

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 7. PESTICIDES

##### SUBCHAPTER D. USE AND APPLICATION

###### 4 TAC §7.30

The Texas Department of Agriculture (Department) proposes amendments to Texas Administrative Code (TAC), Title 4, Part 1, Chapter 7, Subchapter D, §7.30 relating to "Classification of Pesticides." The proposed amendments add a new subsection (d) to classify pesticide products containing the active ingredient warfarin as "state-limited-use" pesticides when used as a feral hog toxicant and to establish related licensure requirements. The amendments are proposed to ensure proper sales, use, and compliance by trained individuals and to address the risk of potential misapplication or distribution resulting in possible secondary exposure to humans or non-target animals.

In addition, the proposed amendments align with the findings and results of the Final Report for the experimental use program conducted by Texas A&M University Agrilife Extension Service (Texas A&M Agrilife) to evaluate the pesticide's efficacy in the State of Texas as directed by the Texas Legislature through its enactment of Senate Bill 1, General Appropriations Act (2022-2023 Biennium), 87th Leg., R.S., art. IV, Rider 28(b), pp. IV-10 to IV-11 ("GAA Rider 28"). Moreover, the proposed amendments are consistent with the legislative restrictions on the Department's authority during the course of the experimental use program; GAA Rider 28 expressly authorized the Department "to register a pesticide product containing warfarin for use in this state to control feral hogs *only if that registration is limited to use by pesticide applicators licensed by the department* who are participating in an experimental use program conducted by the Texas A&M Agrilife Extension Service to evaluate the product's efficacy in this state and the product is registered by the United States Environmental Protection Agency for use to control feral hogs." (Emphasis added.) Texas A&M Agrilife issued its final report for the experimental use program (Final Report) on August 28, 2023. Based on the Final Report, including available data from the Texas A&M Agrilife experimental use program, the Department has determined that use of a pesticide product containing warfarin is safe and effective in assisting landholders to mitigate economic harm and damage caused by feral hogs. The Department is proposing amendments to §7.30 on a permanent basis.

Texas Agriculture Code, Chapter 76, Subchapter C, designates the Department as the state agency responsible for registering pesticides in Texas. Prior to distribution or use in Texas, a prod-

uct must be registered with the Department. Section 7.10 of 4 TAC Part 1, Chapter 7, relating to "Registration of Pesticides," provides that a registration application must include proof of federal registration by the Environmental Protection Agency (EPA), among other requirements.

The Department received a pesticide registration application for a product containing the active ingredient warfarin used only as a feral hog (*Sus scrofa*) toxicant. The application included EPA approval of the product with classification as "general use," without restrictions on the sale or purchase of the product by members of the public. The Department approved the registration in compliance with §7.10 and Chapter 76 of the Texas Agriculture Code. In order to avoid distribution to unqualified users, which may result in product misapplication and the possible secondary exposure to humans or non-target animals, new §7.30(d) imposes stricter regulations than those approved by the EPA by designating the product as a "state-limited-use" product.

New §7.30(d) requires the licensure of applicators or distributors of warfarin, only when used as a feral hog toxicant, subject to the requirements set forth in Chapter 76 of the Texas Agriculture Code and Chapter 1951 of the Texas Occupations Code. In order to distribute a "state-limited-use" pesticide, a dealer is required to hold a pesticide dealer's license, issued by the Department. A person may not purchase or use a "state-limited-use" pesticide, unless licensed as a pesticide applicator, or under the direct supervision of a licensed applicator. Licensees must meet criteria adopted in rule by the Department under 4 TAC Part 1, Chapter 7, including compliance with mandatory recordkeeping requirements. In addition, continuing education and training help to ensure safe and proper use, as well as understanding and compliance with all product labeling requirements. As with all pesticides, warfarin, when used as a feral hog toxicant, must be used in strict accordance with product labeling, as required by state and federal law.

**FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT:** Philip Wright, Administrator for Agriculture and Consumer Protection, has determined there will be no fiscal implications for state or local government as a result of the proposed rule changes.

**PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS:** Mr. Wright has determined that for each year of the first five years these amendments are in effect, there will be minimal economic effect on businesses or individuals who are required to secure licensure to comply with the proposal. However, the cost of licensure, which is a normal cost of doing business required for all pesticide dealers and applicators, provides a significant public benefit by ensuring that the product is only used and distributed by qualified individuals and businesses in accordance with strict labeling requirements, mandatory rules and laws.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Wright has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Mr. Wright provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years these rules will be in effect:

- (1) the proposed amendments will not create or eliminate a government program;
- (2) implementation of the proposed amendments will not require the creation or elimination of existing employee positions;
- (3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the Department;
- (4) the proposed amendments will not require an increase or decrease in fees paid to the Department;
- (5) the proposed amendments do not create a new regulation;
- (6) the proposed amendments will not expand, limit, or repeal an existing regulation;
- (7) the proposed amendments will not increase or decrease the number of individuals subject to the rules; and
- (8) the proposed amendments will not affect this state's economy.

In accordance with Texas Agriculture Code, Section 76.003(a) and Section 76.104, the Department shall conduct a public hearing to receive comments on the proposed amendments in person during the 30-day public comment period for this rulemaking and shall post notice of the date, time, and location on the Department website, as well as through publication of a Miscellaneous Notice in the *Texas Register*.

Written comments on the proposal may be submitted to Philip Wright, Administrator for Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to [Philip.Wright@TexasAgriculture.gov](mailto:Philip.Wright@TexasAgriculture.gov) with a subject line reading "Public Comment - State-Limited-Use Pesticide; Warfarin." Comments must be submitted no later than 30 days from the date of publication of this rule proposal in the *Texas Register*.

The amendments are proposed pursuant to Section 76.003 of the Texas Agriculture Code, which allows the Department to adopt a list of state-limited-use pesticides and to regulate their terms and conditions of use; Section 76.004 of the Code, which allows the Department to adopt rules for carrying out the provisions of Chapter 76 of the Code, to include rules providing for the distribution of pesticides; and Section 76.104 of the Code, which allows the Department to adopt rules related to the use and application of pesticides to include rules related to

restricted-use and state-limited-use pesticides and regulated herbicides.

The code affected by the proposed amendments is Texas Agriculture Code, Chapter 76.

§7.30. *Classification of Pesticides.*

(a) - (c) (No change.)

(d) State-Limited-Use Pesticides Defined by Active Ingredient and Use.

(1) A pesticide product containing the active ingredient warfarin when used only as a feral hog (*Sus scrofa*) toxicant is classified as a state-limited-use pesticide and subject to the restrictions listed in paragraph (2) of this subsection, as well as all other provisions of law generally applicable to state-limited-use pesticides.

(2) Restrictions.

(A) A person may not purchase a pesticide classified as state-limited-use under this subsection unless the person is licensed as a pesticide applicator under either Chapter 76 of the Texas Agriculture Code or Chapter 1951 of the Texas Occupations Code or working under the direct supervision of a person so licensed.

(B) A person may not use a pesticide classified as state-limited-use under this subsection unless the person is licensed as a pesticide applicator under either Chapter 76 of the Texas Agriculture Code or Chapter 1951 of the Texas Occupations Code or working under the direct supervision of a person so licensed.

(C) A person may not distribute a pesticide classified as state-limited-use under this subsection to a person not authorized by this section to purchase state-limited-use pesticide.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 16, 2023.

TRD-202304304  
Susan Maldonado  
General Counsel  
Texas Department of Agriculture  
Earliest possible date of adoption: December 31, 2023  
For further information, please call: (512) 463-6591

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**TITLE 16. ECONOMIC REGULATION**

**PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION**

**CHAPTER 33. LICENSING**

**SUBCHAPTER E. EVENTS AT A TEMPORARY LOCATION**

**16 TAC §§33.70 - 33.72, 33.76, 33.77, 33.81**

The Texas Alcoholic Beverage Commission (TABC) proposes to amend 16 TAC §§33.70-33.72, 33.76, 33.77, 33.81, relating to Events at a Temporary Location. The proposed amendments are necessary to implement legislation. Senate Bill 926 (88th Regular Session) authorized the temporary sale of wine and malt

beverages by a mixed beverage permit holder in certain high-capacity facilities that are open to the public during certain motor vehicle racing events. Senate Bill 1375 (88th Regular Session) authorized a distiller's and rectifier's permit holder to conduct samplings or tastings at certain temporary events. Sections 71, 112, 122, 128, and 247 of House Bill 1545 (86th Regular Session) authorized various permit holders to sell different alcoholic beverages at certain temporary events. These bills all required TABC to adopt implementing rules.

