

Chapter 807. Proprietary Schools and Veterans Education. Prior rules repealed and new rules adopted as a result of agency rule review plan.

## **Part XX. Texas Workforce Commission**

### **Chapter 807. Proprietary Schools**

The Texas Workforce Commission (Commission) adopts the repeal of §§40 TAC Chapter 807, §§807.3, 807.101, 807.121-807.131 and new §§807.1-807.6, 807.11-807.17, 807.31-807.37, 807.51-807.53, 807.61-807.65, 807.81-807.84, 807.91-807.104, 807.111-807.113, 807.121-807.126, 807.141-807.147, 807.161-807.164, 807.171-807.175, 807.191-807.194, 807.211-807.214, 807.221, 807.222, 807.231-807.235, 807.251 and 807.252, concerning Proprietary Schools with changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5391). Specifically, §§807.4, 807.6, 807.11 - 807.13, 807.15, 807.33, 807.53, 807.64, 807.65, 807.81, 807.83, 807.84, 807.92-807.95, 807.101, 807.111, 807.124 - 807.126, 807.143, 807.144, 807.146, 807.173 - 807.175, 807.213, 807.231, 807.232 and 807.235 are adopted with changes to the proposed text as published in the May 22, 1998, issue of the Texas Register (23 TexReg 5391) and all other sections are adopted without changes. The sections with changes will be republished here.

The purpose of the new rules is to interpret and implement the provisions of Texas Education Code, Chapter 132, Proprietary Schools (the Act). The new rules as adopted incorporate some of the requirements previously contained in 40 TAC Chapter 807, which is concurrently repealed. The new rules are a reorganization of the provisions of 40 TAC Chapter 807 with some changes to the requirements including simplification of the wording, removal of repetition of the statute, clarification of particular responsibilities, and changes to requirements as dictated by the review of the rules repealed.

Subchapter A of the adopted rules sets out the General Provisions. Specifically, §807.1 sets out the title and purpose of the rules, §807.2 sets out the definitions of terms, §807.3 sets out the information regarding the memorandum of understanding regarding improvement of quality of education and reduction of default rates, §807.4 sets out the waivers provisions, §807.5 sets out the exemptions provisions, and §807.6 sets out the processing periods.

Subchapter B of the adopted rules interprets and clarifies statutory provisions relating to certificates of approval. Specifically, §807.11 sets out the provisions for original certificates of approval, §807.12 sets out the provisions for renewal of certificates of approval, §807.13 sets out the provisions for changes in ownership, §807.14 sets out the provisions for changes in locations, §807.15 sets out the provisions for notification of legal action, §807.16 sets out the provisions for approval to offer associate degrees, and §807.17 sets out penalties and sanctions.

Subchapter C of the adopted rules interprets and clarifies statutory provisions relating to financial requirements. Specifically, §807.31 sets out definitions relating to financial requirements, §807.32 sets out the standards for financial stability, §807.33 sets out the requirements for financial stability for an original certificate of approval, §807.34 sets out the requirements for financial stability for changes in ownership, §807.35 sets out the requirements for financial stability at renewal, §807.36 sets out the provisions for the submission of interim financial statements, and §807.37 sets out the provisions for audits required by the Commission.

Subchapter D of the adopted rules sets out the provisions regarding representatives. Specifically, §807.51 sets out the representative requirements, §807.52 sets out the standards regarding representatives, and §807.53 sets out the limitations regarding representatives.

Subchapter E of the adopted rules sets out the provisions regarding school directors and administrative staff. Specifically, §807.61 sets out the school director requirements, §807.62 sets out the school director qualifications and duties, §807.63 sets out the provisions for an acting school director, §807.64 sets out the requirements for a director of education, and §807.65 sets out the director of degree programs requirements.

Subchapter F of the adopted rules sets out the provisions regarding instructors. Specifically, §807.81 sets out the instructor qualifications, §807.82 sets out the temporary instructor provisions, §807.83 sets out the instructor application provisions, and §807.84 sets out the schools' responsibilities regarding instructors.

Subchapter G of the adopted rules sets out the provisions regarding courses of instruction. Specifically, §807.91 sets out the definitions relating to courses of instruction, §807.92 sets out the general information for courses of instruction, §807.93 sets out the provisions regarding applications for additional courses of instruction, §807.94 sets out the stated occupation provisions, §807.95 sets out the curriculum content, §807.96 sets out the curriculum length, §807.97 sets out the provisions regarding program title, §807.98 sets out the provisions regarding equipment, §807.99 sets out the provisions regarding facilities, §807.100 sets out admission requirements relating to programs, §807.101 sets out school responsibilities regarding programs, §807.102 sets out requirements regarding program revisions, §807.103 sets out program requirements for degree granting schools, and §807.104 sets out penalties relating to courses of instruction.

Subchapter H of the adopted rules sets out the application fees and other charges. Specifically, §807.111 sets out the fee schedule, §807.112 sets out the fee schedule for renewal of a certificate of approval, and §807.113 sets out the provisions for installment payments of fees.

Subchapter I of the adopted rules sets out the provisions regarding advertising. Specifically, §807.121 sets out general information regarding advertising, §807.122 sets out provisions regarding the methods of advertising, §807.123 sets out provisions regarding the content of advertising, §807.124 sets out provisions regarding advertising of financial incentives, §807.125 sets out standards for the school catalog, and §807.126 sets out the provisions for advertisement monitoring.

Subchapter J of the adopted rules sets out the provisions regarding admissions. Specifically, §807.141 sets out general information regarding admission, §807.142 sets out admission requirements, §807.143 sets out requirements for receipt of enrollment policies, §807.144 sets out provisions for the enrollment agreement, §807.145 sets out provisions for the conduct policy, §807.146 sets out provisions regarding tuition and fees, and §807.147 sets out admission requirements for degree granting schools.

Subchapter K of the adopted rules sets out provisions regarding progress standards. Specifically, §807.161 sets out general requirements for progress standards, §807.162 sets out progress standards for residence schools, §807.163 sets out progress requirements for correspondence schools, and §807.164 sets out progress requirements for degree granting schools.

Subchapter L of the adopted rules sets out provisions regarding attendance standards. Specifically, §807.171 sets out general requirements for attendance, §807.172 sets out attendance requirements for degree granting schools, §807.173 sets out provisions for termination of enrollment, §807.174 sets out provisions for make-up work in the case of an absence, and §807.175 sets out provisions for leaves of absence.

Subchapter M of the adopted rules sets out provisions for cancellation and refund policies. Specifically, §807.191 sets out the provision for cancelling after a tour, §807.192 sets out the standards for consummation of refunds, §807.193 sets out refund requirements for residence schools, and §807.194 sets out penalties relating to refunds.

Subchapter N of the adopted rules sets out the provisions for records. Specifically, §807.211 sets out general information for records, §807.212 sets out the provisions for student records, §807.213 sets out the provisions for attendance record keeping, and §807.214 sets out the requirements for record keeping concerning employment of students.

Subchapter O of the adopted rules sets out the provisions for complaints. Specifically, §807.221 sets out the provisions regarding school policies concerning complaints and §807.222 sets out the provision regarding complaints and investigations.

Subchapter P of the adopted rules sets out the provisions for truck driver training. Specifically, §807.231 sets out general information relating to truck driver training, §807.232 sets out provisions regarding truck driver instructor development courses, §807.233 sets out provisions regarding behind-the-wheel instruction, §807.234 sets out provisions regarding motor vehicle insurance, and §807.235 sets out prohibited activities for truck driver schools, truck driver instructor trainers, and truck driver instructors.

Subchapter Q of the adopted rules sets out the provisions for closed schools. Specifically, §807.251 sets out the provisions for school closures and §807.252 sets out the provisions of the tuition protection fund.

Based on the comments received from the public and internal comments, the Commission has modified: §807.4(a) by changing "the requirements" to "one or more requirements" and by changing "the waiver" to "a waiver" after "grant";

§807.6 by changing "owner" to "ownership" in (a)(1)(C) and (a)(2)(C) and revising the numbering of the paragraph and subparagraphs under subsection (b);

§807.11(3) by adding, ", as specified in this chapter" after "statements";

§807.12(a)(2) by changing "for the most recent fiscal year" to "as specified in this chapter,";

§807.13(a) by changing the provision to read, "the school may notify the Commission of the change in ownership a minimum of 45 days before the change in ownership to request that the Commission, in lieu of a full application, accept a partial application.";

§807.13(b)(2) by deleting the existing wording and adding "the school fails to file notice of the change of ownership at least 45 days prior to the ownership transfer.";

§807.15(c) by adding a comma after "include";

§807.33(a) by moving "for" to paragraphs (1) and (2) and removing the comma;

§807.53(c)(4) by changing "student" to "students";

§807.64 by adding a grandfather clause for directors of education;

§807.65 by adding a grandfather clause for directors of degree programs;

§807.81(b) by changing numerous items as detailed in the reprinted rule;

§807.81(c)(5) by deleting "as a bartending instructor" and adding "as having completed the required awareness course";

§807.81(d) by deleting "and mathematical proficiency";

§807.83(c) by adding "or any professional certifications held by the instructor" after "program," and adding at the end the sentence, "The Commission will accept notification, in lieu of a new instructor application, for any instructor that has a current approval by the Commission to teach the same subjects at other schools that have the same owners.";

§807.84(f) by adding before "Topics" the sentence, "In-service training includes planned professional development opportunities that enable inexperienced instructors to learn and develop effective teaching strategies and skills." and adding at the end the sentence, "Competency-based training specifies the skills and skill levels required to complete a training program, develops and organizes teaching and learning methods to enable students to achieve the identified skills and levels of proficiency, and uses criterion-referenced evaluation to measure achievement.";

