

- 9. 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 423, Fire Suppression, including, but not limited to §423.1.**

CHAPTER 423

FIRE SUPPRESSION

SUBCHAPTER A

MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

§423.1. Minimum Standards for Structure Fire Protection Personnel.

(a) Fire protection personnel of any local government entity, who receive probationary or temporary appointment to structure fire protection duties, must be certified by the Commission within one year from the date of their appointment in a structural fire protection personnel position.

(b) Prior to being appointed to fire suppression duties or certified as a fire protection personnel the Commission must review and approve the applicants finger-print based criminal history record information obtained from the Department of Public Safety and the Federal Bureau of Investigation. The individual or fire department must follow the procedure established by the Department of Public Safety to initiate and complete the electronic finger-print print process. The results will be available to the Commission through the Department of Public Safety's data base. The Commission will follow the criteria established in Title 37, Chapter 403 of the Texas Administrative Code (TAC) for denying a person certification based on the results of the finger-print based criminal history record check.

~~(c)~~(b) Prior to being appointed to fire suppression duties, personnel must complete a Commission-approved basic structure fire suppression program and successfully complete a Commission recognized emergency medical course. The individual must successfully pass the Commission examination pertaining to that curriculum as required by §423.3 of this title. The Commission recognizes the following emergency medical training:

- (1) Department of State Health Services Emergency Medical Service Personnel certification training;
- (2) an American Red Cross Emergency Response course, including the optional lessons and enrichment sections;
- (3) an American Safety and Health Institute First Responder course;
- (4) National Registry of Emergency Medical Technicians certification; or
- (5) medical training deemed equivalent by the Commission.

~~(d)~~(c) Personnel holding any level of structure fire protection personnel certification must comply with the continuing education requirements specified in §441.7 of this title (relating to Continuing Education for Structure Fire Protection Personnel).

9. **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 435, Fire Fighter Safety, including, but not limited to new §435.23.**

Chapter 435

Fire Fighter Safety

§435.23. Fire Fighter Injuries.

- (a) A fire department shall report all Texas Worker Compensation reportable injuries that occur to on-duty regulated fire protection personnel on the Commission form.
- (b) Minor injuries are those injuries that do not result in the fire fighter missing more than one duty period or does not involve the failure of personal protective equipment. Minor injuries shall be reported within 30 business days of the injury event.
- (c) Major injuries are those that require the fire fighter to miss more than one duty period. Major injuries shall be reported within five business days of the injury event.
- (d) Investigable injuries are those resulting from the malfunction of personal protective equipment, failure of personal protective equipment to protect the fire fighter from injury, or injuries sustained from failure to comply with any provision of Commission mandated department SOPs. Investigable injuries shall be reported within five business days of the injury event.
- (e) The regulated entity shall secure any personal protective equipment involved in a fire fighter injury and shall be made available to the Commission for inspection.

From: Mark Roughton
Sent: Friday, November 13, 2009 1:16 PM
To: John (Jake) Soteriou; Miles (Skip) Skipper
Subject: FW: Texas Register Comments

From: Smith, Thayer [mailto:Thayer.Smith@ci.austin.tx.us]
Sent: Friday, November 13, 2009 1:15 PM
To: info
Subject: Texas Register Comments

In regards to the requirement for submittal of Workers Compensation injury information:

This would create a burden on a department the size of Austin as I would expect other departments our size as well. It would be a duplication of effort in data that is already being submitted to other agencies.

Is there not a way for TCFP to get this information directly from the Worker Compensation Commission to whom we are already submitting the data? Could you not accept the data in form of a spreadsheet so that our personnel do not have to then re-enter the information in your proposed website?

Currently we have one person assigned to our Workers Comp section. The opening statement that there is no fiscal impact to government agencies is simply not true. We would have to dedicate the time of an additional FTE to meet this requirement.

We would also suggest that the timelines be extended. Some of the shorter ones are unrealistic as to gathering the information and then submitting it to the various agencies.

Thank you for your consideration.

