

CHAPTER 807. Proprietary Schools

The Texas Workforce Commission (Commission) proposes the review, pursuant to the Rule Review Plan, 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. The proposed rules interpret and implement the provisions of Texas Education Code, Chapter 132, Proprietary Schools (the Act). The new rules as proposed incorporate the requirements previously contained in 40 TAC Chapter 807, which is concurrently proposed for repeal. 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 proposed for repeal. For a detailed comparison between the new rules as proposed and the rules proposed for repeal, please contact the Proprietary School Section at the address and phone number given below.

Subchapter A of the proposed 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 proposed 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 proposed rules interprets and clarifies statutory provisions relating to financial requirements. Specifically, §807.31 sets out definitions relating to financial stability, §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 proposed 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 proposed 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 proposed 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 proposed 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 programs, §807.93 sets out the additional program application provisions, §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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed rules sets out provisions for cancellation and refund policies. Specifically, §807.191 sets out the provision for canceling 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 proposed 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 proposed 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 proposed 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 training qualifications and duties, §807.233 sets out provisions regarding truck driver training course requirements, §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 proposed 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.

The Commission's minimum, maximum, and median times for processing applications from the date the Commission received the initial applications to the date of the final decision using the Commission's performance in the past 12 months are respectively as follows: The Original Certificate of Approval processing period is a maximum of 152 days, a minimum of 2 days, and a median of 23 days. The Renewal Certificate of Approval processing period is a maximum of 102 days, a minimum of 2 days, and a median of 21 days. The Change of Owner processing period is a maximum of 90 days, a minimum of 2 days, and median of 14 days. The Representative processing period is a maximum of 74 days, a minimum of 2 days, and a median of 7 days. The Instructor processing period is a maximum of 190 days, a minimum of 2 days, and a median of 46 days. The Director processing period is a maximum of 61 days, a minimum of 2 days and a median of 13 days. The Director of Education processing period is a maximum of 47 days, a minimum of 4 days and a median of 17 days. The data used to compile the processing periods is based on a mail tracking system. Based on limitations of the mail tracking system, the following qualifiers are provided: processing periods of one day were excluded from the calculations; in an indeterminate number of cases, the data reflects total processing times irrespective of whether additional information was needed to complete the applications; and errors may exist due to processing and data base conversion complications. The processing periods provided in §807.6 were based on a decrease in department staffing and an increase in the number of applications needing to be processed.

Randy Townsend, Director of Finance, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Randy Townsend, Director of Finance, and Michael De Long, Proprietary School Coordinator, have determined that there will be an effect on small businesses and anticipated economic costs to persons who are required to comply with the proposed rules. The Commission submitted drafts of the Proprietary School Rules to the proprietary schools and held two meetings with the Proprietary School Task Force, which included persons representing the interests of proprietary schools, to discuss issues pertaining to the drafts of the rules and any costs incurred by the schools with respect to the rules. A first draft and a subsequent draft were submitted to the Proprietary School Task Force and written and verbal responses were received on both drafts. The concerns of the proprietary schools were also discussed at the two Task Force meetings. The requests for feedback from the schools were made to assist the Commission in determining what, if any, adverse effect there would be on small businesses. During the drafting stage of the proposed rules, the Commission has worked with the proprietary schools to incorporate provisions to reduce the costs to small businesses. Furthermore, the Commission requested feedback from some proprietary schools to determine the costs of complying with the rules and to determine whether an adverse economic effect would be caused by the rules. The Commission estimates the cost of complying is approximately \$10 per hour of labor for the amount of time it would take to meet the requirements of the rule. Factors will cause the estimates to vary, such as the resources available to the school, the wage rate of the person performing the task, the size of the school, and

numerous other variables will bear upon the actual costs of compliance for a particular school. Incidental costs such as postage and telephone calls are not included because of their minimal nature.

Based on the responses from the proprietary schools, the following are estimated costs for small businesses to comply with the rules. See the Figure. For responses where amounts varied, the first amount represents the lowest amount and the second amount represents the highest amount indicated as the estimated cost of complying with the rules.

Figure: 40 TAC Chapter 807--Preamble

For rules that do not add requirements on schools but merely detail how the proprietary schools should comply with the statute, there are no costs other than those required by the statute. Those costs are directly caused by the statute and not by any additional cost to small businesses caused by the rules. For example, the statute requires schools to obtain a bond, and the rules merely state that the bond shall be attached to the application for a certificate of approval.

The Commission anticipates the rules that will present no costs other than those directly required by the statute are as follows: §§807.1, 807.2, 807.51(c), 807.53(c)(5), and 807.53(c)(8)-(10). The Commission anticipates the rules that will present no labor costs are as follows: §§807.3, 807.6, 807.12(c), 807.13(a), 807.31, 807.113(a), 807.121(a), 807.122, 807.123(b)-(e), 807.124(a)-(b), 807.124(d), and 807.126(c).

The comparison between the costs estimated by the proprietary schools for small and large businesses is apparent from the chart. For the costs which could not be estimated, those costs for small businesses are estimated as equal to or more than those costs of large businesses, due to the various resources available to larger businesses.

The majority of currently approved proprietary schools are small businesses; however, many of these proprietary schools are not defined as "small proprietary schools" pursuant to §132.054 of the Act relating to the Small School Exemption, which states that "The Commission may exempt small proprietary schools from any requirement of this chapter to reduce the cost to small schools of receiving a certificate of approval." To lessen the costs on small businesses the Commission has proposed §807.4 pertaining to waivers which would permit a school to request a waiver from all or part of these rules upon a showing of good cause due to undue economic hardship. The Commission intends to reduce the costs for small schools and small businesses in complying with the rules whenever feasible by applying §132.054 of the Act and §807.4 of the rules.

Michael De Long, Proprietary School Coordinator, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules shall be to provide rules that are easier to understand and follow regarding proprietary schools and to make the process simpler for prospective proprietary school owners to obtain a certificate of approval to operate as a proprietary school.

Comments on the proposed rules may be submitted to Michael De Long, Proprietary School Coordinator, Texas Workforce Commission, 101 East 15th Street, Austin, Texas, 78778-0001; telephone number (512) 936-3104; facsimile number (512) 936-3111; e-mail address Michael.Delong@twc.state.tx.us.

The Commission will hold a public hearing on the proposed rules to receive public comments from persons interested in the rules. Notice of this hearing will appear in the Texas Register.

SUBCHAPTER A.General Provisions

40 TAC §§807.1-807.6

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective

administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.1. Title and Purpose.

(a) These rules may be cited as the Proprietary School Rules.

(b) The purpose of these rules is to implement and interpret the provisions of the Texas Education Code, Chapter 132, Proprietary Schools. The Commission shall evaluate each school according to the standards of practice set forth in the Act and this chapter. The Commission will provide assistance, whenever possible, in complying with this chapter.