§807.92 by changing the title of the rule to "General Information for Courses of Instruction";

§807.92(d) by adding after last sentence, "If the school does not follow an advisory committee recommendation, the school shall maintain written documentation of the justification for not following the recommendation.";

§807.93 by changing the title of the rule to "Applications for Additional Courses of Instruction";

§807.94(b) by adding at the end ", all other things being equal";

§807.94(c)(6) by adding at the end ", including letters from potential employers that describe their need for trained employees";

§807.95(a)(5) by changing the wording to read "if deemed appropriate by the Commission, provide an externship or a simulation of the workplace for the program";

§807.95(c) by changing "industry or schools" to "industry, schools, and other relevant entities as determined by the Commission";

§807.101(b)(1) by changing "retention" to "completion";

§807.111(9) by changing "fees" to "fee";

§807.124(b) by adding "unless those amounts have been published by the United States Department of Labor";

§807.124(c)(1) by changing "student tuition loans" to "financial aid available, if qualified";

§807.125(a)(13) by adding ", including the number of clock hours of a seminar, seminar topic, lecture, lab, and externship, as well as credit hours in each subject, if applicable" after "description of courses of instruction";

§807.126(a) by deleting "improper" and adding "in violation of the Act or rules" after "advertising";

§807.126(b) by adding "As corrective action for violations of the Act or rules, the";

§807.143(a) by adding "For all enrollment other than for" before "seminars" and adding "each school" before "shall";

§807.143 by adding "prospective" before "student" in subsections (a) and (b);

§807.144(e)(5) by changing "received" to receive";

§807.146(b) by changing "provide to the Commission" to "make available for review by the Commission upon request";

§807.146(f) by adding "upon request" after "review" and changing "have on file" to "be clearly itemized on";

§807.173(a)(5) by adding a period;

§807.174 by changing "make up" to "make-up";

§807.175(e) by changing "schedule" to "schedules";

§807.213(c) by changing the subsection to read, "Each instructor shall maintain a record of attendance, which shall indicate a positive record of each student's attendance. Entries in the record of attendance shall be made in ink or other permanent medium, including scantron or other permanent computer records, and shall not be changed in a manner that precludes reading the original entry.";

§807.231(1) and (2) by changing "an approved" to "a," deleting the second paragraph, deleting "and" and removing the paragraph designations accordingly;

§807.232 by changing in (b)(2) "muscle" to "muscles", by adding in (b)(6) "and" after "parking," and changing "consisting of following:" to "consist of the following:", and by changing in (b)(6)(A)-(C) "include" to "including" and "signals" to "signal"; and

§807.235 by adding "of" and "or" where appropriate and changing the punctuation.

Some commenters were for the rules, some were against the rules, and others did not indicate their position. The commenters expressed concerns and questions about the rules as proposed and suggested changes. Representatives from the following groups and associations provided comment:

the Academy of Health Care Professionals;  
the Career Colleges and Schools of Texas;

the Interactive College of Technology;  
the International Business College, Inc.;  
the Southern Careers Institute, Inc.;  
the Texas Motor Transportation Association;  
the Tri-State Semi-Driver Training, Inc.;  
the Western Technical Institute; and  
the Wyoming Technical Institute.

Following each comment summary is the Commission's response.

Comment: Concerning the rules generally, one commenter expressed general concern regarding contract training by companies that hire people and promise free training when in fact the promised training often is not free and may be in violation of the Proprietary School Act. The commenter expressed concern that the training often results in penalties to the "students" in terms of defaulted loans, termination of the training, and various charges to the trainees. Specifically, the persons do not qualify to work in the fields in which they were promised training, end up with large debts, or fail to complete the training. The impact is often incomplete training and these situations reflect badly on the approved proprietary schools. The commenter asked that we examine this area of concern, if it is within our jurisdiction.

Response: This comment appears to be more applicable to the implementation of the statute than to the rules presently adopted. The Commission responds by stating that the statute specifically exempts company training per §132.002(a)(4); however, in each case the Commission will determine whether such employment training relationships meet the terms of the exemption.

Comment: Concerning the rules generally, one commenter stated that the licensed schools would have hoped for some regulatory relief, but it does not appear this is the case. The commenter stated further that he appreciates the need for rules and regulations, but the Commission rules may be a bit of overkill.

Response: The Commission disagrees. By comparing the presently proposed rules with the previous rules, it is apparent that numerous areas of regulation were eliminated and many requirements were reduced. Furthermore, the Commission invited the proprietary schools to submit suggestions for changes. The Commission incorporated numerous suggested changes to the rules and worked with representatives from various proprietary schools to review each aspect of the regulations. Many of the changes were made to accommodate the schools in areas where the changes would not affect the protection of students and quality of the schools. These changes significantly reduce regulation of proprietary schools. The Commission adopted rules reflect the combined efforts of the proprietary schools and the Commission in ensuring that the intent of the Act is met in a manner that permits proprietary schools to efficiently conduct business.

Comment: Concerning §807.2(7), one commenter stated that a sentence should be added to the definition of "Clock Hour." The commenter specifically recommended adding, "Two periods may be combined into a 100 minute period including no more than 20 minutes of breaks." The commenter suggested that adding this sentence would align the Commission definition more closely to the United States Department of Education definition.

Response: The Commission disagrees with the suggestion. The Commission believes that at least one ten-minute break per hour of class is needed to increase the amount of material absorbed by students. If two one-hour classes run consecutively, each hour should contain a ten-minute break.

Comment: Concerning §807.2(30) and §807.193, one commenter raised questions regarding the definition of "week." The commenter stated that the definition of "week" is in direct conflict with the definition applied by the United States Department of Education for schools that measure or disburse aid on a credit hour basis. The commenter suggested that the Commission may want to further review this issue.

Response: The Commission disagrees. A representative of the United States Department of Education verified that there is no such conflicting definition of "week." The Commission further believes that the use of the proposed definition of "week" is appropriate for interpreting §807.193 pertaining to the calculation of refunds. The purpose of this definition is to more accurately pro-rated refunds upon termination of a student's enrollment given that as few as two days may span two calendar weeks thus making the student responsible for two weeks worth of classes when in fact the student attended only two days.

Comment: Concerning §807.4, one commenter stated that by using the word "extreme" the Commission limits the ability of this section to be applied in many cases. The commenter recommended that the word "extreme" be deleted because the definition of that term is relative and does not provide a conclusive foundation upon which to make decisions of applicability.

Response: The Commission agrees that the inclusion of the term "extreme" limits the ability of the Commission to apply the section in many cases; however, it is the intent of the Commission to grant waivers only in extreme situations. The Commission added the term specifically to strengthen the requirements for obtaining a waiver.

Paragraphs (1) through (3) clarify the instances where "extreme" extenuating circumstances would be deemed by the Commission as acceptable grounds for granting a waiver. The Commission believes that these paragraphs lend sufficient clarity to the intended meaning of "extreme."

Comment: Concerning §807.13, one commenter stated that the current proposal misses the intent of this section which is for the Commission to have the opportunity to approve or deny in advance any new persons or entities who assume control of a school. Legally and in reality, "ownership" should not be the issue. "Control" is the real issue. For example, a school owner with 100 percent of the stock could give 20 percent of the school's stock to key employees as a reward for their dedicated service and retain 80 percent. In this instance, although there was a change of ownership, there was no change of control of the institution. The majority of the stock is still controlled by the same person/entity, so why should the Commission take staff time to get deeply involved in a legally and realistically insignificant event? On the other hand, control could change in a small stock transaction where there is a 49 percent stockholder and 51 percent stockholder. Let's say the 51 percent stockholder sells 2 percent to the 49 percent stockholder resulting in a real change of control of the institution. Therefore, the "ownership" target may or may not be significant in all cases. But the "control" issue is always significant. As a suggestion, TWC could require notification of all "ownership" changes and retain approval authority over all "control" changes.

Response: The Commission agrees with the commenter that "control" is an important factor. The Commission believes that the change in control is a primary reason why the Act includes a definition of "Owner" in §132.001; why ownership is nontransferable pursuant to §132.056; and why a new owner must, at least 30 days prior to the change in ownership, apply for a new certificate of approval pursuant to §132.056(c). Based on the statutory requirements, the Commission must require that a new application be filed, even when there is no change in control. The Commission agrees that the use of the word "notification" would be beneficial and agrees to accommodate transfers of ownership where there is no change in control by allowing for the filing of a "notification" of change in ownership 45 days in advance of the change in ownership. The advance notice of change in ownership would provide the Commission with an opportunity to allow, on a case-by-case basis where there is no significant change in control, the filing of an abbreviated application in lieu of a full application.

Comment: Concerning §807.15, one commenter asserted that the way the proposal is currently constructed, it would require that the school notify the Commission if one of its representatives was being sued for a traffic accident or one of its managers was going through a divorce, a manager was behind on child support, etc. The commenter stated that the problem could be solved by modifying subparagraph (a) of the proposal to read in part, "...a school shall notify the Commission in writing of any legal action pertaining to the school."

Response: The Commission disagrees with lessening the requirements of this section because the financial stability of the school could be affected by a judgment against a director, owner, management employee, or instructor, particularly if one or more are sued in their official capacity. Also, the schools may not be in the position to determine the ramifications of a suit. In these situations, the impact on the individual assets of the defendant could affect the financial stability of the school.

Comment: Concerning §807.51(a) and §807.111(8), one commenter stated that the whole process of annually reviewing the approval of representatives and reporting changes of addresses for representatives is unnecessary.

Once an individual is approved to be a representative, additional paperwork is unnecessary and burdensome.

