5. **Discussion and possible action regarding proposed rule changes to title 37 TAC, Chapter 427, Training Facilities, including but not limited to, Subchapter A, On-Site Certified Training Provider, §427.1, Minimum Standards for Certified Training Facilities for Fire Protection Personnel, §427.3, Facilities, §427.5, Apparatus, §427.7, Protective Clothing, §427.9, Equipment, §427.11, Reference Materials, §427.13, Records, §427.18, Live Fire Training Evolutions, §427.19, General Information, Subchapter B, Distance Training Provider, §427.201, Minimum Standards for Distance Training Provider, §427.203, Records, §427.209, General Information, Subchapter C, Training Programs for On-Site and Distance Training Providers, including but not limited to, §427.301, General Provisions for Training Programs--On-Site and Distance Training Providers, §427.303, Training Approval process for On-Site and Distance Training Providers, §427.305, Procedures for Testing Conducted by On-Site and Distance Training Providers, and §427.307, On-Site and Distance Training Provider Staff Requirements, and Subchapter D, Certified Training Facilities, §427.401, General Provisions for Training Facilities Not Owned by the State of Texas or Operated by a Political Subdivision of the State of Texas, §427.403, Financial Standards, §427.405, Policy Regarding Complaints, §427.407, School Responsibilities Regarding Instructors, §427.409, Advertising, §427.411, Cancellations or Suspensions and §427.413 Liabilities.**

CHAPTER 427

TRAINING FACILITY CERTIFICATION

SUBCHAPTER A

ON-SITE CERTIFIED TRAINING PROVIDER

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

(a) An on-site training facility must be certified by the commission in each discipline with a commission approved curriculum for which the facility provides accredited training for fire protection personnel certification. An on-site training facility is where instructors and students are in immediate proximity and where content is instructed primarily in classrooms, at demonstration projects, in fire simulation structures, on fire apparatus, or at training sites in the field under direct supervision of the training facility instructors.

(b) A certified on-site training facility may be approved to instruct in any one or all of the fire protection personnel curricula. Minimum requirements for each curriculum must be met to receive certification.

(c) Minimum requirements for certification as a certified on-site training facility shall include facilities, apparatus, equipment, reference materials, standard operating procedures, instructors, and records to support a quality education and training program. The resources must provide for classroom instruction, demonstrations, and practical exercises for the trainees to develop the knowledge and skills required for fire protection personnel certification.

(d) The on-site facilities and training shall be performance oriented, when required. Practical performance training with maximum participation by trainees shall be an integral part of the training program. The evaluation process for each phase of training will emphasize, as required, performance testing to determine if the trainee has acquired the knowledge and skills to achieve the required level of competency as required by the respective curriculum.

(e) It must be clearly understood that the minimum standard for training facilities is applicable only as the title implies and does not address the additional training facility resources which are required for the continuing in-service training essential to the development and maintenance of a well-coordinated and effective fire service organization.

(f) An organization, installation, or facility must submit a written application for certification as a certified on-site training facility to the commission. Such application will include descriptions and addresses of physical facilities together with inventory of apparatus, equipment, and reference material to be utilized in conducting the basic curriculum as specified by the commission. It is not required that the equipment be owned by, permanently assigned to, nor kept at a training facility, but must be readily available for instructional purposes. A training facility must submit a letter of commitment with the original training facility certification application authorizing the use of resources not controlled by the training facility from the provider of said resources. A copy of the letters of commitment must be maintained on-site and be available for review. Photographs of resources annotated to reflect their identity must be included with the application. When seeking training approvals, the facility shall certify that the resources are provided in accordance with this chapter.

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

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

(2) submit a testing schedule for all required academy skills**.**[~~; and~~]

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

§427.3 Facilities.

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

(1) A training tower equivalent to two or more stories in height. The term "training tower" as used in these standards is a structure suitable for training in the practical application of required ladder, rescue, hose and rope skills training.

(2) A facility for classroom instruction and testing shall have seating capacity for anticipated trainees. The facility must be conducive for an effective learning environment including environmental comfort for instructors and students, physical requirements needed for good seeing and hearing, adequate lighting, and free of outside distractions.

(3) An area for practical application of principles and procedures of fire fighting, hose loading, pumper operation, to include friction loss, nozzle reaction, fire stream patterns, and GPM discharge utilizing various layouts for hand lines and/or master stream appliances.

