skills listed in the applicable curriculum. This applies only for curricula in which performance standards have been developed. Retests must be conducted prior to the completion of the course. All skills must be demonstrated before a commission approved field examiner.]~~

#### **§439.13. State Administered Performance Skill Evaluation.**

- ~~(a) — The examinee must complete a state performance skill evaluation in accordance with subsection (b) of this section.~~
- ~~(b) — The state performance skill evaluation must consist of at least three successfully completed performance skill objectives evaluated by field examiners under the supervision of a lead examiner after completion of an approved curriculum.~~
- ~~(1) — The state performance skill evaluation of a Basic Fire Fighter I academy or a combined Fire Fighter I and Fire Fighter II academy must consist of one skill pertaining to self-contained breathing apparatus and at least two other skills identified as a critical skill in Section I of the Performance Evaluation Forms.~~
- ~~(2) — Each student's performance skill evaluation routing card must show the results of the evaluations and be signed by the field examiner(s) performing the evaluation(s).~~

#### **§439.15. Proof of Proficiency.**

- ~~(a) — An individual whose certificate has been expired for one year or longer may not renew the certificate that was previously held.~~
- ~~(b) — The individual may obtain a new certificate in the discipline which was previously held by passing a commission proficiency examination pertaining to the discipline held.~~
- ~~(c) — An individual or entity may petition the commission for a waiver of the examination required by this section if the person's certificate expired because of the individual or employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.~~
- ~~(1) — Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with commission renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.~~
- ~~(2) — Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order restoring the applicant to employment.~~

**~~§439.17. Testing for Certification Status.~~**

- ~~(a) If an individual who has never held certification in a discipline defined in §421.5 of this title, seeks certification in that discipline, the individual shall;~~
- ~~(1) complete all certification requirements; and~~
  - ~~(2) complete the examination process pertaining to that discipline. All portions of an examination must be passed before the individual is considered to have passed the examination.~~
- ~~(b) If an individual completes an approved training program that has been evaluated and deemed equivalent to a certification curriculum approved by the commission, such as an out-of-state or military training program or a training program administered by the State Firemen and Fire Marshals' Association of Texas, the individual must pass a commission examination for certification status and meet any other certification requirements in order to become eligible for certification by the commission as fire protection personnel.~~

**§439.19. Number of Test Questions.**

- (a) Each ~~written~~ examination may have two types of questions: pilot and active. Pilot questions are new questions placed on the examination for statistical purposes only. These questions do not count against an examinee if answered incorrectly.
- (b) The number of questions on the ~~written portion of the~~ state examination will be based upon the number of recommended hours in the particular curriculum or section being tested. The standard is outlined below:

Recommended Hours	No. Questions	Maximum No. Pilot Questions	Time Allowed
30 or less	25	5	30 minutes
31-100	50	5	1 hour
101-200	75	10	1.5 hours
201-300	100	15	2 hours
301-400	125	20	2.5 hours
401 or more	150	25	3 hours

- (c) No Change.

**SUBCHAPTER B**

**EXAMINATIONS FOR DISTANCE TRAINING**

**§439.203. Procedures.**

- ~~(a) Once distance training is completed, each individual receiving a certificate of completion must contact the commission to obtain the appropriate test application packet. unless the commission has established an examination with the provider of training.~~

~~(b) To apply for a state administered commission examination, an individual who completes distance training must complete the Application for Testing form and return it to the commission with the individual's certificate of completion. The commission, upon receipt of the Application for Testing form and supporting documentation, will confirm the time and place for the examination.~~

**§439.205. Performance Skill Evaluation.**

~~(a) State performance skill evaluation. If a performance skill test is part of a commission examination, the examinee must complete a state performance skill evaluation as indicated in the particular standard related to the curriculum being tested or examined.~~

~~(b) Evaluation procedures. If the performance skill portion of a state exam is to be evaluated by an approved field examiner who will not observe the completion of the skill while in the immediate physical presence of the examinee, a letter of assurance from the candidate's training officer or fire chief is required stating that the fire department assures the integrity of the evaluation procedure. If the candidate is not a member of a fire department, then a certified fire instructor, fire chief, or training officer may provide a letter of assurance that meets the requirements of this subsection. The provider of distance training is required to keep a record of this assurance and provide it to the commission upon request.~~

**10. Matters referred from the Fire Fighter Advisory Committee (FFAC), including but not limited to:**

**A. Discussion and possible final adoption on proposed amendments, new sections, repeals, and rule reviews as follows:**

- 6. Proposed amendments to 37 TAC Chapter 449, Head of a Fire Department including, but not limited to §449.3 and §449.5.**