Response: The Commission disagrees with changing this provision because the annual review is a statutory requirement and the need for changes of address are essential to locating the representatives, if necessary. The Commission disagrees that the paperwork is unnecessary and burdensome and that only a one-time review would be appropriate. The intent of the Act is to protect the students, and a yearly review of representatives would allow for proper monitoring.

Comment: Concerning §807.53(a), one commenter stated that representatives should be allowed to begin solicitation of students upon submission of proper paperwork without having to wait for notice of approval. It takes too long for the Commission to issue approvals, and it is unreasonable to assume new employees are not to do their jobs simply because approvals have not been processed. The commenter stated that the frequency of disapproval is very low.

This would make the approval process the same as for instructors.

Response: The Commission disagrees with the suggestion because the Commission interprets the statute as requiring prior approval of representatives before a representative may begin solicitation. The Commission believes the purpose of this provision is to protect students from improper solicitation.

Comment: Concerning §807.64, one commenter stated that the grandfather provision should apply to directors of education.

Response: The Commission agrees to apply the grandfather provision to directors of education.

Comment: Concerning §807.65, two commenters stated that the grandfather provision should apply to the directors of degree programs.

Response: The Commission agrees to apply the grandfather provision to directors of degree programs.

Comment: Concerning §807.81, particularly subparagraph (b)(4)(B), now (b)(5), one commenter stated that this rule revision is a significant departure from the current rules which allow schools the ability to hire instructors with a high school diploma or G.E.D., and practical experience of a minimum of five years within the last ten years. While the majority of the commenter's instructors have a related postsecondary educational credential upon hire, the commenter also employs some excellent instructors who have anywhere from 5 to 20+ years of experience in the field, but no postsecondary training. The commenter stated that he appreciates the value given to postsecondary training in the proposed rules, but stated that it would seriously limit employment choices. Please reconsider this proposed change.

Response: The Commission agrees with this comment and will modify the rule to allow approval of instructors with a secondary education and adequate experience.

Comment: Concerning §807.83(c), one commenter stated that a section from the current rules must be retained in the new rules: "(IV) An instructor shall hold a high school diploma, GED, or proof of satisfactory completion of relevant subject(s) from a recognized postsecondary institution, and practical experience in the appropriate subject area of a minimum of five years within the last 10 years." The reason retention of item (IV) is of such concern is that out of approximately twenty technical instructors at this campus, less than one third of them would qualify under the proposed rules unless item (IV) is kept. Although current faculty may be grandfathered, the commenter is concerned with obtaining quality faculty in the future. The commenter believes that the proposed rules look as though the amount of education is taking precedence over practical experience in fields where it is not appropriate.

Additionally, stronger consideration should be given for professional certifications that instructor candidates may hold. Professional Certifications such as Certified Electronics Technician (CET), Automotive Service Excellence (ASE), Certified Medical Assistant (CMA), and Accredited Records Technician (ART), just to name a few, are really much stronger indications of a candidate's actual competence in a particular field than education or credentials alone. Another commenter stated that the current rules should not be changed because instructors should be approved based on experience and not just if they have a postsecondary education. In the commenter's opinion, this change is unacceptable.

Response: The Commission agrees to modify the rule to recognize the importance of practical experience and postsecondary education as detailed in the rule because many qualified instructors may fall within this category of qualifications. The Commission also agrees to add a provision regarding professional certifications to the revised language of the rule; however, this information, when submitted, is something that is already considered.

Comment: Concerning §807.83(c), one commenter stated that allowances should be made to transfer instructor approvals for the same subjects between campuses of the same school organization without having to submit a new application.

Response: The Commission agrees that notification to the Commission would be acceptable in lieu of a new application. The rule is modified to allow notice, in lieu of a new application under these circumstances.

Comment: Concerning §807.84(c), one commenter stated that requirements imposed are entirely too burdensome and unworkable. The rule states ". . . includes at a minimum. . . attendance at trade and professional conferences, and observation of, or participation in, on-the-job activities." The commenter believes that this is unrealistic.

Response: The Commission disagrees. The quality of education is foremost. One of the best means to ensure quality is to make sure that the instructors are kept up-to-date with information through continuing education training. The responsibility is placed on the school to ensure that the requirements are met.

Comment: Concerning §807.84(f), one commenter stated that the requirements imposed are entirely too burdensome and unworkable. The rule states, "Topics shall include competency-based training . . . ." Since individuals are approved based on their competency, the commenter believes this is redundant.

Response: The Commission disagrees with the suggestion that the provisions in this section are redundant. The qualifications in a field of study do not necessarily indicate that the instructor is an effective teacher. The purpose of this section is to ensure that the school takes the responsibility to ensure that the instructors are good educators and are qualified in their fields. The Commission agrees to modify the rule by defining "competency-based training."

Comment: Concerning §807.84(g), one commenter stated that the requirements imposed are entirely too burdensome and unworkable. The rule states, "The school shall provide and document in-service training that . . . ." This is unnecessary and is not realistic in many subjects; i.e. English Communication, Keyboarding, Office Procedures, Receivables, Payables, Payroll, etc.

Response: The Commission disagrees because there are verifiable means of providing and documenting in-service training in various fields. The Commission clarifies this section by defining "in-service training."

Comment: Concerning §807.94(b), one commenter stated that it is virtually impossible for a school to demonstrate that a graduate is more likely to be employed than an individual who does not complete the program. There are many other ways that individuals may be qualified for employment, i.e. experience, attending other programs, etc.

Response: The Commission agrees that it may be difficult in some instances to compare one individual to another because factors other than education may be difficult to measure; however, the Commission did not intend for all factors to be compared. To clarify this matter, the Commission will add "all other things being equal" to clarify that the training must provide something of value to the students in their employability. Providing a student with education through a proprietary school should put that student in a better position than a student with otherwise identical qualifications but who did not get the added education. The Commission disagrees that this provision should be removed because it affords protection to students by helping to ensure they receive a quality education for the tuition and fees charged.

Comment: Concerning §807.94, one commenter recommended adding another item for consideration in evaluating occupational demand as follows, "(8) Letters from potential employers which describe their need for trained employees."

Response: The Commission agrees with the recommendation and states that these letters are items the Commission already considers. It was intended that such letters would be submitted under item (6), which states "regarding relative supply and demand for the stated occupation." To clarify that these letters are acceptable, the Commission modifies the rule accordingly.

Comment: Concerning §807.95, one commenter commended the Commission's thinking in this area because most listed items are critical to a contemporary, successful program. However, one area that may need tempering is paragraph (5). An externship, while desirable, may not be realistic as a requirement for a program. Also it may be that a school's employer advisory board would be a better judge of what is or is not an "appropriate" workplace simulation.

Response: The Commission agrees in part and revises the wording of the section to state that the Commission may not require an externship in all situations. The Commission agrees that the school advisory committee recommendations would be important for the Commission's review, but disagrees that the schools should be allowed to make the final determination, due to the need to ensure that a quality education is provided to students. The rule is modified for clarity purposes.

Comment: Concerning §807.101(i), one commenter stated that the ratios are too vague and do not allow for circumstances that current rules provide; i.e. 50:1 for keyboarding. Another commenter requested changing "technical, vocational or allied health lecture 30:1" in the new rule to something closer to the "40:1" previously in the rule, or even changing to approximately "36:1." The commenter stated that "factors of three" work best for the trucking industry and that currently that school has been averaging 36:1 with no significant problems at all. The commenter wasn't sure why the rule changed from 40:1 to 30:1 and pointed out that the PTDA adopted 36:1 as the standard. The commenter recommended using "36:1" or, in the alternative, leaving the standard as 40:1.

Response: The Commission disagrees with the suggestion that the rule is too vague. For clarification purposes, the Commission sets forth a guideline of specific ratios that may be acceptable. The Commission incorporated the term "may" because a particular subject may call for a smaller ratio or a larger ratio, as appropriate. The Commission would review and approve such subjects on a case-by-case basis.

Comment: Concerning §807.112, one commenter stated that he was informed by Commission staff in one of the first committee meetings regarding changes to the rules that the fees paid by small schools do not cover their oversight costs to Commission. The commenter believes if that is true, then fees paid by other schools (perhaps even their competition) are subsidizing school regulation. If a school, regardless of size, cannot pay for its own regulation, reason suggests it should not get in the business in the first place. The fees for all schools (except small schools) appear to be increased as a result of this proposal. The statute puts the fees at 0.30 percent of the school's gross tuition and fees, while the proposed rule revision increases the percentage to 0.31 percent. The commenter believes that anytime there is a fee increase, it should not be buried in the proposed regulations but should be clearly disclosed to all schools. The schools certainly cannot increase tuition or fees without clear notification to the Commission. The commenter believes that this should work both ways.

Response: The Commission agrees that one school may pay a larger percentage of the regulatory costs; however, this is based on the Act's construction and not due to the rules. The fees paid by small schools and larger schools are intended to pay for the administration of the entire program without breaking down the costs paid by one school or one type of school. The Commission disagrees with the commenter because each fee is authorized by the Act under §132.201 to be an amount not to exceed 150 percent of the specified amount. The fee in place and contained in the proposed rules has been set at 0.31 percent for several years. The renewal fee is set well below the permissible maximum of 0.45 percent. There is no increase in fees between the old rules and the new rules.

Comment: Concerning §807.122(c), one commenter proposed changing the language to read "Nor shall schools use any information regarding job openings or placement rates except those provided to the Commission on the most currently filed and complete placement employer report and/or TWC PS FORM 005 for the program being advertised. No guarantees concerning job placement may be made and placement assistance can be advertised only if offered by the school." The rationale for this is to prohibit the use of any term other than "placement assistance," and it specifically prohibits the school from communicating in any manner that it knows of jobs or employment in the advertisements. This is inconsistent with what is in 807.143(b)(6), wherein those rules allow us to provide information to prospective students regarding the number of job openings and placement rates.