The proposed amendments to §§33.72, 33.77(f), and 33.81 implement SB 926 by: (1) acknowledging that mixed beverage permittees may sell wine and malt beverages for more than four consecutive days at an authorized temporary event, as provided in Alcoholic Beverage Code §28.20(c); (2) clarifying the recordkeeping and reporting obligations of mixed beverage permittees who sell wine or malt beverages in a county other than the county in which the temporary event premises is located, consistent with Alcoholic Beverage Code §28.20(e); (3) clarifying that if an authorized temporary event is held in a county that includes more than one territory, as that term is defined by Alcoholic Beverage Code §102.71(5), the mixed beverage permittee must purchase malt beverages from the distributor holding the territorial agreement covering the temporary event location; and (4) clarifying that if an authorized temporary event is held in a county other than the county in which the mixed beverage permit holder's premises is located, the mixed beverage permittee must purchase wine from a wholesaler authorized to sell wine in the county covering the temporary event location.

The proposed amendments to §§33.70, 33.71, 33.76, and 33.77(d) implement SB 1375 and HB 1545 by: (1) changing the scope and applicability of Chapter 33, Subchapter E to include temporary events conducted under Chapter 14 of the Alcoholic Beverage Code; (2) acknowledging that certain temporary events are eligible for File and Use Notification even if sponsored by a distiller's and rectifier's permittee or winery permittee; (3) providing that distilled spirits samplings or tastings at temporary events conducted in accordance with Alcoholic Beverage Code §14.09 may be conducted using File and Use Notification, without the need to obtain prior approval from the Commission; and (4) clarifying the requirements to verify the wet/dry status of the governing jurisdiction where the temporary event will be held.

TABC presented the proposed amendments at a stakeholder meeting on October 5, 2023, and received comments. TABC considered those comments when drafting this proposal.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Julie Ross, Director of Licensing, has determined that during each year of the first five years the proposed amendments are in effect, there will be no fiscal impact on state or local governments as a result of enforcing or administering the amended rules. Mrs. Ross made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amended rules. Mrs. Ross also does not anticipate any measurable effect on local employment or a local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTICE.** For each year of the first five years the proposed amendments are in effect, Mrs. Ross expects that enforcing or administering the proposed amendments will have the public benefit of ensuring that TABC's rules comply with newly enacted statutes related to temporary events and clarifying the various requirements and responsibilities

associated with the sale or provision of alcoholic beverages at temporary events, consistent with the agency's public safety mission. Mrs. Ross does not expect the proposed amendments to impose an economic cost on persons required to comply with the amended rules beyond any costs imposed by statute.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

TABC has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TABC is not required to prepare a regulatory flexibility analysis.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TABC has determined that for each year of the first five years that the proposed amendments are in effect, they:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TABC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TABC will consider any written comments on the proposal that are received by TABC no later than 5:00 p.m., central time, on December 31, 2023. Send your comments to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov) or to the Office of the General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127. TABC staff will hold a public hearing to receive oral comments on the proposed amendments at 10:00 a.m. on December 14, 2023. **THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY.** Interested persons should visit the TABC's public website at [www.tabc.texas.gov](http://www.tabc.texas.gov), or contact TABC Legal Assistant Kelly Johnson at (512) 206-3367, prior to the meeting date to receive further instructions.