The views expressed in this email are my own and may or may not be the official view of the Austin Fire Department.

*Battalion Chief Thayer Smith
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9. **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 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) 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) 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.
- ~~[(c) No individual will be permitted to take the Commission examination for Fire Officer I certification 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, or documents accreditation from International Fire Service Accreditation Congress as an Instructor I.]~~

Chapter 451

FIRE OFFICER

Subchapter B

MINIMUM STANDARDS FOR FIRE OFFICER II

§451.205. Examination Requirements.

- (a) 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) Individuals 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.
- ~~[(c) No individual will be permitted to take the Commission examination for Fire Officer II certification 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, or documents accreditation from International Fire Service Accreditation Congress as an Instructor I.]~~

9. **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 repeal of 37 TAC, Chapter 461, General Administration.**

Chapter 461

GENERAL ADMINISTRATION

§461.1. Committee Members.

- (a) In addition to the chairman, the Funds Allocation Advisory Committee (FAAC) shall elect one member of the committee to serve as vice-chairman with a term of one year. Elections will be held at the first meeting of each calendar year.
- (b) In the absence of the chairman and vice-chairman from a regular or special meeting of FAAC, the remaining members, provided there is a quorum, shall elect a pro-tem presiding officer who shall serve until the conclusion of the meeting or until the arrival of the chairman or vice-chairman.
- (c) Current members of FAAC may not be used as references by an applicant for any applications made to the Fire Department Emergency Program.
- (d) Current members of FAAC shall not participate or vote on applications from their respective departments.

§461.2. Meetings.

- (a) Robert's Rules of Order (Revised 1981) shall govern the proceedings of the Funds Allocation Advisory Committee (FAAC), except as otherwise provided by rule or statute.
- (b) The order of business at all regular and special meetings of FAAC will, when practicable, be as follows:
 - (1) roll call and approval of previous meeting(s) minutes;
 - (2) report of commission staff and any action necessary;
 - (3) reading, consideration of, and action on pending applications;
 - (4) consideration and action on unfinished business;
 - (5) consideration and action on new business;
 - (6) adjournment.

§461.3. Commission Inspection.

The following words and terms, when used in Chapters 461, 463, and 465 of this title, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Commission--The Texas Commission on Fire Protection.
- (2) Commission ID number--The identification number assigned to fire departments by the Standards and Certification Division of the Commission on Fire Protection.
- (3) FAAC--The Funds Allocation Advisory Committee.
- (4) FDEP--The Fire Department Emergency Program.
- (5) ISO--The Insurance Services Office.
- (6) Municipal fire department--A fire department which has its primary response area located within an incorporated city.

- (7) NFA--National Fire Academy--The federally funded training facility in Emmitsburg, Maryland.
- (8) NFPA--The National Fire Protection Association.
- (9) NIMS--National Incident Management System--a management system for all government, private sector and non government organizations to work together during domestic incidents.
- (10) TEXFIRS--The Texas Fire Incident Reporting System administered by the Texas Department of Insurance.
- (11) UL--The Underwriters Laboratory.

§461.4. Definitions.

The following words and terms, when used in Chapters 461, 463, and 465 of this title, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Commission -- The Texas Commission on Fire Protection.
- (2) Commission ID number -- The identification number assigned to fire departments by the Standards and Certification Division of the Commission on Fire Protection.
- (3) FAAC -- The Funds Allocation Advisory Committee.
- (4) FDEP -- The Fire Department Emergency Program.
- (5) ISO -- The Insurance Service Organization.
- (6) Municipal fire department -- A fire department which has its primary fire station located within an incorporated city.
- (7) National Fire Academy -- The federally funded training facility in Emmitsburg, Maryland.
- (8) NFPA -- The National Fire Protection Association.
- (9) NIMS -- National Incident Management System – a management system for all government, private sector and non government organizations to work together during domestic incidents.
- (10)TEXFIRS -- The Texas Fire Incident Reporting System administered by the Texas Department of Insurance.
- (11) UL -- The Underwriters Laboratory.