(4) An enclosed area or room for use in practical training with self-contained breathing apparatus. This may be a smoke and fire room or enclosed area which can be charged with smoke-producing devices to provide a realistic training environment.

(5) A structure suitable for interior live fire training and meeting the requirements of the basic curriculum pertaining to the particular discipline(s) which the training facility is approved to teach, shall be available for use by the instructors to teach interior live fire training.

(6) Facilities to conduct exterior live fire training as required by the basic curriculum pertaining to the particular discipline(s) which the training facility is approved to teach, shall be available for use by the instructors to teach exterior live fire training.

(7) If performance or driving skills are part of the curriculum, suitable area(s) for practicing required skills, demonstration of skills, and performance testing must be available.

§427.5 Apparatus.

(a) Certified on-site training facility--approved for basic structural fire protection personnel certification training.

(1) A pumper apparatus fully equipped as required by the basic fire suppression curriculum shall be readily available for use by the instructors for instructional purposes.

(2) Ladders or a ladder truck as required by the basic fire suppression curriculum shall be readily available for use by the instructors for instructional purposes.

(b) Certified on-site training facility--approved for basic aircraft rescue fire fighting personnel certification training. Fire apparatus that is equipped to perform aircraft operations as required by

the basic aircraft fire protection curriculum must be readily available for use by the instructors for instructional purposes.

(c) Certified on-site training facility--approved for Driver/Operator-Pumper certification training. A piece of fire apparatus with a permanently mounted fire pump that has a rated discharge capacity of 750 gpm (2850 L/min) or greater as defined in NFPA 1901, Standard for Automotive Fire Apparatus.

(d) Certified on-site training facility approved for hazardous materials technician certification training must have access to props and/or simulators, protective suits and monitoring equipment required for skills training and testing.

§427.7 Protective Clothing.

Each and every set of protective clothing, including proximity clothing, that will be used during the course of instruction for a commission approved fire protection personnel curriculum shall comply with §435.1 of this title (relating to Protective Clothing). This rule applies whether the protective clothing is provided by the academy or the trainee.

(1) Protective clothing and elements no longer in use to the organization for emergency operations service, but are not contaminated, defective, or damaged, may be used for training that does not involve live fire training, provided such clothing and elements are appropriately marked to be easily recognized.

(2) Protective clothing used for aircraft rescue, live fire training, shall be suitable for the type of fire the student is being trained for and shall be determined by the chief training officer of the training facility.

§427.9 Equipment.

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

(1) If instruction in the use of self-contained breathing apparatus is a part of the curriculum being taught, then self-contained breathing apparatus in sufficient numbers shall be provided to enable each trainee to wear the equipment for at least the life of one breathing air tank during the training. If during the course of the training, a trainee will be subjected to a hazardous atmosphere or where the atmosphere is unknown, the trainee shall be provided with a self-contained breathing apparatus. (Note: All self-contained breathing apparatus used by a certified training facility and the air used in self-contained breathing apparatus must comply with §435.3 of this title (relating to Self-Contained Breathing Apparatus)). This rule applies whether the self-contained breathing apparatus is provided by the academy or the trainee. All students, instructors, safety personnel, and other personnel participating in any evolution or operation of fire suppression during the live fire training shall breathe from an SCBA air supply whenever operating under one or more of the following conditions:

(A) in any atmosphere that is oxygen deficient or contaminated by products of combustion, or both;

(B) in any atmosphere that is suspected of being oxygen deficient or contaminated by products of combustion, or both;

(C) in any atmosphere that can become oxygen deficient or contaminated, or both; and/or

(D) below ground level;

(2) standard classroom equipment to include chalkboard, speaker rostrum, supportive instructional aids available to include audio-visual projection equipment. The use of cutaways, models, flip charts, and other visual aids are recommended to enhance effectiveness of the instruction. Note: The instructor needs to ensure all necessary equipment is available for trainees to use regarding the basic performance skills as identified in appropriate curriculum and to comply with §427.15 of this title (relating to Testing Procedures); and

(3) other equipment, which may include training simulators and mock training aids, and tools required by the applicable curriculum.

§427.11 Reference Material.

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

§427.13 Records.

(a) Training records shall be maintained by the **onsite** [on site] training facility that **reflects:**[reflect:]

(1) who was trained, subject, instructor, and date of instruction. (Note: Individual records are required rather than class records); and

(2) individual trainee test scores to include performance testing.