## Chapter 449

### HEAD OF A FIRE DEPARTMENT

#### §449.3 Minimum Standards for Certification as Head of a Suppression Fire Department

- (a) In order to be certified as a head of a fire department providing fire suppression, an individual must be appointed as head of a fire department; and
- (1)-(2) No change.
- (3) provide documentation in the form of a non self serving sworn affidavit of ten years experience as an employee of a local governmental entity in a full-time structural fire protection personnel position in a jurisdiction other than Texas; and successfully pass a ~~written~~ commission Head of Department examination as specified in Chapter 439; or
- (4) (No change.)
- (5) provide documentation in the form of a sworn non self serving affidavit of ten years experience as an active volunteer fire fighter in one or more volunteer fire departments that meet the requirements of subsection (b) of this section and successfully pass a ~~written~~ commission Head of Department examination as specified in Chapter 439.
- (b)-(d) No change.

#### §449.5 Minimum Standards for Certification as Head of a Prevention Only Department

- (a) In order to be certified as the head of a fire department providing fire prevention activities only, an individual must be appointed as head of a Fire Prevention Department; and
- (1)-(2) No change.
- (3) provide documentation in the form of a sworn non self serving affidavit of ten years experience as an employee of a local governmental entity in a full-time fire inspector, fire investigator, or arson investigator position in a jurisdiction other than Texas and successfully pass a ~~written~~ commission Head of Department examination as specified in Chapter 439; or
- (4) No change.
- (5) provide documentation in the form of a sworn non self serving affidavit of ten years experience as an active volunteer fire inspector, fire investigator, or arson investigator with ten years experience in fire prevention and successfully pass a ~~written~~ commission Head of Department examination as specified in Chapter 439.
- (b) No change.

**10. Matters referred from the Fire Fighter Advisory Committee (FFAC), including but not limited to:**

**A. Discussion and possible final adoption on proposed amendments, new sections, repeals, and rule reviews as follows:**

- 7. Proposed amendments to 37 TAC Chapter 451, Fire Officer including, but not limited to §451.5 and §451.205.**

## Chapter 451

### FIRE OFFICER

#### Subchapter A

#### MINIMUM STANDARDS FOR FIRE OFFICER I

##### §451.5. Examination Requirements.

- (a) ~~The written~~ Examination requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive Fire Officer I certification.
- (b) ~~Performance skills must meet the requirements in Chapter 439.~~
- (b) ~~No~~ Individuals will be permitted to take the commission examination for Fire Officer I certification **by documenting the following: Structure Fire Protection Personnel certification and Fire Service Instructor certification through the commission or the equivalent IFSAC seals, and completing a Commission-approved Fire Officer I curriculum.** ~~unless the individual documents completion of the Fire Fighter I and Fire Fighter II level as required by Chapter 1, Basic Fire Suppression, of the commission's Certification Curriculum Manual and holds, as a minimum, Fire Service Instructor I certification through the commission, or documents accreditation from International Fire Service Accreditation Congress as an Instructor I.~~

#### SUBCHAPTER B

#### MINIMUM STANDARDS FOR FIRE OFFICER II

##### §451.205. Examination Requirements.

- (a) Examination ~~The written examination~~ requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive Fire Officer II certification.
- (b) ~~Performance skills must meet the requirements in Chapter 439.~~
- (b) ~~(e) Individuals No individual~~ will be permitted to take the commission examination for Fire Officer II certification **by documenting the following: Structure Fire Protection Personnel certification, Fire Service Instructor certification and Fire Officer I certification through the commission or the equivalent IFSAC seals, and completing a Commission-approved Fire Officer II curriculum.** ~~unless the individual documents completion of the Fire Fighter I and Fire Fighter II level training as required by Chapter 1, Basic Fire Suppression, of the commission's Certification Curriculum Manual and holds, as a minimum, Fire Service Instructor I certification through the commission, documents accreditation from the International Fire Service Accreditation Congress as an Instructor I.~~

**10. Matters referred from the Fire Fighter Advisory Committee (FFAC), including but not limited to:**

**A. Discussion and possible final adoption on proposed amendments, new sections, repeals, and rule reviews as follows:**

- 8. Proposed amendments to 37 TAC Chapter 453, Minimum Standards for Hazardous Materials including, but not limited to §453.5.**

