

9. 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 441, Continuing Education, including but not limited to, §441.3, Definitions, §441.5, Requirements, §441.7, Continuing Education for Structure Fire Protection Personnel, §441.9, Continuing Education for Aircraft Rescue Fire Fighting Personnel, §441.11, Continuing Education for Marine Fire Protection Personnel, §441.13, Continuing Education for Fire Inspector Personnel, §441.15, Continuing Education for Arson Investigator or Fire Investigator, §441.17, Continuing Education for Hazardous Materials Technician, §441.19, Continuing Education for Head of a Fire Department, §441.21, Continuing Education for Fire Service Instructor.**

CHAPTER 441

CONTINUING EDUCATION

§441.1. Objective.

Continuing education is intended to maintain or increase the knowledge and skills pertinent to the fire service.

§441.3. Definitions.

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

- (1) Certification period--That period from the time a certificate is obtained or renewed until it is time for the certificate to be renewed again. See §437.5 of this title (relating to renewal fees) for the definition of certification period.
- (2) **Level 1**~~[Track A]~~ --Training intended to maintain previously learned skills as stated in the commission certification curriculum manual for the certifications held.
- (3) **Level 2**~~[Track B]~~ -- Fire service training or education intended to develop new skills that are not contained in the commission's certification curriculum manual for certifications held.

§441.5. Requirements.

- (a) Continuing education shall be required in order to renew certification. ~~[which has a continuing education requirement stated in this chapter.]~~
- (b) The continuing education requirement for renewal of certification shall consist of a minimum of ~~18~~**20** hours of training to be conducted during the certification period. ~~[Only 20 total hours of continuing education shall be required to renew all Texas Commission on Fire Protection certificates if any individual holds more than one certificate, except as provided in §441.17 of this title (relating to Continuing Education for Hazardous Materials Technician).]~~All documentation of training used to satisfy the continuing education requirements must be maintained for a period of three years from the date of the training. Continuing education records shall be maintained by the department in accordance with the Texas State Library and Archives Commission, State and Local Records Management Division, Records Schedule, Local Schedule (GR 1050-28), whichever is greater.
- (c) **Level 1**~~[Track A]~~ training must be conducted by a certified instructor. Interactive computer-based continuing education training that is supervised and verified by a certified instructor is acceptable.
- (d) The continuing education program of a regulated entity must be administered and maintained in accordance with commission rule by a certified instructor.
- (e) No more than four hours per year in any one subject of **Level 1 training** ~~[the appropriate chapter of the commission's Certification Curriculum Manual]~~ may be counted toward the ~~[20-~~

- ~~hour~~ continuing education requirement for **a particular certification**. ~~[Track A]~~
- (f) There shall be no "hour per subject limit" placed on **Level 2** ~~[Track B]~~ courses, except that emergency medical courses shall be limited to four hours per year.
- (g) The head of a fire department may select subject matter for continuing education appropriate for a particular discipline.
- (h) The head of a fire department must certify whether or not the individuals whose certificates are being renewed have complied with the continuing education requirements of this chapter on the certification renewal **document**. ~~[application]~~ Unless exempted from the continuing education requirements, an individual who fails to comply with the continuing education requirements in this chapter shall be notified by the commission of the failure to comply.
- (i) After notification from the commission of a failure to comply with continuing education requirements, an individual who holds a certificate is prohibited from performing any duties authorized by a required certificate until such time as the deficiency has been resolved and written documentation is furnished by the department head for approval by the commission, through its Fire Service Standards and Certification Division director. Continuing education hours obtained to resolve a deficiency may not be applied to the continuing education requirements for the current certification period.
- (j) Any person who is a member of a paid or volunteer fire department who is on extended leave for a cumulative period of six months or longer due to a documented illness, injury, or activation to military service may be exempted from the continuing education requirement for the applicable renewal period(s). Such exemptions shall be reported by the head of the department to the commission at renewal time, and a copy kept with the department continuing education records for three years.
- (k) Any individual who is not a member of a paid or volunteer fire department who is unable to perform work, substantially similar in nature as would be performed by fire protection personnel appointed to that discipline, may be exempted from the continuing education requirement for the applicable renewal period(s). Commission staff shall determine the exemption using documentation of the illness or injury that cumulatively lasts six months or longer, which is provided by the individual and the individual's treating physician or by documentation of activation to military service.
- (l) In order to renew certification for any discipline which has a continuing education requirement stated in this chapter, an individual holder of a certificate not employed by a regulated entity must comply with the continuing education requirements for that discipline. ~~[Only 20 total hours of continuing education for each certification period shall be required to renew all certificates the individual holds, except as provided in §441.17 of this title (relating to Continuing Education for Hazardous Materials Technician).]~~
- (m) An individual certificate holder, not employed by a regulated entity, shall submit documentation of continuing education training **upon notification by the commission**. ~~[at the time of renewal.]~~ An example of documentation of continuing education training may include, but not be limited to a Certificate of Completion, a college or training facility transcript, a fire department training roster, etc. Commission staff will review and may approve or disapprove such documentation of training in accordance with applicable commission rules and/or procedures. The training for a resident of Texas at the time the

continuing education training is conducted shall be administered by a commission instructor, commission certified training facility, an accredited institution of higher education, or a military or nationally recognized provider of training. The training for a nonresident of Texas, shall be delivered by a state fire academy, a fire department training facility, an accredited institution of higher education, or a military or nationally recognized provider of training. The individual must submit training documentation to the commission for evaluation of the equivalency of the training required by this chapter. The individual certificate holder is responsible for maintaining all of his/her training records for a period of three years from the date of the training.

- (n) If an individual has completed a commission approved academy in the 12 months prior to his or her certification expiration date, a copy of that certificate of completion will be acceptable documentation of continuing education for that certification renewal period.

§441.7. Continuing Education for Structure Fire Protection Personnel.

- (a) **A minimum of two hours of continuing ~~[Continuing]~~education in addition to the continuing education requirements in §441.5(b) of this title relating to (Requirements) will be required for personnel certified as structure fire protection personnel and who are appointed to structure fire protection duties.**
- (b) Subjects selected to satisfy the continuing education requirement may be selected from either Level 1,~~[Track A]~~Level 2,~~[Track B]~~ or a combination of the two.

§441.9. Continuing Education for Aircraft Rescue Fire Fighting Personnel.

- (a) Continuing education will be required for personnel assigned as aircraft rescue fire fighting personnel.
- (b) Continuing education must, at a minimum, meet the specific training requirements of FAR 139.319(i)(2) and (3) (pertaining to Aircraft Rescue and Fire Fighting Operational Requirements). Continuing education required by this subsection may exceed 20 hours, if necessary, to complete all required subjects.

§441.11. Continuing Education for Marine Fire Protection Personnel.

- (a) **A minimum of two hours of continuing ~~[Continuing]~~education in addition to the continuing education requirements in §441.5(b) of this title relating to (Requirements) will be required for personnel certified as marine fire protection personnel and who are appointed to marine fire protection duties for any certification period beginning after October 31, 1993.**
- (b) Subjects selected to satisfy the continuing education requirement may be selected from either Level 1, ~~[Track A]~~Level 2, ~~[Track B]~~ or a combination of the two.

§441.13. Continuing Education for Fire Inspection Personnel.

- (a) **A minimum of two hours of continuing ~~[Continuing]~~ education in addition to the continuing education requirements in §441.5(b) of this title relating to (Requirements)**

will be required for personnel certified as fire inspection personnel **and who are appointed to fire inspection duties.**

- (b) Subjects selected to satisfy the continuing education requirement may be selected from either **Level 1,** ~~[Track A]~~ **Level 2,** ~~[Track B]~~ or a combination of the two.

§441.15. Continuing Education for Arson Investigator or Fire Investigator.