(b) All training records must be maintained by the on-site training facility for a minimum of three years or in accordance with the requirement of the Texas State Library and Archives Commission, State and Local Records Management Division, whichever is greater.

§427.18 Live Fire Training Evolutions.

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

(1) Prior to being permitted to participate in Live Fire Training Evolutions, the student shall have received training to meet the performance requirements for Fire Fighting I in NFPA 1001, Standard for Fire Fighter Professional Qualifications, related to the following subjects:

(A) safety;

(B) fire behavior;

(C) portable extinguishers;

(D) personal protective equipment to include SCBA;

(E) ladders;

(F) fire hose, appliances, and streams;

(G) overhaul;

(H) water supply;

(I) ventilation;

(J) forcible entry; and

(K) **building construction**.[~~fire fighter rescue~~]

(2) The on-site lead instructor will insure that the water supply rate and duration for each individual Live Fire Training Evolution is adequate to control and extinguish the training fire, the supplies necessary for backup lines to protect personnel, and any water needed to protect exposed property.

(3) The on-site lead instructor will insure that the buildings or props being utilized for live fire training are in a condition that would not pose an undue safety risk.

(4) A safety officer shall be appointed for all Live Fire Training Evolutions. The safety officer shall have the authority, regardless of rank, to intervene and control any aspect of the operations when, in his or her judgment, a potential or actual danger, accident, or unsafe condition exists. The safety officer shall not be assigned other duties that interfere with safety responsibilities. The safety officer shall not be a student.

(5) No person(s) shall play the role of a victim inside the building.

(6) The participating student-to-instructor ratio shall not be greater than five to one.

(7) Prior to the ignition of any fire, instructors shall insure that all personal protective clothing and/or self-contained breathing apparatus are NFPA compliant and being worn in the proper manner.

(8) Prior to conducting any live fire training, a pre-burn briefing session shall be conducted. All participants shall be required to conduct a walk-through of the structure in order to have a knowledge of, and familiarity with, the layout of the building and to be able to facilitate any necessary evacuation of the building.

(9) A standard operating procedure shall be developed and utilized for Live Fire Training Evolutions. The standard operating procedure shall include, but not be limited to:

(A) a Personal Alert Safety System (PASS). A PASS device shall be provided for all students and instructors participating in live fire training and shall meet the requirements in §435.9 of this title (relating to PASS devices). This applies whether the PASS device is provided by the academy or the trainee;

(B) a Personnel Accountability System that complies with §435.13 of this title shall be utilized;

(C) an Incident Management System;

(D) use of personal protective clothing and self-contained breathing apparatus;

(E) an evacuation signal and procedure; and pre-burn, burn and post-burn procedures.

§427.19 General Information.

(a) All Texas certified training facilities shall meet these minimum requirements. No training credit will be recognized from a Texas training facility that has not been certified by the Commission, unless the program has been approved by the Commission as being equivalent. The Commission shall take action on an application for certification of a training facility within 30 days from receipt.

(b) Certified training facilities shall conduct all training in a controlled and safe manner so that trainees are not subjected to unnecessary risks. Texas Government Code, §419.032(c) provides that fire protection personnel must complete a Commission-approved training course in fire suppression before being assigned to fire suppression duties. In addition, certified training facilities, whether operated by a fire department or other governmental or private training facility, shall not put trainees at risk by requiring or allowing a trainee to perform the duties of fire protection personnel at actual uncontrolled emergency situations such as, but not limited to, structure fires, aircraft fires, wildland fires, hazardous materials incidents or dangerous rescue situations.

(c) A certified training facility may transport trainees to the site of an actual emergency for training purposes only if the following requirements are strictly adhered to:

(1) the trainees are kept in a group under the direct supervision of qualified instructors to maintain accountability and ensure their safety;

(2) the trainees are kept outside of the emergency operations area; and

(3) the trainees' activities are restricted to observation only and trainees are not allowed to participate in emergency operations.

(d) Certified training facilities are subject to inspection by the Commission at any time during regular business hours.

(e) In order to retain the certification as a certified training facility, schools desiring to make substantial changes in the facility or other conditions under which the school was approved shall coordinate such plans with the Commission.

(f) The Commission shall be notified, in writing, within 14 days of any change from the original status under which the certification was issued.