**STATUTORY AUTHORITY.** TABC proposes the amendments pursuant to TABC's rulemaking authority under Texas Alcoholic Beverage Code §§5.31, 14.09(g), 16.12(c), 25.16(c), 28.19(c), 28.20(g), 32.25(d), and 69.18(c). Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. Section 14.09(g) requires TABC to adopt rules to implement distilled spirits sampling at temporary events. Section 28.20(g) requires TABC to adopt rules implementing temporary sales at certain racing facilities. Sections 16.12(c), 25.16(c), 28.19(c), 32.25(d), and

69.18(c) require TABC to adopt rules implementing temporary sales by various permittees at a temporary event location.

CROSS-REFERENCE TO STATUTE. The proposed amendments to §§33.70, 33.71, 33.76, and 33.77(d) implement Alcoholic Beverage Code §§14.01 and 14.09. The proposed amendments to §§33.72, 33.77(f), and 33.81 implement Alcoholic Beverage Code §§28.06, 28.10, and 28.20. The proposed amendments to §§ 33.76(a)(2)(F) and 33.77(d) also implement Alcoholic Beverage Code §§ 14.09, 16.12, 25.16, 28.19, 32.25, and 69.18.

§33.70. *Scope and Applicability.*

(a) This subchapter ~~rule~~ relates to Chapters 14, 16, 25, 28, 30, 32, and 69 of the Alcoholic Beverage Code.

(b) (No change.)

§33.71. *Classification of Event Authorizations.*

(a) A File and Use Notification does not require prior approval of the commission and may be used only if:

(1) the estimated total wholesale value of the alcohol to be provided or sold at the event is less than \$10,000;

(2) the estimated attendance at the event is not more than 500 persons;

(3) the event is private and not open to the general public;

(4) the event is not sponsored by a member of the wholesale tier or the manufacturing tier, unless the event is conducted pursuant to Chapters 14 or 16 of the Alcoholic Beverage Code; and

(5) the owner of the premises where the event will be held has authorized the sale or service of alcohol at the event.

(b) In determining whether an event meets the requirement of subsection (a)(3) of this section, the commission may consider whether tickets are sold and whether the event spans more than one day.

(c) A Nonprofit Entity Temporary Event is a picnic, celebration, or similar event, such as a cultural, charitable, religious, or civic event of a limited and specified duration that is organized for, and open to the public and is put on by a nonprofit entity as defined by Alcoholic Beverage Code §30.01.

(d) For all other events that will be held at a temporary location, a Temporary Event Approval is required.

(e) Notwithstanding subsections (a)(1)-(4) and (d) of this section, holders of a distiller's and rectifier's permit may conduct distilled spirits samplings or tastings at a civic or distilled spirits festival, farmers' market, celebration, or similar event in accordance with Alcoholic Beverage Code §14.09 without obtaining prior approval from the commission by submitting a notice on forms provided by the commission.

§33.72. *Term of Authorization; Annual Limitation on Authorizations.*

(a) Temporary Event Approvals and File and Use Notifications shall be effective for no more than four consecutive days, except as provided by subsection (b) of this section.

(b) Temporary Event Approvals issued to holders of a mixed beverage permit for events conducted in accordance with Alcoholic Beverage Code §28.20 may be effective for:

(1) no more than five consecutive days; or

(2) up to six consecutive days if necessary to accommodate the postponement of a scheduled racing event due to an act of nature.

(c) ~~[(b)]~~ A person or entity may use a Temporary Event Approval or File and Use Notification at the same location for no more

than ten events in a calendar year if the person or entity that will hold the authorization has an ownership interest in the real property or a portion of it or has a lease for its use of the location. For purposes of this rule, a lease is defined as a contractual agreement by which one party conveys an estate in property to another party, for a limited period, subject to conditions, in exchange for something of value, but retains ownership. The ten-event limitation does not apply to a location that meets the definition of a Public Entertainment Facility in Alcoholic Beverage Code §108.73, regardless of whether it holds that designation.

(d) ~~[(e)]~~ A Nonprofit Entity Temporary Event Permit shall be effective for no more than ten consecutive days unless the executive director or the executive director's designated representative, on the basis of a case-by-case review of the specific situation, grants additional time.