- 9. 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 repeal of 37 TAC, Chapter 463, Application Criteria.**

Chapter 463

APPLICATION CRITERIA

§463.1 Application Process

- (a) The process of requesting a scholarship, grant, loan, or other financial assistance is initiated upon submission of a written application to the commission. An incomplete application shall be returned to the applicant.
- (b) The Funds Allocation Advisory Committee (FAAC) has the right to determine the form of assistance to fulfill the needs of requests by applicants. Applications may be returned to applicants to request completion of information regarding the form of assistance FAAC may want to consider (e.g., an application for a grant may be returned to the applicant, requesting that the applicant provide information relative to a loan).
- (c) In order to allow sufficient time for fair and responsible review, only completed applications received 30 days prior to the next meeting of FAAC shall be considered at that FAAC meeting, except in cases of emergencies, which, in the judgment of the FAAC, constitute an immediate threat to the public safety. In such cases, the FAAC may consider an application received up to the date of its meeting.
- (d) Each application shall be completed on approved Fire Department Emergency Program (FDEP) forms which will be provided by the commission.
- (e) Each application required by these regulations shall be submitted as a single package (no copies required).
- (f) An application will be considered complete when all information required on application forms furnished by FDEP has been received and accepted by commission or designated representative.
- (g) If FAAC or the commission discovers an error was made in processing an application by staff, or in any of its other activities, FAAC and/or the commission has the authority to correct the error.
- (h) Applications shall expire upon commission approval of FAAC recommendation or upon final committee action.

§463.2 Limitations on Loans, Scholarships and Grants

- (a) Applications for loans will be given priority consideration for funding.
- (b) Loans of less than or equal to \$15,000 will have terms not to exceed 10 years. Loans greater than \$15,000 will have terms not to exceed 20 years. The interest rate charged on loans will not exceed the prime rate.
- (c) Specific loan terms and interest rates within the parameters of subsection (b) of this section will be established at each regularly scheduled meeting of the Commission. It is provided, however, that the term and interest rate applicable to an application will be the term and interest rate in effect at the time of receipt of the application unless the most current Commission-approved interest rate is lower than that in effect at the time of receipt of the application. In that case, the lower interest rate will be applicable.
- (d) The FAAC shall give priority consideration to requests for training, education, personal protective clothing, and self-contained breathing apparatus to enhance firefighter safety. Grants for equipment and facilities will not be awarded if, in the opinion of the Commission, the applicant has the ability to repay a loan for the amount of assistance being requested.
- (e) Applications from fire departments and organizations which are submitted collectively in order to request funds for a single project which exceeds the statutory amount of funds allowed to be awarded to any single applicant will not be considered for funding by the Commission.
- (f) Loans and grants must be approved by the Commission prior to the purchase of eligible equipment or facilities.
- (g) Loans and grants may not be used to pay previous debts.

§463.3 Application Form

- (a) In addition to statutory requirements, the following information will be collected from every applicant to identify the organization and to compile comparative selection criteria established in §463.4 of this title (relating to Competitive Needs Criteria) and loan eligibility in §463.5 of this title (relating to Criteria for Eligibility for Loans):
- (1) name of fire chief;
 - (2) county location;
 - (3) telephone and fax number (if available);
 - (4) whether the fire department is a municipal fire department or serves a rural or unincorporated area;
 - (5) federal identification number (if applicable);
 - (6) corporate charter number of the fire department (if applicable);
 - (7) number of volunteer and/or paid personnel;
 - (8) service area in square miles;
 - (9) population within service area;
 - (10) types of services provided;
 - (11) numbers of: fire stations; training facilities; apparatus; personal protective clothing (and whether or not is National Fire Protection Association (NFPA) approved); and self-contained breathing apparatus (and whether or not NFPA approved);
 - (12) examples of how approval of request would be in the public interest;
 - (13) if applying for scholarships, description of the proposed education and training and the agency(s) approved curricula;
 - (14) a description of facilities requested (if applicable);
 - (15) a description of equipment requested (if applicable);
 - (16) applicant's annual income by tax base, reimbursement, donations, fundraisers, and other categories;
 - (17) existing debt information;
 - (18) information about matching funds;
 - (19) total budget breakdown by major category;
 - (20) resources for unexpected costs associated with request;
 - (21) credit references;
 - (22) description of current training programs;
 - (23) certification programs participated in by applicant;
 - (24) applicant's fire notification procedures;
 - (25) three-year response activity for structure, vehicle, ground cover, and other fires;

(26) TEXFIRS reporting activity;

(27) mutual aid activity.