(g) The Commission may revoke, suspend, and/or probate the certification of a training facility when the Commission determines that the training facility:

(1) fails to provide the quality of training for which the facility was approved; or

(2) fails to comply with Commission rules and/or these minimum standards; or

(3) fails to submit required reports in a timely manner or submits false reports to the Commission; or

(4) fails to meet at least a 70-percent student pass rate on the state certification examination per course.

SUBCHAPTER B

DISTANCE TRAINING PROVIDER

§427.201 Minimum Standards for Distance Training Provider.

(a) The following definition is applicable to this subchapter only. Approved distance training is defined as fire training where instructors and students are primarily in different locations and content is instructed primarily using the internet or an intranet and courses must contain some level of interactivity. Distance training that serves as nothing more than electronic text is not acceptable. Online courses must provide the opportunity for the student to interact or ask questions via e-mail, chat rooms or some other method of communication. Other computer-mediated methods of instruction may be used to enhance instruction; however, the primary delivery method must be through the internet or an intranet.

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

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

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

§427.203 Records.

(a) Training records shall be maintained by the distance training provider that **reflects:**[reflect:]

(1) Who was trained, subject, instructor, and date of instruction. (Note: Individual records are required rather than class records);

(2) Individual trainee test scores to include performance testing; and

(3) Evidence to substantiate the test scores received by each trainee to include performance testing. Such records will include materials (completed tests and/or answer sheets, other documents, video or audio recording, etc.), and will provide identification of the examinee, identification of the evaluating field examiner, and the observer as defined in Chapter 439 **of this title (relating to Examinations For Certification)**.

(b) All distance training provider records must be maintained by the distance training provider for commission review for a minimum of three years or in accordance with the requirement of the Texas State Library and Archives Commission, State and Local Records Management Division, whichever is greater.

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

§427.209 General Information.

(a) All distance training providers shall meet these minimum requirements. No training credit will be recognized from a distance training provider that has not been certified by the Commission. The Commission shall take action on an application for certification of a distance training provider/training facility provider within 30 days from receipt.

(b) Distance training providers conducting on-site programs shall ensure that all training is conducted in a controlled and safe manner so that trainees are not subjected to unnecessary risks. In addition, certified training facilities shall not put trainees at risk by requiring or allowing a trainee to perform the duties of fire protection personnel at actual uncontrolled emergency situations such as, but not limited to, structure fires, aircraft fires, wildland fires, hazardous materials incidents or dangerous rescue situations.

(c) A distance training provider may transport trainees to the site of an actual emergency for training purposes, only if the following requirements are strictly adhered to:

(1) the trainees are kept in a group under the direct supervision of qualified instructors to maintain accountability and ensure their safety;

(2) the trainees are kept outside of the emergency operations area: and

(3) the trainees' activities are restricted to observation only and trainees are not allowed to participate in emergency operations.

(d) Distance training providers are subject to inspection by the Commission at any time during regular business hours. Distance training providers shall provide the Commission with access to the training facility to monitor the course in progress.

(e) The Commission shall be notified, in writing, within 14 days of any change from the original status under which the certification was issued.

(f) The Commission may revoke, suspend, and/or probate the certification of training when the Commission determines that the distance training provider:

(1) fails to provide the quality of training and education for which the provider was approved; or

(2) fails to comply with Commission rules and/or these minimum standards; or

(3) fails to submit required reports in a timely manner or submits false reports to the Commission; or

(4) per course, fails to meet at least a 70-percent student pass rate on the state certification examination.

SUBCHAPTER C

TRAINING PROGRAMS FOR ON-SITE AND DISTANCE TRAINING PROVIDERS

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

(a) Training programs that are intended to satisfy the requirements for fire protection personnel certification for each curriculum must meet the objectives and competencies in that curriculum.

(b) A system for evaluating the comprehension of the trainee, including periodic and comprehensive written tests, is required. If performance skills are part of the applicable curriculum, performance testing shall be done in accordance with §439.11 of this title **(relating to Commission-Designated Performance Skill Evaluations)**.

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

(a) When seeking training approvals, a training provider, whether on-site or distance, shall certify that it has provided the resources described in §427.1(f) of this title **(relating to Minimum Standards for Certified Training Facilities for Fire Protection Personnel)**.

(b) All training for certification must be approved by the Commission. A training provider must submit to the Commission **training prior approval information at least 10** [~~a completed Training Prior Approval Form at least 20~~] days prior to the proposed start date of the training.

