

# TEXAS COMMISSION ON FIRE PROTECTION

January 26, 2011 at 10:00 a.m.

William B. Travis Bldg., 1701 N. Congress Avenue, Room 1-104, Austin, Texas

1. Roll call---10:00 a.m.
2. Welcome of new commissioner John McMakin.
3. Adoption of the October 20, 2010 Commission meeting minutes.
4. The Budget and Strategic Plan subcommittees will meet on January 26, 2011, during the commission meeting and may develop recommendations to be presented to the full commission including but not limited to, modifications to the agency operating budget and strategic plan. The subcommittees may meet separately or together.
5. Report from the Budget and Strategic Plan subcommittees with discussion and possible action relating to any recommendations developed by these subcommittees.
6. Reports from fire service interest groups and agencies on matters relating to organizational purposes, functions, and objectives, including, but not limited to, the Texas Fire Chiefs Association, the Texas State Association of Fire Fighters, the State Firemen's and Fire Marshals' Association of Texas, the Texas Association of Fire Educators, the Texas Forest Service, the National Fire Protection Association, and the State Fire Marshal's Office.
7. Discussion and possible action concerning reports by the Commission representative to the Texas Fire School Advisory Board and by representatives of the Texas Engineering Extension Service (TEEX) regarding fire protection training provided by TEEX through its Emergency Services Training Institute (ESTI).
8. New matters from the commission, staff, or public regarding rulemaking which may be discussed in future Commission meetings.
9. Discussion and possible action on future meeting dates.
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 427, Training Facility Certification, including, but not limited to §427.305, Procedures for Testing Conducted by On-Site and Distance Training Providers.
    2. Proposed amendments to 37 TAC, Chapter 431, Subchapter A, Minimum Standards For Arson Investigation Certification, including, but not limited to §431.1, Minimum Standards For Arson Investigation Personnel; §431.3, Minimum Standards For Basic Arson Investigator Certification; §431.13, International Fire Service Accreditation Congress (IFSAC) Seal; Subchapter B, Minimum Standards for Fire Investigator Certification; §431.201, Minimum Standards for Fire Investigation Personnel, and §431.211 International Fire Service Accreditation Congress (IFSAC) Seal—Fire Investigator.
    3. Proposed amendments to 37 TAC, Chapter 435, Fire Fighter Safety, including, but not limited to new §435.25, Courage to be Safe So Everyone Goes Home Program.
    4. Proposed amendments to 37 TAC, Chapter 437, Fees, including, but not limited to §437.1, Purpose and Scope; §437.5, Renewal Fees, §437.7, Standards Manual and Certification Curriculum Manual Fees.
  - B. Discussion and possible action on proposed amendments, new sections, repeals, and rule reviews as follows:

1. Proposed amendments to 37 TAC, Chapter 401, Practice and Procedure, including, but not limited to §401.1(b) (3), Purpose and Scope.
  2. Proposed amendments to 37 TAC, Chapter 423, Fire Suppression, including, but not limited to §423.3(a)(2)(B) Minimum Standards for Basic Structure Fire Protection Personnel Certification; §423.201(b) Minimum Standards for Aircraft Rescue Fire Fighting Personnel.
- C. Discussion and possible action on recommendation from the Fire Fighter Advisory and Curriculum and Testing Committees regarding proposed rule changes to 37 TAC, Chapter 421, Practice and Procedure, including, but not limited to §421.5(36), definition concerning reciprocity and Pro Board.
11. Discussion and possible approval of the addition of classes or courses to the A List and B List for higher levels of certification.
  12. Discussion and possible action on appointment of new member to the Fire Fighter Advisory Committee.
  13. Update from standards division director on matters relating to the activities of the following committees: International Fire Service Accreditation Congress, Respiratory Protection and Personal Alarm Equipment Committee, Fire Service Occupational Safety Committee, NFPA 1971 Technical Committee, and NFPA Technical Correlating Committee on Fire and Emergency Services Protective Clothing and Equipment.
  14. Discussion and possible action on matters from the Executive Director.
    - A. Report on decisions of the Executive Director in contested cases and consent orders.
    - B. Status of division functions.
  15. Executive session pursuant to Government Code, Section 551.074, for the discussion of personnel matters: the appointment, employment, compensation, evaluation, reassignment, duties, discipline, or dismissal of the Executive Director, and the appointment, employment, reassignment, or duties of personnel acting on an interim basis in this position.
  16. Open session for further discussion and possible action regarding preceding agenda item.
  17. Adjourn meeting.

The Texas Commission on Fire Protection may go into executive session on any agenda item if authorized by the Open Meetings Act, Texas Government Code Chapter 551.

**1. Roll call---10:00 a.m.**

**2. Welcome of new commissioner John McMakin**

**3. Adoption of the October 20, 2010 Commission meeting minutes.**

**TEXAS COMMISSION ON FIRE PROTECTION**

Presiding Officer, Chris Connealy, at 10:00 a.m. called the October 20, 2010 meeting of the Texas Commission on Fire Protection to order at 1701 N. Congress Avenue, Room 1-104, Austin, Texas.

Attending	Les Bunte Carl Giles Arthur Pertile, III**	Elroy Carson John Gillette Leonardo Perez	Chris Connealy Jody Gonzalez Steve Tull	Tony Cortes John Green	Yusuf Farran** Micheal Melton*
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\*absent entire meeting  
\*\*absent part of meeting

Staff	Gary L. Warren, Sr. Jim Crowson, Assistant Attorney General	Deborah Cowan	Jake Soteriou	Ana Muñoz	Miles Skipper
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Guests	John C. Browning Scott D. Korwood Danny Kistner Dawn M. Clopton Paul Maldonado	Gloria C. Nunez J. D. Gardner Rich Marinucci Jason Collier Daniel DeYear	Oralia C. Perez Brian Brank Jim Reidy Kevin Alexander Mike Wisko	Steve Dossett Mike Higgins Randy Safer Hunter Pomrey	Betty Wilkes Rob Franklin Cary Roccaforte Wayne Parrish
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1. Roll call            Secretary, John Gillette called roll and 12 of 13 commissioners were present.

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2. Welcome of New Commissioners    The Presiding Officer introduced the two new commissioners, Tony Cortes and Leonardo Perez.

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3. Adoption of Minutes    A motion to approve the minutes of the June 30, 2010 commission meeting was made by Yusuf Farran and seconded by Arthur Pertile, III. The motion carried.

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4. Subcommittee Meetings    The subcommittees met together and discussed the agency's current budget and 5 percent reduction.

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5. Budget and Strategic Plan Subcommittee Reports    No action necessary

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6. Reports from Fire Service Interest Groups    Brief reports were given by the Texas State Association of Fire Fighters, Texas Fire Chief's Association, Texas Fire Marshal's Association, State Fire Marshal's Office, and National Fire Protection Association.

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7. Report from Fire Service School Advisory Board & TEEX    Commission representative, Michael Hunt was unavailable to attend. Commissioner Bunte gave a brief report on activities at TEEX.

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8. New matters    Nothing.

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9. Future Meeting Dates    Commission meeting date already set for January 26, 2011 at 10:00 a.m.

10. Matters from Fire Fighter Advisory Committee
- A. 1. A motion to approve for final adoption the proposed amendments to 37 TAC Chapter 427, §427.7 as discussed was made by Jody Gonzales and seconded by Steve Tull. The motion carried.
  - B. 1. A motion to approve for publication the proposed amendments to 37 TAC Chapter 427, §427.305 as discussed was made by Elroy Carson and seconded by Leonardo Perez. The motion carried.
  - 2. A motion to approve for publication the proposed amendments to 37 TAC Chapter 431, §§431.1, 431.3, 431.13, 431.201 and 431.211 as discussed was made by Arthur Pertile and seconded by Carl Giles. The motion carried.
  - 3. A motion to approve for publication the proposed amendments to 37 TAC Chapter 435, new §435.25 as discussed was made by Elroy Carson and seconded by Leonardo Perez. The motion carried.
  - 4. A motion to approve for publication the proposed amendments to 37 TAC Chapter 437, §§437.1, 437.5 and 437.7 as discussed was made by Carl Giles and seconded by John Gillette. The motion carried.
  - 5. A motion to approve the appointment of Chris Watson (Austin Fire Department) and Roy Mercer (Sugarland Fire Department) to the Curriculum and Testing Committee was made by Les Bunte and seconded by Yusuf Farran. The motion carried.
  - C. Pat McAuliff, Chairman, Testing and Curriculum Committee was unable to attend meeting. Larry Whitis gave a brief update of committee activities. After discussion, a motion to approve the recommended changes to the Driver Operator, Fire Officer I, Fire Officer II and Inspector Curricula was made by John Gillette and Carl Giles. The motion carried.

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11. Fire Fighter Advisory Committee Appointment
- After discussion, the commission appointed an Ad-Hoc committee to review all applications received for the vacant position. The ad-hoc committee appointees were Arthur Pertile, Steve Tull, Jody Gonzales, Leonardo Perez and John Green. The committee is responsible for reviewing all applications received and make recommendations to the full commission at its January 2011 meeting.

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12. Staff update on NFPA Committee Activities
- Jake Soteriou informed commissioners the agency had not attended any NFPA committee meetings this quarter.

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13. Matters from Executive Director
- a. Mr. Warren provided commissioners a list of results from agency informal conferences.
  - b. Mr. Warren reported the agency had conducted new commissioner training as required by statute. He reported on agency vacancies. He informed commissioners the agency had attended a joint budget hearing with the Legislative Budget Board and Governor's Office of Budget Planning & Policy regarding agency's Legislative Appropriations Request (LAR) for FY12-13. Mr. Warren also reported that he had met with Representative Guillian's office regarding agency functions, duties & responsibilities on October 7, 2010. He also informed commissioners that an update on the implementation of recommendations of the Sunset Advisory Commission was due on November 8, 2010. He asked the agency's Information Resources Manager to provide an update on the agency's IT projects.

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14. Executive Session      Presiding Officer, Chris Connealy called the Executive Session at 3:20 p.m.
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15. Open Session          The commission returned to open session at 4:35 p.m. A motion was made by Les Bunte and seconded by Elroy Carson to authorize the Presiding Officer to finalize and approve the positive performance evaluation of the executive director with the minor edits discussed in closed session was made by Les Bunte and seconded by Elroy Carson. The motion carried.
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16. Adjournment          A motion to adjourn was made by Elroy Carson and seconded by Steve Tull. The motion carried.

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Chris Connealy, Presiding Officer

- 4. The Budget and Strategic Plan subcommittees will meet on January 26, 2011, during the commission meeting and may develop recommendations to be presented to the full commission including but not limited to, modifications to the agency operating budget and strategic plan. The subcommittees may meet separately or together.**

### TCFP FY11 Measures, FY10 Strategic Plan

Key	Division	FY11 1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	FY11 YTD Sum	FY11 Target	% Target ytd/tar	Measures/Explanation
<b>Output:</b> A quantifiable indicator of the number of goods or services an agency produces									
<input type="checkbox"/>	Lib	01-01-01:01	123			123	868	14%	<b>Number of requests from fire department and other entities for agency training and education resources.</b>
						Cumulative			First quarter lower than expected should pick up during the year.
<input type="checkbox"/>	Lib	01-01-01:02	36			36	124	29%	<b>Number of research requests for agency information resource center.</b>
						Cumulative			On track to exceed target.
<input type="checkbox"/>	Std	02-01-01:01	124			124	600	21%	<b>Number of inspections of regulated entities.</b>
						Cumulative			On track to meet target
<input type="checkbox"/>	Std	02-01-01:02	2,096			2,096	9,000	23%	<b>Number of new certifications issued to individuals.</b>
						Cumulative			On track to meet target
<input type="checkbox"/>	Std	02-01-01:03	25,365			25,365	26,500	96%	<b>Number of certifications renewed (individuals).</b>
						Cumulative			On track to exceed target.
<input type="checkbox"/>	Std	02-01-01:04	2,417			2,417	10,000	24%	<b>Number of individuals examined.</b>
						Cumulative			on track to meet target
<input type="checkbox"/>	Adm	04-01-01:01	3,247			3,247	13,000	25%	<b>Dollar value of HUB contacts awarded.</b>
						Cumulative			
<b>Explanatory (Annual):</b> An indicator of factors, agency resources, or requests received that affect a state entity's performance.									
<input type="checkbox"/>	Fin	01-02-01:01	0			0	1,000,000	0%	<b>Amount available to fire departments for loans and grants.</b>
						Cumulative			Program transferred to Texas Forest Service.
<input type="checkbox"/>	Fin	01-02-01:02	0			0	3,779,224	0%	<b>Amount requested by fire departments for loans and grants.</b>
						Cumulative			Program transferred to Texas Forest Service.
<input type="checkbox"/>	Std	02-01-01:01	91.06			91	92	99%	<b>Pass Rate (Percent)</b>
						Non-Cumulative			On track to meet target
<input checked="" type="checkbox"/>	Std	02-01-01:02	28,641			28,641	26,750	107%	<b>Number of fire service personnel certified by the Commission.</b>
						Non-Cumulative			Exceeded target.
<input type="checkbox"/>	Std	02-01-01:03	236			236	210	112%	<b>Number of fire service training facilities certified by the Commission.</b>
						Non-Cumulative			Exceeded target.

Cumulative Measure: A measure for which one quarter's performance can be added to a previous quarter's performance to obtain year-to-date performance; otherwise, a measure is non-cumulative.  
 Non-Cumulative Measure: A measure which, in order to determine year-to-date performance, must be calculated for the entire reporting period and not on the basis of adding together the performance from separate reporting periods

**TCFP FY11 Measures, FY10 Strategic Plan**

Key	Division	FY11 1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	FY11 YTD Sum	FY11 Target	% Target ytd/tar	Measures/Explanation
<b>Efficiency</b> <i>A quantifiable indicator of productivity expressed in unit costs, units of time, or other ratio-based units</i>									
<input type="checkbox"/>	Std	02-01-01:01	1.89			1.89	6	32%	<b>Average certification cost per individual certificate issued.</b> Non-Cumulative Below target which is goal, aided by the fact the majority of renewals issued in first quarter.
<input type="checkbox"/>	Std	02-01-01:02	2.23			2.23	2.5	89%	<b>Average certification cost per facility certificate issued.</b> Non-Cumulative Below target which is goal.
<input type="checkbox"/>	Std	02-01-01:03	98.09			98.09	90	109%	<b>Percentage of new individual certificates issued within 10 days.</b> Non-Cumulative Exceeded target
<input type="checkbox"/>	Std	02-01-01:05	35.09			35.09	21	167%	<b>Average cost per exam administered.</b> Non-Cumulative Cost higher due to the fact Commission removed skills testing during written test for structure.
<b>Outcome (Annual)</b> <i>A quantifiable indicator of the public and customer benefits from an agency's actions</i>									
<input checked="" type="checkbox"/>	Fin	01-02:01	0			0.0%	32%	0%	<b>Percent of total amount requested for loans/grants compared with requests awarded.</b> Non-Cumulative Program transferred to Texas Forest Service.
<input checked="" type="checkbox"/>	Std	02-01:01	93%			92.8%	95%	98%	<b>Percent of inspected certificate holders with no recent violations.</b> Non-Cumulative On target.
<input type="checkbox"/>	Fin	04-01:01	6%			6.0%	10%	60%	<b>Percent of total dollar value of purchasing contracts awarded to HUBs.</b> Non-Cumulative

Note: Explanations are provided for measures that are 5% or more off target. Targets were requested in the FY10 operating budget document.

**Texas Commission on Fire Protection**  
**Fiscal Year 2011 - Operating Budget**

Updated: 12/9/10

Thru: December 1, 2010

**Summary**

Goals:	FY11		Encumb	Balance	%
	Budget	Expended			
Education, Information and Assistance	48,778	12,194		36,583	
Fire Department Standards	1,146,363	283,948		862,416	
Indirect Administration	752,498	172,424		580,074	
Merit Budget					
<b>1001 - Salaries &amp; Wages:</b>	<b>1,947,639</b>	<b>468,566</b>	<b>0</b>	<b>1,479,073</b>	<b>76%</b>
Education, Information and Assistance	1,480	120		1,360	
Fire Department Standards	61,480	5,720		55,760	
Indirect Administration	25,400	4,240		21,160	
<b>1002 - Other Personnel Costs</b>	<b>88,360</b>	<b>10,080</b>	<b>0</b>	<b>78,280</b>	<b>89%</b>
Education, Information and Assistance	0	0		0	
Fire Department Standards	0	0		0	
Indirect Administration	9,072	0		9,072	
<b>2001 - Professional Fees and Services:</b>	<b>9,072</b>	<b>0</b>	<b>0</b>	<b>9,072</b>	<b>100%</b>
Education, Information and Assistance	1,749	1,378		371	
Fire Department Standards	14,191	4,739		9,452	
Indirect Administration	2,390	126		2,264	
<b>2003 - Consumable Supplies:</b>	<b>18,330</b>	<b>6,243</b>	<b>0</b>	<b>12,087</b>	<b>66%</b>
Education, Information and Assistance	291	23		268	
Fire Department Standards	25,233	3,390		21,843	
Indirect Administration	4,788	324		4,464	
<b>2004 - Utilities:</b>	<b>30,312</b>	<b>3,737</b>	<b>0</b>	<b>26,575</b>	<b>88%</b>
Education, Information and Assistance	0	0		0	
Fire Department Standards	71,976	7,526		64,450	
Indirect Administration	19,524	1,245		18,279	
<b>2005 - Travel:</b>	<b>91,500</b>	<b>8,771</b>	<b>0</b>	<b>82,729</b>	<b>90%</b>
Education, Information and Assistance	525	0		525	
Fire Department Standards	2,136	534		1,602	
Indirect Administration	1,188	327		861	
<b>2006 - Rent - Building (storage):</b>	<b>3,849</b>	<b>861</b>	<b>0</b>	<b>2,988</b>	<b>78%</b>
Education, Information and Assistance	1,200	66		1,134	
Fire Department Standards	14,100	1,844		12,256	
Indirect Administration	7,700	933		6,767	
<b>2007 - Rent - Machine and Other:</b>	<b>23,000</b>	<b>2,843</b>	<b>0</b>	<b>20,157</b>	<b>88%</b>
Education, Information and Assistance	3,259	522		2,737	
Fire Department Standards	93,721	11,236		82,485	
Indirect Administration	27,626	8,073		19,553	
<b>2009 - Other Operating Expense:</b>	<b>124,606</b>	<b>19,831</b>	<b>0</b>	<b>104,775</b>	<b>84%</b>
Education, Information and Assistance	1,000,000	1,000,000		0	
Fire Department Standards	0	0		0	
Indirect Administration	0	0		0	
<b>4000 - Grants:</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>0</b>	<b>0</b>	<b>0%</b>
Education, Information and Assistance	11,000	6,153		4,847	
Fire Department Standards	0	0		0	
Indirect Administration	0	0		0	
<b>5000 - Capital Expenditures:</b>	<b>11,000</b>	<b>6,153</b>	<b>0</b>	<b>4,847</b>	<b>44%</b>
<b>TOTAL - ALL EXPENDITURES</b>	<b>3,347,668</b>	<b>1,527,085</b>	<b>0</b>	<b>1,820,583</b>	<b>54%</b>
			<b>3,347,668</b>	<b>0</b>	<b>* diff</b>
Assumes \$60,000 in IFSAC seals:	Appropriated Amt in GAA:	3,347,668		0	