(e) ~~[(d)]~~ Upon written request, the executive director or the executive director's designated representative may make an exception to the limitations of subsections (a), ~~through~~ (c), and (d) of this section on a case-by-case basis. An exception request will be granted or denied in writing.

(f) ~~[(e)]~~ Authorization for an event under this subchapter automatically terminates upon issuance of a two-year license or permit for the event location, regardless of the term of the temporary event authorization.

(g) ~~[(f)]~~ The effective dates of an event authorization under this subchapter must cover the period in which alcoholic beverages will be delivered or stored in addition to the event itself.

(h) ~~[(g)]~~ A temporary permit or license expires on the date indicated on the license or permit or on the same date as the primary permit, whichever occurs earlier.

§33.76. *File and Use Notifications.*

(a) To qualify to use a File and Use Notification, the notification must include:

(1) all information requested by the commission; and

(2) a sworn statement that:

(A) the estimated total wholesale value of the alcohol to be provided or sold at the event is less than \$10,000;

(B) the estimated attendance at the event is not more than 500 persons;

(C) the event is private, and not open to the general public;

(D) the event is not sponsored by a member of the wholesale tier or the manufacturing tier, unless the event is conducted pursuant to Chapters 14 or 16 of the Alcoholic Beverage Code; ~~and~~

(E) the owner of the premises where the event will be held has authorized the sale or service of alcohol at the event; and[-]

(F) verifies the wet/dry status of the governing jurisdiction where the event will be held.

(b) Except as provided by §33.71(e) of this title, an ~~A#~~ event that does not meet the criteria in subsection (a)(2) of this section requires approval by the commission.

(c) - (e) (No change.)

§33.77. *Request for Temporary Event Approval.*

(a) - (c) (No change.)

(d) In addition to the request form, other documents related to the event that may be required include a letter from the property

owner, sponsorship agreements, promoter agreements, concession agreements, management agreements, diagrams, site maps, local governmental authorization (including wet/dry status), and any other documents needed to determine qualification under the Alcoholic Beverage Code.

(e) (No change.)

(f) Upon written notice to the commission, the effective dates for a racing event conducted pursuant to Alcoholic Beverage Code §28.20 may be extended if necessary to accommodate the postponement of a scheduled racing event due to an act of nature. The effective dates may not exceed six consecutive days, as provided in §28.20(c).

*§33.81. Purchase of Alcoholic Beverages for a Temporary Event.*

(a) This section applies to holders of Mixed Beverage Permits when selling alcoholic beverages at an event authorized by a Temporary Event Approval or under a File and Use Notification.

(b) Except as provided by subsection (c) of this section, a Mixed Beverage Permit holder purchasing alcoholic beverages for an event at a temporary location in a county other than the county in which the premises covered by its primary permit is located must:

(1) purchase the alcoholic beverages from a seller authorized under this code to sell the alcoholic beverages to members of the retail tier in the county in which the permit holder sells the alcoholic beverages under this section; and

(2) keep a record of the amount of alcoholic beverages purchased and sold under this section, by type, for no less than two years following the last day of the event.

(c) If the temporary event is held in a county that includes more than one territory, as that term is defined by Alcoholic Beverage Code §102.71(5), a Mixed Beverage Permit holder must purchase malt beverages from the distributor holding the territorial agreement covering the temporary event location.

(d) Except as restricted by subsection (e) for certain events, this [This] section does not preclude a Mixed Beverage Permit holder from transporting alcoholic beverages in stock at its primary location to a temporary event.

(e) Holders of Mixed Beverage Permits who sell wine and malt beverages at an event authorized by Alcoholic Beverage Code §28.20 in a county other than the county in which the premises covered by the permit is located must:

(1) purchase all wine and malt beverages sold at the event from a distributor or wholesaler authorized to sell the beverages in the county in which the permit holder sells the alcoholic beverages under this subsection;

(2) comply with subsections (b)(2) and (c) of this section;  
and

(3) report to the commission, on forms provided by the commission, the amount of beverages purchased and sold at the event.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 14, 2023.