Response: The Commission agrees with the commenter that other sources of information regarding employment rates may be credible, but is concerned with broadening the language to include any or all sources regarding employment rates. Given the costs of reviewing alternate advertising, the Commission declines to make this change.

Comment: Citing §807.123(b), one commenter stated that the section should allow for including information on programs that are offered but not recognized by the United States Secretary of Education. For example, there is an organization called the Professional Truck Driver's Institute of America (PTDIA), that is developing a model and standardized curriculum for truck driver training across the country which is possibly recognized by the Department of Transportation and/or the Department of Labor. The commenter requests that the rules recognize approval or recognition by other entities such as the PTDIA or other agencies the commission deemed appropriate. The commenter believes that other forms of recognition, for the quality of training that a school may offer, should be allowed in school advertisements. The commenter suggested adding "or other bodies approved by the Commission," "or the Commission," or "recognized by a federal agency" instead of just "the United States Department of Education." The commenter stated that using this information would be in line with the movement toward national standards.

Response: The Commission agrees that other sources of information may provide credible information that may be appropriate for advertising; however, the costs of pre-approving the various sources and reviewing the credibility of such sources would be prohibitive.

Comment: Concerning §807.124(b), one commenter suggested that the language "advertisements shall not contain dollar amounts as representative or indicative of the earning potential of graduates," should be modified to allow advertisement of wages that are verifiable from credible wage reports and surveys. Particularly, the commenter suggested permitting information from surveys such as the one available to the truck driving industry published by the American Trucking Association, published in the Wall Street Journal, or contained in the occupational handbook published by the United States Department of Labor, or even reported on the PS-005 forms reported to the Commission regarding wages. The commenter suggested that if the wage and occupational demand information can be substantiated by an independent source or within the school records, then some latitude may be appropriate to allow additional information in broad advertising. The commenter pointed out that this information is required to be disclosed to prospective students once the students prepare to enter the school anyway, so the schools should be able to advertise this same information before the students reach the school's doors.

Response: The Commission agrees with permitting in advertisements by proprietary schools the use of information contained in publications by the United States Department of Labor. The rule is modified accordingly.

Comment: Concerning §807.124(c)(1), one commenter suggested allowing advertisements of financial aid instead of just "student tuition," because there are other types of loans available for housing, books, and expenses in addition to loans for tuition. The proposed language allows that, "Advertisements for student loans shall contain the language, student tuition loans available." The commenter suggested changing the wording to "financing available," and "loans available, if qualified." Since there are other organizations that will finance more than just tuition the commenter requests that the advertisement phrases be a little more open ended.

Response: The Commission agrees with the recommendation and will modify the language to read "financial aid available if qualified."

Comment: Concerning §807.126, one commenter questioned how the term "improper" would be defined in the advertisement monitoring section, what sanctions would be invoked, and what due process notification would apply.

Response: The Commission agrees to clarify this section by substituting for "improper" the phrase "in violation of the Act or the proprietary school rules." Any adverse action that is taken is appealable in the same manner as for other violations under the Act and the same due process would be afforded.

Comment: Concerning §807.126(b), one commenter asked whether this section applies to improper advertising action similar to that referenced in subsection (a).

Response: The Commission agrees to clarify that this section applies to corrective action by adding "as corrective action that the" because (b) is intended as a corrective action for schools found to have violated the advertisement provisions. The Commission would take this action so we hopefully would not have repeats.

Comment: Concerning §807.146(b)(2), one commenter stated that the requirement for a school to submit the name/address of lenders should only apply to lending situations other than lenders making guaranteed loans to students under Title IV.

Response: The Commission disagrees with the commenter. Due to the statutorily imposed refund requirements, credits to the students must often be made directly to the lenders from the Tuition Protection Fund. Without the information requested, the refund process would be extremely difficult.

Comment: Concerning §807.146(f), one commenter stated that the intent of this requirement needs to be clarified and asked: why would schools keep signed receipts of charges or payments to a student, why would one write a receipt for charges, why would a school pay a student, and in an age where most such processes are computerized why should the school be required to make students sign all receipts and keep them as an additional record to the records already required earlier in the paragraph? The commenter suggested that the last sentence of (f) should be deleted and the intent of the entire paragraph should be clearly stated.

Response: The Commission agrees to clarify this section but disagrees with changing the substance of the requirement because it believes that this section is required to facilitate refunds. Often the receipts are not sufficiently detailed and schools do not document when payments are made to students. Schools make payments to students in the form of housing, books, bus passes, and other items. These fees are often credited against refunds and are relevant to implementing the statutory refund provisions.

Comment: Concerning §807.161(a) and §807.162, one commenter suggested eliminating the requirement for a mid-term progress evaluation because a mid-term grade more aptly lends itself to elementary or secondary programs, whereas most, if not all, postsecondary schools are organized on a term, quarterly, or semester basis. The commenter believed all other agencies require and base progress measurements on this time frame and that the Commission attendance policy fairly well prevents a school from simply "carrying someone on the rolls."

Response: The Commission disagrees with changing the provisions in this section because the purpose of requiring a mid-term grade is to provide the students with a measure of their progress. The mid-term will give the students an idea of their likelihood of successfully completing the training and permit the students to make an informed choice as to whether to continue with the training and to expect more funds or incur more debt. Without such a minimum measure, the Commission believes that there is a greater likelihood that the students will be unable to make informed decisions about continued enrollment.

Comment: Concerning §807.193(d), one commenter suggested that a school be able to calculate charges, based on "scheduled or completed hours" as opposed to "scheduled hours of classes through the last day of attendance." The commenter pointed out that in some cases, students will complete the entire course in less than the scheduled time, and that a school should be able to receive tuition for work completed.

Response: The Commission disagrees. The Act at §132.061(b)(1) references "course time." The Commission interprets "course time" to mean scheduled hours through the last date of attendance.

Comment: Concerning §807.213(c), one commenter recommended that with computers, scantrons and other technologies, it is antiquated to require a "positive record of attendance" which means there must be a "p" in every little box on the roll sheet. Under this system, if there are 30 students in a class and only one is absent, the instructor has to take the time to record 30 marks instead of recording only the (1) absence. However, the real problem comes in the subsequent data entry process where it is much more likely a clerk will make a mistake making 30 entries instead of 1 entry.

Response: The Commission disagrees. Often a question of expulsion for failure to attend is an issue that arises between the school and students. Without an affirmative mark for attendance, the Commission would need to provide the student the presumption of attendance. This provision is for the protection of the school and the students, and facilitates accurate determinations of refunds given that the refunds are often done on a pro-rata basis as dictated by attendance.

Comment: Concerning §807.231, one commenter did not believe TxDOT has any truck driver training criteria and feels that it may be more appropriate for the Commission to spell out what the minimum behind-the-wheel standards are.

Response: The Commission agrees to remove the reference to TxDOT minimum behind-the-wheel standards in §807.231(2).

Subchapter A. General Provisions

#### **40 TAC §§807.1-807.6**

The new rules are adopted under Texas Labor Code, §301.062 and 302.001, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

§807.4. *Waivers.*

(a)

Upon a showing of extreme extenuating circumstances, a school governed by this chapter may request a waiver from one or more requirements of this chapter. The Commission shall grant a waiver only upon a specific finding of good cause establishing that:

(1)

the imposition of the rule requirement from which the waiver is sought would cause undue economic hardship to the school and have a negative impact on the ability of the school to provide the students with the skills and knowledge required for employment;

(2)

the quality of education shall in no way be diminished or sacrificed by the granting of the waiver; and

(3)

the granting of the waiver will in no way limit the statutorily required application approval criteria contained in §132.055 of the Act.

(b)

The Commission may revoke a waiver in the same manner as a revocation of a certificate of approval, if the Commission determines that the criteria contained in this section for a waiver no longer exists.

(c)

A school may appeal a requested waiver denial or revocation in accordance with the provisions of Subchapter D of the Act.

*§807.6. Processing Periods.*

(a)

The time periods for processing applications from schools, including small businesses, for certificates of approval, as well as approvals for representatives, school directors, and instructors, shall be in accordance with the following time periods.

(1)

The first period is the time from the receipt of an application to the date of the issuance of a written notice approving the application or outlining the reasons why the application is unacceptable. The time periods for each application are:

(A)

original certificate of approval - 40 days;

(B)

renewed certificate of approval - 40 days;

(C)

change in ownership certificate of approval - 40 days;

(D)

original representatives - 21 days;

(E)

renewed representatives - 21 days;

(F)

school directors and instructors (approval contingent on issuance of school's approval) - 40 days; and

(G)

school directors and instructors (approval not contingent on issuance of school's approval) - 55 days.

(2)

The second period is the time from receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying approval of the application. The time periods for each application are:

(A)

original certificate of approval - 40 days;

(B)

renewed certificate of approval - 40 days;

(C)

change in ownership certificate of approval - 40 days;

(D)

original representative (approval contingent upon issuance of school's approval) - 21 days;

(E)

original representative (approval not contingent upon issuance of school's approval) - 21 days;

(F)

renewed representative (approval contingent upon issuance of school's approval) - 21 days;

(G)

school directors and instructors (approval contingent on issuance of school's approval) - 40 days; and

(H)

school directors and instructors (approval not contingent on issuance of school's approval) - 55 days.

(b)

In the event the application is not processed in the time periods as stated in this section, the applicant has the right to request of the Commission full reimbursement of all filing fees paid in that particular application process. If the Commission does not agree that the established time periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied. Good cause for exceeding the period established is considered to exist if:

(1)

the number of applications for certificates of approval, representatives, school directors, or instructors as appropriate to be processed exceeds by 15% or more the number processed in the same calendar quarter of the preceding year;

(2)

another public or private entity utilized in the application process caused the delay; or

(3)

other conditions exist that give good cause for exceeding the established periods.