## Chapter 453

### MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

#### §453.5. Examination Requirements.

- (a) **Examination**~~[The written Examination]~~ requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive a Hazardous Materials Technician Certification.
- ~~(b) Performance skills must meet the requirements in Chapter 439.~~
- (b)(e) Individuals** No individual will be permitted to take the commission examination for Hazardous Materials Technician **by documenting** unless the individual documents completion of the **NFPA 472 Awareness and Operations level and completing a Commission-approved Hazardous Materials Technician curriculum.** ~~First Responder Awareness and Operations level training as required by Chapter 1, Basic Fire Suppression, of the Commission's Certification Curriculum Manual~~

**10. Matters referred from the Fire Fighter Advisory Committee (FFAC), including but not limited to:**

**B. Discussion and possible action on proposed amendments, new sections, repeals, and rule reviews as follows:**

- 1. Proposed amendments to 37 TAC, Chapter 429, Fire Inspector, including, but not limited to §429.203.**

## Chapter 429

### Minimum Standards for Fire Inspectors

#### Subchapter B

#### Minimum Standards for Fire Inspector Certification

##### §429.203. Minimum Standards for Basic Fire Inspector Certification – New Track.

In order to be certified as a basic fire inspector, an individual must:

- (C) successful completion of the following college courses:
  - (i) Fire Protection Systems, three semester hours;
  - (ii) Fire Prevention, three semester hours; or Fire Prevention Codes and Inspections Investigations, three semester hours;

**10. Matters referred from the Fire Fighter Advisory Committee (FFAC), including but not limited to:**

**B. Discussion and possible action on proposed amendments, new sections, repeals, and rule reviews as follows:**

- 2. Proposed amendments to 37 TAC, Chapter 435, Fire Fighter Safety, including, but not limited to §435.23.**

## Chapter 435

### FIRE FIGHTER SAFETY

#### §435.23 – Fire-Fighter Injuries.

A. A fire department shall report the following fire-fighter injuries on the Commission form.

1) Any injury resulting from failure of SCBA or PPE as defined in §435.1 (1) shall be reported within two business days.

2) Injuries that occur while involved in emergency response activities or received during physical fitness and training activities resulting in loss of time beyond the original day of injury and/or requiring medication prescribed or provided by a licensed physician shall be reported within 14 business days. Emergency response activities will not include EMS incidents unless extrication or rescue is involved.

B. The fire department shall secure any SCBA or protective equipment damaged or contributing to the injury of a fire fighter for inspection by the Commission.

**10. Matters referred from the Fire Fighter Advisory Committee (FFAC), including but not limited to:**

**B. Discussion and possible action on proposed amendments, new sections, repeals, and rule reviews as follows:**

- 3. Proposed amendments to 37 TAC, Chapter 445, Administrative Inspections and Penalties, including, but not limited to §§445.1, 445.9, 445.11, 445.13 and 445.15.**

## Chapter 445

### Administrative Inspections and Penalties

#### §445.1 - Entity Inspections

- a. The commission shall conduct at least biennial inspections of the entities that fall under the regulatory authority of the commission **and may perform risk based inspections of entities the commission determines to be at risk.**
- b. The purpose of these inspections shall be to promote safety and proficiency in the fire service by ensuring compliance with state law and commission rules pertaining to minimum standards for fire protection personnel education, protective clothing, self-contained breathing apparatus, **personal alert safety systems, standard operating procedures,** or any other aspect of the fire service regulated by the commission.
- c. This shall include inspections of volunteer fire fighters and fire departments that participate in the voluntary regulation program pursuant to Section 419.071 of the Texas Government Code in one or more of the component areas.

#### §445.9 - Minor Violations

If during the course of a departmental inspection, the inspector determines the department has committed minor violations, the following procedures shall apply.

1. The inspector shall issue a **notice of minor violations** [~~formal notice of noncompliance~~] identifying the findings **resulting from the compliance inspection** [~~of fact~~].
2. The department then has **30** [~~14~~] calendar days from the date the [~~formal~~] notice of **minor violations** [~~noncompliance~~] is received to [~~correct the violations and~~] provide the commission with [~~proof of compliance or to provide the commission with~~] a written schedule of actions which will be carried out to correct **the minor violations** [~~achieve compliance~~]. The schedule of actions will allow necessary amounts of time for such things as obtaining items through city requisitions and bid processes, when necessary. Lack of funds is not an acceptable reason for delay.
- ~~3. [If the department fails to provide proof of compliance or a written schedule of actions within the 14 calendar days, an administrative penalty of up to \$300 per violation may be recommended by the commission staff. If the department has been compelled to submit proof of compliance or a schedule of actions for the same or similar violations within the previous five years, the administrative penalty shall be up to \$600 per violation.]~~
- ~~4. [In the event the department fails to achieve compliance in accordance with the agreed-upon schedule of actions, an administrative penalty of up to \$600 per violation may be recommended by the commission staff unless the commission staff determines that sufficient reason exists for extending the time allowed for compliance.]~~
- ~~5. [In all cases where an administrative penalty is recommended by the commission staff, the department may be granted 14 calendar days to pay the administrative penalty and come into compliance or submit a written notice of appeal.]~~
3. If the department fails to **provide a plan for obtaining compliance** [~~pay the administrative penalty and come into compliance~~] within the required time frame, a hearing may be scheduled. If determined by the hearing process that violations occurred **and were not corrected**, the department may be:
  - A. allowed extra time to come into compliance;
  - B. assessed appropriate penalties which may be probated and may include suspension of certificates, administrative penalties, hearing costs, and attorneys fees;
  - C. required to furnish proof of compliance.