§807.2. Definitions.

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

(1) Academic quarter--A period of instruction that includes at least ten weeks of instruction, unless otherwise approved by the Commission.

(2) Academic semester--A period of instruction that includes at least 15 weeks of instruction, unless otherwise approved by the Commission.

(3) Accountant--An independent certified public accountant properly registered with the appropriate state board of accountancy.

(4) Act--Texas Education Code, Chapter 132, Proprietary Schools.

(5) Advertising--Any affirmative act designed to call attention to a school or program for the purpose of encouraging enrollment.

(6) Board--A local workforce development board as created under the Workforce and Economic Competitiveness Act.

(7) Clock hour--Fifty minutes of instruction during a 60-minute period.

(8) Commission--The Texas Workforce Commission.

(9) Coordinating Board--The Texas Higher Education Coordinating Board.

(10) Correspondence course--Distance education, either a seminar or a program, that is offered to non-residence school students via correspondence or other media from a remote site on a self-paced schedule, excluding programs using interactive instruction.

(11) Correspondence school--A school that offers only correspondence courses.

(12) Course of instruction--A program or seminar.

(13) Employment--A graduating or graduate student's employment in the same or substantially similar occupation for which the student was trained.

(14) Good reputation--A person is considered to be of good reputation if the person:

(A) has never been convicted of a felony related to the operation of a school, and the person has been rehabilitated, including completion of parole or probation, from any other convictions that would constitute risk of harm to the school or students as determined by the Commission;

(B) has never been successfully sued for fraud or deceptive trade practices within the last 10 years;

(C) does not own a school currently in violation of legal requirements, has never owned a school with repeated violations, and has never owned a school that closed with violations including, but not limited to, unpaid refunds; and

(D) has not knowingly falsified or withheld information from the Commission.

(15) Job placement--An affirmative effort by the school to assist the student in obtaining employment in the same or substantially similar stated occupation for which the student was trained.

(16) Master student registration list--A comprehensive list with an entry made for any person who signs an enrollment agreement, makes a payment to attend the school, or attends a class. The entry shall be made on the date the first of these events occurs.

(17) Program--A sequence of approved subjects offered by a school that teaches skills and fundamental knowledge required for employment in the stated occupation.

(18) Reimbursement contract basis--A school operating, or proposing to operate, under a contract with a state or federal entity in which the school receives payment upon completion of the training.

(19) Residence school--A school that offers at least one program that includes classroom instruction.

(20) School--A "proprietary school," as defined in the Act, that includes each location where courses of instruction shall be offered.

(21) Secondary education--Successful completion of public, private, or home schooling at the high school level or obtainment of a recognized high school equivalency credential.

(22) Seminar--A course of instruction that enhances a student's career, as opposed to a program that teaches skills and fundamental knowledge required for a stated occupation. A seminar may include a workshop, an introduction to an occupation or cluster of occupations, a short course that teaches part of the skills and knowledge for a particular occupation, language training, continuing professional education, and review for postsecondary examination.

(23) Seminar school--A school that offers only seminars.

(24) Small school--A "small school" as defined in the Act.

(25) Stated occupation--An occupation for which a program is offered that:

(A) is recognized by a state or federal law or by a state or federal agency as existing or emerging;

(B) is in demand; and

(C) requires training to achieve entry-level proficiencies.

(26) Student--Any individual solicited, enrolled, or trained in Texas by a school.

(27) Subject--A component of a program that includes specific content designed to advance the practical skills and knowledge necessary to prepare a student for employment in the stated occupation. A subject in a school is similar to a course at a community or technical college.

(28) Suspension of enrollments--A Commission sanction that requires the school to suspend enrollments, re-enrollments, advertising, and solicitation, and to cease, in any way, advising prospective students, either directly or indirectly, of the available courses of instruction.

(29) Tour--An inspection of the facilities and equipment pertaining to a course of instruction.

(30) Week--Seven consecutive calendar days.

§807.3.Memorandum of Understanding for Regulation of Schools.

The Act requires the Commission to execute a memorandum of understanding with the Texas Guaranteed Student Loan Corporation and each state agency regulating schools to reduce default rates at the regulated schools and to improve the overall quality of the programs. Said memorandum of understanding is set out at 40 TAC §800.205. Copies are available at the Texas Workforce Commission, 101 East 15th Street, Room 614, Austin, Texas 78778.

§807.4.Waivers.

(a) Upon a showing of extreme extenuating circumstances, a school governed by this chapter may request a waiver from the requirements of this chapter. The Commission shall grant the 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.

§807.5. Exemptions.

(a) A school desiring exemption from regulation pursuant to the Act shall make application and provide information deemed necessary by the Commission.

(b) The Commission may inspect a school or require such information to ensure continued operation in compliance with the exemption provisions.

§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 owner 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 owner 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.

(1) Good cause for exceeding the period established is considered to exist if:

(A) 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;

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

(C) 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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807568

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER A. Proprietary School Advisory Commission

40 TAC §807.3

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed repeal affects the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.3. Memorandum of Understanding for Regulation of Proprietary Schools.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on

May 11, 1998.

TRD-9807565

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER B. Certificates of Approval

40 TAC §§807.11-807.17

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§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 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 for the most recent fiscal year 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.

(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 new school owner fails to file an application for a change in ownership at least 30 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.

§807.14. Locations.

(a) A school shall obtain a certificate of approval for each location where courses of instruction will be offered, unless the school has a certificate of approval and meets one of the exceptions in this section.

(b) The Commission may approve the following as exempt from applying for approval for a new or additional location, if requested at least 30 days in advance:

(1) review seminars, including preparation for licensing examinations, educational institution entrance examinations, and reading improvement;

(2) classes in no more than one location at a time as an itinerant school;

(3) classes at facilities used for additional classrooms for instructional services only, which are within a one-mile radius of the main campus and are dependent on the main campus for administration, supervision, fiscal control, and student services; or

(4) short-term programs. Short term programs:

(A) include 200 clock hours or less of instruction; and

(B) are conducted with at least a 90-day interval between cessation of one program and the beginning of the next.

(c) The school shall file an application for a certificate of approval to reflect a new or additional location, including all documents deemed necessary by the Commission, and the appropriate fee. The Commission may issue the certificate of approval after inspection of the new facilities.

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

<nl>

§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.

§807.16. Associate Degrees.

(a) If a school desires authorization to grant associate degrees, the school shall make application to the Coordinating Board and have:

(1) a current certificate of approval from the Commission;

(2) an accreditation by an agency or association recognized by the United States Secretary of Education;

(3) a history of conducting classes for the past two years in Texas and compliance with the Act as a non-degree-granting school; and

(4) an ability to fully operate as a degree granting school in compliance with the Coordinating Board's requirements.