(c)

If the request for full reimbursement authorized in this section is denied, the applicant may then request a hearing by appealing to the Commission for a resolution of the dispute. The appeal will be processed in the same manner as other appeals involving schools pursuant to the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill

General Counsel

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#### Subchapter A. Proprietary School Advisory Commission

##### **40 TAC §807.3**

The repeal is adopted under Texas Labor Code, §301.062 and 302.001, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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#### Subchapter B. Certificates of Approval

##### **40 TAC §§807.11-807.17**

The new rules are adopted under Texas Labor Code, §301.062 and 302.001, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

*§807.11. Original approvals.*

A complete application for an original certificate of approval shall consist of the following:

- (1) a completed application form provided by the Commission;
- (2) a properly executed school bond;
- (3) complete and correct financial statements, as specified in this chapter, demonstrating the school is financially stable and capable of fulfilling its commitments for training;
- (4) the application fee as specified in this chapter; and
- (5) any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Commission.

*§807.12. Renewal.*

(a) For small schools, the certificate of approval shall be renewed at least every three years, or more frequently as determined by the Commission. A complete application for renewal of a certificate of approval shall consist of the following:

- (1) a properly executed school bond continuation certificate;
- (2) complete and correct annual financial statements, as specified in this chapter, demonstrating the school is financially stable and capable of fulfilling its commitments for training;
- (3) the renewal fee and the fee for the tuition protection fund, if applicable, specified in this chapter; and
- (4) any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Commission.

(b) For all other schools, the certificate of approval shall be renewed annually. A complete application for renewal of a certificate of approval shall consist of the following:

- (1) a completed application for renewal form provided by the Commission;
- (2) a properly executed school bond;
- (3) complete and correct annual financial statements for the most recent fiscal year demonstrating the school is financially stable and capable of fulfilling its commitments for training;
- (4) the renewal fee and the fee for the tuition protection fund, if applicable, specified by this chapter; and
- (5) any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Commission.

(c) The effective, expiration, and issuance dates are indicated on the certificate of approval. The Commission may reflect the date of renewal as the date following the date of expiration of the prior certificate of approval, if the school submitted a timely request for renewal and met all of the requirements contained in this chapter for renewal.

(d) The complete renewal application shall be postmarked on or before the due date as indicated in the Act.

*§807.13. Change in ownership.*

(a) The Commission may consider the addition or deletion of any person defined as an owner under the Act as a change in school ownership. The school may notify the Commission of the change in ownership a minimum of 45 days before the change in ownership to request that the Commission in lieu of a full application accept a partial application.

(b)

The Commission may require submission of a full application for approval for a change in ownership if:

(1)

the Commission has a reasonable basis to believe the change in ownership of the school may significantly affect the school's continued ability to meet the criteria for approval; or

(2)

the school fails to file notice of the change of ownership at least 45 days prior to the ownership transfer.

(c)

The Commission may require a partial application for approval for a change in ownership if the Commission reasonably believes the change in ownership will not significantly affect the school's continued ability to meet the criteria for approval.

(d)

The purchaser of a school shall accept responsibility for all refund liabilities.

*§807.15. Notification of Legal Action.*

(a)

Unless otherwise instructed by the Commission, a school shall notify the Commission in writing of any legal action to which the school, any of its owners, representatives, or management employees is a party.

(b)

A school shall notify the Commission in writing of any legal action described in this section no later than five business days after the action is known to be filed or the school, owner, representative, or management employee is served.

(c)

A school shall include, with the notice required in this section, a file-marked copy of the petition, complaint, or other legal instrument, including copies of any judgments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter C. Financial Requirements

**40 TAC §§807.31-807.37**

The new rules are adopted under Texas Labor Code, §301.062 and 302.001, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

*§807.33. Financial Requirements for Original Approvals.*

(a)

The prospective owner shall furnish the Commission with the following:

(1)

for a school owned by a sole proprietor, a reviewed personal balance sheet with notes that disclose the amount of payments for the next five years to meet debt agreements as required by GAAP; or

(2)

for all other ownership structures, an audited balance sheet consistent with GAAP and GAAS and certified by an accountant.

(b)

The school shall submit a balance sheet, a list of the expected school-related expenses for the first three months of operation of the school, and a sworn statement signed by the owner affirming the availability of sufficient cash to cover projected expenses at the date of licensure. A school currently operating, or proposing to operate, on a reimbursement contract basis may request a waiver of this section from the Commission. Projected expenses may include the following:

(1)

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

(2)

lease payments for equipment listed by the name of the equipment;

(3)

lease payments for facilities;

(4)

accounting, legal, and other specifically identified professional fees; and

(5)

an estimate of other expenses such as advertising, travel, textbooks, office supplies, classroom supplies, printing, telephone, utilities, taxes, and sales commissions.

(c)

The prospective owner shall also furnish such other evidence as may be deemed appropriate by the Commission to establish financial stability.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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#### Subchapter D. Representatives

#### **40 TAC §§807.51-807.53**

The new rules are adopted under Texas Labor Code, §301.062 and 302.001, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

#### *§807.53. Representative Limitations.*

(a)

The representative shall not begin solicitation of students until the school receives notice of approval for the school and registration of the representative from the Commission.

(b)

Employees and other agents of recruiting firms shall not serve as representatives.

(c)

A representative shall not:

(1)

solicit in public places other than educational settings, job fairs, or organized meetings;

(2)

offer as an inducement or enticement any material consideration to a prospective student prior to enrollment, such as cash, food, housing, or gifts;

(3)

administer the entrance test;

(4)

advise students about financial aid, other than informing the students of the general availability of financial aid;

(5)

give false, misleading, or deceptive information about any aspect of the school's operation, programs, completion or employment rates, examination success rates, job placement, or salary potential;

(6)

concurrently solicit for or represent more than one school, unless the owner of each school being represented is informed that the representative is also soliciting for or representing other schools;

(7)

engage in acts or practices that have a tendency to intimidate, coerce, or mislead a prospective student into accepting an enrollment;

- (8) represent that a school or program has sponsorship, credentials, approval, characteristics, credit transferability, uses, benefits, or qualities that it does not have;
- (9) discredit another school or its programs by false or misleading representation of facts;
- (10) solicit enrollments in a program that has not been approved by the Commission;
- (11) solicit students for a school through an employment agency; or
- (12) violate any legal requirement or prohibition contained in the Act or this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter E. School Director and Administrative Staff

**40 TAC §§807.61-807.65**

The new rules are adopted under Texas Labor Code, §301.062 and 302.001, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

*§807.64. Director of Education Requirements.*

(a)

A school may have a director of education. The Commission shall grandfather schools from meeting the director of education requirements contained in this section for a particular director of education provided that the school has submitted the application for approval of the director of education to the Commission prior to the effective date of this section and the application results in approval by the Commission.

(b)

If the school employs a director of education, the director shall meet the same qualifications as an instructor and, in addition, shall have:

(1)

one year of employment as a postsecondary instructor;

(2)

one year of employment as a supervisor; and

(3)

a bachelor's degree, appropriate for the skills required, as determined by the Commission.

*§807.65. Director of Degree Programs Requirements.*

(a)

A school with a degree program shall have a director of the degree programs as required by the Coordinating Board. The Commission shall grandfather schools from meeting the director of degree programs requirements contained in this section for a particular director of degree programs provided that the school has submitted the application for approval of the director of degree programs to the Commission prior to the effective date of this section and the application results in approval by the Commission.

(b)

A director of degree programs shall be of good reputation and have:

(1)

a master's degree with three years of work-related or administrative experience within the ten years immediately preceding employment by the school; or

(2)

a bachelor's degree with five years of work-related or administrative experience within the ten years immediately preceding employment by the school.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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#### Subchapter F. Instructors

#### **40 TAC §§807.81-807.84**

The new rules are adopted under Texas Labor Code, §301.062 and 302.001, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

#### *§807.81. Instructor Qualifications.*

(a)

The instructor shall be of good reputation and shall not be a current student in the same or similar program, as determined by the Commission, in which the instructor teaches.

(b)

Instructors shall possess and affirm on forms provided by the Commission that the instructor has one of the following qualifications that applies to the subject area to be taught.

(1)

The instructor has a master's degree or higher that:

(A)

includes satisfactory completion of six semester credit hours or eight quarter credit hours in the subject to be taught;

(B)

includes satisfactory completion of three semester credit hours or four quarter credit hours in the subject area and one year of related practical experience within the ten years immediately preceding employment by the school, if the subject to be taught is in a technical field;

(C)

includes satisfactory completion of three semester credit hours, or four quarter credit hours in the subject area to be taught, if the subject to be taught is in a non-technical field; or

(D)

includes one year of related practical experience in the subject to be taught within the ten years immediately preceding employment by the school, if the subject to be taught is in a non-technical field.

(2)

The instructor has a bachelor's degree that:

(A)

includes nine semester hours or 12 quarter hours related to the subject area to be taught;

(B)

includes satisfactory completion of six semester credit hours or eight quarter credit hours in the subject area to be taught and one year of related practical experience within the ten years immediately preceding employment by the school, if the subject to be taught is in a technical field;

(C)

includes satisfactory completion of three semester credit hours or four quarter credit hours in the subject area and one year of related practical experience within the ten years immediately preceding employment by the school, if the subject to be taught is in a non-technical field; or

(D)

includes two years of related practical experience within the ten years immediately preceding employment by the school.