[~~(c) The provider of training will receive from the Commission the following documents.~~]

[~~(1) A Notice of Course Approval. This document will serve as notification that the course has been approved by the Commission and will contain the approval number assigned by the Commission and the course I.D. number.~~]

[~~(2) An Application for Testing Form, when applicable.~~]

[~~(3) A Certificate of Completion Form. This document must be completed by the training provider and issued to each student when the student has successfully completed the applicable curriculum.~~]

[~~(4) Commission-designated skills envelope when applicable.~~]

(c) [~~(d)~~] Approved courses are subject to audit by Commission staff at any time. Any deviation from the approved start-and-end date of the class, periodic and final test schedule, field examiners or the substitution of one instructor for another (this does not apply to an instructor already approved for the course) must be reported to the Commission within three business days of the deviation.

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

(a) The requirements and provisions in this section apply to procedures for periodic and final testing conducted by training providers. For procedures regarding state examinations for certification Commission examinations that occur after a training program is completed, see Chapter 439 of this title (relating to Examinations for Certification).

(b) Periodic and comprehensive final tests shall be given by the training provider in addition to the Commission examination required in Chapter 439 of this title.

(c) Periodic tests shall be administered at the ratio of one test per 50 hours of recommended training, or portion thereof. An average score of 70% must be achieved on all required periodic tests.

(d) In addition to periodic tests, a comprehensive final test must be administered. The final test must be conducted in a proctored setting. For purposes of this section, a proctor can be an approved TCFP Field Examiner, or a member or testing center of an educational institution. A passing score of 70% must be achieved.

(e) If a course is taught in phases, a comprehensive exam for each phase shall be administered upon completion of each phase and a passing score of 70% must be achieved.

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

(a) The chief training officer of a training facility, as a minimum, must possess Fire Service Instructor III certification.

(b) All training instructors (except guest instructors) must possess fire instructor certification. The instructor(s) must be certified in the applicable discipline or be approved by the commission to instruct in the applicable subject.

(c) The lead instructor, as a minimum, shall possess a Fire Service Instructor II certification and must be certified by the commission in the applicable discipline, except as stated in subsections (h)(2) and (i)(2) of this section.

(d) Guest instructors are not required to be certified as instructors. [~~*A guest instructor is defined as an individual with special knowledge, skill, and expertise in a specific subject area who has the ability to enhance the effectiveness of the training. Guest instructors shall teach under the endorsement of the lead instructor.*~~]

(e) In order to teach fire officer certification courses, an individual who does not meet the requirements of subsection (a) or (c) of this section, shall possess a minimum of a bachelor's degree in management or its equivalent.

(f) In order to teach an instructor certification training course for Fire Service Instructor I, an individual must hold one of the following three qualifications:

(1) Hold a Fire Service Instructor II or higher; or

(2) A Bachelor's degree with the following:

(A) ***as*** [~~As~~]a minimum, a minor in education; and

(B) ***three*** [~~Three~~]years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 200 class hours; or

(3) An Associate's degree with the following:

(A) twelve semester hours of education instructional courses; and

(B) five years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 400 class hours.

(g) In order to teach an instructor certification training course for Fire Service Instructor II or III, an individual must hold one of the following three qualifications:

(1) Hold a Fire Service Instructor III; or

(2) A Bachelor's degree with the following:

(A) ***as*** [~~As~~] a minimum, a minor in education; and

(B) ***three*** [~~Three~~] years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 200 class hours; or

(3) An Associate's degree with the following:

(A) twelve semester hours of education instructional courses; and

(B) five years of teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 400 class hours.

(h) In order to teach a certification course for Basic Wildland Fire Protection:

(1) The unit instructor must hold **Intermediate**[~~Basic~~] Wildland Fire Protection certification **or be approved by the commission to instruct a Basic Wildland course and hold:**[~~and a Texas Commission on Fire Protection Instructor I certification.~~]

(A) commission Instructor certification; or

(B) instructor credentials as required by the current National Wildfire Coordinating Group (NWCG) Field Manager's Course Guide (901-1) or current Texas Intrastate Fire Mutual Aid System (TIFMAS) guidelines for this level of course.

(2) The lead instructor must hold **NWCG or TIFMAS Single Resource Boss qualification and hold:** [~~Intermediate Wildland Fire Protection certification and a Texas Commission on Fire Protection Instructor I certification.~~]

(A) commission Instructor certification; or

(B) instructor credentials as required by the current NWCG Field Manager's Course Guide (901-1) or current TIFMAS guidelines for this level of course.