- (a) **A minimum of two hours of continuing** ~~[Continuing]~~ education **in addition to the continuing education requirements in §441.5(b) of this title relating to (Requirements)** will be required for personnel certified as arson investigation or fire investigation personnel **and who are appointed to arson or fire investigation duties.**

- (b) Subjects selected to satisfy the continuing education requirement may be selected from either **Level 1,** ~~[Track A]~~ **Level 2,** ~~[Track B]~~ or a combination of the two.

§441.17. Continuing Education for Hazardous Materials Technician.

- (a) **Eight** ~~[Ten]~~ hours of continuing education in hazardous materials (technician level) will be required for individuals certified as a hazardous materials technician. This will be in addition to continuing education required by other sections of this chapter.

- (b) Subjects selected to satisfy the continuing education requirement may be selected from either **Level 1,** ~~[Track A or]~~ **Level 2,** ~~[Track B]~~ or a combination of the two.

§441.19. Continuing Education for Head of a Fire Department.

- (a) **A minimum of two hours of continuing** ~~[Continuing]~~ education **in addition to the continuing education requirements in §441.5(b) of this title relating to (Requirements)** will be required for personnel certified as head of a fire department **and who are appointed as head of a department.**

- (b) Subjects selected to satisfy the continuing education requirement may be selected from either **Level 1,** ~~[Track A]~~ **Level 2,** ~~[Track B]~~ or a combination of the two.

§441.21. Continuing Education for Fire Service Instructor.

- (a) **A minimum of two hours of continuing** ~~[Continuing]~~ education **in addition to the continuing education requirements in §441.5(b) of this title relating to (Requirements)** will be required for individuals certified as a fire service instructor **and who are appointed to fire service instructor duties.**

- (b) Subjects selected to satisfy the continuing education requirement may be selected from either **Level 1,** ~~[Track A or]~~ **Level 2,** ~~[Track B]~~ or a combination of the two.

9. 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 421, Standards For Certification, including but not limited to, §421.17, Requirement to Maintain Certification.

CHAPTER 421

STANDARDS FOR CERTIFICATION

§421.1. Procedures for Meetings.

- (a) Time and place. The Fire Fighter Advisory Committee and the Curriculum and Testing Committee shall meet at such time and place in the State of Texas as they deem proper. The Fire Fighter Advisory Committee shall meet at least twice each calendar year.
- (b) Meeting called. Meetings shall be called by the chairman, by the Commission, or upon the written request of five members.
- (c) Quorum. A majority of members shall constitute a quorum.
- (d) Members. The Fire Fighter Advisory Committee shall consist of nine members appointed by the Commission. The Curriculum and Testing Committee shall consist of members appointed by the Commission upon the recommendation of the Fire Fighter Advisory Committee. Committee members serve at the will of the Commission.
- (e) Officers. Officers of the Fire Fighter Advisory Committee and the Curriculum and Testing Committee shall consist of a chairman, vice-chairman, and secretary. Each committee shall elect its officers from the appointed members at its first meeting and thereafter at its first meeting following January 1 of each year or upon the vacancy of an office.
- (f) Responsibility. The Fire Fighter Advisory Committee shall review Commission rules relating to fire protection personnel and fire departments and recommend changes in the rules to the Commission.
- (g) Effective Date. Rules shall become effective no sooner than 20 days after filing with the Texas Register for final adoption. The committee or Commission may recommend a later effective date.
- (h) Removal. It is a ground for removal from an advisory committee appointed by the Commission if a member is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the committee.

§421.3. Minimum Standards Set by the Commission.

- (a) General statement. It shall be clearly understood that the specified minimum standards herein described are designated as a minimum program. Employing entities are encouraged to exceed the minimum program wherever possible. Continuous in-service training beyond the minimum standards for fire protection personnel is strongly recommended. Nothing in these regulations shall limit or be construed as limiting the powers of the Civil Service Commission, or the employing entity, to enact rules and regulations which establish a higher standard of training than the minimum specified, or which provides for the termination of the services of unsatisfactory employees during or upon completion of the prescribed probationary period.
- (b) Functional position descriptions.

- (1) Structural fire protection personnel. The following general position description for structural fire protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.
 - (A) Qualifications. Successfully complete a Commission-approved course; achieve a passing score on written and performance certification examinations; must be at least 18 years of age; generally, the knowledge and skills required show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, drag, and balance weight equivalent to the average human weight; ability to interpret in English, written and oral instructions; ability to work effectively in high stress situations; ability to work effectively in an environment with loud noises and flashing lights; ability to function through an entire work shift; ability to calculate weight and volume ratios; ability to read and understand English language manuals including chemical, medical and technical terms, and road maps; ability to accurately discern street signs and address numbers; ability to document in English, all relevant information in prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other emergency response personnel. Good manual dexterity with ability to perform all tasks related to the protection of life and property; ability to bend, stoop, and crawl on uneven surfaces; ability to withstand varied environmental conditions such as extreme heat, cold, and moisture; and ability to work in low or no light, confined spaces, elevated heights and other dangerous environments.
 - (B) Competency. A basic fire fighter must demonstrate competency handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 1 of the Commission's Certification Curriculum Manual.
- (2) Aircraft rescue fire fighting personnel. The following general position description for aircraft rescue fire fighting personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of aircraft rescue fire fighting personnel operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.
 - (A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: familiarity with geographic and physical components of an airport; ability to use and understand communication equipment, terminology, and procedures utilized by airports; ability and knowledge in the application of fire suppression agents; and ability to effectively perform fire suppression and rescue operations.
 - (B) Competency. Basic fire fighting and rescue personnel must demonstrate competency handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 2 of the Commission's Certification Curriculum Manual.
- (3) Marine fire protection personnel. The following general position description for marine fire protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the marine

fire fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

- (A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: familiarity with geographic and physical components of a navigable waterway; ability to use and understand communication equipment, terminology, and procedures used by the maritime industry; and knowledge in the operation of fire fighting vessels.
- (B) Competency. A marine fire fighter must demonstrate competency in handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 3 of the Commission's Certification Curriculum Manual.

(4) Fire inspection personnel. The following general position description for fire inspection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire inspector operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

- (A) Qualifications. Successfully complete a Commission-approved course; achieve a passing score on certification examinations; must be at least 18 years of age; generally, the knowledge and skills required to show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, and balance weight equivalent to weight of common tools and equipment necessary for conducting an inspection; ability to interpret written and oral instructions; ability to work effectively with the public; ability to work effectively in an environment with potentially loud noises; ability to function through an entire work shift; ability to calculate area, weight and volume ratios; ability to read and understand English language manuals including chemical, construction and technical terms, building plans and road maps; ability to accurately discern street signs and address numbers; ability to document, in writing, all relevant information in a prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other personnel. Demonstrate knowledge of characteristics and behavior of fire, and fire prevention principles. Good manual dexterity with the ability to perform all tasks related to the inspection of structures and property; ability to bend, stoop, and crawl on uneven surfaces; ability to climb ladders; ability to withstand varied environmental conditions such as extreme heat, cold, and moisture; and the ability to work in low light, confined spaces, elevated heights, and other dangerous environments.
- (B) Competency. A fire inspector must demonstrate competency in conducting inspections utilizing equipment and skills in accordance with the objectives in Chapter 4 of the Commission's Certification Curriculum Manual.