(b) A certified and accredited branch campus of a fully and separately accredited school approved to grant a degree in Texas may apply to grant the same degree, provided that the branch campus is also in compliance with all other minimum standards, except for the history of conducting classes for the

past two years.

(c) The Commission may recognize the authorization to grant degrees upon receipt of a copy of the letter of authorization issued by the Coordinating Board.

§807.17. Penalties and Sanctions Regarding Schools.

The Commission may impose penalties or sanctions for violations of the Act or this chapter, including:

- (1) collecting a late renewal fee from the school;
- (2) denying the school's application for a certificate of approval;
- (3) revoking the school's certificate of approval;
- (4) placing restrictions on the school's certificate of approval;
- (5) denying, suspending, or revoking the registration of the school's representatives;
- (6) filing a claim against the school's surety bond;
- (7) collecting a late refund penalty from the school;
- (8) assessing an administrative penalty;
- (9) applying for an injunction against the school;
- (10) asking the Attorney General to collect a civil penalty from any person who violates the Act or this chapter;
- (11) ordering a peer review of the school;
- (12) revoking a program approval;
- (13) denying a program approval;
- (14) requiring full or partial refunds to students for program violations or deficiencies;
- (15) suspending the admission of students to the school;
- (16) charging the school an investigation fee to resolve a complaint against the school; and
- (17) charging the school interest and penalties on late payments of fee installments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807569

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER C. Financial Requirements

40 TAC §§807.31-807.37

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.31. Definitions Relating to Financial Requirements.

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

- (1) Alternative bonding--A situation in which the school's bond amount exceeds the highest amount of unearned tuition as shown on the unearned tuition affidavit.
- (2) GAAP--Generally Accepted Accounting Principles.
- (3) GAAS--Generally Accepted Auditing Standards.

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

(5) Unearned tuition affidavit--A statement of the highest amount of unearned tuition at any time during the most recent fiscal year, the projected highest unearned tuition at any time during the next fiscal year, and the gross amount minus refunds of student tuition and fees earned during the fiscal year in all programs approved under the Act.

§807.32. Financial Standards.

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

- (1) positive equity or net worth balance;
- (2) unearned tuition as a current liability;
- (3) a current ratio of at least one-to-one; and
- (4) stockholder's equity or net worth exceeding the amount shown for goodwill, if applicable, under assets in the balance sheet.

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

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

§807.33. Financial Requirements for Original Approvals.

(a) The prospective owner shall furnish the Commission with the following, for:

- (1) 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) 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.

§807.34. Financial Requirements for Changes in Ownership.

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

§807.35. Financial Requirements for Renewal.

(a) A school shall submit annual financial statements as set forth in this section that shall be:

- (1) audited by an accountant and consistent with GAAP;

(2) reviewed by an accountant and consistent with GAAP (except for the first renewal, which must be audited or compiled); or

(3) compiled by an accountant, containing an unearned tuition affidavit and at least one note disclosing the current and long-term liabilities. This note shall be similar to that required by GAAP for reviewed and audited statements.

Compiled statements are acceptable under the following conditions:

(A) the gross annual revenue from student tuition and fees is \$50,000 or less;

(B) the courses of instruction are less than one month in length; or

(C) the school maintains alternative bonding.

(b) Each school shall furnish financial statements in association with an accountant annually and not later than 180 days from the close of the school's fiscal year. These statements shall include the following:

(1) balance sheet (calculation of unearned student tuition shall be based upon at least a quarterly pro rata basis or refund policy basis for the program, whichever would most accurately reflect recognition of income);

(2) statement of results of operation, which includes a statement of income and retained earnings;

(3) statement of cash flows; and

(4) the gross amount minus refunds of annual student tuition and fees for each school, separated from other revenues unrelated to training.

(c) An alternative bonded school may submit all of the following in lieu of the financial statements required in this section:

(1) an unearned tuition affidavit;

(2) a copy of the annual income tax form filed specifically for the business; and

(3) an owner's sworn statement certifying that the unearned tuition affidavit and the copy of the annual income tax form are true and correct.

(d) A school that is a subsidiary of a corporation may submit, in lieu of the statements required in this section, the annual audited financial statements of the parent corporation provided that:

(1) said statements are accompanied by an audited list of any student tuition refunds payable by the subsidiary school at the close of its fiscal year. The statements shall also be accompanied by an owner's sworn statement reflecting the gross amount minus refunds of student tuition and fees earned during the fiscal year on all programs approved under the Act; and

(2) the parent corporation ensures that each student enrolled in the subsidiary school receives either the training agreed upon or a refund as provided in the Act, and submits either a certified resolution of its board of directors to this effect or any other evidence as deemed appropriate by the Commission to establish financial responsibility by the parent corporation.

§807.36. Interim Financial Statements.

If a school chooses to submit interim financial statements in addition to the annual financial statements to establish financial stability, those interim statements shall meet the minimum requirements of this subchapter.

§807.37. Commission Ordered Audits.

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

(1) an audit of a school that has been certified by an accountant; or

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807570

J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: June 21, 1998
For further information, please call: (512) 463-8812

SUBCHAPTER D.Representatives
40 TAC §§807.51-807.53

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.51. Representative Requirements.

- (a) The school shall apply annually to register representatives on forms provided by the Commission and with the appropriate fee.
- (b) A representative shall be of good reputation and under the control of the school and is deemed to be the agent of the school. The school is responsible for any representations or misrepresentations, expressed or implied, made by a representative.
- (c) Any student solicited or enrolled by an unregistered representative is entitled to a refund of all monies paid and a release from all obligations. Any contract signed by a prospective student as a result of solicitation or enrollment by an unregistered representative is null and void and unenforceable.

§807.52. Representative Standards.

A representative shall:

- (1) have sufficient knowledge of the school to provide complete and accurate information regarding the school to prospective students;
- (2) refer questions about financial aid and entrance testing to the appropriate school officials; and
- (3) invite the student applicant to tour the school's facilities, inspect equipment, and speak with students.

§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 student 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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807571

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER E. School Director and Administrative Staff

40 TAC §§807.61-807.65

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.61. School Director Requirements.

- (a) Each school shall designate one person as the school director.
- (b) A person may not concurrently serve as a school director for more than one school.

§807.62. School Director Qualifications and Duties.

- (a) A school director of a small school shall have administrative or management experience. A school director of a small school shall be of good reputation and is not required to attend a Commission-sponsored workshop prior to initial approval by the Commission.
- (b) A school director of other than a small school shall be of good reputation and have a total of five years of administrative or management experience. An equivalent duration of higher education, college or university, may be substituted for each year of experience.
- (c) The school shall obtain Commission approval for the school director before employment of the school director.
- (d) A school director shall attend a Commission-sponsored workshop and demonstrate a proficiency of the knowledge required to operate a school before final Commission approval may be granted. The Commission may require a school director to attend additional workshops scheduled by the Commission in order to maintain skills and continue as an approved school director.
- (e) The school director is responsible for the courses of instruction, organization of classes, designation of a liaison for Commission compliance visits, maintenance of the school facilities and proper administrative records, and all other matters related to the administration of the school, as determined

by the Commission.