(28) NIMS participation.

- (b) Each statement in the application and any other report or other document requested by the Funds Allocation Advisory Committee (FAAC) in support of the application shall be current, accurate, and complete. Any change shall be reported immediately to FAAC. At all times, a current copy of the application and the requested documents supporting the application shall be maintained in the commission office in Austin. The applicant has the responsibility to insure that information submitted to the commission is current.

§463.4 Competitive Needs Criteria.

(a) All applications must meet the following minimum standards:

- (1) Applicants must train its members on a regular basis (at least monthly).
- (2) Training provided must be approved under §465.3 of this title (relating to Education and Training Standards).
- (3) Applicants must have at least 10 volunteer and/or paid personnel active in the organization.
- (4) Applicants must provide fire protection services and/or fire fighting education and training.
- (5) Applicants must routinely and consistently report incidents to the TEXFIRS system.
- (6) Applicants must have adopted and utilized National Incident Management System (NIMS) according to the Governor's Division of Emergency Management requirements.
- (7) Except for applicants for scholarships, all applicants must participate in a training certification program approved by the Texas Commission on Fire Protection at the time of application. Participation in a training certification program means:
 - (A) participation by a majority of a department's members in an approved training program as identified in §465.3 of this title (relating to Education and Training Standards); or
 - (B) current certification of the department as a Commission-approved training facility that conducts at least 48 hours of drills each calendar year attended by a majority of members; or
 - (C) current certification by the Commission of at least 10 members with current continuing education.

(b) All applications for assistance will be competitively evaluated based on a comparison of the applications being considered for funding during a given meeting using one or more of the following criteria:

- (1) ratio of fire response to fire apparatus. Priority will be given to those with highest ratios;
- (2) ratio of matching funds offered by applicant to amount of assistance requested. Priority will be given to those with highest ratios;
- (3) ratio of taxing authority contributions for fire service to fire response activity;
- (4) ratio of existing debt to income. Priority will be given to those with the highest ratio;
- (5) amount of approved protective clothing and equipment compared to number of personnel and fire responses.

§463.5 Criteria for Eligibility for Loans.

- (a) In order to be eligible for a loan, an applicant must prove a consistent income based upon tax revenue, and show, to the satisfaction of the commission, that the income should continue at approximately the same level over the period of the loan being considered; or
- (b) The applicant must prove, to the satisfaction of the commission, that the non-tax-based income which applicant has produced for at least the past five years should reasonably continue at the same or higher level, and that amount of income would be sufficient to make the payments for the duration of the loan being considered; and
- (c) The applicant must have favorable credit references in the opinion of the commission with no history of defaults on loans and/or debts incurred.