(5) Fire Investigator personnel. The following general position description for fire investigator personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire investigator operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

- (A) Qualifications. Successfully complete a Commission-approved course; achieve a passing score on certification examinations; be at least 18 years of age; generally, the knowledge and skills required to show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, and balance weight equivalent to weight of common tools and equipment necessary for conducting an investigation; ability to interpret written and oral instructions; ability to work effectively with the public; ability to work effectively in a hazardous environment; ability to function through an entire work shift; ability to calculate area, weight and volume ratios; ability to read and understand English language manuals including chemical, legal and technical terms, building plans and road maps; ability to accurately discern street signs and address numbers; ability to document, in writing, all relevant information in a prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other personnel. Good manual dexterity with the ability to perform all tasks related to fire investigation; ability to bend, stoop, and walk on uneven surfaces; ability to climb ladders; ability to withstand varied environmental conditions such as extreme heat, cold and moisture; and the ability to work in low light, confined spaces, elevated heights, and other potentially dangerous environments.
- (B) Competency. A fire investigator or arson investigator must demonstrate competency in determining fire cause and origin utilizing equipment and skills in accordance with the objectives in Chapter 5 of the Commission's Certification Curriculum Manual.
- (6) Hazardous Materials Technician personnel. The following general position description for hazardous materials personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the hazardous materials technician operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.
- (A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: successfully complete a Commission-approved course; achieving a passing score on the certification examination; the ability to analyze a hazardous materials incident, plan a response, implement the planned response, evaluate the progress of the planned response, and terminate the incident.
- (B) Competency. A hazardous materials technician must demonstrate competency handling emergencies resulting from releases or potential releases of hazardous materials, using specialized chemical protective clothing and control equipment in accordance with the objectives in Chapter 6 of the Commission's Certification Curriculum Manual.
- (7) Driver/Operator--Pumper personnel. The following general position description for driver/operator--pumper personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the driver/operator--pumper of a fire department pumper operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.
- (A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: ability to perform specified routine test, inspection,

and maintenance functions; ability to perform practical driving exercises; ascertain the expected fire flow; ability to position a fire department pumper to operate at a fire hydrant; ability to produce effective streams; and supply sprinkler and standpipe systems.

- (B) Competency. A driver/operator--pumper must demonstrate competency operating a fire department pumper in accordance with the objectives in Chapter 7 of the Commission's Certification Curriculum Manual.
- (8) Fire Officer I personnel. The following general position description for Fire Officer I personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer I operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.
- (A) Qualifications. In addition to the qualifications for basic structural fire protection and Fire Instructor I personnel: the ability to supervise personnel, and assign tasks at emergency operations; the ability to direct personnel during training activities; the ability to recommend action for member-related problems; the ability to coordinate assigned tasks and projects, and deal with inquiries and concerns from members of the community; the ability to implement policies; the ability to perform routine administrative functions, perform preliminary fire investigation, secure an incident scene and preserve evidence; the ability to develop pre-incident plans, supervise emergency operations, and develop and implement action plans; the ability to deploy assigned resources to ensure a safe work environment for personnel, conduct initial accident investigation, and document an incident.
 - (B) Competency. A Fire Officer I must demonstrate competency in handling emergencies and supervising personnel utilizing skills in accordance with the objectives in Chapter 9 of the Commission's Certification Curriculum Manual.
- (9) Fire Officer II personnel. The following general position description for Fire Officer II personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer II operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.
- (A) Qualifications. In addition to the qualifications for Fire Officer I and Fire Instructor I personnel: the ability to motivate members for maximum job performance; the ability to evaluate job performance; the ability to deliver life safety and fire prevention education programs; the ability to prepare budget requests, news releases, and policy changes; the ability to conduct pre-incident planning, fire inspections, and fire investigations; the ability to supervise multi-unit emergency operations, identify unsafe work environments or behaviors, review injury, accident, and exposure reports.
 - (B) Competency. A Fire Officer II must demonstrate competency in supervising personnel and coordinating multi-unit emergency operations utilizing skills in accordance with the objectives in Chapter 9 of the Commission's Certification Curriculum Manual.

- (10) Fire Service Instructor I personnel. The following general position description for Fire Service Instructor I personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor I operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.
- (A) Qualifications. In addition to successfully completing a Commission-approved course and achieving a passing score on the certification examination: must have the ability to deliver instructions effectively from a prepared lesson plan; the ability to use instructional aids and evaluation instruments; the ability to adapt to lesson plans to the unique requirements of both student and the jurisdictional authority; the ability to organize the learning environment to its maximum potential; the ability to meet the record-keeping requirements of the jurisdictional authority.
- (B) Competency. A Fire Service Instructor I must demonstrate competency in delivering instruction in an environment organized for efficient learning while meeting the record-keeping needs of the authority having jurisdiction, utilizing skills in accordance with the objectives in Chapter 8 of the Commission's Certification Curriculum Manual.
- (11) Fire Service Instructor II personnel. The following general position description for Fire Service Instructor II personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor II operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.
- (A) Qualifications. In addition to successfully completing a Commission-approved course, achieving a passing score on the certification examination, and meeting the qualifications for Fire Service Instructor I: the ability to develop individual lesson plans for a specific topic, including learning objectives, instructional aids, and evaluation instruments; the ability to schedule training sessions based on the overall training plan of the jurisdictional authority; the ability to supervise and coordinate the activities of other instructors.
- (B) Competency. A Fire Service Instructor II must demonstrate competency in developing individual lesson plans; scheduling training sessions; and supervising other instructors, utilizing skills in accordance with the objectives in Chapter 8 of the Commission's Certification Curriculum Manual.
- (12) Fire Service Instructor III personnel. The following general position description for Fire Service Instructor III personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Service Instructor III operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.
- (A) Qualifications. In addition to successfully completing a Commission-approved course, achieving a passing score on the certification examination, and meeting the qualifications for Fire Service Instructor II: the ability to develop comprehensive training curricula and programs for use by single or multiple organizations; the ability to conduct

organizational needs analysis; and the ability to develop training goals and implementation strategies.

- (B) Competency. A Fire Service Instructor III must demonstrate competency in developing comprehensive training curricula and programs; conducting organizational needs analysis; and developing training goals and implementation strategies, utilizing skills in accordance with the objectives in Chapter 8 of the Commission's Certification Curriculum Manual.

§421.5. Definitions.

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

- (1) Admission to employment--An entry level full-time employee of a local government entity in one of the categories of fire protection personnel.
- (2) Appointment--The designation or assignment of a person to a discipline regulated by the Commission. The types of appointments are:
 - (A) permanent appointment--The designation or assignment of certified fire protection personnel or certified part time fire protection employees to a particular discipline (See Texas Government Code, §419.032); and
 - (B) probationary or temporary appointment--The designation or assignment of an individual to a particular discipline, except for head of a fire department, for which the individual has passed the Commission's certification and has met the medical requirement of §423.1(b) of this title, if applicable, but has not yet been certified. (See Texas Government Code, §419.032.)
- (3) Approved training--Any training used for a higher level of certification must be approved by the Commission and assigned to either the A-List or the B-List. The training submission must be in a manner specified by the Commission and contain all information requested by the Commission. The Commission will not grant credit twice for the same subject content or course. Inclusion on the A-List or B-List does not preclude the course approval process as stated elsewhere in the Standards Manual.
- (4) Assigned/work--A fire protection personnel or a part-time fire protection employee shall be considered "assigned/working" in a position, any time the individual is receiving compensation and performing the duties that are regulated by the Texas Commission on Fire Protection certification and has been permanently appointed, as defined in this section, to the particular discipline.
- (5) Assistant fire chief--The officer occupying the first position subordinate to the head of a fire department.
- (6) Auxiliary fire fighter--A volunteer fire fighter.
- (7) Benefits--Benefits shall include, but are not limited to, inclusion in group insurance plans (such as health, life, and disability) or pension plans, stipends, free water usage, and reimbursed travel expenses (such as meals, mileage, and lodging).
- (8) Chief Training Officer--The individual, by whatever title he or she may be called, who coordinates the activities of a certified training facility.