(3)

The instructor has an associate's degree that:

(A) includes satisfactory completion of nine semester credit hours or 12 quarter hours in the subject area to be taught and two years of related practical experience within the ten years immediately preceding employment by the school; or

(B) includes three years of related practical experience within the ten years immediately preceding employment by the school.

(4) The instructor has a secondary education if it includes a certificate of completion from a recognized postsecondary school for at least a 900 clock-hour program in a relevant subject area and four years of related practical experience within the ten years immediately preceding employment by the school; or

(5) The instructor has proof of satisfactory completion of secondary education if accompanied by five years of related practical experience within the ten years immediately preceding employment by the school.

(c) In addition to the other applicable requirements for instructors, including the good reputation requirement, the following qualifications apply to the specific instructors listed in this subsection.

(1) The Commission requires that a court reporting instructor of only machine shorthand theory and speedbuilding shall have:

(A) an associate's degree or higher and certificate of completion of machine shorthand theory requirements in an accredited court reporting program;

(B) an associate's degree in court reporting from any state-recognized school;

(C) a Registered Professional Reporter or Certified Shorthand Reporter certification from any state; or

(D) a certificate of completion of a court reporting program from a state-certified school.

(2) The Commission requires that a court procedures and technology instructor shall have:

(A) a Registered Professional Reporter or Certified Shorthand Reporter certification; and

(B) one year of court reporting experience.

(3) The Commission requires that a modeling instructor shall have, at a minimum:

(A) a secondary education and certificate of completion from a modeling program of at least 45 clock hours from a state recognized school and at least five verifiable paid modeling jobs completed within the past five years; or

(B) a secondary education and at least ten verifiable paid modeling jobs completed within the past five years.

(4) The Commission requires that a truck driving instructor shall have, at a minimum:

(A) a secondary education;

(B) certified proof of successful completion of 40 clock hours in safety education and driver training as required by this chapter; and

(C) three years of full-time tractor trailer driving experience within the ten years immediately preceding employment by the school.

(5) The Commission requires that a bartending instructor shall be certified by the Texas Alcoholic Beverage Commission as having completed the required awareness course.

(d)

The director shall ensure that an instructor applicant demonstrates sufficient language to teach the subject for which the instructor is applying to teach.

(e)

The Commission shall grandfather schools from meeting the instructor requirements contained in this section for a particular instructor provided that the school has submitted the application for approval of the instructor to the Commission prior to the effective date of this section and the application results in approval by the Commission.

(f)

For those instructors who return to the school prior to one full year of absence, and who will be teaching the same subjects as previously approved, the school shall document the leave and reinstatement dates in the instructor's personnel file. When an instructor begins teaching new subjects or the absence was more than one year, the school shall submit a new application to the Commission.

*§807.83. Instructor Application.*

(a)

The school shall file an application for approval of an instructor on forms provided by the Commission in accordance with the following criteria and ensure that the instructor is of good reputation.

(1)

The application shall be postmarked within five calendar days of employment as an instructor subject to the conditions outlined in this subchapter. A school may employ an instructor pending approval by the Commission.

(2)

Depending upon the qualifications indicated on the application, the application shall include one or more of the following:

(A)

a legible copy of the postsecondary certificate or degree, or a transcript indicating appropriate coursework completed, as applicable;

(B)

proof of a current occupational license; and

(C)

proof of secondary education.

(b)

A school with degree programs shall ensure that instructors are of good reputation and meet all the qualifications required by the Coordinating Board.

(c)

The Commission may consider current approvals of instructors by other Texas state agencies responsible for approval and regulation of the program, or any professional certifications held by the instructor when submitted with the Commission's instructor application. The Commission will accept notification, in lieu of a new instructor application, for any instructor that has a current approval by the Commission to teach the same subjects at other schools that have the same owners.

(d)

The Commission may require a school director to submit and receive approvals for instructor applications in advance of employing the instructors for a period of one year if the school has had three instructor applications finally disapproved within the previous two years.

*§807.84. School Responsibilities Regarding Instructors.*

(a)

The school shall ensure that an appropriate number of instructors, as determined by the Commission, have proper licensure or certificates required for the stated occupation's objective. The holder of the license or certificate shall actively participate in program development and revisions.

(b)

The school shall ensure continuity of instruction through reasonable retention of instructors to provide students with a quality education.

(c)

The school shall implement, maintain, and update annually a written plan for staff development, which includes, at a minimum, continuing education, staff meetings, attendance at trade and professional conferences, and observation of, or participation in, on-the-job activities.

(d)

The school director or director of education shall formally evaluate each instructor in writing at least annually, subject to review by the Commission.

(e)

The school director or director of education shall ensure that students are allowed the opportunity to formally evaluate each instructor in writing at least annually and incorporate said evaluation in the instructor's overall evaluation. These student evaluations are subject to review by the Commission.

(f)

The school shall provide in-service training within the first three months of teaching to those instructors hired lacking teaching experience. In-service training includes planned professional development opportunities that enable inexperienced instructors to learn and develop effective teaching strategies and skills. Topics shall include competency-based training, instructional methods, adult learning styles, and student learning and skills assessment. Competency-based training specifies the skills and skill levels required to complete a training program, develops and organizes teaching and learning methods to enable students to achieve the identified skills and levels of proficiency, and uses criterion-referenced evaluation to measure achievement.

(g)

The school shall provide and document in-service training that provides updates on skills, knowledge, and technology required by business and industry for those instructors who have taught for two years, but have not gained relevant work experience during the two-year period.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill

General Counsel

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Subchapter G. Courses of Instruction

**40 TAC §§807.91-807.104**

The new rules are adopted under Texas Labor Code, §301.062 and 302.001, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

*§807.92. General Information for Courses of Instruction.*

(a)

A school submitting applications for approval of seminars shall use abbreviated forms provided by the Commission.

(b)

No subject or program shall be approved by the Commission unless the school demonstrates that the program's quality, content, and length reasonably and adequately impart the job skills and knowledge necessary for the student to obtain employment in the stated occupation.

(c)

A school may not solicit students, otherwise advertise, or conduct classes for a program prior to the Commission's approval of the program. Any such activity by the school, prior to the Commission's approval of the program, shall constitute a misrepresentation by the school and shall entitle each student in the program to a full refund of all tuition and fees paid by the student and release from all obligations.

(d)

The school shall establish and maintain a formal advisory committee of at least five members, unless the Commission approves a lesser number of persons in advance, for each type of program in excess of 200 clock hours in length. At least annually, the committee shall evaluate the curriculum, instructional materials and media, equipment, and facilities to ensure they meet the needs of the job market. The school shall have written documentation of the evaluation available for review by the Commission. If the school does not follow an advisory committee recommendation, the school shall maintain written documentation of the justification for not following the recommendation.

(e)

If the applicant requests approval to measure programs in credit hours, the following conversion table shall be used.

(1)

One academic quarter credit hour equals a minimum of:

- (A) 10 clock hours of classroom lecture;
- (B) 20 clock hours of laboratory experience; or
- (C) 30 clock hours of externship.

(2) One academic semester credit hour is equal to a minimum of:

- (A) 15 clock hours of classroom lecture;
- (B) 30 clock hours of laboratory experience; or
- (C) 45 clock hours of externship.

(3) The school shall calculate lecture, laboratory, and externship credit hour conversions individually for each subject, rounding down to the nearest half credit hour. The school shall add the total for the credit hours for lecture, laboratory, and externship to determine the total credit hours for a subject.

*§807.93. Applications for Additional Courses of Instruction.*

(a) A school applying for approval of an additional program, after receiving an original certificate of approval, shall submit a complete application that includes:

- (1) the appropriate fee;
- (2) a completed application for program approval on forms provided by the Commission; and
- (3) any other revisions or evidence as requested by the Commission.

(b) The Commission may require an abbreviated program application if:

- (1) the school has the exact program approved at another location;
- (2) the program objective changes;
- (3) the program length changes 25% or more; or
- (4) the school's completion and employment rates are exemplary, as determined by the Commission.

(c) The Commission may deny an application for approval of an additional program if the school is not in full compliance with the Act or this chapter.

*§807.94. Stated Occupation.*

(a) The school shall ensure that each program prepares the student for the stated occupation.

(b) The school shall demonstrate that a student who successfully completes the program is more likely to be employed in the stated occupation than an individual who does not complete the program, all other things being equal.

(c) The school shall identify a demonstrable occupational demand for the stated occupation. The Commission may consider the following in evaluating the school's statement of occupational demand:

- (1) publications of established relevant occupational associations;
- (2) targeted occupation lists of boards, if approved by the Commission, or other local or state entities;
- (3) references to advertisements in media for employment;

- (4) occupation employment rate of students;
- (5) percentage of graduating students who have previously completed the same or substantially similar program and who have obtained employment in the same or substantially similar stated occupation for which they have been trained;
- (6) relative supply and demand for the stated occupation, including letters from potential employers that describe their need for trained employees; and
- (7) reports or publications relating to the specific occupational demand.

*§807.95. Curriculum Content.*

- (a) The school shall:
  - (1) provide competency-based programs;
  - (2) assess skills using primarily performance-based methods;
  - (3) use instructional media, methods, and materials appropriate for the program content and students' knowledge and abilities;
  - (4) offer programs in a logical sequence of knowledge and skills; and
  - (5) if deemed appropriate by the Commission, provide an externship or a simulation of the workplace for the program.
- (b) Each subject in the program shall teach the practical skills and knowledge required for employment in the stated occupation. The proportion of lecture, laboratory, and externship hours for each subject and for the program shall be reasonable for the skills and knowledge to be learned for the stated occupation.

- (c) The Commission may use or validate existing skill standards or competencies, or develop statewide skill standards with the assistance of industry, schools, and other relevant entities as determined by the Commission.