(f) The school director shall sign and agree to the terms of the Director's Statement.

(g) The Commission may require the school director to attend additional training to continue approved director status if a school has more than one substantiated complaint from students during a one-year period. If the school has repeat violations from a previous year under the same director, the Commission may revoke the approval of the school director.

(h) The school director shall:

(1) ensure that all facilities, including housing endorsed by the school, comply with local, city, county, municipal, state, and federal regulations such as, but not limited to, fire, building, and sanitation codes; and

(2) inspect facilities, including housing, before endorsement.

(i) The Commission shall grandfather the director of a school from meeting the requirements contained in this section, providing that the school has submitted the application for that school director to the Commission prior to the effective date of this section, and the application results in approval by the Commission.

§807.63. Acting School Director.

(a) The Commission may allow a school to designate an acting school director for a period not to exceed 90 days or as otherwise approved by the Commission, who is:

(1) a currently approved school director at another location with the same owner to facilitate the approval process at a new location;

(2) a new school director pending approval by the Commission; or

(3) required by an emergency as determined by the Commission.

(b) The school shall provide written notice to the Commission, delivered by the end of the first day following the appointment of the acting school director.

§807.64. Director of Education Requirements.

(a) A school may have a director of education.

(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.

(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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807572

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER F. Instructors

40 TAC §§807.81-807.84

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§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 one of the following qualifications that applies to the subject area to be taught.

(1) A master's degree or higher shall suffice if it:

(A) is in a technical field and includes satisfactory completion of six semester credit hours in the subject to be taught;

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

(C) is in a non-technical field and includes satisfactory completion of three semester credit hours in the subject area to be taught; or

(D) is in a non-technical field and includes one year of practical experience in the subject to be taught within the ten years immediately preceding employment by the school.

(2) A bachelor's degree shall suffice if it:

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

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

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

(D) includes two years of practical experience related to the subject to be taught within the ten years immediately preceding employment by the school.

(3) An associate's degree shall suffice if it:

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

(B) includes a minimum of three years of practical experience related to the subject area to be taught within the ten years immediately preceding employment by the school.

(4) A secondary education shall suffice in the subject area to be taught if it is accompanied by:

(A) a certificate of completion from a recognized postsecondary school for at least a 900 clock-hour program and a minimum of four years experience within the ten years immediately preceding employment by the school; or

(B) proof of satisfactory completion of relevant subjects from a recognized postsecondary school and a minimum of five years 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 a bartending instructor.

(d) The director shall ensure that an instructor applicant demonstrates sufficient language and mathematical proficiency 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.

§807.82. Temporary Instructors.

(a) The Commission may allow a school to use a previously unapproved instructor to teach temporarily for a reasonable amount of time in the case of an emergency, as determined by the Commission.

(b) In such circumstances, the school shall provide written notice to the Commission delivered no later than the first day the temporary instructor begins teaching. The notice shall include:

- (1) the subject to be taught;
- (2) the name of the approved instructor;
- (3) the name of the temporary instructor; and
- (4) the reason for the temporary instructor.

(c) Failure to properly notify the Commission shall result in penalties for the use of an unapproved instructor.

(d) The temporary instructor shall have practical experience or education in the subject area to be taught, and shall not have been previously disapproved to teach the subject.

(e) There shall be no more than one temporary instructor per grading period in an individual subject, unless specifically approved in advance by the Commission.

(f) Failure to comply with this section shall result in penalties, up to and including, a full refund to all students attending such classes.

§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, when submitted with the Commission's instructor application.

(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. Topics shall include competency-based training, instructional methods, adult learning styles, and student learning and skills assessment.

(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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt. Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807573

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER G. Courses of Instruction

40 TAC §§807.91-807.104

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.91. Definitions Relating to Courses of Instruction.

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

(1) Externship--Practical, program-related, off-campus training under direct or indirect instructor supervision, with a preplanned outline of experiences and competencies.

(2) Laboratory experience--A specific experience of observation, experimentation, practice, study, technical investigation, analysis, and practical application of theory or verbal instruction involving hands-on supervised study in a selected vocation or subject.

(3) Lecture--A presentation of theories, concepts, procedures, or information about a particular subject.

(4) New program--A program:

(A) not previously offered;

(B) previously offered and then discontinued;

(C) with a revised objective such that the program provides preparation for different jobs than those for which the program was originally approved (examples: legal secretary to paralegal; dental technician to medical technician; computer operator to computer programmer); or

(D) with a 25% or more change within a 12-month period to the total number of hours, content, or lessons (examples: from 1,000 clock hours to 750; 20 lessons to 30; 600 clock hours to 900, 60 semester credit hours to 80).

(5) New seminar--A seminar:

(A) not previously offered;

(B) previously offered and then discontinued;

(C) with a revised objective; or

(D) with a 25% or more change in a 12-month period to the total number of hours of the approved seminar .

(6) Revised program or seminar--Revisions include changes in admission requirements, title, subject title, objective description (but not the detailed objective), subject clock or credit hours, or subject hours of lecture, laboratory, or externship. Scheduling and price changes are catalog changes, not revisions.

§807.92. General Information for Programs.

(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.

(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. Additional Program Applications.

(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.

(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; 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) provide an externship or a simulation of the workplace for the program, as deemed appropriate by the Commission.

(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 or schools.

§807.96. Curriculum Length.

(a) Each subject submitted for approval shall identify the clock or credit hours allocated to that subject. A subject or program that exceeds a length reasonable to prepare the student for the stated occupation shall not be approved.

(b) The Commission may establish minimum and maximum program lengths for stated occupations consistent with the intent of the Act.

§807.97. Program Title.

(a) Each program submitted for approval shall be identified by a title.

(b) The title shall clearly identify the stated occupation and shall be a title commonly used by business or industry.

(c) The Commission shall not approve false, misleading, or deceptive program titles.

§807.98. Equipment.

(a) Equipment required for instruction shall be comparable to that commonly found in the stated occupation.

(b) The school shall remove equipment not in working order from the instructional area, mark it as out-of-order, or properly identify it as awaiting repair.

(c) The school shall provide equipment of sufficient quality and quantity to meet the maximum use requirements of the current students, as demanded by the activity patterns of the training program.

§807.99. Facilities.

(a) In determining adequate space for lecture and laboratory experiences, the Commission shall consider that the amount of lecture and laboratory space meets

the use requirements of the maximum number of current students in class with appropriate seating facilities and/or workstations, as needed by the activity patterns of the program.