TRD-202304255

James Person

General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 206-3230



## CHAPTER 41. AUDITING

### SUBCHAPTER B. RECORDKEEPING & REPORTS

#### 16 TAC §41.25

The Texas Alcoholic Beverage Commission (TABC) proposes to amend 16 TAC §41.25, relating to Providing Retailer Samples: Distiller's and Rectifier's Permit. The proposed amendment is necessary to implement new legislation and provide clarity for impacted permittees. Senate Bill 1375 (88th Regular Session) authorized a distiller's and rectifier's permit holder to conduct samplings or tastings at certain temporary events. The proposed amendment to §41.25 implements SB 1375 by acknowledging that a distiller's and rectifier's permit holder may conduct samplings or tastings consistent with SB 1375 and clarifies that samples of distilled spirits taken from a distiller's inventory for such events qualify as a first sale for purposes of excise tax payments under Alcoholic Beverage Code §§201.02 and 201.03. A conforming change is also made to the rule's title.

TABC presented the proposed amendment at a stakeholder meeting on October 5, 2023, and received comments. TABC considered those comments when drafting this proposal.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Andrea Maceyra, Chief of Regulatory Affairs, has determined that during each year of the first five years the proposed amendment is in effect, there will be no fiscal impact on state or local governments as a result of enforcing or administering the amended rule. Mrs. Maceyra made this determination because the proposed amendment does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amended rule. Mrs. Maceyra also does not anticipate any measurable effect on local employment or a local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendment is in effect, Mrs. Maceyra expects that enforcing or administering the proposed amendment will have the public benefit of ensuring that TABC's rule complies with and implements existing statutes related to excise taxes. Mrs. Maceyra does not expect the proposed amendment to impose an economic cost on persons required to comply with the amended rule.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

TABC has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TABC is not required to prepare a regulatory flexibility analysis.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TABC has determined that for each year of the first five years that the proposed amendment is in effect, it:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TABC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TABC will consider any written comments on the proposal that are received by TABC no later than 5:00 p.m., central time, on December 31, 2023. Send your comments to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov) or to the Office of the General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127. TABC staff will hold a public hearing to receive oral comments on the proposed amendments at 10:00 a.m. on December 14, 2023. THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website at [www.tabc.texas.gov](http://www.tabc.texas.gov), or contact TABC Legal Assistant Kelly Johnson at (512) 206-3367, prior to the meeting date to receive further instructions.

STATUTORY AUTHORITY. TABC proposes the amendment pursuant to TABC's rulemaking authority under Texas Alcoholic Beverage Code §§5.31 and 14.09(g). Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. Section 14.09(g) requires TABC to adopt rules to implement distilled spirits sampling at temporary events.

CROSS-REFERENCE TO STATUTE. The proposed amendment implements Alcoholic Beverage Code §§14.09 and 201.03.

§41.25. *Providing [Retailer] Samples: Distiller's and Rectifier's Permit.*

(a) A holder of a Distiller's and Rectifier's Permit may provide samples obtained from the distiller's inventory to: ~~[a retailer in accordance with Alcoholic Beverage Code §14.07.]~~

(1) a retailer in accordance with Alcoholic Beverage Code §14.07; and

(2) a consumer in accordance with Alcoholic Beverage Code §14.09.

(b) Samples taken from the distiller's inventory are considered "first sale" for purposes of taxation under Alcoholic Beverage Code §201.03. The holder of the Distiller's and Rectifier's Permit shall remit excise taxes for samples taken from inventory not later than the 15th day of the month following the month in which occurs the "first sale."

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 14, 2023.

TRD-202304256

James Person

General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 206-3230



## CHAPTER 45. MARKETING PRACTICES SUBCHAPTER F. ADVERTISING AND PROMOTION

### 16 TAC §45.117

The Texas Alcoholic Beverage Commission (TABC) proposes to amend 16 TAC §45.117, relating to Gifts and Advertising Specialties. The proposed amendment to §45.117 would allow TABC to increase or decrease the total amount of advertising specialties furnished to a retailer under §102.07(b) of the Alcoholic Beverage Code by order of the executive director instead of through formal rulemaking. The proposed amendment does not change the total amount of advertising specialties currently allowed under law. Rather, it aligns the process for setting the amount with the process contemplated in §102.07(b), which specifically states that the executive director may change the amount not more than once a year. Under the proposed amendment, any order issued by the executive director must be published in the *Texas Register* and on the agency's website.