# Texas Commission on Fire Protection

## Fiscal Year 2011 - Operating Budget

Thru: December 1, 2010

### Goal A: Education, Info and Assistance

	Library	IT	Grants	Total	%
<b>Budget:</b>	48,778	0	0	48,778	0
Expended:	12,194	0	0	12,194	
<b>1001 - Balance Salaries &amp; Wages:</b>	<b>36,583</b>	<b>0</b>	<b>0</b>	<b>36,583</b>	<b>75%</b>
Other Personnel Costs:					
7017- One-Time Merit	0	0	0	0	
7022- Longevity Pay	120	0	0	120	
7023- Lump Sum Termination	0	0	0	0	
<b>Budget:</b>	<b>1,480</b>	<b>0</b>	<b>0</b>	<b>1,480</b>	<b>0</b>
Expended:	120	0	0	120	
<b>1002 - Balance Other Personnel Costs</b>	<b>1,360</b>	<b>0</b>	<b>0</b>	<b>1,360</b>	<b>92%</b>
Professional Fees and Services:					
7245- Financial & Accounting Services	0	0	0	0	
7253- Other Professional Fees (EAP)	0	0	0	0	
7274- Temporary Employment Agencies	0	0	0	0	
7275- Computer Programming Services	0	0	0	0	
<b>Budget:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Expended:	0	0	0	0	
<b>2001 - Balance Professional Fees and Services:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>#DIV/0!</b>
<b>Budget:</b>	<b>1,749</b>	<b>0</b>	<b>0</b>	<b>1,749</b>	<b>0</b>
Expended:	9	1,369	0	1,378	
<b>2003 - (7300) Balance Consumable Supplies:</b>	<b>1,740</b>	<b>(1,369)</b>	<b>0</b>	<b>371</b>	<b>21%</b>
Utilities:					
7501- Electricity	0	0	0	0	
7503- Telecommunications-Long Distance	0	0	0	0	
7504- Telecommunications-Monthly Charge	23	0	0	23	
7514- Telecommunications-Maint & Repair	0	0	0	0	
7516- Telecommunications-Other Charges (reg voice/interr	0	0	0	0	
7517- Telecommunications Equipment-Expensed	0	0	0	0	
<b>Budget:</b>	<b>291</b>	<b>0</b>	<b>0</b>	<b>291</b>	<b>0</b>
Expended:	23	0	0	23	
<b>2004 - Balance Utilities:</b>	<b>268</b>	<b>0</b>	<b>0</b>	<b>268</b>	<b>92%</b>
Travel:					
7101- Travel I/S - Public Transportation Fares	0	0	0	0	
7102- Mileage	0	0	0	0	
7104- Travel I/S - Actual Expense Overnight	0	0	0	0	
7105- Travel I/S - Incidental Expenses	0	0	0	0	
7106- Travel I/S - Meals & Lodging	0	0	0	0	
7107- Travel I/S - Non-Overnight Travel (Meals)	0	0	0	0	
7110- Travel I/S - Board Member Meals & Lodging	0	0	0	0	
7111- Travel OOS - Public Transportation Fares	0	0	0	0	
7112- Travel OOS - Mileage	0	0	0	0	
7115- Travel OOS - Incidental Expenses	0	0	0	0	
7116- Travel OOS - Meals, Lodging Allowable	0	0	0	0	
7135- Travel I/S - State Occupancy Tax	0	0	0	0	
<b>Budget:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Expended:	0	0	0	0	
<b>2005 - Balance Travel:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>#DIV/0!</b>
<b>Budget:</b>	<b>525</b>	<b>0</b>	<b>0</b>	<b>525</b>	<b>0</b>
Expended:	0	0	0	0	
<b>2006 - (7470) Balance Rent - Building (storage):</b>	<b>525</b>	<b>0</b>	<b>0</b>	<b>525</b>	<b>100%</b>
Rent - Machine and Other:					
7406- Rental - Furnishings & Equipment (copier)	49	0	0	49	
7411- Rental - Computer Equipment	17	0	0	17	
<b>Budget:</b>	<b>1,200</b>	<b>0</b>	<b>0</b>	<b>1,200</b>	<b>0</b>
Expended:	66	0	0	66	
<b>2007 - Balance Rent - Machine and Other:</b>	<b>1,134</b>	<b>0</b>	<b>0</b>	<b>1,134</b>	<b>95%</b>

# Texas Commission on Fire Protection

## Fiscal Year 2011 - Operating Budget

Thru: December 1, 2010

### Goal A: Education, Info and Assistance

	Library	IT	Grants	Total	%
Other Operating Expense:					
7201- Membership Dues	185	0	0	185	
7203- Registration Fees-Employee Training	0	0	0	0	
7210- Fees & Other Charges (DPS)	0	0	0	0	
7211- Awards	0	0	0	0	
7216- Insurance Premiums - appvd by oag	0	0	0	0	
7262- Maint & Repair - Computer Software	0	0	0	0	
7267- Maint & Repair - Computer Equipment	0	0	0	0	
7273- Reproduction & Printing	0	0	0	0	
7276- Communication Services (T-1 Line)	9	0	0	9	
7281- Advertising Services	0	0	0	0	
7286- Freight & Delivery Services	0	0	0	0	
7291- Postage & Postal Services	322	0	0	322	
7299- Purchased Contracted Services	1	0	0	1	
7303- Subscriptions, Periodicals and Info Services	0	0	0	0	
7312- Medical Supplies	0	0	0	0	
7330- Parts -equip, furn	0	0	0	0	
7334- Furnishings & Equipment -Expensed	0	0	0	0	
7335- Parts -Computer Equipment - Expensed	0	0	0	0	
7354- Bldg Remodel - State Leased -Expensed	0	0	0	0	
7367- Personal Property - Maint & Repair	0	0	0	0	
7374- Personal Property-Furn & Equip - Controlled	0	0	0	0	
7377- Computer Equipment - Expensed	0	0	0	0	
7378- Computer Equipment - Controlled	0	0	0	0	
7379- Computer Equipment - Cap (>1,000)	0	0	0	0	
7380- Computer Software - Expensed	0	0	0	0	
7382- Books - Expensed	0	0	0	0	
7806- Interest on Delayed Payment	0	0	0	0	
7947- Workers Compensation Transfer (SORM)	0	0	0	0	
7953- SWCAP payment/cost allocation	0	0	0	0	
7961- STS Transfers-Telecommunications (TexAn)	5	0	0	5	
<b>Budget:</b>	<b>3,259</b>	<b>0</b>	<b>0</b>	<b>3,259</b>	0
Expended:	522	0	0	522	
<b>2009 - Balance Other Operating Expense:</b>	<b>2,737</b>	<b>0</b>	<b>0</b>	<b>2,737</b>	<b>84%</b>
Grants:					
7312- Medical Supplies	0	0	0	0	
7623- Grants- Community Serv. Programs	0	0	1,000,000	1,000,000	
7701- Loans to Political Subdivisions	0	0	0	0	
<b>Budget:</b>	<b>0</b>	<b>0</b>	<b>1,000,000</b>	<b>1,000,000</b>	0
Expended:	0	0	1,000,000	1,000,000	
<b>4000 - Balance Grants:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0%</b>
Capital Expenditures:					
7354- Remodeling of Bldg-State Owned - Capitalized	0	0	0	0	
7389- Books, Pre-Recorded Ref Material - Capitalized	6,153	0	0	6,153	
<b>Budget:</b>	<b>11,000</b>	<b>0</b>	<b>0</b>	<b>11,000</b>	0
Expended:	6,153	0	0	6,153	
<b>5000 - Balance Capital Expenditures:</b>	<b>4,847</b>	<b>0</b>	<b>0</b>	<b>4,847</b>	<b>44%</b>
<b>Budget:</b>	<b>68,282</b>	<b>0</b>	<b>1,000,000</b>	<b>1,068,282</b>	
Expended:	19,087	1,369	1,000,000	1,020,456	
<b>TOTAL BALANCE</b>	<b>49,194</b>	<b>(1,369)</b>	<b>0</b>	<b>47,825</b>	<b>4%</b>

# Texas Commission on Fire Protection

## Fiscal Year 2011 - Operating Budget

Thru: December 1, 2010

### Goal B: Fire Department Standards

	Mgmt	Complnc	Cert	Testing	Curr Dev	Total	%
<b>Budget:</b>	91,542	446,080	225,790	292,495	90,456	1,146,363	0
Expended:	22,886	111,520	47,448	79,481	22,614	283,948	
<b>1001 - Balance Salaries &amp; Wages:</b>	<b>68,657</b>	<b>334,560</b>	<b>178,343</b>	<b>213,014</b>	<b>67,842</b>	<b>862,416</b>	<b>75%</b>
Other Personnel Costs:							
7017- One-Time Merit	0	0	0	0	0	0	
7022- Longevity Pay	300	1,860	1,080	2,160	320	5,720	
7023- Lump Sum Termination	0	0	0	0	0	0	
7030- Employee Incentive Bonus	0	0	0	0	0	0	
<b>Budget:</b>	<b>15,200</b>	<b>32,760</b>	<b>8,400</b>	<b>8,720</b>	<b>1,400</b>	<b>66,480</b>	-5,000
Expended:	300	1,860	1,080	2,160	320	5,720	
<b>1002 - Balance Other Personnel Costs</b>	<b>14,900</b>	<b>30,900</b>	<b>7,320</b>	<b>6,560</b>	<b>1,080</b>	<b>60,760</b>	<b>91%</b>
Professional Fees and Services:							
7245- Financial & Accounting Services	0	0	0	0	0	0	
7253- Other Professional Fees (EAP)	0	0	0	0	0	0	
7274- Temporary Employment Agencies	0	0	0	0	0	0	
7275- Computer Programming Services	0	0	0	0	0	0	
<b>Budget:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	0
Expended:	0	0	0	0	0	0	
<b>2001 - Balance Professional Fees and Serv</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>#DIV/0!</b>
<b>Budget:</b>	<b>500</b>	<b>2,500</b>	<b>2,000</b>	<b>8,191</b>	<b>1,000</b>	<b>14,191</b>	0
Expended:	234	0	4,000	505	0	4,739	
<b>2003 - (7300) Balance Consumable Supplies:</b>	<b>266</b>	<b>2,500</b>	<b>(2,000)</b>	<b>7,686</b>	<b>1,000</b>	<b>9,452</b>	<b>67%</b>
Utilities:							
7501- Electricity	0	0	0	0	0	0	
7503- Telecommunications-Long Distance	0	0	0	0	0	0	
7504- Telecommunications-Monthly Charge	601	713	0	0	0	1,314	
7514- Telecommunications-Maint & Repair	0	0	0	0	0	0	
7516- Telecommunications-Other Charges (reg voice/i	0	2,076	0	0	0	2,076	
7517- Telecommunications Equipment-Expensed	0	0	0	0	0	0	
<b>Budget:</b>	<b>22,533</b>	<b>2,700</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>25,233</b>	0
Expended:	601	2,789	0	0	0	3,390	
<b>2004 - Balance Utilities:</b>	<b>21,932</b>	<b>(89)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>21,843</b>	<b>87%</b>
Travel:							
7101- Travel I/S - Public Transportation Fares	0	665	0	1,290	0	1,955	
7102- Mileage	0	1,229	0	207	0	1,436	
7104- Travel I/S - Actual Expense Overnight	0	0	0	0	0	0	
7105- Travel I/S - Incidental Expenses	0	386	0	211	0	597	
7106- Travel I/S - Meals & Lodging	0	2,395	0	865	0	3,260	
7107- Travel I/S - Non-Overnight Travel (Meals)	0	78	0	0	0	78	
7110- Travel I/S - Board Member Meals & Lodging	0	0	0	0	0	0	
7111- Travel OOS - Public Transportation Fares	0	0	0	0	0	0	
7112- Travel OOS - Mileage	0	0	0	0	0	0	
7115- Travel OOS - Incidental Expenses	0	0	0	0	0	0	
7116- Travel OOS - Meals, Lodging Allowable	0	0	0	100	0	100	
7135- Travel I/S - State Occupancy Tax	0	90	0	10	0	100	
<b>Budget:</b>	<b>0</b>	<b>49,752</b>	<b>912</b>	<b>20,812</b>	<b>500</b>	<b>71,976</b>	0
Expended:	0	4,843	0	2,683	0	7,526	
<b>2005 - Balance Travel:</b>	<b>0</b>	<b>44,909</b>	<b>912</b>	<b>18,129</b>	<b>500</b>	<b>64,450</b>	<b>90%</b>
7462- Rent office space - building	0	534	0	0	0	534	
<b>Budget:</b>	<b>2,136</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2,136</b>	0
Expended:	0	534	0	0	0	534	
<b>2006 - (7470) Balance Rent - Building (storage):</b>	<b>2,136</b>	<b>(534)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,602</b>	<b>75%</b>
Rent - Machine and Other:							
7406- Rental - Furnishings & Equipment (copier)	1,279	0	0	0	0	1,279	
7411- Rental - Computer Equipment	565	0	0	0	0	565	
<b>Budget:</b>	<b>14,100</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>14,100</b>	0

**Texas Commission on Fire Protection**

**Fiscal Year 2011 - Operating Budget**

*Thru: December 1, 2010*

**Goal B: Fire Department Standards**

	<b>Mgmt</b>	<b>Complnc</b>	<b>Cert</b>	<b>Testing</b>	<b>Curr Dev</b>	<b>Total</b>	<b>%</b>
Expended:	1,844	0	0	0	0	1,844	
<b>2007 - Balance Rent - Machine and Other:</b>	<b>12,256</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12,256</b>	<b>87%</b>
Other Operating Expense:							
7201- Membership Dues	0	0	0	0	0	0	
7203- Registration Fees-Employee Training	0	0	0	0	0	0	
7210- Fees & Other Charges (DPS)	0	0	2	0	0	2	
7211- Awards	0	0	0	0	0	0	
7216- Insurance Premiums - appvd by oag	0	250	0	0	0	250	
7262- Maint & Repair - Computer Software	0	0	0	0	0	0	
7267- Maint & Repair - Computer Equipment	0	0	0	813	0	813	
7273- Reproduction & Printing	0	0	0	371	0	371	
7276- Communication Services (T-1 Line)	221	0	0	0	0	221	
7281- Advertising Services	0	0	0	0	0	0	
7286- Freight & Delivery Services	0	0	0	1,070	0	1,070	
7291- Postage & Postal Services	8,362	0	0	0	0	8,362	
7299- Purchased Contracted Services	19	0	0	0	0	19	
7303- Subscriptions, Periodicals and Info Services	0	0	0	0	0	0	
7312- Medical Supplies	0	0	0	0	0	0	
7330- Parts -equip, furn	0	0	0	0	0	0	
7334- Furnishings & Equipment -Expensed	0	0	0	0	0	0	
7335- Parts -Computer Equipment - Expensed	0	0	0	0	0	0	
7354- Bldg Remodel - State Leased -Expensed	0	0	0	0	0	0	
7367- Personal Property - Maint & Repair	0	0	0	0	0	0	
7374- Personal Property-Furn & Equip - Controlled	0	0	0	0	0	0	
7377- Computer Equipment - Expensed	0	0	0	0	0	0	
7378- Computer Equipment - Controlled	0	0	0	0	0	0	
7379- Computer Equipment - Cap (>1,000)	0	0	0	0	0	0	
7380- Computer Software - Expensed	0	0	0	0	0	0	
7382- Books - Expensed	0	0	0	0	0	0	
7806- Interest on Delayed Payment	0	0	0	0	0	0	
7947- Workers Compensation Transfer (SORM)	0	0	0	0	0	0	
7953- SWCAP payment/cost allocation	0	0	0	0	0	0	
7961- STS Transfers-Telecommunications (TexAn)	128	0	0	0	0	128	
<b>Budget:</b>	<b>76,321</b>	<b>7,100</b>	<b>4,100</b>	<b>5,100</b>	<b>1,100</b>	<b>93,721</b>	0
Expended:	8,730	250	2	2,254	0	11,236	
<b>2009 - Balance Other Operating Expense:</b>	<b>67,591</b>	<b>6,850</b>	<b>4,098</b>	<b>2,846</b>	<b>1,100</b>	<b>82,485</b>	<b>88%</b>
Capital Expenditures:							
7312- Medical Supplies	0	0	0	0	0	0	
7354- Remodeling of Bldg-State Owned - Capitalized	0	0	0	0	0	0	
7389- Books, Pre-Recorded Ref Material - Capitalized	0	0	0	0	0	0	
<b>Budget:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	0
Expended:	0	0	0	0	0	0	
<b>5000 - Balance Capital Expenditures:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>#DIV/0!</b>
<b>Budget:</b>	<b>222,332</b>	<b>540,892</b>	<b>241,202</b>	<b>335,318</b>	<b>94,456</b>	<b>1,434,200</b>	0
Expended:	34,595	121,796	52,530	87,083	22,934	318,937	
<b>TOTAL BALANCE</b>	<b>187,738</b>	<b>419,096</b>	<b>188,673</b>	<b>248,235</b>	<b>71,522</b>	<b>1,115,264</b>	<b>78%</b>

Current Costs for Performance Measures: salaries, travel, consumables:

	<b>1st Qtr</b>	<b>2nd Qtr</b>	<b>3rd Qtr</b>	<b>4th Qtr</b>	<b>Total</b>
4006 - Certification	52,528	0	0	0	52,528
4007 - Testing	84,829	0	0	0	84,829

**Texas Commission on Fire Protection**  
**Fiscal Year 2011 - Operating Budget**

*Thru: December 1, 2010*

**Goal C: Indirect Administration**

	Exec Office	Supp Svcs	Commis	Total	%
<b>Budget:</b>	429,641	309,858	0	739,498	13,000
Expended:	93,810	78,614	0	172,424	
<b>1001 - Balance Salaries &amp; Wages:</b>	<b>335,831</b>	<b>231,244</b>	<b>0</b>	<b>567,074</b>	<b>77%</b>
Other Personnel Costs:					
7004- Non-Permanent Full-Time Employee	0	0	0	0	
7017- One-Time Merit	0	0	0	0	
7022- Longevity Pay	1,300	2,940	0	4,240	
7023- Lump Sum Termination	0	0	0	0	
7030- Employee Incentive Bonus	0	0	0	0	
<b>Budget:</b>	<b>8,460</b>	<b>19,940</b>	<b>0</b>	<b>28,400</b>	-3,000
Expended:	1,300	2,940	0	4,240	
<b>1002 - Balance Other Personnel Costs</b>	<b>7,160</b>	<b>17,000</b>	<b>0</b>	<b>24,160</b>	<b>85%</b>
Professional Fees and Services:					
7245- Financial & Accounting Services	0	0	0	0	
7253- Other Professional Fees (EAP)	0	0	0	0	
7274- Temporary Employment Agencies	0	0	0	0	
7275- Computer Programming Services	0	0	0	0	
<b>Budget:</b>	<b>0</b>	<b>9,072</b>	<b>0</b>	<b>9,072</b>	0
Expended:	0	0	0	0	
<b>2001 - Balance Professional Fees and Services:</b>	<b>0</b>	<b>9,072</b>	<b>0</b>	<b>9,072</b>	<b>100%</b>
<b>Budget:</b>	<b>600</b>	<b>1,790</b>	<b>0</b>	<b>2,390</b>	0
Expended:	0	126	0	126	
<b>2003 - (7300) Balance Consumable Supplies:</b>	<b>600</b>	<b>1,664</b>	<b>0</b>	<b>2,264</b>	<b>95%</b>
Utilities:					
7501- Electricity	0	0	0	0	
7503- Telecommunications-Long Distance	0	0	0	0	
7504- Telecommunications-Monthly Charge	0	324	0	324	
7514- Telecommunications-Maint & Repair	0	0	0	0	
7516- Telecommunications-Other Charges (reg voice/intern)	0	0	0	0	
7517- Telecommunications equipment - Expensed	0	0	0	0	
<b>Budget:</b>	<b>0</b>	<b>4,788</b>	<b>0</b>	<b>4,788</b>	0
Expended:	0	324	0	324	
<b>2004 - Balance Utilities:</b>	<b>0</b>	<b>4,464</b>	<b>0</b>	<b>4,464</b>	<b>93%</b>
Travel:					
7101- Travel I/S - Public Transportation Fares	0	0	0	0	
7102- Mileage	0	94	923	1,017	
7104- Travel I/S - Actual Expense Overnight	0	0	0	0	
7105- Travel I/S - Incidental Expenses	0	0	33	33	
7106- Travel I/S - Meals & Lodging	0	0	0	0	
7107- Travel I/S - Non-Overnight Travel (Meals)	0	0	0	0	
7110- Travel I/S - Board Member Meals & Lodging	0	0	190	190	
7111- Travel OOS - Public Transportation Fares	0	0	0	0	
7112- Travel OOS - Mileage	0	0	0	0	
7115- Travel OOS - Incidental Expenses	0	0	0	0	
7116- Travel OOS - Meals, Lodging Allowable	0	0	0	0	
7135- Travel I/S - State Occupancy Tax	0	0	5	5	
<b>Budget:</b>	<b>2,000</b>	<b>2,000</b>	<b>15,524</b>	<b>19,524</b>	0.00
Expended:	0	94	1,151	1,245	
<b>2005 - Balance Travel:</b>	<b>2,000</b>	<b>1,906</b>	<b>14,373</b>	<b>18,279</b>	<b>94%</b>
<b>Budget:</b>	<b>0</b>	<b>1,188</b>	<b>0</b>	<b>1,188</b>	0
Expended:	120	207	0	327	
<b>2006 - (7470) Balance Rent - Building (storage):</b>	<b>(120)</b>	<b>981</b>	<b>0</b>	<b>861</b>	<b>72%</b>
Rent - Machine and Other:					
7406- Rental - Furnishings & Equipment (copier)	0	689	0	689	
7411- Rental - Computer Equipment	0	244	0	244	