(b) Enrollment shall not exceed the design characteristics of the available workstations.

§807.100. Admission Requirements Relating to Programs.

(a) The school shall submit, for approval by the Commission, its admission requirements for each program with justification for the requirements.

(b) The school shall ensure that the student demonstrates to the school sufficient proficiency in the language of instruction to successfully complete the training program.

§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 retention 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.

§807.102. Program Revisions.

(a) The school shall submit a revised program application for any proposed changes in the program that shall be reflected in the school catalog's program information.

(b) The school shall receive approval of proposed program revisions in writing from the Commission before implementing the revisions.

(c) The school shall work closely with employers in its job market to ensure

that the program meets employers' needs.

§807.103. Program Requirements for Degree Granting Schools.

(a) The quality, content, and sequence of each subject or program shall be appropriate for the purpose of the school and shall be such that the school may reasonably and adequately achieve the stated objectives of the subject or program by providing graduates of these programs with marketable skills.

(b) Prior to graduation students shall demonstrate the attainment of advanced skills as appropriate to the degree.

(c) At least 95% of the subjects required for each degree shall be offered in organized classes.

(d) A school may contract with another school for the instruction of general education or applied foundation courses if the Coordinating Board has approved that contract.

§807.104. Penalties Relating to Courses of Instruction.

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

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

- (1) inadequate instruction;
- (2) unapproved or inadequate curriculum;
- (3) inadequate equipment; or
- (4) inadequate facilities.

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

(d) If upon review and consideration of an original, renewal, or revised application for program approval, the Commission determines that the applicant fails to meet the requirements in the Act or this chapter, the Commission shall notify the school, setting forth in writing the reasons for the denial. This may include summaries of peer evaluations from both educators and employers offering similar programs.

(e) The Commission may revoke approval of a school's program at any time the Commission finds cause. For purposes of this subsection, cause includes, but is not limited to:

- (1) any statement contained in the application for the program approval which is untrue;
- (2) the school's failure to maintain the instructors, facilities, equipment, or programs, or program outcomes on the basis of which approval was issued;
- (3) advertising made on behalf of the school which is false, misleading, or deceptive, including those that use the word "associate" to describe a degree other than those approved by the Coordinating Board;
- (4) programs without clearly stated limited transferability if there are no articulation agreements with other postsecondary institutions in the same geographic area;
- (5) programs for which financial aid is advertised but is not available;
- (6) repeated violations by the school that negatively impact the quality of a particular program; or
- (7) violations by the school of any applicable provision of the Act or this chapter.

(f) A school whose program approval is denied or revoked shall have the right to appeal. The Commission will conduct hearings in accordance with Commission policies and procedures applicable to the appeal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807574

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER D. Veterans Approval for Proprietary Schools

40 TAC §807.101

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed repeal affects the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.101. Accredited and Nonaccredited Programs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807566

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER H. Application Fees and Other Charges

40 TAC §§807.111-807.113

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§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 fees 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.

§807.112. Renewal Fees.

(a) For small schools, if a certificate of approval is issued for more than one year, the renewal fee is \$1,001, which may be paid with \$501 the first year and \$250 on the anniversary date of the certificate for each subsequent year.

(b) For all other schools, the renewal fee is based on the gross amount minus refunds of annual student tuition and fees. The renewal fee is the greater of:

(1) 0.31% of the school's gross tuition and fees, excluding refunds as provided by the Act; or

(2) \$500.

(c) For all schools, the Commission shall assess a penalty of 10% of the renewal fee, not less than \$200 or more than \$1,000, if the school fails to file a complete application for renewal at least 30 days before the expiration date of the certificate of approval.

§807.113. Installment Payments.

(a) With the exception of the renewal installment schedule for small schools, a school may elect to pay any single fee in excess of \$1,000 by quarterly installment. A service charge of 10% of the fee shall be added, and the total divided into equal quarterly installment payments. The first payment shall be due on the date the fee is due. The successive payments shall be due in 90-day increments.

(b) Failure to pay any installment by the due date may result in one or more of the following:

(1) a penalty being assessed in the amount of 50% of the total amount of the fee;

(2) full payment of the penalty and outstanding balance due within 30 days; or

(3) suspension of participation in the installment payment plan for the next renewal period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807575

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER E. Minimum Standards for Operation of Texas Proprietary Schools

40 TAC §§807.121-807.131

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce

Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed repeals affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.121. General Information.

§807.122. Definitions.

§807.123. Exemptions.

§807.124. Representatives.

§807.125. Approvals.

§ 807.126. Applications from Small Businesses.

§807.127. Minimum Standards for Operation of Proprietary Schools.

§807.128. Application Fees and Other Charges.

§807.129. Minimum Standards for Operation of Proprietary Schools Which Grant Degrees.

§807.130. Truck Driver Training.

§807.131. Tuition Protection Fund.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807567

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER I. Advertising

40 TAC §§807.121-807.126

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.121. General Information for Advertising.

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

(b) The Commission may require a school to furnish proof to the Commission of any of its advertising claims, when requested.

§807.122. Advertisement Method.

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

(b) A school shall not be advertised under any "help wanted," "employment," or similar classification.

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

(d) A degree granting school shall not use terms to describe the significance of the approval that specify or connote greater approval. Terms that schools may not use to connote greater approval by the Commission include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended."

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

§807.123. Advertisement Content.

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

(b) Advertisements shall not include:

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

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

(3) representation of the school as an employment agency under the same name, or a confusingly similar name, or at the same location of the school.

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

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

(e) A school shall not use a photograph, cut, engraving, or illustration in advertising in such a manner as to convey a false impression of size, importance, or location of the school, equipment, or facilities associated with the school.

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

§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. 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 "student tuition loans available"; 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;
 - (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 improper advertising, 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) The Commission may require schools to submit all advertisements to the Commission for preapproval 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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807576

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER J. Admission

40 TAC §§807.141-807.147

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools. §807.141. General Information for Admission.

(a) The Commission may approve specific admission requirements for seminars and small schools.

(b) Small schools with programs of 40 clock hours or less, individual subject offerings, and seminars are not required to grant credit for previous education and training.

(c) The school shall make appropriate adjustments to the program length and price based upon credit granted for previous education and training, where warranted.

(d) For a school having specific term-beginning dates, a school may not start students after the third day of classes during any given term, except in those cases where appropriate credit for previous education and training has been given according to the Act and this chapter.

§807.142. Admission Requirements.

(a) The school shall require for admission into its programs proof of one of the following:

(1) secondary education;

(2) successful completion or the equivalent of one full-time academic semester (12 academic semester hours) or academic quarter (18 academic quarter hours) at an accredited college, university, or other postsecondary school; or

(3) for certificate programs only, proven ability-to-benefit by obtaining a satisfactory score on the approved entrance test.