*§807.101. School Responsibilities Regarding Programs.*

- (a) As a condition of program approval or renewal, the school shall identify any portion of instruction that is self-paced.
- (b) To maintain program approval, the school shall demonstrate the following:
  - (1) a reasonable student completion rate for each program; and
  - (2) a minimum employment rate for program graduates in jobs related to the stated occupation.
- (c) When a school is approved to offer a program, the school shall maintain sufficient instructors to teach all subjects for completing the program during the length of time stipulated in the school catalog, regardless of the size of the class.
- (d) The school shall schedule classes so that students will be able to complete the program during the length of time stipulated in the school catalog.
- (e) The school shall ensure that students receive the lecture and laboratory experience hours with sufficient instructors and scheduling. An instructor may not be simultaneously supervising a laboratory experience and a lecture even if they are in the same room.
- (f) A school shall provide course outlines to students at the beginning of each subject which lists students' performance objectives, references and resources, and a general content outline for the subject.

(g)

A school shall have and use lesson plans for all subjects.

(h)

A school may not use subjects from one or more approved programs to create a new program and award a certificate of completion without prior approval.

(i)

The student-to-instructor ratio shall be sufficient for students to learn, practice, and demonstrate the necessary knowledge and skills. These ratios may be varied at the discretion of the Commission to conform to conditions in an individual school. The following student-instructor ratios may be acceptable for single subject classes:

(1)

business lecture or laboratory--30 to one;

(2)

technical, vocational, or allied health lecture--30 to one;

(3)

technical lab (examples: computer programming, data processing, electronics)--20 to one;

(4)

vocational lab (examples: auto mechanics, air conditioning and refrigeration, drafting)--20 to one; and

(5)

intensive language instruction (beginning)--15 to one; (intermediate to advanced)--20 to one.

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#### Subchapter D. Veterans Approval for Proprietary Schools

##### **40 TAC §807.101**

The repeal is adopted under Texas Labor Code, §301.062 and 302.001, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

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#### Subchapter H. Application Fees and Other Charges

##### **40 TAC §§807.111-807.113**

The new rules are adopted under Texas Labor Code, §301.062 and 302.001, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

*§807.111. Fee Schedule.*

The Commission shall collect fees according to the following schedule.

(1)

The initial fee for a certificate of approval for a small school is \$1,001.

(2)

The initial fee for any other school is \$3,000.

(3)

In the event of a change in ownership of the school, the new owner shall pay the same fee as that charged for an initial fee for a school.

(4)

The initial registration fee for a representative is \$90.

(5)

The annual renewal fee for a representative is \$45.

(6)

The fee for a change of name of the school or owner is \$150.

(7)

The fee for a change of address of a school is \$270.

(8)

The fee for a change in the name or address of a representative or a change of the name or address of a school that causes the reissuance of the notice of permitted representative is \$15.

(9)

The application fee for a course of instruction that is an additional program is \$225.

(10)

The application fee for a course of instruction that is a seminar program is \$35.

(11)

The application fee for a school director, administrative staff member, or instructor is \$20.

(12)

The fee for an inspection of classroom facilities that are separate from the main campus is \$375.

(13)

The fee for an investigation of a complaint against a school is \$400, if assessed.

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#### Subchapter E. Minimum Standards for Operation of Texas Proprietary Schools

##### **40 TAC §§807.121-807.131**

The repeals are adopted under Texas Labor Code, §301.062 and 302.001, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

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#### Subchapter I. Advertising

##### **40 TAC §§807.121-807.126**

The new rules are adopted under Texas Labor Code, §301.062 and 302.001, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

*§807.124. Financial Incentives.*

(a)

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.

(b)

Advertisements shall not 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.

(c)

Advertisements for student tuition loans shall:

(1)

contain the language "financial aid available, if qualified"; and

(2)

appear in type no larger than the font used for the name of the school and in similar color and style.

(d)

Advertising of student tuition loans as described in this section does not preclude disclosure of the school's eligibility under the various state and federal loan programs.

*§807.125. Catalog.*

(a)

The catalog shall include the following:

(1)

table of contents or index;

(2)

name and complete street address of the school;

(3)

volume number, date of publication, and effective dates;

(4)

history of any accreditations or approvals, including statement of approval and regulation by the Commission;

(5)

description of space, facilities, and equipment;

(6)

list of all trustees, directors, officers of the corporation, and owners;

(7)

list of management staff and faculty, including education relating to the areas of instruction;

(8)

tuition, fees, other charges, and applicable scholarship terms;

(9)

school calendar;

(10)

school hours of operation and class schedule, including the amount of time allocated for breaks and mealtimes;

(11)

policies regarding enrollment, previous education credit, cancellation and refund, progress, attendance, leave of absence, and conduct;

(12)

veterans administration refund policy, if applicable;

(13)

description of courses of instruction, including the number of clock hours of a seminar, seminar topic, lecture, lab, and externship, as well as credit hours in each subject, if applicable;

(14)

description of each subject;

- (15) description of the grading policy, including requirements for graduation;
- (16) description of placement assistance, if available;
- (17) statement of policies regarding grievances; and
- (18) a statement signed by the owner or director indicating that all of the information contained in the catalog is true and correct.

(b) Any subjects defined as self-paced shall be noted as such in the catalog.

*§807.126. Advertisement Monitoring.*

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

- (1) retraction by the school of such advertising claims published in the same manner as the claims themselves; and
- (2) cancellation of telephone numbers without an automatic forwarding message.

(b) 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.

(c) Nothing in these guidelines shall prohibit release of information to students as required by a state or federal agency. This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter J. Admission

**40 TAC §§807.141-807.147**

The new rules are adopted under Texas Labor Code, §301.062 and 302.001, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

*§807.143. Receipt of Enrollment Policies.*

(a) For all enrollments other than for seminars, individual subjects, and small schools with programs of 40 clock hours or less, each school shall use a form provided by the Commission to verify the prospective student's receipt of the information required in this section.

(b) Unless otherwise required in this chapter, prior to enrollment the school shall furnish the following to each prospective student:

- (1) a school catalog and program outline, unless the prospective student enrolls in a seminar;
- (2) a schedule of tuition, fees, and other charges;
- (3) the cancellation and refund policy;
- (4)

the attendance, progress, and grievance policies;

(5)

the rules of operation and conduct;

(6)

if available, the average starting salary per pay period and annually for the prospective student's stated occupation, and information regarding the number of job openings in the program objective field in a specified area within the last 12 months, including the name of the information source;

(7)

the regulations pertaining to incomplete grades;

(8)

written and verbal information regarding loans and grants and their differences, if the school participates in a loan or grant program;

(9)

the requirements, if any, for any state or national licensing, certifications, or registrations;

(10)

the exam passage rates for programs that prepare students for state licensing, certification, or registration exams; and

(11)

the job placement and employment data for the stated occupation as required in this chapter.

(c)

Any school that refers to the awarding of credit hours shall explain to each student during the enrollment process that transferability of such hours may be limited. Each student shall sign a statement indicating such an explanation has been provided.

(d)

Should a school have an articulation agreement with an accredited college or university, or other postsecondary school, such information shall be provided to the student, including any known agreement limitations. Such schools shall also provide a list of known Texas postsecondary schools that accept any or all of the credit hours so earned.

(e)

Students shall acknowledge receipt of each piece of information or documentation as set forth in this section by initialing each page and providing a complete signature at the end of the receipt of the enrollment policy form.

(f)

A copy of the receipt of the enrollment policies form shall be given to the student and a copy maintained as a part of the student's files.

*§807.144. Enrollment Agreement.*

(a)

A school does not need an enrollment agreement to enroll a student in a seminar.

(b)

For correspondence schools, the enrollment agreement shall specify the amount of time allotted to the student to complete the program.

(c)

A school shall submit an enrollment agreement to the Commission for approval.

(d)

A school shall use only an approved enrollment agreement to enroll students.

(e)

The executed enrollment agreement shall include, but is not limited to, the following:

(1)

full and correct name and location of the school;

(2)

program title, tuition, fees, reasonable estimate cost of books and supplies, any other expenses, total cost of the program, items subject to cost change, method of payment and payment schedule, disclosure statement if interest is charged on more than three payments, and detachable buyer's right to cancel if enrollment is procured off campus;

(3)

date training is to begin and program length;

(4)

name, address, and signature of the student;

(5)

statement by the school that the student will receive a copy of the school enrollment agreement and catalog at the time of signing by the student;

(6)

cancellation and refund policy; and

(7)

a Federal Trade Commission statement for holder in due course, unless no loans, grants, or installment payments are involved.

(f)

The school shall provide a notice of cancellation, attached to the enrollment agreement, for any student enrolled off the school premises. The notice shall:

(1)

be in duplicate;

(2)

be easily detachable;

(3)

be printed in boldface type, with a minimum font of 10 point;

(4)

contain the date of the enrollment agreement, name and address of school, the date on which the statutory 72-hour cancellation privilege will expire, and any other provisions as determined by the Commission;

(5)

be printed in the same language as used in the enrollment agreement; and

(6)

be in such a form that can be used by the student to notify the school of the student's desire to cancel by dating, signing, and mailing or otherwise delivering the form to the school's address shown.

(g)

A copy of the enrollment agreement form shall be given to the student and a copy maintained as a part of the student's file.

(h)

The Commission may permit a school to submit an abbreviated enrollment agreement for students enrolled on a reimbursement contract basis.

*§807.146. Tuition and Fees.*

(a)

A school shall disclose to potential students all tuition, fees, and other charges, and state such information in the school's application for a certificate of approval.