- (9) Class hour--Defined as not less than 50 minutes of instruction, also defined as a contact hour; a standard for certification of fire protection personnel.
- (10) Code--The official legislation creating the Commission.
- (11) College credits--Credits earned for studies satisfactorily completed at an institution of higher education accredited by an agency recognized by the U.S. Secretary of Education and including National Fire Academy (NFA) open learning program colleges, or courses recommended for college credit by the American Council on Education (ACE) or delivered through the National Emergency Training Center (both EMI and NFA) programs. A course of study satisfactorily completed and identified on an official transcript from a college or in the ACE National Guide that is primarily related to Fire Service, Emergency Medicine, Emergency Management, or Public Administration is defined as applicable for Fire Science college credit, and is acceptable for higher levels of certification.
- (12) Commission--Texas Commission on Fire Protection.
- (13) Commission-recognized training--A curriculum or training program which carries written approval from the Commission, or credit hours that appear on an official transcript from an accredited college or university, or any fire service training received from a nationally recognized source, i.e., the National Fire Academy.
- (14) Compensation--Compensation is to include wages, salaries, and "per call" payments (for attending drills, meetings or answering emergencies).
- (15) Expired--Any certification that has not been renewed on or before the end of the certification period.
- (16) Federal fire fighter--A person as defined in the Texas Government Code, §419.084(h).
- (17) Fire chief--The head of a fire department.
- (18) Fire department--A department of a local government that is staffed by one or more fire protection personnel or part-time fire protection employees.
- (19) Fire protection personnel--Any person who is a permanent full-time employee of a fire department or governmental entity and who is appointed duties in one of the following categories/disciplines: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others employed in related positions necessarily or customarily appertaining thereto.
- (20) Fire suppression duties--Engaging in the controlling or extinguishment of a fire of any type or performing activities which are required for and directly related to the control and extinguishment of fires or standing by on the employer's premises or apparatus or nearby in a state of readiness to perform these duties.
- (21) Full-time--An officer or employee is considered full-time if the employee works an average of 40 hours a week or averages 40 hours per week or more during a work cycle in a calendar year. For the purposes of this definition paid leave will be considered time worked.

- (22) Government entity--The local authority having jurisdiction as employer of full-time fire protection personnel in a state agency, incorporated city, village, town or county, education institution or political subdivision.
- (23) High school--A school accredited as a high school by the Texas Education Agency or equivalent accreditation agency from another jurisdiction.
- (24) Immediately dangerous to life or health (IDLH)--An atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.
- (25) Incipient stage fire--A fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.
- (26) Interior structural fire fighting--The physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage. (See 29 CFR §1910.155)
- (27) Lead instructor--An individual qualified as an instructor to deliver fire protection training.
- (28) Municipality--Any incorporated city, village, or town of this state and any county or political subdivision or district in this state. Municipal pertains to a municipality as herein defined.
- (29) National Fire Academy semester credit hours--The number of hours credited for attendance of National Fire Academy courses is determined as recommended in the most recent edition of the "National Guide to Educational Credit for Training Programs," American Council on Education (ACE).
- (30) Non-self-serving affidavit--A sworn document executed by someone other than the individual seeking certification.
- (31) Participating volunteer fire fighter--An individual who voluntarily seeks certification and regulation by the Commission under the Government Code, Chapter 419, Subchapter D.
- (32) Participating volunteer fire service organization--A fire department that voluntarily seeks regulation by the Commission under the Government Code, Chapter 419, Subchapter D.
- (33) Part-time fire protection employee--An individual who is appointed as a part-time fire protection employee and who receives compensation, including benefits and reimbursement for expenses. A part-time fire protection employee is not full-time as defined in this section.
- (34) Personal alert safety system (PASS)--Devices that are certified as being compliant with NFPA 1982, and that automatically activates an alarm signal (which can also be manually activated) to alert and assist others in locating a fire fighter or emergency services person who is in danger.
- (35) Political subdivision--A political subdivision of the State of Texas that includes, but is not limited to the following:
- (A) city;
 - (B) county;

- (C) school district;
- (D) junior college district;
- (E) levee improvement district;
- (F) drainage district;
- (G) irrigation district;
- (H) water improvement district;
- (I) water control and improvement district;
- (J) water control and preservation district;
- (K) freshwater supply district;
- (L) navigation district;
- (M) conservation and reclamation district;
- (N) soil conservation district;
- (O) communication district;
- (P) public health district;
- (Q) river authority;
- (R) municipal utility district;
- (S) transit authority;
- (T) hospital district;
- (U) emergency services district;
- (V) rural fire prevention district; and
- (W) any other governmental entity that: embraces a geographical area with a defined boundary;
 - (i) embraces a geographical area with a defined boundary;
 - (ii) exists for the purpose of discharging functions of the government; and
 - (iii) possesses authority for subordinate self-government through officers selected by it.

(36) Reciprocity for IFSAC seals--Valid documentation of accreditation from the International Fire Service Accreditation Congress used for TCFP certification may only be used for obtaining an initial certification.

- (37) Recognition of training--A document issued by the Commission stating that an individual has completed the training requirements of a specific phase level of the Basic Fire Suppression Curriculum.
- (38) School--Any school, college, university, academy, or local training program which offers fire service training and included within its meaning the combination of course curriculum, instructors, and facilities.
- (39) Structural fire protection personnel--Any person who is a permanent full-time employee of a government entity who engages in fire fighting activities involving structures and may perform other emergency activities typically associated with fire fighting activities such as rescue, emergency medical response, confined space rescue, hazardous materials response, and wildland fire fighting.
- (40) Trainee--An individual who is participating in a Commission approved training program.
- (41) Volunteer fire protection personnel--Any person who has met the requirements for membership in a volunteer fire service organization, who is assigned duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others in related positions necessarily or customarily appertaining thereto.
- (42) Volunteer fire service organization--A volunteer fire department or organization not under mandatory regulation by the Texas Commission on Fire Protection.
- (43) Years of experience--For purposes of higher levels of certification or fire service instructor certification:
- (A) Except as provided in subparagraph (B) of this paragraph, years of experience is defined as full years of full-time, part-time or volunteer fire service while holding:
- (i) a Texas Commission on Fire Protection certification as a full-time, or part-time employee of a government entity, a member in a volunteer fire service organization, and/or an employee of a regulated non-governmental fire department; or
 - (ii) a State Firemen's and Fire Marshals' Association advanced fire fighter certification and have successfully completed, as a minimum, the requirements for an Emergency Care Attendant (ECA) as specified by the Department of State Health Services (DSHS), or its successor agency, or its equivalent; or
 - (iii) an equivalent certification as a full-time fire protection personnel of a governmental entity from another jurisdiction, including the military, or while a member in a volunteer fire service organization from another jurisdiction, and have, as a minimum, the requirements for an Emergency Care Attendant (ECA) as specified by the Department of State Health Services (DSHS), or its successor agency, or its equivalent; or
 - (iv) for fire service instructor eligibility only, a State Firemen's and Fire Marshals' Association Level II Instructor Certification, received prior to June 1, 2008 or Instructor I received on or after June 1, 2008 or an equivalent instructor certification from the Texas Department of State Health Services (DSHS) or the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Documentation of at least

three years of experience as a volunteer in the fire service shall be in the form of a non self-serving sworn affidavit.

- (B) For fire service personnel certified as required in subparagraph (A) of this paragraph on or before October 31, 1998, years of experience includes the time from the date of employment or membership to date of certification not to exceed one year.

§421.9. Designation of Fire Protection Duties.

- (a) An individual who performs one or more fire protection duties, listed in the Texas Government Code, §419.021(3)(C), for a fire department of local government entity shall be designated to only one of the following categories:
- (1) fire protection personnel;
 - (2) a part-time fire protection employee; or
 - (3) a volunteer fire fighter or other auxiliary fire fighter.
- (b) A fire department regulated by the Commission may not designate the same person under more than one category under this section. The designation shall be made on the records of the department and the designation shall be made available for inspection by the Commission or sent to the Commission on request.
- (c) A fire department regulated by the Commission shall report the appointment of fire protection personnel to a regulated discipline via the Commission's online management program, or the appropriate form if available. Fire protection personnel who are assigned to a regulated discipline as part of their regularly assigned duties shall be appointed to that discipline with the Commission. No individual may be appointed to a discipline without approval by the Commission. The Commission shall not approve an initial appointment to a regulated discipline until it has reviewed and approved a person's fingerprint-based criminal history record. Termination of fire protection personnel or part-time fire protection employees shall be reported to the Commission via the Commission's online management program, or the appropriate form if available within 14 calendar days of the action. In the case of termination, the employing entity shall report an individual's last known home address to the Commission. A Removal from Appointment form may be submitted without the employee's signature.
- (d) A fire department may not in a calendar year compensate, reimburse, or provide benefits to a person the department has designated as a volunteer or other auxiliary fire fighter in an amount that is equal to or more than what a person receives working 2,080 hours at the federal minimum wage.
- (e) A person certified as fire protection personnel in one fire department may be employed and designated as a part-time fire protection employee in another fire department without additional certification as a part-time fire protection employee.