(b) Entrance test requirements shall be in accordance with the following provisions.

(1) Any entrance test shall be a nationally recognized standardized test or a nonstandardized test developed by the appropriate industry and approved by the Commission. A nonstandardized test shall be validated by a qualified third party, such as an expert in tests and measurements, for both appropriateness and the specific score level required for admission into the program. The name of the test and its publisher, any time limitations, a minimum acceptable score, and an explanation of score meanings, as referenced in the test material, shall be provided to the student with a copy of the test, if the test is not already on file with the Commission.

(2) If multiple opportunities are allowed for retaking the same entrance test, such students shall wait a minimum of five calendar days prior to retaking the test. A student may take a second entrance test on the same day provided a substantially different test is administered. This shall be stated in the admissions policy published in the school catalog.

(3) A representative is not allowed to administer the test, nor is anyone allowed to assist the student in answering the questions.

(4) If the entrance test reveals the student to be ineligible as an ability-to-benefit student, the student may be enrolled as a remedial student. The school shall have an evaluation procedure approved by the Commission to determine remedial needs and to determine when the required level of remediation has been reached. The school shall also have a remediation plan for such students consisting of subjects approved by the Commission as a part of the program. The students may be charged for the remedial portion of the program on an hourly pro rata basis, but the student is not obligated for the tuition and fees of the program until the entrance requirements are met.

(c) Evidence shall be maintained in each student's file to show the admissions requirements have been met. A full refund of all monies paid and a full release from all obligations shall be due, as determined by the Commission, to any student for whom the school cannot establish that the admission requirements were met.

§807.143. Receipt of Enrollment Policies.

(a) Seminars, individual subjects, and small schools with programs of 40 clock hours or less, shall use a form provided by the Commission to verify the 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 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 received 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.

§807.145. Conduct Policy.

The school shall submit for approval a copy of the rules and regulations pertaining to conduct, which shall include statements regarding:

- (1) conditions for dismissal; and
- (2) conditions for reenrollment of those students dismissed for violating the conduct policy.

§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 provide to the Commission:

- (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 by the Commission. Each separately charged item shall have on file a student-signed receipt.

§807.147. Admission Requirements for Degree Granting Schools.

(a) Students who transfer from other postsecondary schools shall complete at least 20 academic semester hours or 30 academic quarter hours in residency at the school that will grant the degree. This does not apply to transfers within the same school system.

(b) A school shall allow students attending at the time a school becomes a degree granting school to earn a degree, providing the student:

(1) meets all the prerequisites for acceptance into the degree program; and
(2) satisfactorily completes all courses or equivalent courses of the degree program.

(c) Former students shall meet all the prerequisites for acceptance into the degree program and shall satisfactorily complete all courses or equivalent courses in the approved degree program to qualify for a degree.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807577

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER K. Progress Standards

40 TAC §§807.161-807.164

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.161. General Requirements for Progress Standards.

(a) The Commission may approve specific progress standards for self-paced, competency-based programs.

(b) Seminars, because of their nature and duration, are not required to have progress standards.

(c) The progress evaluation records shall be of the type and nature to reflect whether the student is making satisfactory progress to the point of being able to complete all subject matter within the allotted time provided in the course curriculum.

(d) The school shall submit its policies pertaining to incomplete grades to the Commission for approval and publish those policies in the school's catalog. The policies shall address the possibility of the subjects being discontinued when the student returns and clarify options available to that student pursuant to the Act.

§807.162. Progress Requirements for Residence Schools.

(a) For programs of 40 clock hours or less, the school is only required to give a final exam at the end of the program to determine whether the student has sufficient knowledge to warrant a certificate of completion, in lieu of a progress evaluation.

(b) For programs of 41 to 200 clock hours, the school shall record a student's grades at the midpoint and end of each progress evaluation period. A student not making satisfactory progress at the midpoint shall be placed on academic probation for the remainder of the progress evaluation period. If the student does not achieve satisfactory progress by the end of the probationary period,

the student's enrollment shall be terminated.

(c) For schools approved on a clock hour basis and offering programs in excess of 200 hours, the school shall evaluate progress at least every eight weeks. A school approved on a credit hour basis shall evaluate progress at the midpoint and end-of-term for academic semester or academic quarter or at least every eight weeks. For programs in excess of 200 clock hours, the following shall apply.

(1) The school shall place a student making unsatisfactory progress for the program at the end of a progress evaluation period on academic probation for the next progress evaluation period. If the student on academic probation achieves satisfactory progress for the subsequent progress evaluation period, but does not achieve the required grades to meet overall satisfactory progress for the program, the student may be continued on academic probation for one more progress evaluation period.

(2) If a student on academic probation fails to achieve satisfactory progress for the first probationary progress evaluation period, the student's enrollment shall be terminated.

(3) The enrollment of a student who fails to achieve overall satisfactory progress for the program at the end of two successive probationary progress evaluation periods shall be terminated.

(d) When a student is placed on academic probation, the school shall counsel the student prior to the student returning to class. The date, action taken, and terms of probation shall be clearly indicated in the student's permanent file.

(e) The school may allow a student whose enrollment was terminated for unsatisfactory progress to reenroll after a minimum of one progress evaluation period. Such reenrollment does not circumvent the approved refund policy.

(f) The school shall place a student who returns after their enrollment was terminated for unsatisfactory progress on academic probation for the next grading period. The school shall advise the student of this action and document the student's file accordingly. If the student does not demonstrate satisfactory progress at the end of this probationary period, that student's enrollment shall be terminated.

§807.163. Progress Requirements for Correspondence Schools.

(a) Correspondence schools shall evaluate progress as the school receives each lesson assignment. The school shall maintain the record of progress on forms approved by the Commission. Forms shall include:

- (1) the date course materials are mailed to the student;
- (2) the date the lesson assignment is received from the student;
- (3) the grade on a per-lesson basis;
- (4) the instructor's name;
- (5) the date graded assignments are returned to the student; and
- (6) the final grade for the program with completion date indicated.

(b) If at the end of the time period specified in the enrollment agreement, the student has not completed the program, the student's enrollment shall be terminated.

§807.164. Progress Requirements for Degree Granting Schools.

For a school offering degree programs, the progress standards shall include the following:

- (1) a student progress evaluation every academic semester, academic quarter, or at least every eight weeks in block-time programs;
- (2) a minimum grade point average for graduation from all degree programs of 2.0 based on a 4.0 scale, and that a student achieve a passing grade in all required subjects;
- (3) a probationary period of one academic semester, academic quarter, or approved grading period following the end of the academic semester, academic

quarter, or approved grading period in which the student's grades become unsatisfactory; and

(4) provisions for termination at the end of not more than two consecutive probationary periods if the student's cumulative grade point average does not improve to the level required for graduation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807578

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER L. Attendance Standards

40 TAC §§807.171-807.175

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.171. General Requirements for Attendance.