[~~(3) The lead instructor must be present in any class being taught.~~]

(i) In order to teach a certification course for Intermediate Wildland Fire Protection:

(1) The unit instructor must hold an Intermediate Wildland Fire Protection certification **or be approved by the commission to instruct an Intermediate Wildland course and hold:**[~~and a Texas Commission on Fire Protection Instructor I certification.~~]

(A) commission Instructor certification; or

(B) instructor credentials as required by the current NWCG Field Manager's Course Guide (901-1) or current TIFMAS guidelines for this level of course.

(2) The lead instructor must hold **NWCG or TIFMAS Single Resource Boss qualification and:**[~~an Intermediate Wildland Fire Protection certification and a Texas Commission on Fire Protection Instructor I certification.~~]

(A) commission Instructor certification; or

(B) instructor credentials as required by the current NWCG Field Manager's Course Guide (901-1) or current TIFMAS guidelines for this level of course.

[~~(3) The lead instructor must be present in any class being taught.~~]

SUBCHAPTER D

CERTIFIED TRAINING FACILITIES

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

(a) The provisions in this subchapter apply only to certified training facilities that are not owned or operated by the State of Texas or a political subdivision of the State of Texas.

(b) Training facilities seeking certification under this subchapter must comply with all the provisions of this chapter and must also meet and comply with all Commission rules.

(c) Training facilities seeking certification under this subchapter must apply for training facility certification in each discipline they wish to teach.

(d) In order to become a Commission approved training facility under this subchapter; the provider must submit a completed Commission training facility application for certification with supporting documentation and fees. Supporting documentation will consist of:

(1) descriptions, photos and addresses of where the provider will have their course delivery and materials;

(2) documentation of how the provider will meet all the minimum requirements for each discipline for which it seeks certification;

(3) complete and correct financial statements, as specified in this subchapter, demonstrating the facility is financially stable and capable of fulfilling its commitments for training;

(4) statement of ownership which identifies the owners, stockholders, partners, representatives, management, trustees, board members;

(5) documentation showing registration with the Texas Secretary of State as a business.

§427.403 Financial Standards.

(a) Definitions Relating to Financial Requirements.

(1) Balance Sheet--A statement of financial position or statement of condition, showing the status of assets, liabilities and owner equity for a defined period i.e., monthly, quarterly, etc.

(2) Current ratio--ability to pay current obligations from current assets.

(3) Generally Accepted Accounting Principles (GAAP)--Conventions, rules and procedures that define accepted accounting practices to include both broad guidelines as well as detailed procedures.

(4) Generally Accepted Auditing Standards (GAAS)--Conventions, rules and procedures that define accepted audit practices.

(5) Stockholders Equity (net worth)--amount by which assets exceed liabilities.

(6) Sworn statement--A notarized statement including the following language: "I swear or affirm that the information in these statements is true and correct to the best of my knowledge."

(7) Unearned income (tuition) affidavit--A statement of income received but not yet earned during the current or most recent fiscal year. This is usually shown as a liability on a balance sheet, assuming it will be credited to income within the normal accounting cycle.

(b) The balance sheet required in this subchapter shall reflect the following:

(1) positive equity or net worth balance;

(2) unearned tuition as a current liability;

(3) a current ratio of at least one-to-one; (current assets divided by current liabilities) and

(4) stockholder's equity or net worth exceeding the amount shown for goodwill, if applicable, under assets in the balance sheet.

(c) Compilations shall be accompanied by the owner's sworn statement.

(d) All financial statements shall identify the name, license number, and licensing state of the accountant associated with the statements and be in accordance with GAAP.

(e) A school that maintains a financial responsibility composite score that meets the general standards established in federal regulations by the U.S. Department of Education for postsecondary institutions participating in student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, shall be considered to have met the financial standards of this subchapter.

(f) A school that qualifies under an alternative standard but not the general standard of these federal regulations will not be considered to have met the financial standards of this subchapter unless the school meets the other requirements stated in this subchapter.

(g) Requirements for Original Approvals.

(1) The owner shall furnish the Commission with the following:

(A) a school owned by a sole proprietor must submit a reviewed personal balance sheet stating the disclosure of payments for the next five years to meet debt agreements as required by GAAP; or

(B) all other ownership structures must submit an audited balance sheet consistent with GAAP and GAAS and certified by an accountant.