§421.11. Requirement To Be Certified Within One Year.

- (a) Fire protection personnel or part-time fire protection employees of a fire department who are appointed duties identified as fire protection personnel duties must be certified by the Commission in the discipline(s) to which they are assigned within one year of their appointment to the duties or within two years of successfully passing the applicable Commission examination, whichever is less. The Commission shall not approve an initial certification for a regulated discipline until it has reviewed and approved a person's fingerprint-based criminal history record.

An individual who accepts appointment(s) in violation of this section shall be removed from the appointment(s) and will be subject to administrative penalties. A department or local government that appoints an individual in violation of this section will also be subject to administrative penalties.

- (b) An individual who has been removed from appointment to duties identified as fire protection personnel duties for violation of this section must petition the Commission in writing for permission to be reappointed to the duties from which they were removed. The petition will be considered only if the individual has obtained all appropriate certification(s) applicable to the duties to which the individual seeks reappointment.

§421.13. Individual Certificate Holders.

- (a) Employment is not mandatory for certification. An individual may hold or renew any certificate issued by the commission for which they maintain their qualifications.
- (b) An individual certificate holder must notify the commission of a change of his or her home address within 14 calendar days of a change of address.

§421.15. Extension of Training Period.

A fire department may apply to the commission for an extension of the one-year training period, identified in §419.032(c) of the Government Code, for a time period not exceeding two years from the date of original appointment as follows:

- (1) the request for extension shall be placed on the Fire Fighter Advisory Committee's (FFAC's) agenda to be heard at its next regular or special called meeting after submission of the request;
- (2) after review by the FFAC, the application along with the FFAC's recommendations will be sent to the commission to be heard at its next regular meeting. If the request for extension is approved by the commission, the extension shall become effective immediately; and
- (3) the one-year extension of training time, if granted, shall run from the date of forfeiture and removal or, at the latest, from one year after the original date training began, whichever occurs first.

§421.17. Requirement to Maintain Certification.

- (a) All full-time or part-time employees of a fire department or local government who are assigned duties identified as fire protection personnel duties must maintain certification by the Commission in the discipline(s) to which they are assigned for the duration of their assignment.
- (b) In order to maintain the certification required by this section, the certificate(s) of the employees must be renewed annually by complying with §437.5, of this title (relating to Renewal Fees) and Chapter 441 of this title (relating to Continuing Education) of the Commission's standards manual.
- (c) An individual whose certificate has been expired for one year or longer may not renew the certificate that was previously held. To obtain a new certification, an individual must meet the requirements in Chapter 439 of this title (relating to Examinations for Certification).

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

(e) All certificate holders are subject to the requirements of Section 57.491 of the Texas Education Code regarding license renewal and default on student loans.

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

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

3. **Proposed amendments pursuant to Section 2001.039, Texas Government Code regarding rule review of 37 TAC, Chapter 401, Practice and Procedure, Subchapter A, General Provisions and Definitions, including, but not limited to, §401.5, Delegation of Authority, §401.11, Conduct of Commission and Advisory Meetings, and §401.13, Computation of Time, Subchapter B, §401.17, Requirements, and §401.19, Petition for Adoption of Rules, Subchapter C, Examination Appeals Process, §401.21, Examination Challenge, and §401.123, Examination Waiver Request, Subchapter D, Disciplinary Proceedings, §401.31, Disciplinary Proceedings in Contested Cases, Subchapter E, §401.41, Preliminary Staff Conference, §401.43, Prehearing Conferences, §401.45, Interim Orders, §401.47, Appeal of an Interim Order, and §401.49, Prehearing Statements, Subchapter F, Contested Cases, §401.51, Preliminary Notice and Opportunity for Hearing, Subchapter H, Reinstatement, §401.117, Commission Action Possible upon Reinstatement, and Subchapter I, Notice and Processing Periods For Certificate Applications, 401.121, Purpose of Establishing Time Periods, §401.123, Notice of Deficiency, and §401.125 Processing Periods new Subchapter J, Charges For Public Records, §401.129, Charges for Public Records, and new Subchapter K, Historically Underutilized Businesses, §401.131, Historically Underutilized Businesses.**

Chapter 401

ADMINISTRATIVE 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 matters related solely to the internal personnel rules and practices of this agency.
 - (4) 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) 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 or designee.

§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 **fire fighter** 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 **in writing** 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 **15**~~[30]~~ days in advance of commission **or fire fighter advisory committee** 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 **the fire fighter advisory committee** ~~[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 **sent** ~~[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 **executive** director **or designee**, upon the following conditions:
- (1) A written motion must be duly filed with the **executive** director **or designee** 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 **the fire fighter** advisory **committee** ~~[committees]~~ provided for by law, the procedure for rulemaking is governed by Subchapter B of the Administrative Procedure Act (**APA**).

§401.19. Petition for Adoption of Rules.

- (a) Any person may petition the **commission** ~~[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** ~~[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** ~~[Commission]~~ or **the fire fighter** ~~[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** ~~[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 [~~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 [~~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 [~~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 [~~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 [~~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 [~~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.

SUBCHAPTER D
DISCIPLINARY PROCEEDINGS

§401.31. Disciplinary Proceedings in Contested Cases.

- (a) If the **commission** [~~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** [~~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 **Preliminary Staff** 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** [~~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 commission ~~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 hearings officer shall schedule prehearing conferences as necessary for the efficient management of the proceedings. The presiding hearings 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 hearings 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 hearings 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 hearings officer intends to reduce an oral ruling to a written order, the presiding hearings 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 hearings 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 hearings 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 hearings 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 hearings 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 **November 26, 2008** [~~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** [~~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/or;** ~~[and]~~

~~[(5) require monitoring of the applicant's work activity as specified by the commission.]~~

- (5) reinstate a suspended or revoked license or certificate after verification through examination of required knowledge and skills appropriate to the suspended or revoked license or certificate. All applicable procedures shall be followed and all applicable fees shall be paid.**

§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 **establishes** [~~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 **in accordance with §401.123** 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.

SUBCHAPTER J**CHARGES FOR PUBLIC RECORDS****§401.129. Charges for Public Records.**

- (a) The Texas Commission on Fire Protection is subject to Texas Government Code, Chapter 552, Texas Public Information Act. The Act gives the public the right to request access to government information.**
- (b) The Texas Commission on Fire Protection adopts by reference Title 1, Part 13, Chapter 70, Cost of Copies of Public Information, as promulgated by the Office of the Attorney General.**
- (c) The executive director may waive or reduce a charge for copies when furnishing the information benefits to the general public.**

SUBCHAPTER K**HISTORICALLY UNDERUTILIZED BUSINESSES****§401.131. Historically Underutilized Businesses.**

The Texas Commission on Fire Protection adopts by reference Title 34, Part 1, Chapter 20, Texas Procurement and Support Services, Subchapter B, Historically Underutilized Business Program, as promulgated by the Comptroller of Public Accounts.

9. **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:**
 4. **Proposed amendments pursuant to Section 2001.039, Texas Government Code regarding rule review of 37 TAC, Chapter 403, Criminal Convictions and Eligibility for Certification, including, but not limited to, §403.1, Purpose, §403.3 Scope, §403.5, Access to Criminal History Record Information, §403.9, Mitigating Factors, §403.11, Procedures for Suspension, Revocation, or Denial of a Certificate to Persons with Criminal Backgrounds, and §403.15, Report of Convictions by an Individual or a Department.**

Chapter 403

CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

§403.1. Purpose.