**Texas Commission on Fire Protection**  
**Fiscal Year 2011 - Operating Budget**

*Thru: December 1, 2010*

**Goal C: Indirect Administration**

	Exec Office	Supp Svcs	Commis	Total	%
<b>Budget:</b>	<b>2,000</b>	<b>5,700</b>	<b>0</b>	<b>7,700</b>	0
<b>Expended:</b>	<b>0</b>	<b>933</b>	<b>0</b>	<b>933</b>	
<b>2007 - Balance Rent - Machine and Other:</b>	<b>2,000</b>	<b>4,767</b>	<b>0</b>	<b>6,767</b>	<b>88%</b>
Other Operating Expense:					
7201- Membership Dues	0	0	0	0	
7203- Registration Fees-Employee Training	0	0	0	0	
7210- Fees & Other Charges (DPS)	0	0	0	0	
7211- Awards	0	0	0	0	
7216- Insurance Premiums - appvd by oag	0	0	0	0	
7262- Maint & Repair - Computer Software	0	0	0	0	
7267- Maint & Repair - Computer Equipment	0	0	0	0	
7273- Reproduction & Printing	0	20	0	20	
7276- Communication Services (T-1 Line)	0	119	0	119	
7281- Advertising Services	0	0	0	0	
7286- Freight & Delivery Services	0	0	0	0	
7291- Postage & Postal Services	0	4,502	0	4,502	
7299- Purchased Contracted Services	434	10	0	444	
7303- Subscriptions, Periodicals and Info Services	0	0	0	0	
7312- Medical Supplies	0	0	0	0	
7330- Parts -equip, furn	0	0	0	0	
7334- Furnishings & Equipment -Expensed	0	0	0	0	
7335- Parts -Computer Equipment - Expensed	0	0	0	0	
7354- Bldg Remodel - State Leased -Expensed	0	0	0	0	
7367- Personal Property - Maint & Repair	0	0	0	0	
7374- Personal Property-Furn & Equip - Controlled	0	0	0	0	
7377- Computer Equipment - Expensed	0	0	0	0	
7378- Computer Equipment - Controlled	0	0	0	0	
7379- Computer Equipment - Cap (>1,000)	0	0	0	0	
7380- Computer Software - Expensed	0	0	0	0	
7382- Books - Expensed	0	0	0	0	
7806- Interest on Delayed Payment	0	0	0	0	
7947- Workers Compensation Transfer (SORM)	0	2,170	0	2,170	
7953- SWCAP payment/cost allocation	0	749	0	749	
7961- STS Transfers-Telecommunications (TexAn)	0	69	0	69	
<b>Budget:</b>	<b>5,599</b>	<b>26,027</b>	<b>0</b>	<b>31,626</b>	-4,000
<b>Expended:</b>	<b>434</b>	<b>7,639</b>	<b>0</b>	<b>8,073</b>	
<b>2009 - Balance Other Operating Expense:</b>	<b>5,165</b>	<b>18,388</b>	<b>0</b>	<b>23,553</b>	<b>74%</b>
Capital Expenditures:					
7312- Medical Supplies	0	0	0	0	
7354- Remodeling of Bldg-State Owned - Capitalized	0	0	0	0	
7389- Books, Pre-Recorded Ref Material - Capitalized	0	0	0	0	
<b>Budget:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	0
<b>Expended:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>5000 - Balance Capital Expenditures:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>#DIV/0!</b>
<b>Budget:</b>	<b>448,300</b>	<b>380,363</b>	<b>15,524</b>	<b>844,186</b>	0
<b>Expended:</b>	<b>95,664</b>	<b>90,877</b>	<b>1,151</b>	<b>187,692</b>	
<b>TOTAL - BALANCE</b>	<b>352,636</b>	<b>289,486</b>	<b>14,373</b>	<b>656,494</b>	<b>78%</b>

**5. Reports from the Budget and Strategic Plan subcommittees with discussion and possible action relating to any recommendations developed by these subcommittees.**

- 6. Reports from fire service interest groups and agencies on matters relating to organizational purposes, functions, and objectives, including, but not limited to, the Texas Fire Chiefs Association, the Texas State Association of Fire Fighters, the State Firemen's and Fire Marshals' Association of Texas, the Texas Association of Fire Educators, the Texas Forest Service, the National Fire Protection Association, and the State Fire Marshal's Office.**

- 7. Discussion and possible action concerning reports by the Commission representative to the Texas Fire School Advisory Board and by representatives of the Texas Engineering Extension Service (TEEX) regarding fire protection training provided by TEEX through its Emergency Services Training Institute (ESTI).**

**8. New matters from the commission, staff, or public regarding rulemaking which may be discussed in future Commission meetings.**

**9. Discussion and possible action on future meeting dates.**

- 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 427, Training Facility Certification, including, but not limited to §427.305, Procedures for Testing Conducted by On-Site and Distance Training Providers.**

# Chapter 427

## TRAINING FACILITY CERTIFICATION

### SUBCHAPTER A

#### ON-SITE CERTIFIED TRAINING PROVIDER

##### §427.1. Minimum Standards for Certified Training Facilities for Fire Protection Personnel.

- (a) An on-site training facility must be certified by the commission in each discipline with a commission approved curriculum for which the facility provides accredited training for fire protection personnel certification. An on-site training facility is where instructors and students are in immediate proximity and where content is instructed primarily in classrooms, at demonstration projects, in fire simulation structures, on fire apparatus, or at training sites in the field under direct supervision of the training facility instructors.
- (b) A certified on-site training facility may be approved to instruct in any one or all of the fire protection personnel curricula. Minimum requirements for each curriculum must be met to receive certification.
- (c) Minimum requirements for certification as a certified on-site training facility shall include facilities, apparatus, equipment, reference materials, standard operating procedures, instructors, and records to support a quality education and training program. The resources must provide for classroom instruction, demonstrations, and practical exercises for the trainees to develop the knowledge and skills required for fire protection personnel certification.
- (d) The on-site facilities and training shall be performance oriented, when required. Practical performance training with maximum participation by trainees shall be an integral part of the training program. The evaluation process for each phase of training will emphasize, as required, performance testing to determine if the trainee has acquired the knowledge and skills to achieve the required level of competency as required by the respective curriculum.
- (e) It must be clearly understood that the minimum standard for training facilities is applicable only as the title implies and does not address the additional training facility resources which are required for the continuing in-service training essential to the development and maintenance of a well-coordinated and effective fire service organization.
- (f) An organization, installation, or facility must submit a written application for certification as a certified on-site training facility to the commission. Such application will include descriptions and addresses of physical facilities together with inventory of apparatus, equipment, and reference material to be utilized in conducting the basic curriculum as specified by the commission. It is not required that the equipment be owned by, permanently assigned to, nor kept at a training facility, but must be readily available for instructional purposes. A training facility must submit a letter of commitment with the original training facility certification application authorizing the use of resources not controlled by the training facility from the provider of said resources. A copy of the letters of commitment must be maintained on-site and be available for review. Photographs of resources annotated to reflect their identity must be included with the application. When seeking training approvals, the facility shall certify that the resources are provided in accordance with this chapter.
- (g) All training for certification must be submitted to the commission in writing 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 required academy skills; and

- (3) notify the Commission of any changes in instructor staff and/or field examiners.
- (h) An on-site training provider certified for the first time by the commission will receive, at no charge, one Commission Certification Curriculum and Standards Manual on CD that is to be utilized by the certified on-site training provider's instructors. The on-site provider is responsible for ensuring that all subjects are taught as required by the respective curriculum. Additional CD copies may be purchased from the commission or downloaded from the agency web site. On-site training providers that renew their certification will receive appropriate updates at no charge.

### **§427.3. Facilities.**

The following minimum resources, applicable to the curricula, are required for certification as a certified on-site training facility. These facilities may be combined or separated utilizing one or more structures. In either event the facilities must be available and used by the instructor and trainees.

- (1) A training tower equivalent to two or more stories in height. The term "training tower" as used in these standards is a structure suitable for training in the practical application of required ladder, rescue, hose and rope skills training.
- (2) A facility for classroom instruction and testing shall have seating capacity for anticipated trainees. The facility must be conducive for an effective learning environment including environmental comfort for instructors and students, physical requirements needed for good seeing and hearing, adequate lighting, and free of outside distractions.
- (3) An area for practical application of principles and procedures of fire fighting, hose loading, pumper operation, to include friction loss, nozzle reaction, fire stream patterns, and GPM discharge utilizing various layouts for hand lines and/or master stream appliances.
- (4) An enclosed area or room for use in practical training with self-contained breathing apparatus. This may be a smoke and fire room or enclosed area which can be charged with smoke-producing devices to provide a realistic training environment.
- (5) A structure suitable for interior live fire training and meeting the requirements of the basic curriculum pertaining to the particular discipline(s) which the training facility is approved to teach, shall be available for use by the instructors to teach interior live fire training.
- (6) Facilities to conduct exterior live fire training as required by the basic curriculum pertaining to the particular discipline(s) which the training facility is approved to teach, shall be available for use by the instructors to teach exterior live fire training.
- (7) If performance or driving skills are part of the curriculum, suitable area(s) for practicing required skills, demonstration of skills, and performance testing must be available.

### **§427.5. Apparatus.**

- (a) Certified on-site training facility--approved for basic structural fire protection personnel certification training.
  - (1) A pumper apparatus fully equipped as required by the basic fire suppression curriculum shall be readily available for use by the instructors for instructional purposes.
  - (2) Ladders or a ladder truck as required by the basic fire suppression curriculum shall be readily available for use by the instructors for instructional purposes.
- (b) Certified on-site training facility--approved for basic aircraft rescue fire fighting personnel certification training. Fire apparatus that is equipped to perform aircraft operations as required by the basic aircraft fire protection curriculum must be readily available for use by the instructors for instructional purposes.

- (c) Certified on-site training facility--approved for Driver/Operator – Pumper certification training. A piece of fire apparatus with a permanently mounted fire pump that has a rated discharge capacity of 750 gpm (2850 L/min) or greater as defined in NFPA 1901, Standard for Automotive Fire Apparatus.
- (d) Certified on-site training facility approved for hazardous materials technician certification training must have access to props and/or simulators, protective suits and monitoring equipment required for skills training and testing.

#### **§427.7. Protective Clothing.**

Each and every set of protective clothing, including proximity clothing, that will be used during the course of instruction for a commission approved fire protection personnel curriculum shall comply with §435.1 of this title (relating to Protective Clothing). This rule applies whether the protective clothing is provided by the academy or the trainee. Protective clothing and elements that are no longer of use to the organization for emergency operations service but are not contaminated, defective, or damaged may be used for training that does not involve live fire training provided such clothing and elements are appropriately marked to be easily recognized.

#### **§427.9. Equipment.**

The following minimum equipment, applicable to the curricula the training facility is certified to teach, is required for certification as a certified on-site training facility. The equipment must be available for use by the certified training facility:

- (1) If instruction in the use of self-contained breathing apparatus is a part of the curriculum being taught, then self-contained breathing apparatus in sufficient numbers shall be provided to enable each trainee to wear the equipment for at least the life of one breathing air tank during the training. If during the course of the training, a trainee will be subjected to a hazardous atmosphere or where the atmosphere is unknown, the trainee shall be provided with a self-contained breathing apparatus. (Note: All self-contained breathing apparatus used by a certified training facility and the air used in self-contained breathing apparatus must comply with §435.3 of this title (relating to Self-Contained Breathing Apparatus)). This rule applies whether the self-contained breathing apparatus is provided by the academy or the trainee. All students, instructors, safety personnel, and other personnel participating in any evolution or operation of fire suppression during the live fire training shall breathe from an SCBA air supply whenever operating under one or more of the following conditions:
  - (A) in any atmosphere that is oxygen deficient or contaminated by products of combustion, or both;
  - (B) in any atmosphere that is suspected of being oxygen deficient or contaminated by products of combustion, or both;
  - (C) in any atmosphere that can become oxygen deficient or contaminated, or both; and/or
  - (D) below ground level;
- (2) standard classroom equipment to include chalkboard, speaker rostrum, supportive instructional aids available to include audio-visual projection equipment. The use of cutaways, models, flip charts, and other visual aids are recommended to enhance effectiveness of the instruction. Note: The instructor needs to ensure all necessary equipment is available for trainees to use regarding the basic performance skills as identified in appropriate curriculum and to comply with §427.15 of this title (relating to Testing Procedures); and
- (3) other equipment, which may include training simulators and mock training aids, and tools required by the applicable curriculum.

#### **§427.11. Reference Material.**

A reference library is required. The library must contain the publications required to conduct research and develop lesson plans covering the material required in the applicable curriculum. The reference library material must be readily and easily accessible to students and instructors.

### **§427.13. Records.**

- (a) Training records shall be maintained by the on site training facility that reflect:
  - (1) who was trained, subject, instructor, and date of instruction. (Note: Individual records are required rather than class records); and
  - (2) individual trainee test scores to include performance testing.
- (b) All training records must be maintained by the on-site training facility for a minimum of three years or in accordance with the requirement of the Texas State Library and Archives Commission, State and Local Records Management Division, whichever is greater.

### **§427.18. Live Fire Training Evolutions.**

The most current edition of NFPA 1403, Standard on Live Fire Training Evolutions, shall be used as a guide when developing standard operating procedures for conducting live fire training. The following requirements shall apply for all Live Fire Training Evolutions conducted during basic certification training of fire protection personnel.

- (1) Prior to being permitted to participate in Live Fire Training Evolutions, the student shall have received training to meet the performance requirements for Fire Fighting I in NFPA 1001, Standard for Fire Fighter Professional Qualifications, related to the following subjects:
  - (A) safety;
  - (B) fire behavior;
  - (C) portable extinguishers;
  - (D) personal protective equipment to include SCBA;
  - (E) ladders;
  - (F) fire hose, appliances, and streams;
  - (G) overhaul;
  - (H) water supply;
  - (I) ventilation;
  - (J) forcible entry; and
  - (K) fire fighter rescue.
- (2) The on-site lead instructor will insure that the water supply rate and duration for each individual Live Fire Training Evolution is adequate to control and extinguish the training fire, the supplies necessary for backup lines to protect personnel, and any water needed to protect exposed property.
- (3) The on-site lead instructor will insure that the buildings or props being utilized for live fire training are in a condition that would not pose an undue safety risk.
- (4) A safety officer shall be appointed for all Live Fire Training Evolutions. The safety officer shall have the authority, regardless of rank, to intervene and control any aspect of the operations when, in his or her judgment, a potential or actual danger, accident, or unsafe condition exists. The safety officer shall not be assigned other duties that interfere with safety responsibilities. The safety officer shall not be a student.
- (5) No person(s) shall play the role of a victim inside the building.
- (6) The participating student-to-instructor ratio shall not be greater than five to one.

- (7) Prior to the ignition of any fire, instructors shall insure that all personal protective clothing and/or self-contained breathing apparatus are NFPA compliant and being worn in the proper manner.
- (8) Prior to conducting any live fire training, a pre-burn briefing session shall be conducted. All participants shall be required to conduct a walk-through of the structure in order to have a knowledge of, and familiarity with, the layout of the building and to be able to facilitate any necessary evacuation of the building.
- (9) A standard operating procedure shall be developed and utilized for Live Fire Training Evolutions. The standard operating procedure shall include, but not be limited to:
  - (A) a Personal Alert Safety System (PASS). A PASS device shall be provided for all students and instructors participating in live fire training and shall meet the requirements in §435.9 of this title (relating to PASS devices). This applies whether the PASS device is provided by the academy or the trainee;
  - (B) a Personnel Accountability System that complies with §435.13 of this title shall be utilized;
  - (C) an Incident Management System;
  - (D) use of personal protective clothing and self-contained breathing apparatus;
  - (E) an evacuation signal and procedure; and pre-burn, burn and post-burn procedures.

#### **§427.19. General Information.**

- (a) All Texas certified training facilities shall meet these minimum requirements. No training credit will be recognized from a Texas training facility that has not been certified by the Commission, unless the program has been approved by the Commission as being equivalent. The Commission shall take action on an application for certification of a training facility within 30 days from receipt.
- (b) Certified training facilities shall conduct all training in a controlled and safe manner so that trainees are not subjected to unnecessary risks. Texas Government Code, §419.032(c) provides that fire protection personnel must complete a Commission-approved training course in fire suppression before being assigned to fire suppression duties. In addition, certified training facilities, whether operated by a fire department or other governmental or private training facility, shall not put trainees at risk by requiring or allowing a trainee to perform the duties of fire protection personnel at actual uncontrolled emergency situations such as, but not limited to, structure fires, aircraft fires, wildland fires, hazardous materials incidents or dangerous rescue situations.
- (c) A certified training facility may transport trainees to the site of an actual emergency for training purposes only if the following requirements are strictly adhered to:
  - (1) the trainees are kept in a group under the direct supervision of qualified instructors to maintain accountability and ensure their safety;
  - (2) the trainees are kept outside of the emergency operations area; and
  - (3) the trainees' activities are restricted to observation only and trainees are not allowed to participate in emergency operations.
- (d) Certified training facilities are subject to inspection by the Commission at any time during regular business hours.
- (e) In order to retain the certification as a certified training facility, schools desiring to make substantial changes in the facility or other conditions under which the school was approved shall coordinate such plans with the Commission.
- (f) The Commission shall be notified, in writing, within 14 days of any change from the original status under which the certification was issued.
- (g) The Commission may revoke, suspend, and/or probate the certification of a training facility when the Commission determines that the training facility:
  - (1) fails to provide the quality of training for which the facility was approved; or

- (2) fails to comply with Commission rules and/or these minimum standards; or
- (3) fails to submit required reports in a timely manner or submits false reports to the Commission; or
- (4) fails to meet at least a 70-percent student pass rate on the state certification examination per course.

## **SUBCHAPTER B**

### **DISTANCE TRAINING PROVIDERS**

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

- (a) The following definition is applicable to this subchapter only. Approved distance training is defined as fire training where instructors and students are primarily in different locations and content is instructed primarily using the internet or an intranet and courses must contain some level of interactivity. Distance training that serves as nothing more than electronic text is not acceptable. Online courses must provide the opportunity for the student to interact or ask questions via e-mail, chat rooms or some other method of communication. Other computer-mediated methods of instruction may be used to enhance instruction; however, the primary delivery method must be through the internet or an intranet.
- (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. 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) 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.
- (e) 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 providers' 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 website. Distance training providers that renew their certification will receive appropriate updates at no charge.

#### **§427.203. Records.**

- (a) Training records shall be maintained by the distance training provider that reflect:
  - (1) Who was trained, subject, instructor, and date of instruction. (Note: Individual records are required rather than class records);
  - (2) Individual trainee test scores to include performance testing; and
  - (3) Evidence to substantiate the test scores received by each trainee to include performance testing. Such records will include materials (completed tests and/or answer sheets, other documents, video or audio recording, etc.), and will provide identification of the examinee, identification of the evaluating field examiner, and the observer as defined in Chapter 439.
- (b) All distance training provider records must be maintained by the distance training provider for commission review for a minimum of three years or in accordance with the requirement of the

Texas State Library and Archives Commission, State and Local Records Management Division, whichever is greater.

- (c) A master copy of tests will be maintained for review by commission representatives. The certified distance training provider shall maintain copies of all tests for a minimum of three

**§427.209. General Information.**

- (a) All distance training providers shall meet these minimum requirements. No training credit will be recognized from a distance training provider that has not been certified by the Commission. The Commission shall take action on an application for certification of a distance training provider/training facility provider within 30 days from receipt.
- (b) Distance training providers conducting on-site programs shall ensure that all training is conducted in a controlled and safe manner so that trainees are not subjected to unnecessary risks. In addition, certified training facilities shall not put trainees at risk by requiring or allowing a trainee to perform the duties of fire protection personnel at actual uncontrolled emergency situations such as, but not limited to, structure fires, aircraft fires, wildland fires, hazardous materials incidents or dangerous rescue situations.
- (c) A distance training provider may transport trainees to the site of an actual emergency for training purposes, only if the following requirements are strictly adhered to:
  - (1) the trainees are kept in a group under the direct supervision of qualified instructors to maintain accountability and ensure their safety;
  - (2) the trainees are kept outside of the emergency operations area; and
  - (3) the trainees' activities are restricted to observation only and trainees are not allowed to participate in emergency operations.
- (d) Distance training providers are subject to inspection by the Commission at any time during regular business hours. Distance training providers shall provide the Commission with access to the training facility to monitor the course in progress.
- (e) The Commission shall be notified, in writing, within 14 days of any change from the original status under which the certification was issued.
- (f) The Commission may revoke, suspend, and/or probate the certification of training when the Commission determines that the distance training provider:
  - (1) fails to provide the quality of training and education for which the provider was approved; or
  - (2) fails to comply with Commission rules and/or these minimum standards; or
  - (3) fails to submit required reports in a timely manner or submits false reports to the Commission; or
  - (4) per course, fails to meet at least a 70-percent student pass rate on the state certification examination.

## SUBCHAPTER C

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

#### **§427.301. General Provisions for Training Programs -- On-Site and Distance Training Providers.**

- (a) Training programs that are intended to satisfy the requirements for fire protection personnel certification for each curriculum must meet the objectives and competencies in that curriculum.
- (b) A system for evaluating the comprehension of the trainee, including periodic and comprehensive written tests, is required. If performance skills are part of the applicable curriculum, performance testing shall be done in accordance with §439.11 of this title.