(b)

A school shall make available for review by the Commission upon request:

(1)

a description of the methods of payment that are available to enrolling students;

(2)

the names and addresses of lending institutions used by the school for student tuition loans; and

(3)

the true annual percentage rate and any other fees or charges associated with student tuition loans.

(c)

A school shall refund or forfeit any tuition, fees, or other charges not previously disclosed to the Commission.

(d)

A school may offer scholarships providing the terms of scholarships are disclosed to the Commission.

(e)

The school 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. A school shall clearly identify the payor, the type of funding, and the reason for the charges. These records shall be posted and kept current.

(f)

A school 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 a student-signed receipt. This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter K. Progress Standards

**40 TAC §§807.161-807.164**

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Subchapter L. Attendance Standards

**40 TAC §§807.171-807.175**

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*§807.173. Termination of Enrollment.*

(a)

A school shall terminate the enrollment of a student who accumulates the lesser of the following amounts of absences:

(1)

more than 10 consecutive school days;

(2)

more than 20% of the total clock hours in a program of more than 200 clock hours;

(3)

more than 25% of the total clock hours, if the program or individual subject is 41 to 200 clock hours in length;

(4)

more than 25% of the total clock hours for seminars, individual subjects, or programs of 40 clock hours or less; or

(5)

any number of days if the student fails to return as scheduled from an approved leave of absence.

(b)

Students whose enrollments are terminated for violation of the attendance policy may not reenroll before the start of the next progress evaluation period. This provision does not circumvent the approved refund policy.

*§807.174. Make-up Work.*

(a)

No more than 5% of the total clock hours for a program may be made up.

(b)

The school shall submit make-up work policies to the Commission for approval.

(c)

Make-up work shall:

(1)

be supervised by an instructor approved for the subject being made up;

(2)

require the student to demonstrate substantially the same level of knowledge or competence expected of a student who attended the scheduled class session;

(3)

be completed within two weeks of the end of the grading period during which the absence occurred;

(4)

be documented by the school as being completed, recording the date, time, duration of the make-up session, and the name of the supervising instructor; and

(5)

be signed and dated by the student to acknowledge the make-up session.

*§807.175. Leaves of Absence.*

(a)

Seminars and small schools with programs of 40 clock hours or less shall not grant leaves of absence.

(b)

A school director may grant a leave of absence after determining that good cause is shown. A leave of absence may not exceed the lesser of 30 school days or 60 calendar days.

(c)

A school shall grant a student only one leave of absence per 12-month calendar period.

(d)

School attendance records shall clearly define the dates of the leave of absence. A written statement as to why the leave of absence was granted, signed by both the student and the school director indicating approval, shall be placed in the student's permanent file.

(e)

In addition to the requirements concerning leaves of absence in this subchapter, a school offering degree programs that schedules their courses on an academic quarter or academic semester basis may include in their attendance policies provisions for summer leaves of absence. These leaves of absence shall not exceed the lesser of 120 days or the interval between the end of the spring academic quarter or academic semester and the start of the fall academic quarter or academic semester.

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#### Subchapter M. Cancellation and Refund Policy

##### **40 TAC §§807.191-807.194**

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#### Subchapter N. Records

##### **40 TAC §§807.211-807.214**

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*§807.213. Attendance Record Keeping.*

(a)

A school offering seminars or other programs where students do not change instructors during the school day, are not required to maintain a separate master record of attendance.

(b)

A school shall maintain a master record of attendance on each student that clearly indicates the number of scheduled hours each day and the hours of absence.

(c)

Each instructor shall maintain a record of attendance, which shall indicate a positive record of each student's attendance. Entries in the record of attendance shall be made in ink or other permanent medium, including scantron or other permanent computer records, and shall not be changed in a manner that precludes reading the original entry. This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter O. Complaints

**40 TAC §807.221, §807.222**

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Subchapter P. Truck Driver Training Programs

**40 TAC §§807.231-807.235**

The new rules are adopted under Texas Labor Code, §301.062 and 302.001, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

*§807.231. General Information Relating to Truck Driver Training.*

A school providing truck driver training shall ensure that the truck driver instructors complete a 40 clock hour truck driver instructor development course.

*§807.232. Truck Driver Instructor Development Course.*

(a)

A school shall apply to the Commission for approval to provide a truck driver instructor development course.

(b)

The instructor development course shall consist of 40 clock hours, which includes at least the following topics.

(1)

Five hours shall cover techniques of instruction including: qualities of a competent instructor, the learning process, methods of teaching, development of efficient teaching habits, demonstration teaching, the use of instruction material and training aids, course preparation, lesson plans, testing and evaluation, and the duration and frequency of lessons.

(2)

Two hours shall cover personality factors affecting the driver and pedestrian including: natural abilities; senses; mind and nerves; bones and muscles; knowledge of vehicle, road, traffic, and self; attitudes and emotions; reaction time; and reactions to alcohol, carbon monoxide, over-the-counter drugs, prescription drugs, illegal drugs, heart ailments, epilepsy, diabetes, insanity, exhaustion, tension, and monotony.

(3)

Six hours shall cover state laws as located in the Texas Motor Vehicle Law book relating to the operation of motor vehicles including: driver's license, vehicle registration, certificate of title, operation of vehicles, uniform act, miscellaneous offenses, and safety responsibility.

(4)

Eight hours shall cover driving procedures including: handling--city, rural, night, mountain, and freeway driving; fog, rain, sandstorms, and other hazardous weather conditions; road hazards and recovery procedures for slick roads; blowout hazards and running off the road; traffic signs, markings, and signals; use of rearview mirrors; vehicle braking and stopping distances; following distances; right-of-way, when and how to yield it; vehicle acceleration and deceleration; yielding right-of-way to emergency vehicles; driver signals; proper passing procedures; procedures and problems for passing on two and three-lane roadways; and super-size motorized equipment.

(5)

Three hours shall cover physical forces affecting the motor vehicle in motion including: forces of gravity; friction; acceleration, mass, and force; inertia and centrifugal force; kinetic energy and momentum; kinetic energy and braking; and horsepower and acceleration.

(6)

Two hours shall cover highway characteristics including: primary, secondary, expressway, freeway, farm or ranch road, two-way two-lane, two-way three-lane, two-way multilane, two-way multilane divided, one-way multilane, parking, and traffic controls. Traffic control topics consist of the following:

(A)

sign topics including shape, color, location and importance;

(B)

traffic marking topics including center and lane lines, no passing zone, transition markings, turn lane marking, stop lines, crosswalk lines, etc.; and

(C)

signal topics including classification, location, type, timing.

(7)

Two hours shall cover automobile systems and maintenance including: electrical system--generator, alternator, battery, lighting, and electric-powered equipment; cooling system--lubrication and fuel systems; power train--engine, transmission, and differential; brake system--wheels and tires, caster, camber, toe-in, balance, inflation, tire condition, and care; exhaust system; instruments and gauges; compartment adjustments--seat, ventilation, mirrors, headrests, seat belts, and shoulder harness; starting the engine and warm-up procedures; safety devices--door locks, headrests; and miscellaneous features--windshield wipers, heater, and defroster.

(8)

Two hours shall cover behind-the-wheel elementary lessons with demonstration in an appropriate vehicle and practice to be performed in the presence of the instructor including: starting; steering; stopping; shifting gears; backing; turning--right and left; and parking and starting on grade.

(9)

Six hours shall cover behind-the-wheel driving safety lessons with demonstration in an appropriate vehicle and practice to be performed in the presence of the instructor including: developing good seeing habits; speed control; safe following; lane driving and lane changing; intersections and right-of-way; proper signaling; correct turn procedures; detecting of and handling problems--vehicle, cycle, pedestrian; freeway driving--ramp use, entering, exiting, lane use, emergency stopping; parking procedures; entering traffic from parked position; and night driving.

(10)

Two hours shall cover school and instructor approval requirements including the following: school approval requirements, instructor approval requirements, classroom and automotive equipment requirements, required student records, contract requirements, and department of instructors.

(11)

Two hours shall cover specialized training regarding the following: students with physical, mental, or emotional handicaps; illiterate students; non-English-speaking students; and habitual violators and problem drivers.

*§807.235. Prohibited Activities Regarding Truck Driver Training.*

(a)

A school, a trainer of truck driver instructors, or a truck driver instructor shall not:

(1)

allow an instructor to give instruction or allow a student to secure instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, or other such impairment;

(2)

permit a student to operate a motor vehicle without a valid driver's license or instruction permit in the student's possession during behind-the-wheel instruction;

(3)

permit more than a ratio of four students per vehicle and three vehicles per instructor on truck driving ranges;

(4)

permit more than four students per vehicle per instructor during street instruction for truck driver training; or

(5)

advertise or otherwise state or imply that a driver's license or permit is guaranteed or assured to any student or individual who may take or complete any instruction or course of instruction, enroll, or otherwise receive instruction in any truck driver training school.

(b)

The Commission may suspend, revoke, or refuse to renew approval of a truck driver instructor or a trainer of truck driver instructors, upon determining that the applicant or instructor has been:

(1)

convicted under the laws of this state, another state, or the United States of any felony; of an offense of criminally negligent homicide committed as a result of the person's operation of a motor vehicle; of an offense involving driving while intoxicated or under the influence; or of an offense involving tampering with a governmental record; or

(2)

found incompetent or is incompetent to:

(A)

safely operate a motor vehicle; or

(B)

properly conduct classroom or behind-the-wheel instruction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 1998.

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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Effective date: August 16, 1998

Proposal publication date: May 22, 1998

For further information, please call: (512) 463-8812

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Subchapter Q. Closed Schools

**40 TAC §807.251, §807.252**

The new rules are adopted under Texas Labor Code, §301.062 and 302.001, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4, Subtitles A and B.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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