- (a) The purpose of this chapter is to establish **policy, procedures**~~[guidelines]~~ and criteria on the eligibility of persons with a criminal conviction for a certificate or renewal of a certificate issued by the Texas Commission on Fire Protection (the **commission**~~[Commission]~~) and to establish procedures for suspension, probation, revocation, or denial of a certificate held or applied for by persons with a criminal conviction pursuant to Chapter 53, Texas Occupations Code.
- (b) The duties and responsibilities of persons who hold certifications issued by the **commission** ~~[Commission]~~ each involve matters that directly relate to public safety, specifically to the reduction of loss of life and property from fire. Thus, conduct involving the injury to a person or the destruction of property by fire, relates directly to the fitness of the individual to be fire protection personnel. Fire protection personnel often have access to areas not generally open to the public. The public relies on the honesty, trustworthiness, and reliability of persons certified by the **commission**~~[Commission]~~. Thus, crimes involving moral turpitude, including, but not limited to, fraud and dishonesty, are directly relevant. In addition, the ability of such persons to function unimpaired by alcohol or the illegal use of drugs, in dangerous or potentially dangerous circumstances, including, but not limited to, the operation of emergency vehicles is paramount in light of the duty to protect the health and safety of the public.

§403.3. Scope.

- (a) The **policy and procedures**~~[guidelines]~~ established in this chapter apply to a person who holds or applies for any certificate issued under the **commission's**~~[Commission's]~~ regulatory authority contained in Government Code, Chapter 419.
- (b) When a person is charged with, or convicted of a crime of a sexual nature, the conviction of which would require the individual to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure; or
- (c) When a person engages in conduct that is an offense under Title 7 of the Texas Penal Code, or a similar offense under the laws of the United States of America, another state, or other jurisdiction, the person's conduct directly relates to the competency and reliability of the person to assume and discharge the responsibilities of fire protection personnel. Such conduct includes, but is not limited to, intentional or knowing conduct, without a legal privilege, that causes or is intended to cause a fire or explosion with the intent to injure or kill any person or animal or to destroy or damage any property. The **commission**~~[Commission]~~ may consider the person's conduct even though a final conviction has not occurred and may:
- (1) deny to a person the opportunity to be examined for a certificate;
 - (2) deny the application for a certificate;
 - (3) grant the application for a new certificate with the condition that a probated suspension be placed on the newly granted certificate;
 - (4) refuse to renew a certificate;
 - (5) suspend, revoke or probate the suspension or revocation of an existing certificate; or
 - (6) limit the terms or practice of a certificate holder to areas prescribed by the **commission**~~[Commission]~~.
- (d) When a person's criminal conviction of a felony or misdemeanor directly relates to the duties and responsibilities of the holder of a certificate issued by the **commission**~~[Commission]~~, the **commission** ~~[Commission]~~ may:
- (1) deny to a person the opportunity to be examined for a certificate;
 - (2) deny the application for a certificate;

- (3) grant the application for a new certificate with the condition that a probated suspension be placed on the newly granted certificate;
- (4) refuse to renew a certificate;
- (5) suspend, revoke or probate the suspension or revocation of an existing certificate; or
- (6) limit the terms or practice of a certificate holder to areas prescribed by the **commission**. [Commission.]

§403.5. Access to Criminal History Record Information.

- (a) Criminal history record. The **commission**[Commission] is entitled to obtain criminal history record information maintained by the Department of Public Safety, or another law enforcement agency to investigate the eligibility of a person applying to the **commission**[Commission] for or holding a certificate.
- (b) Confidentiality of information. All information received under this section is confidential and may not be released to any person outside the agency except in the following instances:
 - (1) a court order;
 - (2) with written consent of the person being investigated;
 - (3) in a criminal proceeding; or
 - (4) in a hearing conducted under the authority of the **commission**. [Commission.]
- (c) Early review. A fire department that employs a person regulated by the **commission**[Commission], a person seeking to apply for a beginning position with a regulated entity, a volunteer fire department, or an individual participating in the **commission** [Commission]-certification program may seek the early review under this chapter of the person's present fitness to be certified. Prior to completing the requirements for certification, the individual may request such a review in writing by **submitting the required forms and fee(s)**. [~~providing the person's full name, date of birth and any additional identifying information requested by the Commission.~~] A decision based on an early review does not bind the **commission** [Commission] if there is a change in circumstances.

§403.7. Criminal Convictions Guidelines.

- (a) The following crimes are considered to relate directly to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of persons certified by the commission:
 - (1) offenses under the Government Code, Chapter 419, relating to the Texas Commission on Fire Protection;
 - (2) offenses under the Texas Transportation Code Title 6 Roadways, which are punishable by fines greater than \$200, or imprisonment, or both fine and imprisonment;
 - (3) offenses under the Health and Safety Code, Chapter 481, concerning controlled substances;
 - (4) offenses under the Health and Safety Code, Chapter 483, concerning dangerous drugs;
 - (5) offenses under the following titles of the Texas Penal Code:
 - (A) Title 5-offenses against the person;
 - (B) Title 6-offenses against the family;
 - (C) Title 7-offenses against property;
 - (D) Title 8-offenses against public administration;
 - (E) Title 9-offenses against public order and decency;

(F) Title 10-offenses against public health, safety and morals;

(G) Title 11-offenses involving organized crime; and

(H) Title 4-inchoate offenses Chapter 15 preparatory offenses to any of the offenses in this section;

(6) the offenses listed in this subsection are not inclusive, in that the commission may consider other particular crimes in special cases in order to promote the intent of the statutes administered by the commission.

(b) In all cases the commission shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring the certificate issued by the commission;

(3) the extent to which the certificate might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the certificate holder;

(5) the level and nature of supervision of the person by others; and

(6) the level and nature of access to public, commercial, and residential properties, including access after regular business hours and access to areas not open to the general public.

§403.9. Mitigating Factors.

(a) In addition to the factors that must be considered under §403.7 of this title (relating to Criminal Convictions Guidelines), in determining the present fitness of a person who has been convicted of a crime, the **commission**~~[Commission]~~ shall consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters of recommendation from:

(A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; and

(C) any other persons in contact with the convicted person.

(b) It shall be the responsibility of the applicant to the extent possible to secure and provide to the commission **as required** the recommendations of prosecution, law enforcement, and correctional authorities as required by statute and these rules upon request by the commission staff. The applicant shall **upon request** also furnish:

(1) a copy of the indictment, information or complaint;

(2) a copy of the judgement(s) or order(s) of the court adjudicating guilt, granting probation, community supervision, deferred adjudication, or discharge from probation or community supervision;

- (3) a record of steady employment in the form of a letter from current or former employers;
- (4) a record that the applicant has supported his or her dependents in the form of a letter from a person in the applicant's community with personal knowledge of the circumstances;
- (5) evidence that the applicant has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted, in the form of copies of official records, documents, or a letter from the person's probation or parole officer where applicable concerning his or her current status; and
- (6) a copy of the police or offense report(s).

§403.11. Procedures for Suspension, Revocation, or Denial of a Certificate to Persons with Criminal Backgrounds.

- (a) If the **commission** [~~Commission~~] Standards Division (the division) proposes to suspend, revoke, limit, or deny a certificate based on the criteria in this chapter, the division shall notify the individual **per Government Code, Chapter 2001**. [~~at his or her last known address as shown in the Commission's records, by registered or certified mail.~~] The notice of intended action shall specify the facts or conduct alleged to warrant the intended action.
- (b) If the proposed action is to limit, suspend, revoke, or refuse to renew a current certificate, or deny an application for a new certificate, a written notice of intended action shall comply with the preliminary notice requirements of Government Code §2001.054(c). The individual may request, in writing, an informal conference with the **commission** [~~Commission~~] staff in order to show compliance with all requirements of law for the retention of the certificate, pursuant to Government Code §2001.054(c). A written request for an informal staff conference must be submitted to the division director no later than 15 days after the date of the notice of intended action. If the informal staff conference does not result in an agreed consent order, a formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.
- (c) If the individual does not request an informal staff conference or a formal hearing in writing within the time specified in this section, the individual is deemed to have waived the opportunity for a hearing, and the proposed action will be taken.
- (d) If the **commission** [~~Commission~~] limits, suspends, revokes, or denies a certificate under this chapter, the executive director shall give the person written notice:
 - (1) of the reasons for the decision;
 - (2) that the person may appeal the decision of the executive director to the **commission** [~~Commission~~] in accordance with §401.63 of this title (relating to Appeals to the Commission) within 30 days from the date the decision of the executive director is final and appealable;
 - (3) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas, for judicial review of the evidence presented to the **commission** [~~Commission~~] and its decision; and that such petition must be filed with the court no later than 30 days after the **commission** [~~Commission~~] action is final and appealable.