(2) The facility shall submit a balance sheet, a list of the expected school-related expenses for the first three months of operation of the school; a sworn statement signed by the owner affirming the availability of sufficient cash to cover projected expenses at the date of the certification. Projected expenses may include the following:

(A) employee salaries, listed by position title, including withholding and unemployment taxes, and other related expenses;

(B) lease or rent payments for listed equipment;

(C) lease or rent payments for facilities;

(D) accounting, legal and other specifically identified professional fees;

(E) an estimate of expenses such as advertising, travel, textbooks, office and classroom supplies, printing, telephone, utilities, taxes;

(F) a projection of the gross amount of tuition and fees to be collected during each of the first two years of operation; and

(G) such other evidence as may be deemed appropriate by the Commission to establish financial stability.

(h) Prior to a change in ownership of a facility, the purchaser shall furnish the Commission a current balance sheet meeting the requirements outlined in this subchapter for original approvals, excluding the sufficient cash requirement for initial expenses. The purchaser shall furnish any other evidence deemed appropriate by the Commission to establish financial stability.

(i) The deletion or addition of any person that would be considered an owner is considered a change in facility ownership. The facility must notify the Commission of the change in ownership within 14 days of the transaction.

(j) The Commission may require submission of a full application for approval of a change in ownership.

(k) Management agreements must be disclosed to the Commission. Parties to a management agreement shall be of good reputation and character.

(l) The deletion, addition or moving of a facility will be reported to the Commission 14 days prior to the transaction.

(m) If the Commission determines that the deletion, addition or moving of a facility presents an unreasonable transportation hardship which would prevent a student from completing the training at the new location, the school shall provide a full refund of all monies paid and a release from all obligations to the student.

(n) The Commission shall be notified in writing of any legal action to which the facility, any of its owners, representatives or management employees is a party.

(o) The notification shall be within 14 days after the action is known to be filed or the facility, owner, representative or management employee is served.

(p) The facility shall include, with the required notice, a file-marked copy of the petition, complaint, or other legal instrument, including copies of any judgments.

(q) If the Commission determines that reasonable cause exists to question the validity of any financial information submitted, or the financial stability of the facility, the Commission may require at the facility's expense:

(1) an audit of the facility that has been certified by an accountant; or

(2) The owner must furnish any other evidence deemed appropriate by the Commission to establish financial stability.

(r) The entity certified under this subchapter shall maintain, in a permanent format that is acceptable and readily accessible to the Commission, a record of any funds received from, or on behalf of, the student. The entity shall clearly identify the payer, the type of funding, and the reason for the charges. These records shall be posted and kept current.

(s) An entity certified under this subchapter shall issue written receipts of any charges or payments to the student and maintain such records for review upon request by the Commission. Each separately charged item shall be clearly itemized on the student-signed receipt.

(t) An entity certified under this subchapter shall develop and maintain a cancellation and refund policy.

(u) The student shall be entitled to a full refund of all monies paid to the facility if classes or courses are cancelled by the facility.

(v) Classes or courses cancelled by the student, refund policies will be based on a prorated basis or percentage of the class or program completed by the student.

(w) An entity certified under this subchapter shall comply with Chapter 437.3 concerning certification and renewal fees.

(x) Upon application for renewal, an entity certified under this subchapter will provide a balance sheet with a sworn statement.

§427.405 Policy Regarding Complaints.

(a) Complaints. The entity shall:

(1) Submit a written grievance procedure designed to resolve disputes between current and former students and the school for Commission approval;

(2) Provide a copy of the grievance procedure to each student and maintain proof of such delivery;

(3) Maintain records regarding grievance filings and resolutions; and

(4) Diligently work to resolve all complaints at the local school level.

(b) Investigations.

(1) The Commission may investigate a complaint about an entity and may determine the extent of investigation needed by considering various factors, such as:

(A) the seriousness of the alleged violation;

(B) the source of the complaint;

(C) the school's history of compliance and complaints;

(D) the timeliness of the complaint; and

(E) any other reasonable matter deemed appropriate.

(2) The Commission may require documentation or other evidence of the violation before initiating a complaint investigation.

§427.407 School Responsibilities Regarding Instructors.

(a) The facility Chief Training Officer (CTO) shall ensure that there are an appropriate number of instructors.