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

- (a) When seeking training approvals, a training provider, whether on-site or distance, shall certify that it has provided the resources described in §427.1(f) of this title.
- (b) All training for certification must be approved by the Commission. A training provider must submit to the Commission a completed Training Prior Approval Form at least 20 days prior to the proposed start date of the training.
- (c) The provider of training will receive from the Commission the following documents.
  - (1) A Notice of Course Approval. This document will serve as notification that the course has been approved by the Commission and will contain the approval number assigned by the Commission and the course I.D. number.
  - (2) An Application for Testing Form, when applicable.
  - (3) A Certificate of Completion Form. This document must be completed by the training provider and issued to each student when the student has successfully completed the applicable curriculum.
  - (4) Commission-designated skills envelope when applicable.
- (d) Approved courses are subject to audit by Commission staff at any time. Any deviation from the approved start-and-end date of the class, periodic and final test schedule, field examiners or the substitution of one instructor for another (this does not apply to an instructor already approved for the course) 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) The requirements and provisions in this section apply to procedures for periodic and final testing conducted by training providers. For procedures regarding state examinations for certification Commission examinations that occur after a training program is completed, see Chapter 439 of this title.
- (b) Periodic and comprehensive final tests shall be given by the training provider in addition to the Commission examination required in Chapter 439 of this title.
- (c) Periodic ~~written~~ tests shall be administered at the ratio of one test per 50 hours of recommended training, or portion thereof. ~~[In addition to periodic tests, a comprehensive final~~

~~written test must be administered.] An average [passing] score of 70% must be achieved on all required periodic[written] tests. [If a course is taught in phases, one comprehensive final written test shall be administered at the completion of all phases and a passing score of 70% must be achieved.]~~

**(d) In addition to periodic tests, a comprehensive final test must be administered. A passing score of 70% must be achieved.**

**(e) If the Fire Investigator course is taught in phases, one comprehensive final test shall be administered upon completion of the final phase and a passing score of 70% must be achieved.**

#### **§427.307. On-Site and Distance Training Provider Staff Requirements.**

- (a) The chief training officer of a training facility, as a minimum, must possess Fire Service Instructor III certification.
- (b) All training instructors (except guest instructors) must possess fire instructor certification. The instructor(s) must be certified in the applicable discipline or be approved by the commission to instruct in the applicable subject.
- (c) The lead instructor, as a minimum, shall possess a Fire Service Instructor II certification and must be certified by the commission in the applicable discipline.
- (d) Guest instructors are not required to be certified as instructors. A guest instructor is defined as an individual with special knowledge, skill, and expertise in a specific subject area who has the ability to enhance the effectiveness of the training. Guest instructors shall teach under the endorsement of the lead instructor.
- (e) In order to teach fire officer certification courses, an individual who does not meet the requirements of subsection (a) or (c) of this section, shall possess a minimum of a bachelor's degree in management or its equivalent.
- (f) In order to teach an instructor certification training course for Fire Service Instructor I, an individual must hold one of the following three qualifications:
  - (1) Hold a Fire Service Instructor II or higher, or
  - (2) A Bachelor's degree with the following:
    - (A) As a minimum, a minor in education, and
    - (B) Three years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 200 class hours; or
  - (3) An Associate's degree with the following:
    - (A) twelve semester hours of education instructional courses, and
    - (B) five years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 400 class hours.
- (g) In order to teach an instructor certification training course for Fire Service Instructor II or III, an individual must hold one of the following three qualifications:

- (1) Hold a Fire Service Instructor III or
- (2) A Bachelor's degree with the following:
  - (A) As a minimum, a minor in education, and
  - (B) Three years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 200 class hours; or
- (3) An Associate's degree with the following:
  - (A) twelve semester hours of education instructional courses, and
  - (B) five years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 400 class hours.

## SUBCHAPTER D

### Certified Training Facilities

#### **§427.401. General Provisions for Training Facilities Not Owned by the State of Texas or Operated by a Political Subdivision of the State of Texas.**

- (a) The provisions in this subchapter apply only to certified training facilities that are not owned or operated by the State of Texas or a political subdivision of the State of Texas.
- (b) Training facilities seeking certification under this subchapter must comply with all the provisions of this chapter and must also meet and comply with all Commission rules.
- (c) Training facilities seeking certification under this subchapter must apply for training facility certification in each discipline they wish to teach.
- (d) In order to become a Commission approved training facility under this subchapter; the provider must submit a completed Commission training facility application for certification with supporting documentation and fees. Supporting documentation will consist of:
  - (1) descriptions, photos and addresses of where the provider will have their course delivery and materials;
  - (2) documentation of how the provider will meet all the minimum requirements for each discipline for which it seeks certification;
  - (3) complete and correct financial statements, as specified in this subchapter, demonstrating the facility is financially stable and capable of fulfilling its commitments for training;
  - (4) statement of ownership which identifies the owners, stockholders, partners, representatives, management, trustees, board members;
  - (5) documentation showing registration with the Texas Secretary of State as a business.

#### **§427.403. Financial Standards.**

- (a) Definitions Relating to Financial Requirements.
  - (1) Balance Sheet--A statement of financial position or statement of condition, showing the status of assets, liabilities and owner equity for a defined period i.e., monthly, quarterly, etc.
  - (2) Current ratio--ability to pay current obligations from current assets.
  - (3) Generally Accepted Accounting Principles (GAAP)--Conventions, rules and procedures that define accepted accounting practices to include both broad guidelines as well as detailed procedures.
  - (4) Generally Accepted Auditing Standards (GAAS)--Conventions, rules and procedures that define accepted audit practices.
  - (5) Stockholders Equity (net worth)--amount by which assets exceed liabilities.
  - (6) Sworn statement--A notarized statement including the following language: "I swear or affirm that the information in these statements is true and correct to the best of my knowledge."

- (7) Unearned income (tuition) affidavit--A statement of income received but not yet earned during the current or most recent fiscal year. This is usually shown as a liability on a balance sheet, assuming it will be credited to income within the normal accounting cycle.
- (b) The balance sheet required in this subchapter shall reflect the following:
- (1) positive equity or net worth balance;
  - (2) unearned tuition as a current liability;
  - (3) a current ratio of at least one-to-one; (current assets divided by current liabilities) and
  - (4) stockholder's equity or net worth exceeding the amount shown for goodwill, if applicable, under assets in the balance sheet.
- (c) Compilations shall be accompanied by the owner's sworn statement.
- (d) All financial statements shall identify the name, license number, and licensing state of the accountant associated with the statements and be in accordance with GAAP.
- (e) A school that maintains a financial responsibility composite score that meets the general standards established in federal regulations by the U.S. Department of Education for postsecondary institutions participating in student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, shall be considered to have met the financial standards of this subchapter.
- (f) A school that qualifies under an alternative standard but not the general standard of these federal regulations will not be considered to have met the financial standards of this subchapter unless the school meets the other requirements stated in this subchapter.
- (g) Requirements for Original Approvals.
- (1) The owner shall furnish the Commission with the following:
    - (A) a school owned by a sole proprietor must submit a reviewed personal balance sheet stating the disclosure of payments for the next five years to meet debt agreements as required by GAAP; or
    - (B) all other ownership structures must submit an audited balance sheet consistent with GAAP and GAAS and certified by an accountant.
  - (2) The facility shall submit a balance sheet, a list of the expected school-related expenses for the first three months of operation of the school; a sworn statement signed by the owner affirming the availability of sufficient cash to cover projected expenses at the date of the certification. Projected expenses may include the following:
    - (A) employee salaries, listed by position title, including withholding and unemployment taxes, and other related expenses;
    - (B) lease or rent payments for listed equipment;
    - (C) lease or rent payments for facilities;
    - (D) accounting, legal and other specifically identified professional fees;

- (E) an estimate of expenses such as advertising, travel, textbooks, office and classroom supplies, printing, telephone, utilities, taxes;
- (F) a projection of the gross amount of tuition and fees to be collected during each of the first two years of operation; and
- (G) such other evidence as may be deemed appropriate by the Commission to establish financial stability.
- (h) Prior to a change in ownership of a facility, the purchaser shall furnish the Commission a current balance sheet meeting the requirements outlined in this subchapter for original approvals, excluding the sufficient cash requirement for initial expenses. The purchaser shall furnish any other evidence deemed appropriate by the Commission to establish financial stability.
- (i) The deletion or addition of any person that would be considered an owner is considered a change in facility ownership. The facility must notify the Commission of the change in ownership within 14 days of the transaction.
- (j) The Commission may require submission of a full application for approval of a change in ownership.
- (k) Management agreements must be disclosed to the Commission. Parties to a management agreement shall be of good reputation and character.
- (l) The deletion, addition or moving of a facility will be reported to the Commission 14 days prior to the transaction.
- (m) If the Commission determines that the deletion, addition or moving of a facility presents an unreasonable transportation hardship which would prevent a student from completing the training at the new location, the school shall provide a full refund of all monies paid and a release from all obligations to the student.
- (n) The Commission shall be notified in writing of any legal action to which the facility, any of its owners, representatives or management employees is a party.
- (o) The notification shall be within 14 days after the action is known to be filed or the facility, owner, representative or management employee is served.
- (p) The facility shall include, with the required notice, a file-marked copy of the petition, complaint, or other legal instrument, including copies of any judgments.
- (q) If the Commission determines that reasonable cause exists to question the validity of any financial information submitted, or the financial stability of the facility, the Commission may require at the facility's expense:
  - (1) an audit of the facility that has been certified by an accountant; or
  - (2) The owner must furnish any other evidence deemed appropriate by the Commission to establish financial stability.
- (r) The entity certified under this subchapter shall maintain, in a permanent format that is acceptable and readily accessible to the Commission, a record of any funds received from, or on behalf of, the student. The entity shall clearly identify the payer, the type of funding, and the reason for the charges. These records shall be posted and kept current.
- (s) An entity certified under this subchapter shall issue written receipts of any charges or payments to the student and maintain such records for review upon request by the Commission. Each separately charged item shall be clearly itemized on the student-signed receipt.

- (t) An entity certified under this subchapter shall develop and maintain a cancellation and refund policy.
- (u) The student shall be entitled to a full refund of all monies paid to the facility if classes or courses are cancelled by the facility.
- (v) Classes or courses cancelled by the student, refund policies will be based on a prorated basis or percentage of the class or program completed by the student.
- (w) An entity certified under this subchapter shall comply with Chapter 437.3 concerning certification and renewal fees.
- (x) Upon application for renewal, an entity certified under this subchapter will provide a balance sheet with a sworn statement.

**§427.405. Policy Regarding Complaints.**

- (a) Complaints. The entity shall:
  - (1) Submit a written grievance procedure designed to resolve disputes between current and former students and the school for Commission approval;
  - (2) Provide a copy of the grievance procedure to each student and maintain proof of such delivery;
  - (3) Maintain records regarding grievance filings and resolutions; and
  - (4) Diligently work to resolve all complaints at the local school level.
- (b) Investigations
  - (1) The Commission may investigate a complaint about an entity and may determine the extent of investigation needed by considering various factors, such as:
    - (A) the seriousness of the alleged violation;
    - (B) the source of the complaint;
    - (C) the school's history of compliance and complaints;
    - (D) the timeliness of the complaint; and
    - (E) any other reasonable matter deemed appropriate.
  - (2) The Commission may require documentation or other evidence of the violation before initiating a complaint investigation.

**§427.407. School Responsibilities Regarding Instructors.**

- (a) The facility Chief Training Officer (CTO) shall ensure that there are an appropriate number of instructors.
- (b) The facility CTO shall ensure that instructors are qualified to instruct in the subjects they are teaching or assisting.
- (c) The facility CTO shall ensure continuity of instruction and that instructors provide students with a quality education.

- (d) The facility CTO shall formally evaluate each instructor in writing at least annually and shall make the evaluations available for review by the Commission.
- (e) The facility CTO shall ensure that students are allowed the opportunity to formally evaluate each instructor in writing and make the evaluations available for review by the Commission.

**§427.409. Advertising.**

(a) General Information for Advertising.

- (1) A school shall not make deceptive statements in attempting to enroll students.
- (2) The Commission may require a school to furnish proof to the Commission of any of its advertising claims.

(b) Advertisement Method.

- (1) A school may advertise for prospective students under "instruction," "education," "training," or a similarly titled classification.
- (2) No school advertisements shall use the word "wanted," "help wanted," or "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate, in any manner, that the school has or knows of employment of any nature available to prospective students; only "placement assistance," if offered, may be advertised.
- (3) A school shall not use terms to describe the significance of the approval that specify or connote greater approval. Terms that schools may not use to connote greater approval by the Commission include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended." A school shall not use the words "guarantee," "guaranteed," or "free" unless approved in writing by the Commission.
- (4) Any advertisement that includes a reference to awarding of credit hours shall include the statement, "limited transferability." Where a school has an arrangement with a college or university to accept transfer hours, such information may be advertised, but any limitations shall be included in the advertisement.

(c) Advertisement Content.

- (1) Advertisement content shall include, and clearly indicate, the full and correct name of the school and its address, including city, as they appear on the certificate of approval.
- (2) Advertisements shall not include:
  - (A) statements that the school or its programs are accredited unless the accreditation is that of an agency recognized by the United States Department of Education;
  - (B) statements that the school or its courses of instruction have been approved unless the approval can be substantiated by an appropriate certificate of approval issued by an agency of the state or federal government;
  - (B) statements that represent the school as an employment agency under the same name, or a confusingly similar name, or at the same location of the school; or

(D) statements as being Commission-approved or IFSAC approved in order to solicit students prior to receiving actual Commission approval. Any such activity by the school, prior to the Commission's approval of the training course, shall constitute misrepresentation by the training facility and shall entitle each student in the course to a full refund of all monies paid and a release from all obligations to the student".

(3) A school holding a franchise to offer specialized programs or subjects not available to other schools shall not advertise such programs in such a manner as to diminish the value and scope of programs offered by other schools not holding such a franchise. Advertising of special subjects or programs offered under a franchise shall be limited to the subject or programs offered.

(4) a school shall not use endorsements, commendations, or recommendations by students in favor of a school except with the consent of the student and without any offer of financial or other material compensation. Endorsements shall bear the legal or professional name of the student.

(5) a school shall not use a photograph, cut, engraving, illustration or graphic in advertising in such a manner as to:

(A) convey a false impression of size, importance, or location of the school, equipment, or facilities associated with the school, or

(B) circumvent any of the requirements of this subchapter regarding written or oral statements.

(6) Every advertisement must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.

(d) Financial Incentives. Advertisements shall not:

(1) state that students shall be guaranteed employment while enrolled in the school;

(2) state that employment shall be guaranteed for students after graduation; or

(3) misrepresent opportunities for employment upon completion of any program; or

(4) contain dollar amounts as representative or indicative of the earning potential of graduates unless those dollar amounts have been published by the United States Department of Labor. This provision shall not be construed as prohibiting the school from providing earning potential to the student individually on the student's receipt of enrollment policies or other such Commission-approved document.

(e) Advertisements for student tuition loans shall:

(1) contain the language "financial aid available, if qualified";

(2) appear in type no larger than the font used for the name of the school and in similar color and style; and

(3) does not preclude disclosure of the school's eligibility under the various state and federal loan programs.

(f) Advertisement Monitoring.

(1) The Commission may order corrective action to counteract the effect of advertising in violation of the Act or rules, including:

- (A) retraction by the school of such advertising claims published in the same manner as the claims themselves; and
  - (B) cancellation of telephone numbers without an automatic forwarding message.
- (2) As corrective action for violations of the Act or rules, the Commission may require schools to submit all advertisements to the Commission for pre-approval at least 30 days before proposed submission of the advertisements to the advertising medium.
  - (3) Nothing in these guidelines shall prohibit release of information to students as required by a state or federal agency.

**§427.411. Cancellations or Suspensions.**

- (a) If an approved course of instruction is discontinued for any reason, the Commission shall be notified within 72 hours (9 days) of discontinuance and furnished with the names and addresses of any students who were prevented from completion of the course of instruction due to discontinuance. Should the school fail to make arrangements satisfactory to the students and the Commission for the completion of the course of instruction, the full amount of all tuition and fees paid by the students are then due and refundable. Any course of instruction discontinued will be removed from the list of approved courses of instruction.
- (b) The Commission may suspend enrollments in a particular course of instruction at any time the Commission finds cause. For purposes of this subsection, cause includes, but is not limited to:
  - (1) inadequate instruction;
  - (2) unapproved or inadequate curriculum;
  - (3) inadequate equipment; or
  - (4) inadequate facilities.
- (c) If a school begins teaching a course of instruction or revised course of instruction that has not been approved by the Commission, the Commission may require the school to refund to the enrolled students all or a portion of the tuition fees.

**§427.413. Liabilities.**

- (a) Curriculum and Testing
  - (1) The school shall be able to provide license agreements with the publisher of any curriculum used. The school may not reproduce the curriculum, or any part thereof, without describing the purpose or having the written consent by said publisher.
  - (2) The school shall be able to provide a valid purchase receipt or license agreement of any published test banks, or any part thereof, used in the evaluation process of any course taught.
- (b) Equipment and Facilities
  - (1) The school shall be able to provide written agreements for the use of any equipment not owned by the school, but used during the instruction of any student. The agreement shall dictate the terms, liability, fees, and availability of maintenance records of such equipment.

- (2) The school shall be able to provide written agreements of the use of any facilities or area, not otherwise public, but used during the instruction of any student. The agreement shall dictate the terms, liability, and fees of such facilities or area.
- (c) Insurance Coverage. The school shall be able to provide a general liability policy issued by a company licensed to do business in the State of Texas.

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 431, Subchapter A, Minimum Standards For Arson Investigation Certification, including, but not limited to §431.1, Minimum Standards For Arson Investigation Personnel; §431.3, Minimum Standards For Basic Arson Investigator Certification; §431.13, International Fire Service Accreditation Congress (IFSAC) Seal; Subchapter B, Minimum Standards for Fire Investigator Certification; §431.201, Minimum Standards for Fire Investigation Personnel, and §431.211 International Fire Service Accreditation Congress (IFSAC) Seal—Fire Investigator.**

# **CHAPTER 431**

## **FIRE INVESTIGATION**

### **Subchapter A**

#### **MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION**

##### **§431.1. Minimum Standards for Arson Investigation Personnel.**

- (a) Fire protection personnel who are assigned arson investigation duties must be certified, as a minimum, as a basic arson investigator as specified in §431.3 of this title (relating to Minimum Standards for Basic Arson Investigator Certification) within one year from the date of initial appointment to such position.
- (b) Prior to being appointed to arson investigation duties, fire protection personnel must complete a commission approved basic fire investigator training program, ~~and~~ successfully pass the commission examination pertaining to that curriculum, **and possess a current peace officer license from the Texas Commission on Law Enforcement Officer Standards and Education or document that the individual is a federal law enforcement officer.**
- (c) Personnel holding any level of arson investigation certification shall be required to comply with the continuing education requirements in §441.15 of this title (relating to Continuing Education ~~Requirements~~) for Arson Investigator or Fire Investigator).

##### **§431.3. Minimum Standards for Basic Arson Investigator Certification.**

In order to be certified by the Commission as a Basic Arson Investigator an individual must:

- (1) possess a current basic peace officer's license from the Texas Commission on Law Enforcement Officer Standards and Education or documentation that the individual is a federal law enforcement officer;
- (2) hold a current **license**~~[Commission]~~ as a peace officer **and notify the Commission on the prescribed form regarding the law enforcement agency currently holding the individual's peace officer license**~~with the employing entity for which the arson investigations will be done~~; and
- (3) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire Investigator; or
- (4) complete a Commission-approved basic fire investigation training program and successfully pass the Commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved fire investigation training program shall consist of one of the following:
  - (A) completion of the Commission-approved Fire Investigator Curriculum, as specified in Chapter 5 of the Commission's Certification Curriculum Manual;
  - (B) successful completion of an out-of-state, NFA, or military training program which has been submitted to the Commission for evaluation and found to meet the minimum requirements as listed in the Commission-approved Fire Investigator Curriculum as specified in Chapter 5 of the Commission's Certification Curriculum Manual; or

- (C) successful completion of the following college courses: Arson Investigator, 3 semester hours; Hazardous Materials, 3 semester hours; Building Construction, 3 semester hours; Fire Protection Systems, 3 semester hours. Total semester hours, 12. The three semester hour course "Building Codes and Construction" may be substituted for Building Construction. Arson Investigator I or II may be used to satisfy the requirements of Arson Investigation. Hazardous Materials I or II may be used to satisfy the requirements of Hazardous Materials.

**§431.5. Minimum Standards for Intermediate Arson Investigator Certification.**

- (a) Applicants for Intermediate Arson Investigator Certification must complete the following requirements:
  - (1) hold as a prerequisite a Basic Arson Investigator Certification as defined in §431.3 of this title (relating to Minimum Standards for Basic Arson Investigator Certification); and
  - (2) acquire a minimum of four years of fire protection experience and complete the requirements listed in one of the following options:
    - (A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or
    - (B) Option 2—Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or
    - (C) Option 3—Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section); or
    - (D) Option 4—Hold current Intermediate Peace Officer certification from the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) with four additional law enforcement courses applicable for fire investigations. (See exception outlined in subsection (c) of this section.)
- (b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.
- (c) The training required in this section must be in addition to any training used to qualify for any lower level of Arson Investigator Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

**§431.7. Minimum Standards for Advanced Arson Investigator Certification.**

- (a) Applicants for Advanced Arson Investigator certification must complete the following requirements:
  - (1) hold as a prerequisite an Intermediate Arson Investigator Certification as defined in §431.5 of this title (relating to Minimum Standards for Intermediate Arson Investigator Certification); and
  - (2) acquire a minimum of eight years of fire protection experience and complete the requirements listed in one of the following options:
    - (A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or

- (B) Option 2—Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or
  - (C) Option 3—Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section); or
  - (D) Option 4--Advanced Arson for Profit or Complex Arson Investigative Techniques (Bureau of Alcohol, Tobacco, Firearms, and Explosives resident or field course, 80 hours); or
  - (E) Option 5—Hold current Advanced Peace Officer certification from the Texas Commission on Law Enforcement Officer Standards & Education (TCLEOSE) with four additional law enforcement courses applicable for fire investigations. (See exception outlined in subsection (c) of this section.)
- (b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.
  - (c) The training required in this section must be in addition to any training used to qualify for any lower level of Arson Investigator Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

**§431.9. Minimum Standards for Master Arson Investigator Certification.**

- (a) Applicants for Master Arson Investigator Certification must complete the following requirements:
  - (1) hold as a prerequisite an Advanced Arson Investigator Certification as defined in §431.7 of this title (relating to Minimum Standards for Advanced Arson Investigator Certification); and
  - (2) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.
- (b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Arson Investigator Certification.

**§431.11. Minimum Standards for Arson Investigator Certification for Law Enforcement Personnel.**

- (a) A law enforcement officer employed or commissioned by a law enforcement agency as a peace officer who is designated as an arson investigator by an appropriate local authority is eligible for certification on a voluntary basis by complying with this chapter.
- (b) An individual holding commission certification as a fire investigator who becomes a law enforcement officer employed or commissioned by a law enforcement agency as a peace officer, and who is designated as an arson investigator by an appropriate local authority will qualify for a similar level arson investigator certificate. To obtain a printed certificate the individual must make application to the commission to include confirmation of commission.