§403.15. Report of Convictions by an Individual or a Department.

- (a) A certificate holder **must** [~~shall~~] report to the **commission** [~~Commission~~], any conviction, other than a minor traffic offense (Class C misdemeanor) under the laws of this state, another state, the United States, or foreign country, within 14 days of the conviction date.
- (b) A fire department or local government **entity** [~~regulated by the Commission~~] shall report to the **commission** [~~Commission~~], any conviction of a certificate holder [~~employed by the regulated entity,~~] other than a minor traffic offense (class C misdemeanor) under the laws of this state, another state, the United States, or foreign country, that it has knowledge of, within 14 days of the conviction date.
- (c) A certificate holder is subject to suspension, revocation or denial of any or all certifications for violation of the requirements of section (a) above. Each day may be considered a separate offense.**

(d) A fire department or government entity regulated by the commission violating section (b) above may be subject to administrative penalties of up to \$500. Each day may be considered a separate offense.

(e) Notification may be made by mail, e-mail, or in person to the Texas Commission on Fire Protection (TCFP) Austin office. TCFP Form #0014 shall be used.

9. 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:

- 5. Proposed amendments pursuant to Section 2001.039, Texas Government Code regarding rule review and repeal of 37 TAC, Chapter 405, Charges For Public Records, including, but not limited to, §405.1, General Provisions Regarding Charges for Public Records, §405.3, Definitions, §405.5, Charges For Providing Copies of Public Information, §405.7, Access to Information Where Copies Are Not Requested, §405.9, Format for Copies of Public Information, §405.11, Estimates and Waivers of Public Information Charges, and §405.15, The Texas Commission on Fire Protection Charge Schedule.**

Chapter 405

CHARGES FOR PUBLIC RECORDS

~~§405.1. General Provisions Regarding Charges for Public Records.~~

- ~~(a) State agencies, including the Texas Commission on Fire Protection, are subject to the Texas Public Information Act, codified at Texas Government Code, Chapter 552. The Act gives the public the right to request access to government information. The Texas Building and Procurement Commission has adopted rules for use by each state agency in determining charges for public records. When a request for public records is made for more than 50 pages of readily available information, the Commission is authorized to establish charges up to the full cost to the Commission of providing the copies.~~
- ~~(b) The Texas Commission on Fire Protection has considered and conformed its rules to the Texas Building and Procurement Commission's rules in 1 TAC, Chapter 111, for charges for public records. These rules may also be used to determine what the Commission may charge another state agency for public information.~~
- ~~(c) Utilization of standard charges, as determined by the Texas Building and Procurement Commission, enhances the public's understanding of how costs for public information have been calculated. The charges for public information may not be excessive and should be reasonable and not effectively bar access to information.~~
- ~~(d) These rules adopted in this chapter supersede any other rules applicable to charges for public records adopted by the Texas Commission on Fire Protection or its predecessors and are intended to apply to all of the Commission's programs and divisions.~~

~~§405.3. Definitions.~~

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

- ~~(1) Actual cost—The sum of all direct costs plus a proportional share of overhead or indirect costs. Actual cost should be determined in accordance with rules adopted by the Texas Building and Procurement Commission.~~
- ~~(2) Commission—The Texas Commission on Fire Protection.~~
- ~~(3) Nonstandard copy—A copy of public information that is made available to a requestor in any format other than a standard-size paper copy. Diskettes, magnetic tapes, and CD-ROM are examples of nonstandard copies. Paper copies larger than 8 1/2 by 14 inches (legal size) are also considered nonstandard copies.~~
- ~~(4) Readily available information—Information that already exists in printed form, or information that is stored electronically and is ready to be printed or copied without requiring any programming. Information that requires a substantial amount of time to locate or prepare for release is not readily available information. The Commission may compile and maintain information, especially information that is likely to be the subject of repeated requests for access or copies, in a manner that maximizes the ready availability of the information. In determining whether to charge for providing copies of public records, the Commission may take into account not only whether the information is in fact readily available, but also whether, in the exercise of efficient recordkeeping, it could or should have been readily available.~~
- ~~(5) Standard paper copy—A printed impression on one side of a piece of paper that measures up to 8 1/2 by 14 inches. Each side of a piece of paper on which an impression is made is counted as a single copy. A piece of paper that is printed on both sides is counted as two copies.~~

~~§405.5. Charges for Providing Copies of Public Information.~~

- ~~(a) Basis for Charges. The charges stated in this section to recover costs associated with providing public information are based on estimated average costs to state agencies.~~
- ~~(b) Copy charge.~~

~~(1) Standard size paper copy The charge for standard size paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page.~~

~~(2) Nonstandard copy The charges for nonstandard copies are:~~

~~(A) Diskette \$1.00/each;~~

~~(B) Audio cassette \$1.00/each;~~

~~(C) Oversize Paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper see 1 TAC §111.69) \$.50/each;~~

~~(D) Rewritable CD (CD RW) \$1.00/each;~~

~~(E) Non rewritable CD (CD R) \$1.00/each;~~

~~(F) Magnetic tape actual cost;~~

~~(G) Data cartridge actual cost;~~

~~(H) Tape cartridge actual cost;~~

~~(I) Digital video disc (DVD) \$3.00;~~

~~(J) JAZ drive actual cost;~~

~~(K) VHS video cassette \$2.50;~~

~~(L) Specialty paper (e.g., Mylar, blueprint, blue-line, map, photographic) actual cost; and~~

~~(M) other electronic media actual cost.~~

~~(3) The charges in this section are to recover the cost of materials onto which information is copied and do not reflect any additional charges that may be associated with a particular request.~~

~~(c) Personnel charge.~~

~~(1) The charge for personnel costs incurred by the Commission in processing a request for public information is \$15 per hour, including fringe benefits. The personnel charge includes the actual time spent to take requests, locate and compile documents, and reproduce requested information. Where applicable, the personnel charge is prorated to cover the cost for personnel time spent.~~

~~(2) A personnel charge may not be billed in connection with complying with requests that are for 50 or fewer pages of readily available information.~~

~~(3) Personnel time may not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:~~

~~(A) to determine whether the Commission will raise any exceptions to disclosure of the requested information under Subchapter C of the Public Information Act; or~~

~~(B) to research or prepare a request for a ruling by the Attorney General's Office pursuant to Texas Government Code, §552.301 (the Public Information Act).~~

~~(d) Overhead charge.~~

~~(1) In response to a request for information that is not readily available or for in excess of 50 pages of readily available information, the Commission may include in the charges direct and indirect costs, in addition to the personnel charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair,~~

utilities and administrative overhead. If the Commission chooses to recover such costs, a charge may be made in accordance with the methodology described in paragraph (3) of this subsection.

(2) — An overhead charge should not be made for requests for readily available information of fewer than 50 pages.

(3) — The overhead charge may be computed at 20% of any charge made to cover personnel costs associated with a particular request. This is the standard methodology as set out in the Texas Building and Procurement Commission rules (1 TAC, §111.63), which state that the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(e) — Remote document retrieval charge.

(1) — Due to limited on-site capacity of storage of documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort will be made by the Commission to store such documents with the Texas State Library, which is equipped to provide such a service free of charge. To the extent that charges for retrieval of documents result in a charge to the Commission to comply with a request, it is permissible for the Commission to recover costs of such services. Where a charge is made for document retrieval, no additional personnel charge will be factored in for time spent locating documents.