(b) The facility CTO shall ensure that instructors are qualified to instruct in the subjects they are teaching or assisting.

(c) The facility CTO shall ensure continuity of instruction and that instructors provide students with a quality education.

(d) The facility CTO shall formally evaluate each instructor in writing at least annually and shall make the evaluations available for review by the Commission.

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

§427.409 Advertising.

(a) General Information for Advertising.

(1) A school shall not make deceptive statements in attempting to enroll students.

(2) The Commission may require a school to furnish proof to the Commission of any of its advertising claims.

(b) Advertisement Method.

(1) A school may advertise for prospective students under "instruction," "education," "training," or a similarly titled classification.

(2) No school advertisements shall use the word "wanted," "help wanted," or "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate, in any manner, that the school has or knows of employment of any nature available to prospective students; only "placement assistance," if offered, may be advertised.

(3) A school shall not use terms to describe the significance of the approval that specify or connote greater approval. Terms that schools may not use to connote greater approval by the Commission include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended." A school shall not use the words "guarantee," "guaranteed," or "free" unless approved in writing by the Commission.

(4) Any advertisement that includes a reference to awarding of credit hours shall include the statement, "limited transferability." Where a school has an arrangement with a college or university to accept transfer hours, such information may be advertised, but any limitations shall be included in the advertisement.

(c) Advertisement Content.

(1) Advertisement content shall include, and clearly indicate, the full and correct name of the school and its address, including city, as they appear on the certificate of approval.

(2) Advertisements shall not include:

(A) statements that the school or its programs are accredited unless the accreditation is that of an agency recognized by the United States Department of Education;

(B) statements that the school or its courses of instruction have been approved unless the approval can be substantiated by an appropriate certificate of approval issued by an agency of the state or federal government;

(C) statements that represent the school as an employment agency under the same name, or a confusingly similar name, or at the same location of the school; or

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

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

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

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

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

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

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

(d) Financial Incentives. Advertisements shall not:

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

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

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

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

(e) Advertisements for student tuition loans shall:

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

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

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

(f) Advertisement Monitoring.

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

(A) retraction by the school of such advertising claims published in the same manner as the claims themselves; and

(B) cancellation of telephone numbers without an automatic forwarding message.

(2) As corrective action for violations of the Act or rules, the Commission may require schools to submit all advertisements to the Commission for pre-approval at least 30 days before proposed submission of the advertisements to the advertising medium.

(3) Nothing in these guidelines shall prohibit release of information to students as required by a state or federal agency.

§427.411 Cancellations or Suspensions.

(a) If an approved course of instruction is discontinued for any reason, the Commission shall be notified within 72 hours (9 days) of discontinuance and furnished with the names and addresses of any students who were prevented from completion of the course of instruction due to discontinuance. Should the school fail to make arrangements satisfactory to the students and the Commission for the completion of the course of instruction, the full amount of all tuition and fees paid by the students are then due and refundable. Any course of instruction discontinued will be removed from the list of approved courses of instruction.

(b) The Commission may suspend enrollments in a particular course of instruction at any time the Commission finds cause. For purposes of this subsection, cause includes, but is not limited to:

(1) inadequate instruction;

(2) unapproved or inadequate curriculum;

(3) inadequate equipment; or

(4) inadequate facilities.

(c) If a school begins teaching a course of instruction or revised course of instruction that has not been approved by the Commission, the Commission may require the school to refund to the enrolled students all or a portion of the tuition fees.

§427.413 Liabilities.

(a) Curriculum and Testing.

(1) The school shall be able to provide license agreements with the publisher of any curriculum used. The school may not reproduce the curriculum, or any part thereof, without describing the purpose or having the written consent by said publisher.

(2) The school shall be able to provide a valid purchase receipt or license agreement of any published test banks, or any part thereof, used in the evaluation process of any course taught.

(b) Equipment and Facilities.

(1) The school shall be able to provide written agreements for the use of any equipment not owned by the school, but used during the instruction of any student. The agreement shall dictate the terms, liability, fees, and availability of maintenance records of such equipment.

(2) The school shall be able to provide written agreements of the use of any facilities or area, not otherwise public, but used during the instruction of any student. The agreement shall dictate the terms, liability, and fees of such facilities or area.

(c) Insurance Coverage. The school shall be able to provide a general liability policy issued by a company licensed to do business in the State of Texas.