**§431.13. International Fire Service Accreditation Congress (IFSAC) Seal.**

- (a) Individuals holding a current commission Arson Investigator certification **received prior to March 10, 2003** may be granted an International Fire Service Accreditation Congress (IFSAC) seal as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees.
- (b) Individuals completing a commission-approved basic fire investigator program and passing the applicable state examination may be granted an IFSAC seal as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees.

## SUBCHAPTER B

### MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

#### §431.201. Minimum Standards for Fire Investigation Personnel.

- (a) Fire protection personnel who **receive temporary or probationary appointment to** ~~are appointed~~ fire investigation duties must be ~~as a minimum,~~ certified as a ~~structure fire protection personnel or~~ fire investigator by the **Commission within one year of appointment to such duties** ~~commission~~.
- (b) Prior to being appointed to fire investigation duties, personnel ~~who are not certified as structure fire protection personnel~~ must:
  - (1) complete a commission approved basic fire investigator training program and successfully pass the commission examination pertaining to that curriculum; **or**
  - (2) **hold current certification as structure fire protection personnel.**
- (c) Individuals holding a Fire Investigator certification shall be required to comply with the continuing education requirements in §441.15 of this title (relating to Continuing Education ~~Requirements~~) for Arson Investigator or Fire Investigator).
- (d) Individuals certified under this subchapter shall limit their investigation to determining fire cause and origin. If evidence of a crime is discovered, custody and control of the investigation shall be immediately transferred to a certified arson investigator or licensed peace officer.
- (e) Individuals who previously held arson investigator certification, who no longer hold a current commission as a peace officer, will qualify for certification as a fire investigator of similar level upon notice to the commission. To obtain a printed certificate the individual will be required to make application to the commission.

#### §431.203. Minimum Standards for Fire Investigator Certification.

- (a) In order to be certified by the Commission as a Fire Investigator an individual must complete the requirements specified in §431.3(a)(3) or (4) of this title (relating to Minimum Standards for Basic Arson Investigator Certification).
- (b) A person who holds or is eligible to hold a certificate as a Fire Investigator may be certified as an Arson Investigator by meeting the requirements of Chapter 431, Subchapter A, but shall not be required to repeat the applicable examination requirements.

#### §431.205. Minimum Standards for Intermediate Fire Investigator Certification.

- (a) Applicants for Intermediate Fire Investigator must complete the following requirements:
  - (1) hold as a prerequisite a Basic Fire Investigator Certification as defined in §431.203 of this title (relating to Minimum Standards for Fire Investigator Certification); and
  - (2) acquire a minimum of four years of fire protection experience and complete the training listed in one of the following options:

- (A) Option 1—Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or
  - (B) Option 2—Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List and four B-List courses. (See the exception outlined in subsection (c) of this section.); or
  - (C) Option 3—Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses. (See the exception outlined in subsection (c) of this section.)
- (b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission’s Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.
- (c) The training required in this section must be in addition to any training used to qualify for any lower level of Fire Investigator Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

**§431.207. Minimum Standards for Advanced Fire Investigator Certification.**

- (a) Applicants for Advanced Fire Investigator must complete the following requirements:
  - (1) hold as a prerequisite an Intermediate fire Investigator Certification as defined in §431.203 of this title (relating to Minimum Standards for Fire Investigator Certification); and
  - (2) acquire a minimum of eight years of fire protection experience and complete the training listed in one of the following options:
    - (A) Option 1—Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or
    - (B) Option 2—Completion of coursework from the either A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List and four B-List courses. (See the exception outlined in subsection (c) of this section.); or
    - (C) Option 3—Completion of coursework from either the A-List the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses. (See the exception outlined in subsection (c) of this section.)
- (b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission’s Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.

- (c) The training required in this section must be in addition to any training used to qualify for any lower level of Fire Investigator Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

**§431.209. Minimum Standards for Master Fire Investigator Certification.**

- (a) Applicants for Master Fire Investigator Certification must complete the following requirements:
  - (1) hold as a prerequisite an Advanced Fire Investigator Certification as defined in §431.207 of this title (relating to Minimum Standards for Advanced Fire Investigator Certification); and
  - (2) acquire a minimum of twelve years of fire protection experience, and sixty college semester hours or an associate degree, which includes at least eighteen college semester hours in fire science subjects.
- (b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Fire Investigator Certification.

**§431.211. International Fire Service Accreditation Congress (IFSAC) Seal -- Fire Investigator.**

- (a) Individuals holding a current commission Fire Investigator certification **received prior to March 10, 2003** may be granted an International Fire Service Accreditation Congress (IFSAC) seal as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees.
- (b) Individuals completing a commission-approved basic fire investigator program and passing the applicable state examination may be granted an IFSAC seal as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees.

- 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 435, Fire Fighter Safety, including, but not limited to new §435.25, Courage to be Safe So Everyone Goes Home Program.**

## Chapter 435

### FIRE FIGHTER SAFETY

#### §435.1. Protective Clothing.

- (a) A regulated fire department shall:
- (1) purchase, provide, and maintain a complete set of protective clothing for all fire protection personnel who would be exposed to hazardous conditions from fire or other emergencies or where the potential for such exposure exists. A complete set of protective clothing shall consist of garments including bunker coats, bunker pants, boots, gloves, helmets, and protective hoods, worn by fire protection personnel in the course of performing fire-fighting operations;
  - (2) ensure that all protective clothing which are used by fire protection personnel assigned to fire suppression duties comply with the minimum standards of the National Fire Protection Association suitable for the tasks the individual is expected to perform. The National Fire Protection Association standard applicable to protective clothing is the standard in effect at the time the entity contracts for new, rebuilt, or used protective clothing; and
  - (3) maintain and provide upon request by the Commission, a departmental standard operating procedure regarding the use, selection, care, and maintenance of protective clothing which complies with NFPA 1851, Standard on Selection, Care, and Maintenance of Structural Fire Fighting Protective Ensembles.
- (b) An entity may continue to use protective clothing in use or contracted for before a change in the National Fire Protection Association standard, unless the Commission determines that the protective clothing constitutes an undue risk to the wearer, in which case the Commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard.
- (c) Protective clothing in use or contracted for prior to January 1, 2002, shall be exempted from the record keeping requirements contained in Section 2.3, Records, of NFPA 1851.
- (d) In accordance with §419.043, Texas Government Code and subsection (b) of this section as set out hereinabove and consistent with past practice with respect to the implementation of NFPA standards when immediate implementation of a standard as written is impractical for Texas, the modifications contained in Sections 10.1.2, 10.1.3, and 10.1.3.1 of the 2008 Edition of NFPA 1851 (effective June 24, 2007) shall be implemented as follows:
- (1) with respect to Section 10.1.2, structural fire fighting ensembles and ensemble elements shall be retired in accordance with Section 10.2.1 of the 2008 Edition of NFPA 1851, no more than 12 years from the date the ensembles or ensemble elements were manufactured, or no more than 10 years from the date the ensemble or ensemble elements were first put into service;
  - (2) with respect to Section 10.1.3, proximity fire fighting ensembles and ensemble elements shall be retired in accordance with Section 10.2.1 of the 2008 Edition of NFPA 1851, no more than 12 years from the date the ensembles or ensemble elements were manufactured, or no more than ten years from the date the ensemble or ensemble elements were first put into service; and
  - (3) with respect to Section 10.1.3.1, the radiant reflective outer shells shall be retired in accordance with Section 10.2.1 of the 2008 Edition of NFPA 1851, no more than 7 years from the date the outer shells are manufactured or no more than 5 years from the date the outer shells were first put into service.

- (e) Subsections (d) and (e) of this section will expire March 1, 2011.

**§435.3. Self-Contained Breathing Apparatus.**

The employing entity shall:

- (1) purchase, provide, and maintain a complete self-contained breathing apparatus for each on-duty fire protection personnel who engage in operations where IDLH atmospheres may be encountered, where the atmosphere is unknown or would be exposed to hazardous atmospheres from fire or other emergencies or where the potential for such exposure exists;
- (2) ensure that all self-contained breathing apparatus used by fire protection personnel complies with the minimum standards of the National Fire Protection Association identified in NFPA 1981, Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire Fighters.
  - (A) the National Fire Protection Association standard applicable to a self-contained breathing apparatus is the standard in effect at the time the entity contracts for new, rebuilt, or used self-contained breathing apparatus;
  - (B) an entity may continue to use a self-contained breathing apparatus in use or contracted for before a change in the National Fire Protection Association standard, unless the Commission determines that the continued use of the self-contained breathing apparatus constitutes an undue risk to the wearer, in which case the Commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard;
- (3) develop an air quality program that complies with the most recent edition of the NFPA 1989 Standard on Breathing Air Quality for Emergency Services Respiratory Protection;
- (4) maintain and supply upon request by the Commission, records and reports documenting compliance with Commission requirements concerning self-contained breathing apparatus and breathing air. Records of all tests shall be made and the records shall be retained for a period of no less than three years;
- (5) maintain and provide upon request by the Commission, a departmental standard operating procedure regarding the use of self-contained breathing apparatus; and
- (6) maintain and provide upon request by the Commission, a department standard operating procedure regarding the selection, care, and maintenance of self-contained breathing apparatus that complies with the most recent edition of the NFPA 1852 Standard on Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus (SCBA).

**§435.5. Commission Recommendations.**

The commission recommends that all employing entities use as a guide the following publications:

- (1) NFPA 1403 "Live Fire Training Evolutions";
- (2) NFPA 1500 "Fire Department Occupational Safety and Health Program;"
- (3) IAFF/IAFC - "Fire Service Joint Labor Management Wellness-Fitness Initiative."

**§435.7. Fire Department Staffing Studies.**

- (a) Section 419.022(a)(4) Texas Government Code provides that the commission may "on request, assist in performing staffing studies of fire departments." Staffing studies must take into consideration all the

objectives and missions of the fire department. The commission does not have the resources or the staff to directly assist in performing the necessary tasks to perform a staffing study. Many staffing studies have been developed that can be used to assist in evaluating the needs of a fire department.

- (b) A city should ultimately decide on the level of fire protection it is willing to provide to its citizens. The city and fire department should, as a minimum, address the needs of prevention, investigation and suppression as outlined in the appropriate NFPA Standards. That decision should be based on facts, the safety of its citizens, and the safety of the fire fighters providing that protection.
- (c) The commission will assist by maintaining information pertinent to fire department staffing. The information shall be maintained in the Ernest A. Emerson Fire Protection Resource Library at the Texas Commission on Fire Protection. Copies shall be made available, free of charge, to anyone requesting such information to the extent permitted by copyright laws.

#### **§435.9. Personal Alert Safety System (PASS).**

The employing entity shall:

- (1) purchase, provide, and maintain a PASS device for each on duty fire protection personnel who engage in operations where IDLH atmospheres may be encountered, or where the atmosphere is unknown, or where hazardous conditions from fire or other emergencies exist, or where the potential for such exposure exists;
- (2) ensure that all PASS devices used by fire protection personnel comply with the minimum standards of the National Fire Protection Association identified in NFPA 1982, Standard on Personal Alert Safety Systems (PASS) for Fire Fighters:
  - (A) the National Fire Protection Association standard applicable to a PASS device is the standard in effect at the time the entity contracts for new, rebuilt, or used PASS devices;
  - (B) an entity may continue to use a PASS device that meets the requirements of an earlier edition of NFPA 1982, unless the commission determines that the continued use of the PASS device constitutes an undue risk to the wearer, in which case the commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard;
- (3) ensure that the PASS device assigned to an individual user be inspected at the beginning of each duty period and before each use.
- (4) maintain and provide upon request by the commission, a departmental standard operating procedure regarding the proper use, selection, care and maintenance of PASS devices.

#### **§435.11. Incident Management System (IMS)**

- (a) The fire department shall develop, maintain and use an incident management system.
- (b) The incident management system shall:
  - (1) include a written operating procedure for the management of emergency incidents;
  - (2) require that the IMS be used at all emergency incidents;

- (3) require operations to be conducted in a manner that recognizes hazards and assists in the prevention of accidents and injuries;
- (4) require that all fire protection personnel be trained in the use of the IMS; and
- (5) require that the IMS be applied to all drills, exercises and all other situations that involve hazards similar to those encountered at an actual emergency.
  - (c) The IMS shall meet the requirements of the applicable sections of the National Fire Protection Association 1561, Standard on Fire Department Incident Management System.
  - (d) The Commission recommends departments follow the National Incident Management System (NIMS) when developing their incident management system.

**§435.13. Personnel Accountability System.**

- (a) The fire department shall develop, maintain and use a personnel accountability system that provides for a rapid accounting of all personnel at an emergency incident.
- (b) The accountability system shall:
  - (1) require all fire protection personnel be trained in the use of the accountability system;
  - (2) require that the fire protection personnel accountability system be used at all incidents;
  - (3) require that all fire protection personnel operating at an emergency incident to actively participate in the personnel accountability system; and
  - (4) require that the incident commander be responsible for the overall personnel accountability system for the incident.
- (c) The fire department shall be responsible for developing the system components required to make the personnel accountability system effective.
- (d) The personnel accountability system shall meet the minimum standards required by the National Fire Protection Association 1561, Standard on Fire Department Incident Management System. If the standard is revised, the fire department shall have one (1) year from the effective date of the new standard to comply.

**§435.15. Operating At Emergency Incidents.**

- (a) The fire department shall develop, maintain and use a standard operating procedure for fire protection personnel operating at emergency incidents.
- (b) The standard operating procedure shall:
  - (1) specify an adequate number of personnel to safely conduct emergency scene operations;
  - (2) limit operations to those that can be safely performed by personnel at the scene;

- (3) require all personnel to be trained in and use the standard operating procedures; and
  - (4) comply with §435.17 (Procedures for Interior Structural Fire Fighting).
- (c) The fire department may use standards established by the National Fire Protection Association for fire protection personnel operating at an emergency incident.

**§435.17. Procedures for Interior Structural Fire Fighting (2-In/2-Out Rule).**

- (a) The fire department shall develop written procedures that comply with the Occupational Safety and Health Administration's Final Rule, 29 CFR Section 1910.134(g)(4) by requiring:
- (1) a team of at least four fire protection personnel must be assembled before an interior fire attack can be made when the fire has progressed beyond the incipient stage;
  - (2) at least two fire protection personnel to enter the IDLH atmosphere and remain in visual or voice (not radio) contact with each other;
    - (A) Visual means that the fire protection personnel must be close enough to see each other.
    - (B) Voice means that the fire protection personnel of the entry team must be close enough to speak to one another without the use of radios.
  - (3) at least two fire protection personnel remain located outside the IDLH atmosphere to perform rescue of the fire protection personnel inside the IDLH atmosphere;
  - (4) all fire protection personnel engaged in interior structural fire fighting use self-contained breathing apparatus and be clothed in a complete set of protective clothing as identified in Chapter 435;
  - (5) all fire protection personnel located outside the IDLH atmosphere be equipped with appropriate retrieval equipment where retrieval equipment would contribute to the rescue of the fire protection personnel that have entered the IDLH atmosphere;
  - (6) one of the outside fire protection personnel must actively monitor the status of the inside fire protection personnel and not be assigned other duties. The second outside fire protection personnel may be assigned to an additional role, including, but not limited to, incident commander, safety officer, driver-operator, command technician or aide, or fire fighter/EMS personnel, so long as this individual is able to perform assistance or rescue activities without jeopardizing the safety or health of any fire protection personnel working at the scene;
  - (7) the fire protection personnel outside the IDLH atmosphere must remain in communication (including, but not limited to, radio) with the fire protection personnel in the IDLH atmosphere. Use of a signal line (rope) as a communications instrument for interior fire fighting is not permitted by the commission. This does not preclude the use of rescue guide ropes (guide line or lifeline or by what ever name they may be called) used during structural searches; and
  - (8) each outside fire protection personnel must have a complete set of protective clothing and self-contained breathing apparatus, as identified in Chapter 435, immediately accessible for use if the need

for rescue activities inside the IDLH atmosphere is necessary.

- (b) The fire department shall comply with the 2-in/2-out rule as described in this section except in an imminent life-threatening situation when immediate action could prevent the loss of life or serious injury before the team of four fire protection personnel are assembled.

**§435.19. Enforcement of Commission Rules.**

- (a) The Commission shall enforce all Commission rules at any time, including, but not limited to, Commission investigations, fire department inspections, or upon receiving a written complaint from an identified person or entity of an alleged infraction of a Commission rule.
- (b) The Commission shall not provide prior notification of an inspection to a fire department.
- (c) Upon receipt of a signed complaint alleging a violation of a Commission rule, the Commission shall have 30 days to initiate an investigation and report back to the complainant its progress.
- (d) Upon substantiating the validity of a written complaint, the Commission shall follow the procedures outlined in Government Code, Chapter 419, §419.011(b) and (c).

**§435.21. Fire Service Joint Labor Management Wellness-Fitness Initiative.**

- (a) A fire department shall assess the wellness and fitness needs of the personnel in the department. The procedure used to make this assessment shall be written and made available for commission inspection.
- (b) A fire department shall develop and maintain a standard operating procedure to address those needs.
- (c) The approach to the fitness needs of the department shall be based on the local assessment and local resources.
- (d) The standard operating procedure shall be made available to the commission for inspection.

**§435.23. Fire Fighter Injuries.**

- (a) A fire department shall report all Texas Workers' Compensation Commission 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) Investigatable 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. Investigatable 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.

**§435.25. Courage to be Safe So Everyone Goes Home Program**

- (a) In an effort to improve firefighter safety in the State of Texas, all regulated entities will ensure that the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program be completed as part of the continuing education required for certified fire protection personnel by December 1, 2015. Individuals will be credited with four hours of continuing education credit for completing this program.**
- (b) All regulated fire protection personnel must complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program prior to December 1, 2015.**
- (c) All fire protection personnel appointed after December 1, 2015 will be required to complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program training within one year of appointment to a fire department.**
- (d) Departments will report the completion of training through the Commission web based reporting system.**
- (e) Failure to complete the National Fallen Firefighters Foundation's "Courage to be Safe So Everyone Goes Home" program before the required deadlines will be considered a violation of continuing education rules found in Chapter 441 of the Commission's Standards Manual.**

**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 §437.1, Purpose and Scope; §437.5, Renewal Fees, §437.7, Standards Manual and Certification Curriculum Manual Fees.**

## CHAPTER 437

### FEEES

#### §437.1. Purpose and Scope.

- (a) The purpose of **this chapter** [these sections] is to set forth requirements governing the fees charged for the issuance of certificates to fire protection personnel, to establish the procedures for the collection of annual renewal fees[, fees for commission manuals,] and copying fees as prescribed by the Government Code, §419.025 and §419.026, and commission rule.
- (b) **This chapter** [These sections] shall govern all proceedings before and dealing with the commission concerning certification fees, renewal fees, [fees for commission manuals, ]and copying fees. Hearings and appellate proceedings regarding these fees shall be governed by **this chapter** [these sections] where applicable and by the rules of the practice and procedure of the commission and the Administrative Procedure Act and Texas Register Act, Chapter 2001, of the Texas Government Code.
- (c) If a fee submitted in the form of a check is returned for insufficient funds the certification, seal or test for which the fee was collected will be invalidated.

#### §437.3. Certification Fees.

- (a) A \$35.00 non-refundable application fee is required for each certificate issued by the 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 the certification. If the certificate is denied, the applicant must pay a new certification application fee to file a new application.
- (b) The regulated employing entity shall be responsible for all certification fees required as a condition of appointment.
- (c) Nothing in this section shall prohibit an individual from paying a certification fee for any certificate which he or she is qualified to hold, providing the certificate is not required as a condition of appointment (see subsection (b) of this section concerning certification fees).
- (d) Any person who holds a certificate, and is no longer employed by an entity that is regulated by the Commission may submit in writing, a request, together with the required fee to receive a one-time certificate stating the level of certification in each discipline held by the person on the date that person left employment pursuant to the Texas Government Code, §419.033(b).

Multiple certifications may be listed on the one-time certificate. The one-time fee for the one-time certificate shall be the same as the current certification fee provided in subsection (a) of this section.

- (e) A facility that provides basic level training for any discipline for which the Commission has established a Basic Curriculum must be certified by the Commission. The training facility will be charged a separate certification fee for each discipline.

#### §437.5. Renewal Fees.

- (a) A \$35.00 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 may collect only one \$35.00 renewal fee, which will renew all certificates held by the individual or certified training facility.