(2) — Such charge may be waived if the request is for 50 pages or fewer of readily available information.

(f) — Computer resource charge.

(1) — The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(2) — These computer resource charges are not intended to substitute for cost recovery methodologies or charges made for purposes other than responding to open records requests.

(3) — The charges in this subsection are averages based on a survey of state agencies with a broad range of computer capabilities. The Commission has determined that the category of computer type which most closely fits its existing system is a personal computer or LAN and has set its charge accordingly at \$1.00 per clock hour in accordance with Texas Building and Procurement Commission rules.

(4) — The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather, it is solely to recover costs associated with the actual time required by the computer to execute a program. This time frame most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (g) of this section. No charge should be made for computer print-out time.

(g) — Programming time. If a particular request requires the services of a programmer to enter data in order to execute an existing program or to create a new program so that the requested information may be accessed and copied, the Commission may charge for the programmer's time. The average hourly salary of a programmer for the State of Texas is currently \$28.50 an hour, including fringe benefits, which is the charge to be used in these rules. Any charge for programming should be prorated. Only programming services should be charged at this hourly rate. Any personnel time spent in performing services other than programming should be charged at the rate for personnel as described in subsection (e)(1) of this section.

(h) — Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, binders and other supplies used to produce the requested information may be added to the total charge for public information.

(i) — Postal and shipping charges. The Commission may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.

(j) — Fax charge. The charge for a fax transmitted locally is \$.10 per page. The charge for a long distance transmission is \$.50 per page for a fax sent within the Commission's area code, and \$1.00 per page for a fax transmitted to a different area code.

(k) — Sales tax. Sales tax shall not be added on charges for public information.

(l) ~~Updating of Charges. The Commission shall reevaluate and update these charges as necessary.~~

~~§405.7. Access to Information Where Copies Are Not Requested.~~

- (a) ~~Access to information in standard form. The Commission may not charge for making available for inspection information maintained in standard form, with the following exceptions:~~
- (1) ~~if the information is located at a remote document storage center and the Commission will incur a retrieval charge in order to make the information available, the Commission may charge the requesting party the actual cost of retrieval; or~~
 - (2) ~~if the information requested takes more than five hours to prepare for inspection; and~~
 - (A) ~~is older than five years; or~~
 - (B) ~~completely fills, or when assembled will completely fill, six or more archival boxes.~~
- (b) ~~Access to information in other than standard form. In response to requests for access, for purposes of inspection only, to information that is maintained in other than standard form, the Commission may charge the requesting party the cost of preparing and making available such information if complying with the request will require programming or the manipulation of data.~~

~~§405.9. Format for Copies of Public Information.~~

~~To the extent possible the Commission will attempt to accommodate a requesting party by providing information in the format requested. The extent to which a requestor can be accommodated will depend largely on the technological capability of the Commission. The Commission is not required to acquire software or programming capabilities that it does not already possess to accommodate a particular kind of request. However, the Commission will take into account in its data processing planning the public's interest in obtaining access to information and the ways in which such access can be facilitated through acquisition of improved technology.~~

~~§405.11. Estimates and Waivers of Public Information Charges.~~

- (a) ~~In accordance with 1 TAC, Chapter 111, the Commission will provide to the party requesting copies of public information an itemized statement of estimated charges if charges for copies of public information or if charges for making public information available for inspection will exceed \$40. The itemized statement will contain the following information:~~
- (1) ~~the itemized charges, including any allowable charges for personnel time, overhead, copies, etc; and~~
 - (2) ~~whether a less costly or no cost way of viewing the information is available.~~
- (b) ~~The requestor must respond to the itemized statement in writing by mail, in person, by facsimile or email within 10 business days after the date the statement is sent, or the request will be considered to have been automatically withdrawn by the requestor. The written response must contain one of the following statements:~~
- (1) ~~that the requestor will accept the estimated charges; or~~
 - (2) ~~that the requestor is modifying the request in response to the itemized statement; or~~
 - (3) ~~that the requestor has sent to the Texas Building and Procurement Commission a complaint alleging that the requestor has been overcharged for being provided with a copy of the public information.~~
- (c) ~~If the Commission cannot produce the requested public information and/or duplication within 10 business days after the date the written response from the requestor has been received, the Commission will certify to that fact in writing and set a date and hour within a reasonable time, as to when the information will be available.~~
- (d) ~~The Commission will furnish public records without charge or at a reduced charge if it determines that a waiver or reduction is in the public interest because providing the copy of the information primarily benefits the general public.~~

- (e) ~~If the estimated charges are \$100 or more, the Commission may require a bond for the entire estimated amount or a deposit not to exceed 50 percent of the entire estimated charges.~~
- (f) ~~Where a particular request will involve considerable time and resources to process, the Commission staff will advise the requesting party of what may be involved and an estimated date of completion. All efforts will be made to process requests as efficiently as possible so that requested information will be provided at the lowest possible charge. When the Commission charges for public information, full disclosure will be made to the requesting party as to how the charges were calculated.~~

~~§405.15. The Texas Commission on Fire Protection Charge Schedule.~~

~~The following are the charges for copies of public information according to the type of service rendered. No sales tax shall be applied to copies of public information.~~

- (1) ~~Standard paper copy \$.10 per page.~~
- (2) ~~Nonstandard copy.~~
- (A) ~~Diskette \$1.00 each.~~
- (B) ~~Audio cassette \$1.00 each.~~
- (C) ~~Oversize Paper copy \$.50 each.~~
- (D) ~~Rewritable CD (CD-RW) \$1.00 each.~~
- (E) ~~Non-rewritable CD (CD-R) \$1.00 each.~~
- (F) ~~Magnetic tape Actual cost.~~
- (G) ~~Data cartridge Actual cost.~~
- (H) ~~Tape cartridge Actual cost.~~
- (I) ~~Digital video disc (DVD) \$3.00.~~
- (J) ~~JAZ drive Actual cost.~~
- (K) ~~VHS video cassette \$2.50.~~
- (L) ~~Specialty paper (e.g., Mylar, blueprint, blue-line, map, photographic) Actual cost.~~
- (M) ~~other electronic media Actual cost.~~
- (3) ~~Personnel charge.~~
- (A) ~~Programming Personnel \$28.50 per hour.~~
- (B) ~~Other Personnel \$15 per hour.~~
- (4) ~~Overhead charge 20% of personnel charge.~~
- (5) ~~Remote document retrieval charge Actual cost.~~
- (6) ~~Computer resource charge, PC or LAN \$1.00 per clock hour.~~
- (7) ~~Computer resource charge, Midsize computer \$1.50 per CPU minute.~~
- (8) ~~Computer resource charge, Client/Server \$2.20 per clock hour.~~
- (9) ~~Miscellaneous supplies Actual cost.~~

~~(10) Postage and shipping Actual cost.~~

~~(11) Fax charge.~~

~~(A) Local \$.10 per page.~~

~~(B) Long distance, same area code \$.50 per page.~~

~~(C) Long distance, different area code \$1.00 per page.~~

~~(12) Outsourced/Contracted Services Actual cost (may not include development costs).~~

~~(13) Other costs Actual cost.~~

9. **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:**
 6. **Proposed amendments pursuant to Section 2001.039, Texas Government Code regarding rule review and repeal of 37 TAC, Chapter 407, Administration, including, but not limited to, §407.1 Historically Underutilized Businesses.**

Chapter 407

ADMINISTRATION

§407.1. Historically Underutilized Businesses.

- (a) ~~The Commission adopts by reference the rules of the Texas Building and Procurement Commission in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter B (relating to Historically Underutilized Business Program). Certification of a business as a historically underutilized business remains the responsibility of the Texas Building and Procurement Commission.~~
- (b) ~~The adoption of this rule is required by Texas Government Code, §2161.003 (as added by the 76th Legislature, effective September 1, 1999).~~