§463.6 Contract Information

- (a) A scholarship, grant, loan, or other financial assistance awarded by the commission shall be issued upon the condition that the applicant observes and complies with all Fire Department Emergency Program (FDEP) rules and regulations. If FDEP rules and regulations are amended, the scholarship, grant, loan, or other financial assistance shall be conditioned upon compliance with the rules and regulations in effect at the time of award of the scholarship, grant, loan or other financial assistance.
- (b) Any violation of statutory provisions, commission rules or contract provisions may be considered by the commission as a default, breach of contract, statutory violation, or rule violation by a recipient of a scholarship, grant, loan, or other financial assistance. Cases involving default, breach of contract, statutory violation, or rule violation, in the judgment of the commission, will be referred to the executive director of the commission for appropriate action, including, but not limited to, disqualification from any further awards until the default, breach of contract, statutory violation, or rule violation is cured.
- (c) All contracts with the commission for assistance under the FDEP will contain the following minimum provisions;
 - (1) parties to the contract;
 - (2) contract period;
 - (3) contractor performance requirements, including:
 - (A) performance statement, including the bidding process which must at least meet the minimum standards required by the state;
 - (B) budget;
 - (C) project implementation schedule;
 - (D) contractor's application for FDEP assistance;
 - (4) method of payment of funds to contractor;
 - (5) contractor's requirement to retain up-to-date records and make them accessible to commission staff and state auditor;
 - (6) contractor reporting requirements;
 - (7) commission monitoring plan;
 - (8) conveyance provisions;
 - (9) limitation of commission liability;
 - (10) conflict of interest and nepotism provisions;
 - (11) fixing venue for any litigation which may occur regarding FDEP funds in Travis County;
 - (12) provisions for changes and amendments to the contract;
 - (13) contract suspension provisions;
 - (14) contractor assurances and certifications;
 - (15) contractor's requirement to provide sufficient insurance on items obtained with FDEP funds;
 - (16) signatory page.

(d) In addition to the provisions in subsection (c) of this section, all contracts with the commission for loans will contain the following minimum provisions:

- (1) payback schedule, including provisions for early pay-off;
- (2) provisions for late payment charges;
- (3) collateral, including first or second liens by the commission on facilities, apparatus, and/or equipment being financed, or other security devices considered necessary by the commission to secure the loan;
- (4) provisions for altering terms of contract based upon dire circumstances.

9. **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 repeal of 37 TAC, Chapter 465, Equipment, Facilities and Training Standards.**

Chapter 465

EQUIPMENT, FACILITIES, AND TRAINING STANDARDS

§465.1. Equipment Standards.

- (a) All equipment purchased, either new or used, must meet or exceed National Fire Protection Association, Underwriters Laboratory, or Insurance Services Office standards.
- (b) Fire fighting equipment must be of a type customarily used in the suppression of fires related to fire suppression activities, for the applicant to meet its fire fighting responsibilities or to comply with federal and state laws (e.g., fire fighting hand tools, self-contained breathing apparatus, personal protective clothing, ladders, hose, etc.).
- (c) Transportation equipment must be of a type customarily and commonly used in responding to fires or related to fire fighting activities (e.g., pumpers, ladder trucks, booster and brush vehicles, etc.).
- (d) Equipment may not be acquired with Fire Department Emergency Program funds which have not been expressly approved for purchase by the Commission.

§465.2. Facility Standards.

- (a) Fire Department Emergency Program (FDEP) funds may only be used to purchase facilities meeting the following minimum requirements.
 - (1) Facilities, either new or used, must be maintained in a habitable condition and adequate to house equipment and personnel in a safe and efficient manner.
 - (2) All facilities must comply with or meet applicable building standards and codes, zoning ordinances, and enforceable deed restrictions. Funded facilities shall not be located in unregulated flood plains.
 - (3) Funded facilities must be of a type customarily and commonly used to maintain fire fighting equipment and personnel required for suppression activities, or the applicant to meet its fire fighting responsibilities or to comply with state or federal laws.
 - (4) Training facilities must be of a type customarily and commonly used in training personnel to respond to fire or related to training personnel in fire suppression duties.
- (b) Facilities may not be constructed or acquired with FDEP funds which have not been expressly approved by the commission.

§465.3. Education and Training Standards.

- (a) All training and educational programs must be approved or recognized by one of the following entities:
 - (1) the Texas Commission on Fire Protection;
 - (2) the State Firemen's and Fire Marshals' Association;
 - (3) Texas A&M University Extension Services;
 - (4) National Fire Academy.
- (b) Funded training and education must be of a type customarily and commonly used to train personnel to perform fire fighting duties or to perform duties necessarily related to fire suppression and designed to educate and train the applicant's fire fighters to meet their fire fighting responsibilities.
- (c) Training and education programs cannot be supported or contracted for with Fire Department Emergency Program funds without the expressed approval of the commission