(a) Seminar programs that begin and end during one day are not required to maintain an attendance policy.

(b) The Commission may approve specific attendance requirements for self-paced, competency-based programs.

(c) No provision in this subchapter shall require a school to terminate the enrollment of a student for lack of attendance at a point at which a refund would not be due.

(d) A school shall charge for a full day of absence when the student fails to attend all of the scheduled classes on that day. The school shall charge for a partial day of absence for any period of absence during the day.

(e) A school shall not consider school holidays, such as summer vacation and Christmas holidays, etc., as days of absence.

§807.172. Attendance Requirements for Degree Granting Schools.

For a school offering degree programs, the attendance standards shall include the following:

(1) provisions for termination or probation during the next academic quarter, academic semester, or approved term when a student is absent for more than 20% of the scheduled clock hours during an academic quarter, academic semester, or approved term;

(2) provisions for termination when a student is absent for more than 20% of the scheduled clock hours during the probationary academic quarter, academic semester, or approved term; and

(3) provisions for termination prior to the last quarter, when a student is absent in excess of 10 consecutive school days or 20% of the total clock hours in the course, whichever occurs first.

§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 5.0% 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 schedule 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.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt. Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807579

J. Randel (Jerry) Hill
General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.191. Right to Cancel After Tour.

(a) Correspondence, combination correspondence-residence, and seminars are not required to provide the student a tour.

(b) Any potential student who has not been provided the opportunity to tour the school facilities and inspect the equipment before signing an enrollment contract has an additional three days, excluding Saturdays, Sundays, and legal holidays, following a tour and inspection to cancel enrollment and request a full refund of any money paid to the school and release from all obligations. The student shall sign and date an acknowledgement form certifying the completion of the tour.

§807.192. Consummation of Refund.

(a) A school shall document refunds by written record indicating the date of the refund transaction, the name of the student receiving the refund, the total amount refunded, and the specific reason for the refund. Proof of consummation shall be on file within 120 days of the effective date of termination and shall include:

- (1) copies of both sides of the cancelled check;
- (2) printed proof of completed transaction of electronic funds transfer or other similar electronic means; or
- (3) documentation of an awarded credit to a credit card or other similar account.

(b) To ensure a school's good faith effort to timely consummate a refund owed directly to a student, the student's file shall contain evidence of the following proof of a certified mailing of the refund to the:

- (1) student's last known address;
- (2) student's permanent address, if different from the student's last known address; or
- (3) address of the student's parent or legal guardian, if different from the student's last known and permanent addresses.

(c) If after making a good faith effort to timely consummate a refund, the school is unable to consummate the refund, the school shall forward to the Commission the appropriate refund amount and any pertinent student information to assist the Commission in locating the student.

§807.193. Refund Requirements for Residence Schools.

(a) Students are entitled to a full refund for classes attended if the school does not provide a class with:

- (1) an approved instructor;
- (2) an instructor for whom an application has been properly submitted to the Commission; or
- (3) a temporary instructor for whom the school submitted notice to the Commission.

(b) If a class has no instructor for more than one class period, students are entitled to a full refund for each such class attended.

(c) The length of a program, for purposes of calculating refunds owed, is the shortest scheduled time period in which the program may be completed by continuous attendance of a full-time student.

(d) A school shall calculate refunds for students based upon scheduled hours of

classes through the last date of attendance. A school shall not count leaves of absence, suspensions, school holidays, days when classes are not offered, and summer vacations for purposes of calculating a student's refund.

(e) For all schools other than correspondence, combination correspondence-residence, and seminars, a student may cancel enrollment, request a full refund, and request a release from any obligations to the school within three days, excluding Saturdays, Sundays and legal holidays following:

- (1) the first day of the student's scheduled classes if the student is not provided an opportunity to tour the school facilities, which includes inspection of equipment, before signing an enrollment contract; or
- (2) the day the tour of the school facilities, including inspection of the equipment, is completed, when provided before the first day of the student's scheduled classes.

§807.194. Penalties Relating to Refunds.

(a) A penalty shall be paid on any refund not consummated in a timely manner as required by the Act. The penalty assessment shall begin on the first day following the expiration of the statutorily defined refund period and end on the day preceding the date the refund is consummated.

(b) Penalties assessed on late refunds for grants shall be paid to the tuition protection fund if the amount is \$15 or less. Any other penalty assessed on a school's late payment of student refunds shall be disbursed in the following order of priority:

- (1) to the student's account at a lending institution for the balance of principal and interest on the student loan;
- (2) to the student for tuition and fees paid directly by the student; and
- (3) to the tuition protection fund for any remaining balance of assessed penalty.

(c) If the Commission determines that the method used by the school to calculate refunds is in error or the school does not routinely pay refunds within the time required by the Act, the school shall submit an audited report conducted by an accountant of the refunds due former students that includes any penalty due as specified in the Act. An audit opinion letter shall accompany a schedule of student refunds due, which discloses the following information for the four years prior to the date of the Commission's request:

- (1) student information, including name, address, and social security number;
- (2) pertinent dates, including last date of attendance and date of termination; and
- (3) refund information, including amount of refund with principal, penalty, and any balance due separately stated, payee, and date and check number of payment if payment has been made.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807580

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER N. Records

40 TAC §§807.211-807.214

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code,

Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.211. General Information for Records.

(a) A school shall permanently maintain a master student registration list indicating the following:

- (1) date of applicable entry;
- (2) name of student;
- (3) address of student including city, state, and zip code;
- (4) telephone number;
- (5) social security number;
- (6) date of birth; and
- (7) name of program.

(b) A school shall maintain current records and necessary data for each student required to be on the master student registration list to show compliance with the Act and this chapter. These records shall be:

- (1) maintained on-site; and
- (2) made available to the Commission for inspection.

(c) If applicable, the school shall maintain and ensure that copies of the accreditation authorization and letter of eligibility from the United States Department of Education are available for Commission review.

(d) Degree granting schools shall maintain a copy of the certificate of authorization from the Coordinating Board for each authorized degree program.

(e) The Commission may conduct unannounced compliance inspections.

(f) A school shall maintain complete records of all advertising, sales, and enrollment materials used by or on behalf of the school for a five-year period. Materials maintained shall include, but not be limited to, direct mail pieces, brochures, printed literature, films, leaflets, handbills, fliers, video and audio tapes disseminated through the broadcast media, materials disseminated through the print media or Internet, and sales and recruitment manuals used to instruct sales personnel.

§807.212. Student Records.

(a) A school shall permanently maintain student transcripts of academic records. A school shall provide such transcripts to students and prospective employers at a reasonable charge if the student has fulfilled the financial obligation to the school and is neither in default nor owes a refund to any federal or state student financial aid program.