- (b) A regulated employing entity shall pay the renewal fee for all certificates which a person must possess as a condition of employment.
- (c) If a person re-enters the fire service whose certificate(s) has been expired for less than one year, the regulated entity must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fees, the certificates previously held by the individual, for which he or she continues to qualify, will be renewed.
- (d) If a person reapplies for a certificate(s) which has been expired less than one year and the individual is not employed by a regulated employing entity as defined in subsection (b) of this section, the individual must pay all applicable renewal fee(s) and any applicable additional fee(s). Upon payment of the required fee(s), the certificate(s) previously held by the individual, for whom he or she continues to qualify, will be renewed.
- (e) Nothing in this section shall prohibit an individual from paying a renewal fee for any certificate which he or she is qualified to hold providing the certificate is not required as a condition of employment.
- (f) Certification renewal statements will be mailed to all regulated employing entities **and individuals holding certification** at least 60 days prior to October 31 of each calendar year. Certification renewal statements will be mailed to certified training facilities at least 60 days prior to February 1 of each calendar year. ~~[Certification renewal statements will be mailed to individuals holding certification at least 60 days prior to April 30 of each calendar year.]~~
- (g) All certification renewal fees must be returned with the renewal statement to the Commission.
- (h) All certification renewal fees must be paid on or before the renewal date posted on the certification renewal statement to avoid additional fee(s).
- (i) The certification period shall be a period not to exceed one year. The certification period for employees of regulated employing entities, **and individuals holding certification** is November 1 to October 31. The certification period of certified training facilities is February 1 to January 31. ~~[The certification period of individual certificate holders is May 1 to April 30.]~~
- ~~(j) Individual certificate holders that possess a certification that expires on October 31 will receive a renewal statement during the regulated entity's renewal cycle for a six month renewal period to align that individual to the individual holding certification renewal cycle as defined in subsection (i) of this section.]~~
- ~~(k) A regulated entity that hires an individual holding certification that is current and has a renewal expiration date of April 30 will receive a renewal statement during the individual holding certification renewal cycle to align the renewal period as defined in subsection (i) of this section.]~~
- (l)(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 late fee in addition to the renewal fee for each individual for which a renewal fee was due.
- (k)(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 late fee in addition to the renewal fee for each individual for which a renewal fee was due.
- (l)(n)** In addition to any non-refundable late fee(s) assessed for certification renewal, the Commission may hold an informal conference to determine if any further action(s) is to be taken.
- (m)(e)** An individual or entity may petition the Commission for a waiver of the late fees required by this section if the person's certificate expired because of the individual or regulated 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.

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

#### **§437.7. Standards Manual and Certification Curriculum Manual [Fees].**

**(a) A current version of the Commission's Standards Manual for Fire Protection Personnel and the Curriculum Manual are available for free on the web site at [www.tcfp.state.tx.us](http://www.tcfp.state.tx.us).**

~~(a) A fee of \$12 will be charged for the compact disk containing the Commission's Standards Manual for Fire Protection Personnel and the Certification Curriculum Manual.]~~

~~[(b) A \$12 annual compact disk subscription fee will be charged to receive revisions. The compact disk subscription will contain an entire revision of both manuals.]~~

**(b)**~~(c)~~ The Commission does not provide printed copies of the manuals. A printed copy of the Commission's standards may be obtained from Thomson West, 610 Opperman Drive, Eagan, MN 55123, (800) 328-9352, by requesting "Title 37, Public Safety and Corrections" of the Texas Administrative Code. The web address for Thomson West is [www.thomsonwest.com](http://www.thomsonwest.com).

#### **§437.11. Copying Fees.**

- (a) All photographic reproduction of records or documents in the files of the commission and prepared on standard office machines will be furnished for a fee.
- (b) A fee will be charged for address and telephone number lists of fire service agencies.
- (c) A fee will be charged for mailing peel-off labels of fire service agencies.

#### **§437.13. Processing Fees for Test Application.**

- (a) A non-refundable application processing fee of \$35.00 shall be charged for each examination.
- (b) Fees will be paid in advance with the application or the provider of training may be invoiced or billed if previous arrangements have been made with the Commission.

#### **§437.15. International Fire Service Accreditation Congress (IFSAC) Seal Fees.**

A non-refundable \$10.00 fee shall be charged for each IFSAC seal issued by the commission.

**§437.17. Records Review Fees.**

- (a) A non-refundable fee of \$35 shall be charged for each training records review conducted by the commission for the purpose of determining equivalency to the appropriate commission training program or to establish eligibility to test. Applicants submitting training records for review shall receive a written analysis from the commission.
- (b) The fee provided for in this section shall not apply to an individual who holds an advanced certificate from the State Firemen's and Fire Marshals' Association of Texas.

**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 401, Practice and Procedure, including, but not limited to §401.1(b) (3), Purpose and Scope.**

**Chapter 401**  
**PRACTICE AND PROCEDURE**  
**Subchapter A**  
**GENERAL PROVISIONS AND DEFINITIONS**

**§401.1. Purpose and Scope.**

- (a) Purpose. The purpose of this chapter is to provide a system of procedures for practice before the Texas Commission on Fire Protection that will promote the just and efficient disposition of proceedings and public participation in the decision-making process. The provisions of this chapter shall be given a fair and impartial construction to attain these objectives.
- (b) Scope.
- (1) This chapter shall govern the initiation, conduct, and determination of proceedings required or permitted by law in matters regulated by the commission, whether instituted by order of the commission or by the filing of an application, complaint, petition, or any other pleading.
- (2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, its staff, or the substantive rights of any person.
- ~~(3) This chapter shall not apply to applications or proceedings concerning Fire Department Emergency Program funds which are governed by Chapter 461 of this title (relating to General Administration), Chapter 463 of this title (relating to Application Criteria), and Chapter 465 of this title (relating to Equipment, Facilities, and Training Standards).]~~
- (3)(4)** This chapter shall not apply to matters related solely to the internal personnel rules and practices of this agency.
- (4)(5)** To the extent that any provision of this chapter is in conflict with any statute or substantive rule of the commission, the statute or substantive rule shall control.
- (5)(6)** In matters referred to the State Office of Administrative Hearings (SOAH), hearings or other proceedings are governed by 1 TAC Chapter 155 (relating to Rules of Procedures) adopted by SOAH effective January 2, 1998. To the extent that any provision of this chapter is in conflict with SOAH Rules of Procedures, the SOAH rules shall control.

**§401.3. Definitions.**

The following terms, when used in this chapter, shall have the following meanings, unless the context or specific language of a section clearly indicates otherwise:

- (1) Advisory Committee--An advisory committee that is required to assist the commission in its rule-making function and whose members are appointed by the commission pursuant to Government Code, §419.008, or other law.
- (2) Agency--Includes the commission, the executive director, and all divisions, departments, and employees thereof.

- (3) APA--Government Code, Chapter 2001, The Administrative Procedure Act, as it may be amended from time to time.
- (4) Applicant--A person, including the commission staff, who seeks action from the commission by written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.
- (5) Application--A written request seeking a license from the commission, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.
- (6) Authorized Representative--A person who enters an appearance on behalf of a party, or on behalf of a person seeking to be a party or otherwise to participate in a commission proceeding.
- (7) Chairman--The commissioner who serves as presiding officer of the commission pursuant to Government Code, §419.007.
- (8) Commission--The Texas Commission on Fire Protection.
- (9) Commissioner--One of the appointed members of the decision-making body defined as the commission.
- (10) Complainant--Any person, including the commission's legal staff, who files a signed written complaint intended to initiate a proceeding with the commission regarding any act or omission by a person subject to the commission's jurisdiction.
- (11) Contested Case--A proceeding, including but not restricted to, the issuance of certificates, licenses, registrations, permits, etc., in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for adjudicative hearing.
- (12) Days--Calendar days, not working days, unless otherwise specified in this chapter or in the commission's substantive rules.
- (13) Division--An administrative unit for regulation of specific activities within the commission's jurisdiction.
- (14) Executive Director--The executive director appointed by the commission pursuant to Government Code, §419.009.
- (15) Hearings Officer--An administrative law judge on the staff of the State Office of Administrative Hearings assigned to conduct a hearing and to issue a proposal for decision, including findings of fact and conclusions of law, in a contested case pursuant to Government Code, Chapter 2003.
- (16) License--Includes the whole or part of any agency permit, certificate, approval, registration, license, or similar form of permission required or permitted by law.
- (17) Licensee--A person who holds an agency permit, certificate, approval, registration, license, or similar form of permission required or permitted by law.
- (18) Licensing--Includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.
- (19) Party--Each person or agency named or admitted as a party in a contested case.
- (20) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the commission.
- (21) Pleading--A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a commission proceeding.

- (22) Presiding Officer--The chairman, the acting chairman, the executive director, or a duly authorized hearings officer.
- (23) Proceeding--Any hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint.
- (24) Respondent--A person under the commission's jurisdiction against whom any complaint or appeal has been filed or who is under formal investigation by the commission.

#### **§401.5. Delegation of Authority.**

All decisions to suspend, revoke, or deny an application for any certificate or approval, to reprimand or place on probation the holder of such certificate or approval, or to impose an order for restitution, remedial action, or administrative penalties pursuant to Government Code, Chapter 419, shall be made by the executive director.

#### **§401.7. Construction.**

- (a) A provision of a rule referring to the commission, the executive director, or a provision referring to the presiding officer, is construed to apply to the commission or chairman if the matter is within the jurisdiction of the commission, to the executive director if the matter is within the jurisdiction of the executive director.
- (b) Unless otherwise provided by law, any duty imposed on the commission, the chairman, or the executive director may be delegated to a duly authorized representative. In such case, the provisions of any rule referring to the commission, the chairman, or the executive director, shall be construed to also apply to the duly authorized representative of the commission, the chairman, or the executive director.

#### **§401.9. Records of Official Action.**

All official acts of the commission or the executive director shall be evidenced by a recorded or written record. Official action of the commission or the executive director shall not be bound or prejudiced by any informal statement or opinion made by any member of the commission, the executive director, or the employees of the agency.

#### **§401.11. Conduct of Commission and Advisory Meetings.**

- (a) Statements concerning items which are part of the commission's posted agenda. Persons who desire to make presentations to the commission concerning matters on the agenda for a scheduled commission meeting or advisory committee meeting shall complete registration cards which shall be made available at the entry to the place where the commission's scheduled meeting is to be held. The registration cards shall include blanks in which all of the following information must be disclosed:
  - (1) name of the person making a presentation;
  - (2) a statement as to whether the person is being reimbursed for the presentation; and if so, the name of the person or entity on whose behalf the presentation is made;
  - (3) a statement as to whether the presenter has registered as a lobbyist in relationship to the matter in question;
  - (4) a reference to the agenda item which the person wishes to discuss before the commission;
  - (5) an indication as to whether the presenter wishes to speak for or against the proposed agenda item; and

- (6) a statement verifying that all factual information to be presented shall be true and correct to the best of the knowledge of the speaker.
- (b) Discretion of the presiding officer. The presiding officer of the commission or the advisory committee, as the case may be, shall have discretion to employ any generally recognized system of parliamentary procedures, including, but not limited to Robert's Rules of Order for the conduct of commission or committee meetings, to the extent that such parliamentary procedures are consistent with the Texas Open Meetings Act or other applicable law and these rules. The presiding officer shall also have discretion in setting reasonable limits on the time to be allocated for each matter on the agenda of a scheduled commission meeting or advisory committee meeting and for each presentation on a particular agenda item. If several persons wish to address the commission or advisory committee on the same agenda item, it shall be within the discretion of the chair to request that persons who wish to address the same side of the issue coordinate their comments, or limit their comments to an expression in favor of views previously articulated by persons speaking on the same side of an issue.
- (c) Requests that issues be placed on an agenda for discussion. Persons who wish to bring issues before the commission shall first address their request to the General Counsel and Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286. Such requests should be submitted at least 30 days in advance of commission meetings, but in no event less than 15 days. The decision whether to place a matter on an agenda for discussion before the full commission, or alternatively before a commission advisory committee, or with designated staff members, shall be within the discretion of the appropriate presiding officer.

#### **§401.13. Computation of Time.**

- (a) Computing Time. In computing any period of time prescribed or allowed by these rules, by order of the Agency, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or a legal holiday, in which event, the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. A party or attorney of record notified by mail under §401.61 of this title (relating to Record) is deemed to have been notified on the date on which notice is mailed.
- (b) Extensions. Unless otherwise provided by statute, the time for filing any pleading, except a notice of protest, may be extended by order of the director, upon the following conditions:
  - (1) A written motion must be duly filed with the director prior to the expiration of the applicable period of time allowed for such filings.
  - (2) The written motion must show good cause for such extension and that the need is not caused by the neglect, indifference, or lack of diligence on the part of the movant.
  - (3) A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof.

#### **§401.15. Agreements To Be in Writing.**

- (a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.
- (b) No stipulation or agreement between the parties, their attorneys or representatives, with regard to any matter involved in any proceeding before the Agency, shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by these rules, unless precluded by law.

**Subchapter B**  
**RULEMAKING PROCEEDINGS**

**§401.17. Requirements.**

Except for the requirements of mandatory rule development by advisory committees provided for by law, the procedure for rulemaking is governed by Subchapter B of the Administrative Procedure Act.

**§401.19. Petition for Adoption of Rules.**

- (a) Any person may petition the Commission requesting the adoption of a new rule or an amendment to an existing rule as authorized by the APA, §2001.021.
- (b) Petitions shall be sent to the executive director. Petitions shall be deemed sufficient if they contain:
  - (1) the name and address of the person or entity on whose behalf the application is filed;
  - (2) specific reference to the existing rule which is proposed to be changed, amended, or repealed; new, changed, or amended proposed rule with new language underlined and deleted language dashed out;
  - (4) the proposed effective date; and
  - (5) a justification for the proposed action set out in narrative form with sufficient particularity to inform the Commission and any other interested person of the reasons and arguments on which the petitioner is relying.
- (c) The executive director shall direct that the petition for adoption of rules be placed on the next agenda for discussion by the Commission or an advisory committee with subject matter jurisdiction in accordance with §401.11 of this title (relating to Conduct of Commission and Advisory Meetings).
- (d) A request for clarification of a rule shall be treated as a petition for a rule change. The Commission staff may request submission of additional information from the applicant to comply with the requirements of subsection (b) of this section.

## SUBCHAPTER C

### EXAMINATION APPEALS PROCESS

#### **§401.21. Examination Challenge.**

- (a) An examinee who seeks to challenge the failure of an examination must submit a written request for an informal conference to the Fire Service Standards and Certification division director to discuss informal disposition of the complaint(s).
- (b) An examination may be challenged only on the basis of examination content, failure to comply with Commission rules by a certified training facility, or problems in the administration of the examination.
- (c) The written request must identify the examinee, the specific examination taken, the date of the examination, and the basis of the appeal.
- (d) An examinee who challenges the content of an examination must identify the subject matter of the question(s) challenged and is not entitled to review the examination due to the necessity of preserving test security.
- (e) The request must be submitted within 30 days from the date the grade report is posted on the website.
- (f) Commission staff shall schedule a conference with the applicant in accordance with §401.41 of this title (relating to Preliminary Staff Conference) to discuss the challenge within 30 days of the request or as soon as practical. The examinee may accept or reject the settlement recommendations of the Commission staff. If the examinee rejects the proposed agreement, the examinee must request a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the action complained of.

#### **§401.23. Examination Waiver Request.**

- (a) An individual who is required to take a Commission examination pursuant to §439.15 of this title (relating to Testing for Proof of Proficiency) or §439.17 of this title (relating to Testing for Certification Status) may petition the Commission for a waiver of the examination if the person's certificate or eligibility expired because of a good faith clerical error on the part of the individual or an employing entity.
- (b) The waiver request must include a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with Commission requirements and that failure to comply was due to circumstances beyond the control of the certificate holder or applicant.
- (c) Commission staff shall schedule a conference with the applicant in accordance with §401.41 of this title (relating to Preliminary Staff Conference) to discuss the waiver request within 30 days of the request, or as soon as practical. The applicant may accept or reject the settlement recommendations of the Commission staff. If the examinee rejects the proposed agreement, the applicant must request a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the action complained of.

**CHAPTER D**  
**DISCIPLINARY PROCEEDINGS**

**§401.31. Disciplinary Proceedings in Contested Cases.**

- (a) If the Commission staff recommends administrative penalties or any other sanction pursuant to Chapter 445 of this title (relating to Administrative Inspections and Penalties) or §401.105 of this title, (relating to Administrative Penalties) for alleged violations of laws or rules administered or enforced by the Commission and its staff, the respondent may request a preliminary staff conference in accordance with §401.41 of this title (relating to Preliminary Staff Conference).
- (b) Commission staff shall schedule a conference with the applicant in accordance with §401.41 of this title (relating to Preliminary Staff Conference) to discuss the alleged violations of laws or rules within 30 days of the request or as soon as practical. The respondent may accept or reject the settlement recommendations of the Commission staff. If the respondent rejects the proposed agreement, the respondent must request a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the notice of the staff's recommended disciplinary action.

## SUBCHAPTER E

### PREHEARING PROCEEDINGS

#### **§401.41. Preliminary Staff Conference.**

- (a) General. After receipt of preliminary notice of alleged violations of laws or rules administered or enforced by the commission and its staff, the holder of the certificate, applicant or regulated entity may request a conference with the commission's staff for the purpose of showing compliance with all requirements of law, or to discuss informal disposition of any complaint or contested case, pursuant to the Government Code, §419.906(c) and §2001.056.
- (b) Representation. The certificate holder, applicant or regulated entity may be represented by counsel or by a representative of his or her choice. The commission shall be represented by one or more members of its staff and by staff legal counsel.
- (c) Informal Proceedings. The conference shall be informal, and will not follow procedure established in Subchapter F of this chapter (relating to Contested Cases) for contested cases. The commission's representative(s) may prohibit or limit attendance by other persons; may prohibit or limit access to the commission's investigative file by the licensee, the licensee's representative, and the complainant, if present; and may record part or all of the staff conference. At the discretion of the commission's representative(s), the licensee, the licensee's representative, and the commission staff may question witnesses; make relevant statements; and present affidavits, reports, letters, statements of persons not in attendance, and such other evidence as may be appropriate.
- (d) Settlement Conference. At the discretion of the commission's representative(s), the preliminary staff conference may be concluded, and a settlement conference initiated to discuss staff recommendations for informal resolution of the issues. Such recommendations may include any disciplinary actions authorized by law, including restitution, remedial actions, or such reasonable restrictions that may be in the public interest. Recommendations for administrative penalties or monetary forfeitures shall be made in accordance with §401.105 of this title (relating to Administrative Penalties). These recommendations may be modified by the commission's representative(s) based on new information, a change of circumstances, or to expedite resolution in the interest of protecting the public. The commission's representative(s) may also recommend that the investigation be closed or referred for further investigation.
- (e) Proposed Consent Order. The licensee may accept or reject the settlement recommendations of the commission staff. If the licensee accepts the recommendations, the licensee shall execute a settlement agreement in the form of a proposed consent order as soon thereafter as practicable. If the licensee rejects the proposed agreement, the matter may be scheduled for a hearing as described in Subchapter F of this chapter (relating to Contested Cases).
- (f) Approval of Consent Order. Following acceptance and execution of the settlement agreement recommended by staff, said proposed agreement shall be submitted to the executive director for approval. If the order is approved, it shall be signed by the executive director. If the proposed order is not approved, the licensee shall be so informed and the matter shall be referred to the commission staff for appropriate action to include dismissal, closure, further negotiation, further investigation, or a formal hearing.

#### **§401.43. Prehearing Conferences.**

The presiding officer shall schedule prehearing conferences as necessary for the efficient management of the proceedings. The presiding officer shall conduct prehearing conferences for any appropriate purpose, including consideration of the following:

- (1) motions and other preliminary matters related to the proceeding, including notice, discovery, and procedural schedules;
- (2) settlement of the case, or clarification and simplification of the issues;
- (3) the necessity or desirability of amended pleadings;
- (4) the possibility of obtaining stipulations that would avoid the unnecessary introduction of evidence;
- (5) evidentiary matters, including a request for interim relief;
- (6) the specific procedures to be followed at the hearing;
- (7) the scheduling of the hearing on the merits; and
- (8) any other matters as may assist the disposition of the proceeding in a fair and efficient manner.

#### **§401.45. Interim Orders.**

The presiding officer shall issue orders covering procedural and discovery matters, requests for interim relief, and such other matters as may aid in the conduct of the hearing and efficient and fair disposition of the proceeding. Interim orders may be written or stated orally on the record.

#### **§401.47. Appeal of an Interim Order.**

- (a) **Availability of Appeal.** Appeals are available for any order of the presiding officer that immediately prejudices a substantial or material right of a party, or materially affects the course of the hearing, other than evidentiary rulings. Interim orders shall not be subject to exceptions or applications for rehearing prior to issuance of a report of a hearing officer.
- (b) **Procedure for Appeal.** If the presiding officer intends to reduce an oral ruling to a written order, the presiding officer shall so indicate on the record at the time of the oral ruling and shall promptly issue the written order. Any appeal to the executive director as to matters within his or her jurisdiction shall be filed within five working days of the issuance of the written order or the appealable oral ruling. The appeal shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.
- (c) **Contents.** An appeal shall specify the reasons why the interim order is unjustified or improper.
- (d) **Responses.** Any response to an appeal shall be filed within five working days of the filing of the appeal.
- (e) **Motions for Stay.** Pending a ruling by the executive director, the presiding officer may, upon motion, grant a stay of the interim order. A motion for a stay shall specify the basis for a stay. Good cause shall be shown for granting a stay. The mere filing of an appeal shall not stay the interim order or the procedural schedule.
- (f) **Denial.** The executive director shall rule on the interim order within 20 days of the filing of the appeal. If the executive director does not rule on the appeal within 20 days of its filing, or extend the time for ruling, the interim order is deemed approved and any granted stay is lifted. The appeal may be carried with the underlying case provided the executive director does not act upon the appeal within the time provided in this section.
- (g) **Reconsideration.** The presiding officer may treat an appeal as a motion for reconsideration and may withdraw or modify the order under appeal prior to a decision on the appeal.