## §445.11 - Major Violations

~~[If during the course of a departmental inspection the inspector determines the department has committed major violations, the following procedures shall apply.]~~

- ~~1. [The inspector shall issue a formal notice of noncompliance identifying the findings of fact.]~~
- ~~2. [An administrative penalty of up to \$500 per violation may be recommended by the commission staff. If it is determined by the commission that the department has been subjected to an administrative penalty for the same or similar violations within the previous five years, the administrative penalty may be up to \$1,000 per violation.]~~
- ~~3. [The department then has 14 calendar days from the date of the receipt of the formal notice of noncompliance to pay the administrative penalty, correct the violations, and to provide the commission with proof of compliance or submit written notice of appeal.]~~
- ~~4. [If the department fails to pay the administrative penalty and come into compliance within the total 14 calendar day time frame, a hearing shall be scheduled. If determined by the hearing process that violations occurred, the department may be:]~~
  - ~~A. [allowed extra time to come into compliance;]~~
  - ~~B. [assessed appropriate penalties which may be probated and may include suspension of certificates, administrative penalties, hearing costs, and attorneys fees;]~~
  - ~~C. [required to furnish proof of compliance.]~~

**If during the course of a departmental inspection the inspector determines the department has committed major violations involving protective clothing, self-contained breathing apparatus, personal alert safety systems or breathing air, the following procedures shall apply.**

**The inspector shall issue a formal notice of noncompliance identifying the violations and the corrective measures to be taken by the department to correct the listed violations.**

**The department has 30 calendar days from the date of receipt of the formal notice of noncompliance to correct the violations, and to provide the commission with proof of compliance or submit written notice of appeal.**

**If the department fails to come into compliance within the allotted time frame an administrative penalty of up to \$500 per day may be assessed from the first day of formal notice of violation for each violation. If it is determined that the department was assessed administrative penalties for the same or similar violations within the previous five years, the administrative penalty of up to \$1,000 per violation may be assessed.**

**The department then has 30 calendar days from formal notice of administrative penalties assessed to pay the administrative penalty or submit written notice of appeal.**

**Upon receipt of a written appeal concerning administrative action or penalty a hearing will be scheduled. Chapter 154 of the Texas Civil Practice and Remedies Code shall be used as a procedural guide.**

## §445.13 - Disciplinary Hearings

~~[Upon the filing of a complaint with the commission charging a regulated entity with a violation of the Code or commission regulations as grounds for disciplinary action, the commission shall provide for a hearing of the charges. The commission's rules of practice and procedure govern disciplinary proceedings under this chapter.]~~

A complaint case shall be opened no later than the 30<sup>th</sup> day after formal notice to the fire department, training provider or individual, concerning unresolved major violations found during an inspection. A hearing will be scheduled with the fire department, training provider or individual to determine administrative actions or penalties.

The commission shall consider the following factors when determining administrative penalties:

Compliance history;  
Seriousness of the violation;  
The safety threat to the public or fire personnel;  
Any mitigating factors; and  
Any other factors the commission considers appropriate.

#### **§445.15 - Judicial Enforcement**

~~[If a department is found to have committed major violations of the same or similar nature on three or more occasions within the previous five years, proceedings for injunctive relief, penalties, and discipline may be instituted; provided, however, that this section shall not prohibit the commission from resorting to judicial enforcement for any violation of the Code or rules.]~~

The commission may enter a default order if a fire department or training provider fails to take action to correct a violation found during an inspection conducted under this chapter or to request an informal settlement conference before the 61<sup>st</sup> day after the date the commission provides to the department or provider notice requiring the department or provider to correct the violations.

**10. Matters referred from the Fire Fighter Advisory Committee (FFAC), including but not limited to:**

- C. Discussion and possible action on recommendations from the Curriculum and Testing Committee.**