(b) A school shall retain financial records in accordance with federal retention requirements.

(c) A school shall retain all student records for at least a five-year period and these records shall include:

- (1) a written record of previous education and training on a form provided by the Commission; and
- (2) official transcripts from all previous postsecondary schools attended by the student.

§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 roll books. The roll books shall indicate a positive record of each student's attendance. Entries in the roll books shall be

made in ink or other permanent medium and shall not be changed in a manner that precludes reading the original entry.

§807.214. Employment Records.

(a) A school offering programs approved for an occupational objective shall complete the labor market information survey on forms provided by the Commission and submit them on or before the date provided in the survey packet as requested by the Commission.

(b) A school shall report program completion, job placement, and employment data on an annual basis in each program approved for an occupational objective.

(1) The school shall provide the data in a form acceptable to the Commission.

(2) Verifiable documentation shall be made available for review to support data reported. The documentation shall include the names of graduates and the names, addresses, and telephone numbers of their employers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807581

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER O. Complaints

40 TAC §807.221, §807.222

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.221. School Policy Regarding Complaints.

The school shall:

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

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

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

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

§807.222. Complaints and Investigations.

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

(1) the seriousness of the alleged violation;

(2) the source of the complaint;

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

(4) the timeliness of the complaint; and

(5) any other reasonable matter deemed appropriate.

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

(c) The investigation fee authorized by the Act is based on a per site visit.

The school director shall be notified that an on-site visit was conducted when the investigation results in assessment of a fee.

This agency hereby certifies that the proposal has been reviewed by legal

counsel and found to be within the agency's legal authority to adopt.
Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807582

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER P.Truck Driver Training Programs

40 TAC §§807.231-807.235

The new rules are proposed under Texas Labor Code, Title 4, §§302.002 and 302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §§302.002 and 302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.231. General Information Relating to Truck Driver Training.

A school providing truck driver training shall ensure that the truck driver instructors:

- (1) complete an approved 40 clock hour truck driver instructor development course; and
- (2) provide behind-the-wheel instruction that meets the Texas Department of Transportation's minimum standards for drivers.

§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 muscle; 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, traffic controls. Traffic control topics consisting of following:

(A) sign topics include shape, color, location and importance;
(B) traffic marking topics include center and lane lines, no passing zone, transition markings, turn lane marking, stop lines, crosswalk lines, etc.; and
(C) signals topics include 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.

§807.233. Behind-the-Wheel Instruction.

A school providing behind-the-wheel instruction shall ensure that the instruction includes:

- (1) actual driving practice while the motor vehicle is in motion;
- (2) no more than four persons, excluding the instructor, occupying any motor vehicle during the behind-the-wheel instruction;
- (3) notice in all contracts and advertisements of behind-the-wheel instruction being conducted with groups of students, if applicable; and
- (4) credit toward satisfying minimum standards for behind-the-wheel instruction for only actual time spent behind the wheel in vehicle operation.

§807.234. Motor Vehicle Insurance.

A school providing truck driver training shall ensure that:

- (1) a current list of vehicles used in truck driver training is filed with the Commission on a form provided by the Commission;
- (2) an insurance certificate accompanies each motor vehicle used in training and is filed with the Commission on or before the date the school files an original

or renewal application for approval of the program with the Commission;

(3) an insuring company or carrier issues an insurance certificate on a form furnished by the Commission directly to the Commission, which states the insurance company or carrier has issued a policy or policies of insurance, and the amounts of insurance for each vehicle listed on the list of vehicles used in truck driver training;

(4) a written notice is provided to the Commission by registered or certified mail at least 10 days prior to the expiration date of insurance coverage of a listed vehicle; and

(5) a copy of the written notice of cancellation of insurance on any listed vehicle is provided to the Commission by registered or certified mail immediately upon receipt of notice by the school.

§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; an offense of criminally negligent homicide committed as a result of the person's operation of a motor vehicle; an offense involving driving while intoxicated or under the influence; or an offense involving tampering with a governmental record.

(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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807583

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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

SUBCHAPTER Q. Closed Schools

40 TAC §807.251, §807.252

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective

administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.251. School Closures.

(a) The Commission may declare a school to be closed when:

(1) written notification is received by the Commission from the school owner stating the school will close;

(2) Commission staff determines that the school facility has been vacated without prior notification of a change of address given to the Commission;

(3) an owner with multiple school locations transfers all students from one school location to another school location;

(4) the school dismisses all students, contrary to the school's class schedule as printed in the school catalog; or

(5) the school fails to maintain the faculty, facilities, equipment, or programs on the basis for which approval was issued.

(b) After the Commission determines that a school will close or has closed, the Commission will attempt to notify students concerning their options to accept a teach-out program or to receive a proportional tuition refund based on available funds. Notification to students may include constructive notice in news media, student meetings, or mailings to students.

§807.252. Tuition Protection Fund.

(a) Each school shall make a payment to the tuition protection fund at the time the school renewal fee is paid if the accrued balance of the tuition protection fund is less than \$200,000. The accrued balance is the remaining balance of the tuition protection fund less the sum of the amount of unpaid student refunds and teach-out claims not yet disbursed from the tuition protection fund. The amount in the tuition protection fund, as provided in the Act, is the accrued balance as described herein.

(b) Disbursements shall be made from the tuition protection fund for student refunds and reimbursable teach-out expenses incurred during each 12-month period ending August 31, and shall be:

(1) made first for student refunds on a proportional basis;

(2) disbursed for reimbursable teach-out expenses based upon remaining funds; and

(3) calculated after anticipated bond funds and other funding sources have been determined.

(c) Each teach-out program requires approval of the Commission to determine whether the program is available, reasonable, and comparable with the program of the closed school. The teach-out program is subject to the following conditions:

(1) Transfers of students from a closed school to another school under the same ownership shall not constitute a teach-out program.

(2) In order to be eligible for a teach-out program, students shall submit a signed statement of acceptance to the teach-out school by the deadline as established by the Commission.

(3) The teach-out school shall give credit for all comparable training received at the closed school, as determined by the Commission.

(d) Following the graduation or termination of the students from the teach-out school, the teach-out school shall determine actual expenses and submit a claim for reimbursement to the Commission on or before the date provided in the application packet. The teach-out school shall:

(1) not claim expenses for facilities, equipment, utilities, or other items which were owned, rented, used, or otherwise obligated by the school prior to the Commission's approval of the teach-out program, even though such items may be used for the teach-out program;

(2) be limited to expenses for tuition and fees that are non-recoverable from

all financial resources, including grants and loans; and
(3) ensure that the sum of the tuition and fees paid to the student's account at the closed school and the teach-out school is the lesser amount the student would have been charged for the complete program at the closed school or the teach-out school.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807584

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

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