#### **§401.49. Prehearing Statements.**

- (a) Prehearing Statements Required. Each party shall file a prehearing statement no later than three days before the start of a hearing unless the presiding officer determines that such a requirement would add unjustified burden and expense to the proceeding, or that a different deadline should be imposed. The presiding officer may impose sanctions provided in §401.103 of this title (relating to Discovery Sanctions) against any party who fails to comply with the requirement that a prehearing statement be filed.
- (b) Contents of Prehearing Statement. Unless otherwise provided by order of the presiding officer, the prehearing statement shall contain the following information:
  - (1) a concise statement of the party's position in the proceeding;
  - (2) a concise statement of each question of fact, law, or policy the party considers at issue;
  - (3) a concise statement of the party's position on each issue identified pursuant to paragraph (2) of this subsection;
  - (4) a statement of issues that have been resolved by agreement of the parties, including agreements that do not include all parties; and
  - (5) a statement as to any requirement set forth in the prehearing order that cannot be complied with, the reasons for noncompliance, and such other information as will aid in achieving an orderly disposition of the proceeding.

## **SUBCHAPTER F**

### **CONTESTED CASES**

#### **§401.51. Preliminary Notice and Opportunity for Hearing.**

- (a) In General. Except as otherwise provided by law, the procedure for the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a certificate is governed by Government Code, Chapter 2001, pertaining to Administrative Procedures and by 1 TAC Chapter 155 (relating to Rules of Procedures) adopted by SOAH effective January 2, 1998.
- (b) Preliminary Notice. A revocation, suspension, annulment, or withdrawal of a certificate or license is not effective unless, before the institution of agency proceedings, the holder of the certificate receives preliminary notice of the facts or conduct alleged to warrant the intended action and an opportunity to show compliance with all requirements of law, as required by Government Code, §2001.054(c).
- (c) Staff Conference. The holder of the certificate may request a conference with the Commission's staff for the purpose of showing compliance with all requirements of law, or to discuss informal disposition of any complaint or contested case, pursuant to the Government Code, §419.906(c) and §2001.056, and the procedures provided in §401.41 of this title (relating to Preliminary Staff Conference).
- (d) Request for Hearing. Except as otherwise provided by law, if an applicant's original application or request for certificate is denied, he or she shall have 30 days from the date of denial to make a written request for a hearing, and if so requested, the hearing will be granted and the provisions of the APA and this chapter with regard to contested cases shall apply.

#### **§401.53. Notice of Hearing.**

- (a) Notice in a contested case shall comply with the APA, §2001.051 and §2001.052.
- (b) Deposit in the United States mails of a registered or certified letter, return receipt requested, containing a notice of a hearing in compliance with the requirements specified in this rule, or containing a copy of any decision or order addressed to the affected party or the attorney of record for the party at the party's last known address, shall constitute notice of the hearing or of such decision or order. The date of deposit as herein provided is the date of the act, after which any designated period begins to run as provided in §401.13 of this title (relating to Computation of Time).

#### **§401.55. Hearings Officer.**

- (a) The executive director may designate and appoint a hearings officer to act on his or her behalf in conducting any hearing or proceeding held under this chapter and to prepare proposals for decision on those hearings.
- (b) The hearings officer has the authority to administer oaths; call and examine witnesses; issue subpoenas; make rulings on motions, admissibility of evidence, and amendments to pleadings; maintain decorum; schedule and recess the proceedings from day to day; and make any other orders as justice requires.
- (c) If the hearings officer is unable to continue presiding over a case at any time before the final decision, another officer will be appointed who shall perform any remaining function without the necessity of repeating any previous proceedings.

### **§ 401.57. Filing of Exceptions and Replies to Proposal for Decision.**

- (a) A copy of the proposal for decision in a contested case shall be simultaneously delivered or mailed by certified mail, return receipt requested, to each party representative of record.
- (b) Exceptions to the proposal for decision shall be filed within ten calendar days of the date of the proposal for decision.
- (c) Replies to exceptions shall be filed within 20 calendar days of the date of the proposal for decision.
- (d) All disagreements with the factual finds of the proposal for decision must be made in the parties' exceptions to the proposal for decision or be waived.
- (e) The exceptions shall be specifically and concisely stated. The evidence relied upon shall be stated with particularity, and any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.

### **§401.59. Orders.**

After the time for filing exceptions and replies to exceptions expires, the hearings officer's proposal for decision will be considered by the executive director and either adopted or modified and adopted. An order issued by the hearings officer may be modified or vacated only for reasons of policy, with the reasons and legal basis clearly stated in writing. All final decisions or orders of the commission or the executive director shall be in writing and signed. A final decision shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accomplished by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by certified mail of any decision or order, and a copy of the decision or order shall be delivered or mailed to any party and to his or her authorized representative.

### **§401.61. Record.**

- (a) The record in a contested case includes the matters listed in the APA, Government Code, §2001.060.
- (b) Proceedings, or any part of them, shall be transcribed on written request of any party. The party requesting the proceeding to be transcribed shall bear the expense thereof in accordance with the usual and customary charges of a court reporter. Should two or more parties make such request, the cost shall be borne on a pro rata basis. This section does not limit the agency to a stenographic record of proceedings.

### **§401.63. Appeals to the Commission.**

- (a) In general. Any party aggrieved of a final decision or order of the executive director in a contested case may appeal to the commission after the decision or order complained of is final. An appeal to the commission for review of action of the executive director shall be made within 30 days from the date that the writing evidencing the official action or order complained of is final and appealable, but for good cause shown, the commission may allow an appeal after that date. A motion for rehearing is not a prerequisite for an appeal to the commission.
- (b) Standard of Review. The review of decisions of the executive director by the commission shall be based on the substantial evidence rule. In reviewing any final decision or order of the executive director, the commission may consider the record in the contested case developed before the executive director or the assigned examiner, and may not consider evidence not presented to or officially noticed by the executive director or the hearings officer. A party may apply to the commission to present additional evidence. If the commission is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the executive director, the commission may order that

additional evidence be taken before the assigned hearings officer on conditions set by the commission. The executive director may change his or her findings and decision by reason of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the commission.

- (c) Oral argument. On the request of any party, the commission may allow oral argument prior to the final determination of an appeal of a decision or order of the executive director.

#### **§401.65. Suspension of Orders.**

Pending appeal and final disposition of a matter, the commission, for good cause, may suspend the effectiveness of the executive director's orders. A request for hearing does not of itself stay an official act or order unless the official act or order is stayed by controlling law.

#### **§401.67. Motions for Rehearing.**

- (a) In the absence of a finding of imminent peril, a motion for rehearing is a prerequisite to a judicial appeal. A motion for rehearing must be filed by a party within 20 days after the date the party representative is notified of the final decision or order.
- (b) Replies to a motion for rehearing must be filed with the agency within 30 days after the date the party representative is notified of the final decision or order.
- (c) Agency action on the motion for rehearing must be taken within 45 days after the date a party representative is notified of the final decision or order. If agency action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date the party representative is notified of the final decision or order.
- (d) The commission may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, facsimile transmission, or another suitable means of communication. The motion shall be deemed overruled by operation of law, unless a majority of the commissioners serving vote to grant the motion within the time provided by law for ruling on the motion for rehearing.
- (e) The agency may, by written order, extend the period of time for filing the motions or replies and taking agency action, except that an extension may not extend the period for agency action beyond 90 days after the date a party representative is notified of the final order or decision.
- (f) In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the party representative is notified of the final decision or order.

## SUBCHAPTER G

### CONDUCT AND DECORUM, SANCTIONS, AND PENALTIES

#### §401.101. Conduct and Decorum.

- (a) Standard of conduct during adjudicative proceedings.
  - (1) The hearings officer and the party representative should refer to the Texas Disciplinary Rules of Professional Conduct for guidance, regardless of whether all participants are licensed attorneys (Texas State Bar Rules, Article 10, §9).
  - (2) Party representatives shall maintain high standards of professionalism during the administrative process and promote an atmosphere of civility and fairness.
  - (3) A party representative shall use these rules for legitimate purposes and not for dilatory purposes or to harass or intimidate other participants.
- (b) Exclusion or disqualification of party representatives.
  - (1) Contemptuous conduct. A hearings officer may exclude or disqualify a party representative from participating in an agency hearing for contemptuous conduct. The hearings officer shall warn the party representative prior to exclusion, if possible. Contemptuous conduct includes:
    - (A) actual or threatened physical assault of any participant to the proceeding;
    - (B) knowingly or recklessly making a false statement of material fact or law to the hearings officer;
    - (C) counseling or assisting a witness to testify falsely;
    - (D) knowingly or recklessly offering or using false evidence;
    - (E) filing a frivolous or knowingly false pleading or other document, or filing a frivolous or knowingly false defense. A frivolous filing is one:
      - (i) primarily for the purpose of harassing or maliciously injuring another person; or
      - (ii) for which the party representative is unable to make a good faith argument for an extension, modification, or reversal of existing law;
    - (F) paying, offering to pay, or acquiescing in a payment or offer of payment to a witness based on the content of the witness' testimony or the outcome of the proceeding;
    - (G) continually violating an established rule of agency procedure or of evidence;
    - (H) raising superfluous objections or otherwise unreasonably delaying the proceeding or increasing the costs or other burden of the proceeding;
    - (I) misrepresenting, mischaracterizing, or misquoting facts or law to gain unfair advantage;

- (J) except as otherwise permitted by law, communicating or causing someone else to communicate with the hearings officer without the knowledge and consent of opposing party representatives in order to gain unfair advantage or to influence the proceeding;
  - (K) using vulgar or abusive language during the proceeding; and
  - (L) engaging in disruptive conduct.
- (2) Conflicts of interest. A hearings officer may disqualify a party representative from participating in a proceeding if the hearings officer decides that the party representative has a conflict of interest. Conflicts of interest can be, but are not limited to, the following:
- (A) when a party representative who previously acted as a public officer or employee on a matter later attempts to represent a private client on the same matter, unless the appropriate government agency consents;
  - (B) when a party representative who serves as a public officer or employee on a matter negotiates for private employment with a party or party representative involved in the same matter;
  - (C) when a party representative who serves as a public officer or employee participates in a matter involving a former private client whom he or she represented on the same matter, unless no one may legally act in the attorney's stead;
  - (D) when an attorney engages in the practice of law while under suspension or in violation of a disciplinary order or judgment; and
  - (E) any other conflict of interest that, in the opinion of the hearings officer, offends the dignity and decorum of the proceeding.
- (3) Procedures for excluding or disqualifying a party representative.
- (A) Notice. The hearings officer shall state the specific reason for excluding or disqualifying a party representative on the record or in a written order. The hearings officer shall notify the affected party and representative of the exclusion or disqualification personally or by certified mail.
  - (B) Reasonable time for substitution. After the hearings officer has excluded or disqualified a party representative, the affected party or party representative shall have reasonable time to appeal to the executive director. If the exclusion or disqualification order is sustained, the party shall have a reasonable time to substitute a new representative. In determining a reasonable time, the hearings officer shall consider the right of opposing parties to have the proceeding resolved without undue delay. The hearings officer may therefore align the affected party with another party in interest instead of permitting a substitution.
  - (C) Appeal of exclusion or disqualification. A party or party representative may appeal the exclusion (if it is for a period of more than eight hours) or disqualification to the executive director pursuant to §401.47 of this title (relating to Appeal of an Interim Order).
  - (D) No further participation. After being disqualified from the proceeding, a party representative may not provide further assistance, either directly or indirectly, to any party with regard to the proceeding, except to the extent reasonably necessary to make an appeal of the disqualification order pursuant to §401.47 (relating to Appeal of an Interim Order) of this title and to complete the withdrawal and substitution of a new party representative.

- (E) No recusal. The exclusion or disqualification of a party representative by a hearings officer is not a ground for recusal of the hearings officer in the same or any subsequent proceeding.

#### **§401.103. Discovery Sanctions.**

- (a) After notice and opportunity for hearing, an order imposing sanctions, as are just, may be issued by the hearings officer for failure to comply with a discovery order or subpoena issued pursuant to a Commission for deposition or production of books, records, papers, or other objects. The order imposing sanctions may:
  - (1) disallow any further discovery of any kind or of a particular kind of disobedient party;
  - (2) require the party, the party's representative, or both to obey the discovery order;
  - (3) require the party, the party's representative, or both to pay reasonable expenses, including attorney fees, incurred by reason of the party's noncompliance;
  - (4) direct that the matters regarding which the discovery order was made shall be deemed established in accordance with the claim of the party obtaining the order;
  - (5) refuse to allow the disobedient party to support or oppose designated claims or defenses or prohibit the party from introducing designated matters into evidence;
  - (6) strike pleadings or parts thereof or abate further proceedings until the order is obeyed; or
  - (7) dismiss the action or proceeding or any part thereof or render a decision by default against the disobedient party.
- (b) Appellate Review. Any discovery order or subpoena and any order imposing sanctions issued by the hearings officer is subject to review by an appeal to the executive director in accordance with §401.47 of this title (relating to Appeal of an Interim Order).

#### **§401.105. Administrative Penalties.**

- (a) The commission, acting through the executive director may, after notice and hearing required by Government Code, Chapter 2001, Administrative Procedure Act, impose an order requiring payment of an administrative penalty or monetary forfeiture in an amount not to exceed \$1,000 for each violation of Government Code, Chapter 419, or rule promulgated thereunder, as provided by Government Code, §419.906.
- (b) In determining the amount of the administrative penalty or monetary forfeiture the executive director shall consider:
  - (1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited act, and the hazard or potential hazard created to the health and safety of the public;
  - (2) the economic damage to property or the public's interests or confidences caused by the violation;
  - (3) the history of previous violations;
  - (4) any economic benefit gained through the violation;
  - (5) the amount necessary to deter future violations;

- (6) the demonstrated good faith of the person, including efforts taken by the alleged violator to correct the violation;
- (7) the economic impact of imposition of the penalty or forfeiture on the person; and
- (8) any other matters that justice may require.

## **SUBCHAPTER H**

### **REINSTATEMENT**

#### **§401.111. Application for Reinstatement of License or Certificate.**

- (a) At the expiration of one year from the date of revocation or suspension, or upon the conclusion of any specified period of suspension, the commission may consider a request for reinstatement by the former licensee or certificate holder (applicant).
- (b) The request for reinstatement must be submitted to the commission office in writing and should include a short and plain statement of the reasons why the applicant believes the license should be reinstated.
- (c) Upon denial of any application for reinstatement, the commission may not consider a subsequent application until the expiration of one year from the date of denial of the prior application.
- (d) In taking action to revoke or suspend a license or certificate, the commission may, in its discretion, specify the terms and conditions upon which reinstatement shall be considered.

#### **§401.113. Evaluation for Reinstatement.**

In considering reinstatement of a suspended or revoked license or certificate, the commission will evaluate:

- (1) the severity of the act which resulted in revocation or suspension of the license or certificate;
- (2) the conduct of the applicant subsequent to the revocation or suspension of the license or certificate;
- (3) the lapse of time since revocation or suspension;
- (4) the degree of compliance with all conditions the commission may have stipulated as a prerequisite for reinstatement;
- (5) the degree of rehabilitation attained by the applicant as evidenced by sworn notarized statements sent directly to the commission from qualified people who have personal and professional knowledge of the applicant; and
- (6) the applicant's present qualifications to perform duties regulated by the commission.

#### **§401.115. Procedure upon Request for Reinstatement.**

- (a) An applicant for reinstatement of a revoked or suspended license or certificate must personally appear before an administrative law judge designated by the commission at a scheduled date and time to show why the license or certificate should be reinstated.
- (b) Upon submission of proof of past revocation or suspension of the applicant's license or certificate, the applicant has the burden of proof to show present fitness and/or rehabilitation to perform duties regulated by the commission.
- (c) Upon receipt of a written request for reinstatement as required by §401.111 of this title (relating to Application for Reinstatement of License or Certificate), the applicant will be notified of a date and time of an appearance before the administrative law judge.

#### **§401.117. Commission Action Possible upon Reinstatement.**

After evaluation, the commission may:

- (1) deny reinstatement of a suspended or revoked license or certificate;
- (2) reinstate a suspended or revoked license or certificate and probate the practitioner for a specified period of time under specific conditions;
- (3) authorize reinstatement of the suspended or revoked license or certificate;
- (4) require the satisfactory completion of a specific program of remedial education approved by the commission; and
- (5) require monitoring of the applicant's work activity as specified by the commission.

#### **§401.119. Failure To Appear for Reinstatement.**

An applicant for reinstatement of a revoked or suspended license or certificate who makes a commitment to appear before the administrative law judge, and fails to appear at a hearing set with notice by the agency, shall not be authorized to appear before the administrative law judge before the expiration of six months. For good cause shown, the executive director may authorize an exception to this rule.

## **SUBCHAPTER I**

### **NOTICE AND PROCESSING PERIODS FOR CERTIFICATE APPLICATIONS**

#### **§401.121. Purpose of Establishing Time Periods.**

In order to minimize delays which hamper small businesses and other enterprises, this subchapter established time periods within which the Texas Commission on Fire Protection shall review and process certificate applications efficiently and provides for an appeal process should the agency violate these periods in accordance with the Government Code, Chapter 2005.

#### **§401.123. Notice of Deficiency.**

- (a) **Manner of Notice.** Written notice that an application is complete or deficient must be mailed to the applicant or delivered by such means as will reasonably provide actual notice.
- (b) **Written Notice Not Required.** Written notice that an application is complete shall not be required under this subchapter if an application is approved and a license issued during the notice period.

#### **§401.125. Processing Periods.**

- (a) **Notice to applicant.** Within 30 days from receipt of an application for a certificate or approval issued pursuant to the Government Code, Chapter 419, the agency shall determine a filing to be complete or deficient and immediately issue written notice to the applicant regarding the status of the application.
  - (1) **Complete application.**
    - (A) The written notice for a complete application shall state that the application is complete and accepted for filing and shall advise the applicant of the time period in which the agency must deny or approve the application unless such information has previously been provided to the applicant.
    - (B) For purposes of this section, an application is complete upon agency determination that it is in compliance with the content and form prescribed by the agency.
  - (2) **Deficient application.**
    - (A) The written notice for a deficient application shall state that the application is not complete, set out the specific additional information that is required for completion, and advise the applicant that the agency may disapprove an application that is not complete within 30 days of its original receipt. After one written notice of deficiency has been issued, another is not required for an application resubmitted in whole or in part with deficiencies.
    - (B) In addition to notice issued under subparagraph (A) of this paragraph, the agency may notify the applicant, in any manner, of deficiencies in the application.
- (b) **Processing of application.** Within 60 days after receipt of a complete application, the agency shall:
  - (1) issue the certificate on payment of the appropriate fees and successful completion of all required examinations; or
  - (2) deny the certificate.

- (c) Application disapproved. The agency may disapprove an application that is not complete within 30 days of its original receipt by the agency.

#### **§401.127. Appeal.**

- (a) Hearing.
  - (1) Notice. An applicant who does not receive notice as to the complete or deficient status of a certificate application within the period established in this subchapter for such application may petition for a hearing to review the matter.
  - (2) Processing. An applicant whose permit is not approved or denied within the period established in this subchapter for such certificate may petition for a hearing to review the matter.
  - (3) Procedure. A hearing under this section shall be in accordance with the Administrative Procedure Act and Subchapter E of this chapter (relating to Contested Cases).
- (b) Petition. A petition filed under this section must be in writing and directed to the executive director. The petition shall identify the applicant, indicate the type of certificate sought and the date of the application, specify each provision in this subchapter that the agency has violated, and describe with particularity how the agency has violated each provision. The petition shall be filed with the office of the executive director.
- (c) Decision. An appeal filed under this section shall be decided in the applicant's favor if the executive director finds that:
  - (1) the agency exceeded an established period under this subchapter; and
  - (2) the agency failed to establish good cause for exceeding the period.
- (d) Good cause. The agency is considered to have good cause for exceeding a notice or processing period established for a permit if:
  - (1) the number of certificates to be processed exceeds by 15% or more the number of certificates processed in the same calendar quarter of the preceding year;
  - (2) the agency must rely on another public or private entity for all or part of its certificate processing, and the delay is caused by the other entity;
  - (3) the hearing and decision-making process results in reasonable delay under the circumstances;
  - (4) the applicant is under administrative review; or
  - (5) any other conditions exist giving the agency good cause for exceeding a notice or processing period.
- (e) Commission review. A permit applicant aggrieved by a final decision or order of the executive director concerning a period established by these sections may appeal to the commission in writing after the decision or order complained of is final, in accordance with §401.63 of this title (relating to Appeals to the Commission).
- (f) Relief.
  - (1) Complete or deficient status. An applicant who maintains a successful appeal under subsection (c) of this section for agency failure to issue notice as to the complete or deficient status of an application shall be entitled to notice of application status.

- (2) Certificate approval or denial. An applicant who maintains a successful appeal under subsection (c) of this section for agency failure to approve or deny a certificate shall be entitled to such approval or denial of the certificate and to full reimbursement of all filing fees that have been paid to the agency in connection with the application.

**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 423, Fire Suppression, including, but not limited to §423.3(a)(2)(B) Minimum Standards for Basic Structure Fire Protection Personnel Certification; §423.201(b) Minimum Standards for Aircraft Rescue Fire Fighting Personnel.**

**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 fire protection personnel, the Commission must review and approve the applicants fingerprint 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 fingerprint 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 fingerprint based criminal history record check.
- (c) 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) 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).

**§423.3. Minimum Standards for Basic Structure Fire Protection Personnel Certification.**

- (a) In order to become certified as basic structure fire protection personnel, an individual must:
- (1) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire Fighter I, Fire Fighter II, Hazardous Materials Awareness Level Personnel; and
    - (A) Hazardous Materials Operations Level Responders including the Mission-Specific Competencies for Personal Protective Equipment and Product Control under the current edition; or
    - (B) NFPA 472 Hazardous Materials Operations prior to the 2008 edition; and
    - (C) must meet the medical requirements outlined in §423.1(b) of this title; or
  - (2) complete a Commission-approved basic structure fire suppression program, meet the medical requirements outlined in §423.1(b), and successfully pass the Commission examination(s) as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic structure fire suppression program shall consist of one or any combination of the following:
    - (A) completion of a Commission-approved Basic Fire Suppression Curriculum, as specified in Chapter 1 of the Commission's Certification Curriculum Manual; or
    - ~~[(B) completion of the five phase levels of the approved Basic Fire Suppression Curriculum, as specified in Chapter 1 of the Commission's Certification Curriculum Manual; or ]~~
    - (B)(C)** completion of an out-of-state, and/or military training program deemed equivalent to the Commission-approved Basic Fire Suppression Curriculum; or
    - (C)(D)** documentation of the receipt of an advanced certificate or training records from the State Firemen's and Fire Marshals' Association of Texas, that is deemed equivalent to a Commission-approved Basic Fire Suppression Curriculum.
- (b) A basic fire suppression program may be submitted to the Commission for approval by another jurisdiction as required in Texas Government Code, §419.032(d), Appointment of Fire Protection Personnel. These programs include out-of-state and military programs, and shall be deemed equivalent by the Commission if the subjects taught, subject content, and total hours of training meet or exceed those contained in Chapter 1 of the Commission's Certification Curriculum Manual.

**§423.5. Minimum Standards for Intermediate Structure Fire Protection Personnel Certification.**

- (a) Applicants for Intermediate Structure Fire Protection Personnel Certification must complete the following requirements:
- (1) hold, as a prerequisite, a Basic Structure Fire Protection Personnel Certification as defined in §423.3 of this title (relating to Minimum Standards for Basic Structure Fire Protection Personnel Certification); and
  - (2) acquire a minimum of four years of fire protection experience and complete the training listed in one of the following options:
    - (A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (b) and (c) of this section; or

- (B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or
  - (C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1, with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section).
- (b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the Commission's Certification Curriculum Manual or for experience in fire service, may not be counted toward this level of certification.
  - (c) The training required in this section must be in addition to any training used to qualify for any lower level of Structure Fire Protection Personnel Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

**§423.7. Minimum Standards for Advanced Structure Fire Protection Personnel Certification.**

- (a) Applicants for Advanced Structure Fire Protection Personnel certification must complete the following requirements:
  - (1) hold as a prerequisite an Intermediate Structure Fire Protection Personnel Certification as defined in §423.5 of this title (relating to Minimum Standards for Intermediate Structure Fire Protection Personnel Certification); and
  - (2) acquire a minimum of eight years of fire protection experience and complete the training listed in one of the following options:
    - (A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or
    - (B) Option 2—Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or
    - (C) Option 3—Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section).
- (b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.
- (c) The training required in this section must be in addition to any training used to qualify for any lower level of Structure Fire Protection Personnel Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

### **§423.9. Minimum Standards for Master Structure Fire Protection Personnel Certification.**

- (a) Applicants for Master Structure Fire Protection Personnel Certification must complete the following requirements:
  - (1) hold as a prerequisite an Advanced Structure Fire Protection Personnel Certification as defined in §423.7 of this title (relating to Minimum Standards for Advanced Structure Fire Protection Personnel Certification); and
  - (2) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.
- (b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Structure Fire Protection Personnel Certification

### **§423.11. Higher Levels of Certification.**

- (a) An individual may receive higher levels of certification in structural fire protection while being assigned to another discipline, provided that all requirements for the higher level or levels of certification are met.
- (b) Repetitive training cannot be used toward higher levels of certification.

### **§423.13. International Fire Service Accreditation Congress (IFSAC) Seal.**

- (a) Individuals holding a current Commission Structure Fire Protection Personnel certification received prior to March 10, 2003, may be granted International Fire Service Accreditation Congress (IFSAC) seals for Hazardous Materials Awareness Level Personnel, Hazardous Materials Operations Level Responders, Fire Fighter I, and Fire Fighter II by making application to the Commission for the IFSAC seals and paying applicable fees.
- (b) Individuals completing a Commission-approved basic fire suppression program, meeting any other NFPA requirement, and passing the applicable examination(s) based on the basic fire suppression curriculum, may be granted IFSAC seal(s) for Hazardous Materials Awareness Level Personnel, Hazardous Materials Operations Level Responders (including the Mission-Specific Competencies for Personal Protective Equipment and Product Control), Fire Fighter I, and/or Fire Fighter II by making application to the Commission for the IFSAC seal(s) and paying applicable fees, provided they meet the following provisions:
  - (1) To receive the IFSAC Hazardous Materials Awareness Level Personnel seal, the individual must:
    - (A) complete the Hazardous Materials Awareness section of a Commission approved course; and
    - (B) pass the Hazardous Materials Awareness section of a Commission examination.
  - (2) To receive the IFSAC Hazardous Materials Operations Level Responders seal (including the Mission-Specific Competencies for Personal Protective Equipment and Product Control) the individual must:

- (A) complete the Hazardous Materials Operation section of a Commission-approved course;
  - (B) document possession of an IFSAC Hazardous Materials Awareness Level Personnel seal; and
  - (C) pass the Hazardous Materials Operations section of a Commission examination.
- (3) To receive the IFSAC Fire Fighter I seal, the individual must:
  - (A) complete a Commission-approved Fire Fighter I course;
  - (B) provide medical documentation as outlined in subsection (c) of this section;
  - (C) document possession of an IFSAC Hazardous Materials Awareness Level Personnel seal; and
  - (D) document possession of an IFSAC Hazardous Materials Operations Level Responders seal; and
  - (E) pass the Fire Fighter I section of a Commission examination.
- (4) To receive the IFSAC Fire Fighter II seal, the individual must:
  - (A) complete a Commission-approved Fire Fighter II course;
  - (B) document possession of an IFSAC Fire Fighter I seal; and
  - (C) pass the Fire Fighter II section of a Commission examination.
- (c) In order to meet the medical requirements of NFPA 1001, the individual must document successful completion of an emergency medical training course or program. The Commission recognizes the following emergency medical training:
  - (1) The Texas Department of State Health Services Emergency Medical Service Personnel certification training;
  - (2) American Red Cross Response course (including optional lessons and enrichment sections);
  - (3) 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.

## SUBCHAPTER B

### MINIMUM STANDARDS FOR AIRCRAFT RESCUE FIRE FIGHTING PERSONNEL

#### §423.201. Minimum Standards for Aircraft Rescue Fire Fighting Personnel.

- (a) Aircraft rescue fire fighting personnel are employees of a local governmental entity who are appointed to aircraft rescue firefighting duties. These duties may include fighting aircraft fires at airports, standing by for potential crash landings, and performing aircraft rescue and fire fighting duties.
- (b) Personnel appointed as ~~for~~ Aircraft Rescue Fire Fighting Personnel must be certified to at least the basic level by the Commission within one year from their employment in an ~~for~~ Aircraft Rescue Fire Fighting Personnel position.
- (c) Prior to being appointed to aircraft rescue fire suppression duties, all personnel must:
  - (1) successfully complete a Commission-approved basic fire suppression course and pass the Commission's examination pertaining to that curriculum; and
  - (2) successfully complete a Commission-approved basic aircraft rescue fire protection course and pass the Commission's examination pertaining to that curriculum.
- (d) "Stand by" means the act of responding to a designated position in the movement area on the airfield at which initial response fire and rescue units will await the arrival of an aircraft experiencing an announced emergency.
- (e) "Movement area" is comprised of all runways, taxiways, and other areas of the airport which are used for taxiing or hover taxiing, take-off, and landing of aircraft, exclusive of loading ramps and aircraft parking areas.
- (f) Personnel holding any level of aircraft rescue fire fighting personnel certification shall be required to comply with the continuing education specified in §441.9 of this title (relating to Continuing Education for Aircraft Rescue Fire Fighting Personnel).
- (g) Aircraft rescue fire fighting personnel that perform structure fire fighting duties must be certified, as a minimum, as basic structural fire protection personnel.

#### §423.203. Minimum Standards for Basic Aircraft Rescue Fire Fighting Personnel Certification.

In order to obtain a Basic Aircraft Rescue Fire Fighting Personnel Certification the individual must:

- (1) hold a Basic Structure Fire Protection Personnel Certification; and
- (2) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as an Airport Fire Fighter; or
- (3) complete a Commission-approved aircraft rescue fire suppression training program and successfully pass the Commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved aircraft rescue fire suppression training program shall consist of one of the following:
  - (A) a Commission-approved Basic Aircraft Rescue Fire Suppression Curriculum as specified in Chapter 2 of the Commission's Certification Curriculum Manual.
  - (B) an out-of-state, and/or military training program that has been submitted to the Commission for evaluation and found to be equivalent to or exceeds the Commission-approved Basic Aircraft Rescue Fire Suppression Curriculum.

**§423.205. Minimum Standards for Intermediate Aircraft Rescue Fire Fighting Personnel Certification.**

- (a) Applicants for Intermediate Aircraft Rescue Fire Fighting Personnel Certification must complete the following requirements:
  - (1) hold as a prerequisite a Basic Aircraft Rescue Fire Fighting Personnel Certification as defined in §423.203 of this title (relating to Minimum Standards for Basic Aircraft Rescue Fire Fighting Personnel Certification); and
  - (2) acquire a minimum of four years of fire protection experience and complete the training listed in one of the following options:
    - (A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or
    - (B) Option 2—Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or
    - (C) Option 3—Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section).
- (b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.
- (c) The training required in this section must be in addition to any training used to qualify for any lower level of Aircraft Rescue Fire Fighting Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

**§423.207. Minimum Standards for Advanced Aircraft Rescue Fire Fighting Personnel Certification.**

- (a) Applicants for Advanced Aircraft Rescue Fire Fighting Personnel certification must complete the following requirements:
  - (1) hold as a prerequisite an Intermediate Aircraft Rescue Fire Fighting Personnel Certification as defined in §423.205 of this title (relating to Minimum Standards for Intermediate Aircraft Rescue Fire Fighting Personnel Certification); and
  - (2) acquire a minimum of eight years of fire protection experience and complete the training listed in one of the following options:
    - (A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or
    - (B) Option 2—Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or
    - (C) Option 3—Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section).

- (b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted toward this level of certification.
- (c) The training required in this section must be in addition to any training used to qualify for any lower level of Aircraft Rescue Fire Fighting Personnel Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

**§423.209. Minimum Standards for Master Aircraft Rescue Fire Fighting Personnel Certification.**

- (a) Applicants for Master Aircraft Rescue Fire Fighting Personnel Certification must complete the following requirements:
  - (1) hold, as a prerequisite, an Advanced Aircraft Rescue Fire Fighting Personnel Certification as defined in §423.207 of this title (relating to Minimum Standards for Advanced Aircraft Rescue Fire Fighting Personnel Certification); and
  - (2) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate's degree, which includes at least 18 college semester hours in fire science subjects.
- (b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Aircraft Rescue Fire Fighting Personnel Certification.

**§423.211. International Fire Service Accreditation Congress (IFSAC) Seal.**

- (a) Individuals holding a current commission Aircraft Rescue Fire Fighting Personnel certification received prior to March 10, 2003, may be granted an International Fire Service Accreditation Congress (IFSAC) seal as an Airport Fire Fighter by making application to the commission for the IFSAC seal and paying applicable fees.
- (b) Individuals completing a commission-approved basic aircraft rescue fire suppression program, documenting an IFSAC seal for Fire Fighter II, and passing the applicable state examination may be granted an IFSAC seal as an Airport Fire Fighter by making application to the commission for the IFSAC seal and paying applicable fees.

## Subchapter C

### MINIMUM STANDARDS FOR MARINE FIRE PROTECTION PERSONNEL

#### §423.301. Minimum Standards For Marine Fire Protection Personnel.

- (a) Marine fire protection personnel are employees of a local governmental entity who work aboard a fire boat with a minimum pumping capacity of 2,000 gallons per minute, and fight fires that occur on or adjacent to a waterway, waterfront, channel, or turning basin.
- (b) Fire protection personnel of any local government entity, who are appointed marine fire protection duties, must be certified by the Commission within one year from the date of their appointment in a marine fire protection personnel position.
- (c) Prior to being appointed to marine fire suppression duties, all personnel must:
  - (1) successfully complete a Commission-approved basic fire suppression course and pass the Commission's examination pertaining to that curriculum; and
  - (2) successfully complete a Commission-approved basic marine fire suppression course and pass the Commission's examination pertaining to that curriculum.
- (d) Personnel holding any level of Marine Fire Protection Personnel certification shall be required to comply with the continuing education specified in §441.11 of this title (relating to Continuing Education for Marine Fire Protection Personnel).

#### §423.303. Minimum Standards For Basic Marine Fire Protection Personnel Certification.

In order to obtain a basic Marine Fire Protection Personnel Certification the individual must:

- (1) hold a Basic Structure Fire Protection Personnel Certification;
- (2) complete a training program specific to marine fire protection consisting of one of the following:
  - (A) complete the Commission-approved Basic Marine Fire Protection Curriculum as specified in Chapter 3, of the Commission's Certification Curriculum Manual.
  - (B) An out-of-state, and/or military training program that has been submitted to the Commission for evaluation and found to be equivalent to or exceed the Commission-approved Basic Marine Fire Protection Curriculum.
- (3) successfully pass the Commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification) prior to assignment.

#### §423.305. Minimum Standards For Intermediate Marine Fire Protection Personnel Certification.

- (a) Applicants for Intermediate Marine Fire Protection Personnel Certification must complete the following requirements:
  - (1) hold, as a prerequisite, a Basic Marine Fire Protection Personnel Certification as defined in §423.303 of this title (relating to Minimum Standards for Basic Marine Fire Protection Personnel Certification); and
  - (2) acquire a minimum of four years of fire protection experience and complete the training listed in one of the following options:

- (A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (b) and (c) of this section; or
  - (B) Option 2--Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or
  - (C) Option 3--Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses. (See the exception outlined in subsection (c) of this section).
- (b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the Commission's Certification Curriculum Manual or for experience in fire service, may not be counted towards this level of certification.
  - (c) The training required in this section must be in addition to any training used to qualify for any lower level of Marine Fire Protection Personnel Certification. Repeating a course, or a course of similar content, cannot be used towards this level of certification.

**§423.307. Minimum Standards For Advanced Marine Fire Protection Personnel Certification.**

- (a) Applicants for Advanced Marine Fire Protection Personnel certification must complete the following requirements:
  - (1) hold as a prerequisite an Intermediate Marine Fire Protection Personnel Certification as defined in §423.305 of this title (relating to Minimum Standards for Intermediate Marine Fire Protection Personnel Certification); and
  - (2) acquire a minimum of eight years of fire protection experience and complete the training listed in one of the following options:
    - (A) Option 1--Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the commission that the courses comply with subsections (b) and (c) of this section; or
    - (B) Option 2—Completion of coursework from either the A-List or the B-List courses. Acceptable combinations of courses are as follows: two A-List courses; or eight B-List courses; or one A-List course and four B-List courses. (See the exception outlined in subsection (c) of this section); or
    - (C) Option 3—Completion of coursework from either the A-List or the B-List courses in combination with college courses in fire science or fire protection. Acceptable combinations of courses are three semester hours meeting the requirements of Option 1 with either one A-List course or four B-List courses (See the exception outlined in subsection (c) of this section).
- (b) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's Certification Curriculum Manual or for experience in the fire service, may not be counted towards this level of certification.
- (c) The training required in this section must be in addition to any training used to qualify for any lower level of Marine Fire Protection Personnel Certification. Repeating a course or a course of similar content cannot be used towards this level of certification.

**§423.309. Minimum Standards for Master Marine Fire Protection Personnel Certification.**

- (a) Applicants for Master Marine Fire Protection Personnel Certification must complete the following requirements:
  - (1) hold, as a prerequisite, an Advanced Marine Fire Protection Personnel Certification as defined in §423.307 of this title (relating to Minimum Standards for Advanced Marine Fire Protection Personnel Certification); and
  - 2) acquire a minimum of twelve years of fire protection experience, 60 college semester hours or an associate's degree, which includes at least 18 college semester hours in fire science subjects.
- (b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Marine Fire Protection Personnel Certification.

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

- C. Discussion and possible action on recommendation from the Fire Fighter Advisory and Curriculum and Testing Committee regarding proposed rule changes to 37 TAC, Chapter 421, Practice and Procedure, including, but not limited to §421.5(36), definition concerning reciprocity and Pro Board.**

**11. Discussion and possible approval of the addition of classes or courses to the A List and B List for higher levels of certification.**

A/B LIST COURSES

Proposed for  
Commission Approval  
1/26/2011

**A-List Courses:**

NATIONAL FIRE ACADEMY (resident courses):

- National Fire Incident Reporting System: Program Manager
- Demonstrating Your Fire Prevention Program's Worth
- Changing American Family at Risk
- Special Operations Program Management

**B-List Courses:**

- National Emergency Communications Institute: Fire Communications Officer (24 hours)
- International Critical Incident Stress Foundation:
  - Individual Crisis Intervention and Peer Support (13 hours)
  - Group Crisis Intervention (14 hours)
- Department of Homeland Security/Office of Domestic Preparedness:  
Weapons of Mass Destruction Radiological/Nuclear Responder Operations Course (24 hours)

**12. Discussion and possible action on appointment of new member to the Fire Fighter Advisory Committee.**

**Texas Commission on Fire Protection  
Fire Fighter Advisory Committee Matrix**

Candidate Name	Rank	Fire Department Affiliation	Active or Retired	Certification Level	Discipline	Years of Experience	Certifying Entity	Instructor of Fire Protection Personnel	Verified
1 Kelly Stephen Morman	Battalion Chief	Lubbock Fire Department	active	Advanced	Structure	24.5	TCFP		yes
				Advanced	Aircraft	23	TCFP		yes
				Level II	Fire Instructor	20	TCFP	yes	yes
					Fire Officer I	15	TCFP		yes
					Fire Officer II	13	TCFP		yes
		Haz-Mat	20	TCFP		yes			
2 John Dustin Ledford	Captain	Lufkin Fire Department Appleby VFD	active	Advanced	Structure	17	TCFP		yes
				Intermediate	Fire Investigator	5	TCFP		yes
				Advanced	Fire Inspector	8	TCFP		yes
				Intermediate	Fire Instructor	6	TCFP	yes	yes
					Fire Officer I	5	TCFP		yes
					Fire Officer II	5	TCFP		yes
		Haz-Mat	14			no			
3 Albert J. Castillo, Jr.	Engineer Operator	Houston Fire Department	active	Advanced	Structure		TCFP		yes
				Level II	Fire Instructor		TCFP	yes	yes
					Fire Officer I		TCFP		yes
					Driver/Operator Haz-Mat Tech		TCFP		yes
4 Jason Collier	Assistant Fire Chief	Highland Village Fire Department	active	Master	Structure	23	TCFP		yes
				Master	Fire Investigator	19	TCFP		yes
				Master	Fire Inspector	23	TCFP		yes
				Master	Fire Instructor	18	TCFP	yes	yes
					Fire Officer I	2	TCFP		yes
		Fire Officer II	1	TCFP		yes			
5 Michael Robert Strobo	Firefighter/Paramedic	Marble Falls Fire & Rescue	active	Advanced	Structure	10	TCFP		yes
				Level II	Fire Instructor	6-4	TCFP	yes	yes
					Driver/Operator	7	TCFP		yes
					Haz-Mat	9	TCFP		yes
6 Danny Warner	Deputy FC/Fire Marshal	Harlingen Fire Department	active	Master	Structure	17	TCFP	yes	yes
				Master	Fire Investigator	6	TCFP		yes
				Master	Fire Inspector	9	TCFP		yes
				Level III	Fire Instructor	10	TCFP		yes
				Basic	Driver/Operator	4	TCFP		yes
7 Jason O. Wilson	Firefighter Haz-Mat Technician	Houston Fire Department Harris Co. Fire Marshal's Office	active	Advanced	Structure		TCFP		yes
				Advanced	Aircraft		TCFP		yes
				Level II	Fire Instructor		TCFP	yes	yes
					Fire Officer I		TCFP		yes
					Driver/Operator Haz-Mat		TCFP		yes

**13. Update from standards division director on matters relating to the activities of the following committees: International Fire Service Accreditation Congress, Respiratory Protection and Personal Alarm Equipment Committee, Fire Service Occupational Safety Committee, NFPA 1971 Technical Committee, and NFPA Technical Correlating Committee on Fire and Emergency Services Protective Clothing and Equipment.**

**14. Discussion and possible action on matters from the Executive Director.**

**A. Report on decisions of the Executive Director in contested cases and consent orders.**

**B. Status of division functions.**

**15. Executive session pursuant to Government Code, Section 551.074, for the discussion of personnel matters: the appointment, employment, compensation, evaluation, reassignment, duties, discipline, or dismissal of the Executive Director, and appoint, employment, reassignment, or duties of personnel acting on an interim basis.**

**16. Open session for further discussion and possible action regarding preceding agenda item.**

**17. Adjourn meeting.**