TABC presented the proposed amendment at a stakeholder meeting on October 5, 2023, and received comments. TABC considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Andrea Maceyra, Chief of Regulatory Affairs, has determined that during each year of the first five years the proposed amendment is in effect, there will be no fiscal impact on state or local governments as a result of enforcing or administering the amended rule. Mrs. Maceyra made this determination because the proposed amendment does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the amended rule. Mrs. Maceyra also does not anticipate any measurable effect on local employment or a local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Mrs. Maceyra expects that enforcing or administering the amended rule will have the public benefit of aligning the agency's rule with statute and reducing the amount of time it takes the agency to adjust the limit on advertising specialties to account for fluctuations in the consumer price index's annual average. Mrs. Maceyra does not expect the proposed amendment to impose an economic cost on persons required to comply with the amended rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TABC has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TABC is not required to prepare a regulatory flexibility analysis.

GOVERNMENT GROWTH IMPACT STATEMENT. TABC has determined that for each year of the first five years that the proposed amendment is in effect, it:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TABC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TABC will consider any written comments on the proposal that are received by TABC no later than 5:00 p.m., central time, on December 31, 2023. Send your comments to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov) or to the Office of the General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127. TABC staff will hold a public hearing to receive oral comments on the proposed amendments at 10:00 a.m. on December 14, 2023. THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website at [www.tabc.texas.gov](http://www.tabc.texas.gov), or contact TABC Legal Assistant Kelly Johnson at (512) 206-3367, prior to the meeting date to receive further instructions.

STATUTORY AUTHORITY. TABC proposes the amendment pursuant to TABC's rulemaking authority under Texas Alcoholic Beverage Code §5.31. Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

CROSS-REFERENCE TO STATUTE. The proposed amendment implements Alcoholic Beverage Code §102.07(b).

§45.117. *Gifts and Advertising Specialties.*

(a) - (b) (No change.)

(c) Gifts to Retailers. Holders of distiller's and rectifier's, winery, nonresident seller's and wholesaler's permits may furnish advertising specialties to retailers.

(1) (No change.)

(2) The total cost of all advertising specialties furnished to a retailer shall not exceed the amount set by order of the executive director in accordance with Alcoholic Beverage Code §102.07(b) [\$125] per brand per calendar year. The executive director's order shall be published in the *Texas Register* and on the commission's website. Dollar limitations may not be pooled to provide a retailer with advertising specialties in excess of the maximum permitted under this subsection.

(d) - (f) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 14, 2023.

TRD-202304257

James Person

General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 206-3230



## CHAPTER 50. ALCOHOLIC BEVERAGE SELLER SERVER AND DELIVERY DRIVER TRAINING

The Texas Alcoholic Beverage Commission (TABC) proposes to amend 16 TAC §§50.3 - 50.6 and 50.29, relating to Alcoholic Beverage Seller Server and Delivery Driver Training. The proposed amendments to §50.3 eliminate outdated references to the process TABC used to develop the original mandatory course curriculum for seller server training. The proposed amendments also simplify the process for updating the curriculum. As proposed, §50.3 will allow TABC's executive director or their designee to update the curriculum as needed and will require the agency to post notice of any such changes on its website and in the *Texas Register*.

The proposed amendments to §§50.4 - 50.6 and 50.29 implement Senate Bill 998 (88th Regular Session), which requires TABC to develop a program that would provide training on the signs and symptoms of an opioid-related drug overdose and the administration of an opioid antagonist. TABC will require this opioid-related training to be included in the mandatory course curriculum for seller server training. To account for the inclusion of this new opioid-related training, the proposed amendments to §§50.4 - 50.6 and 50.29 simply increase the minimum minutes of active instruction and student participation in the mandatory curriculum from 120 to 140.

TABC presented the proposed amendments at a stakeholder meeting on October 5, 2023, and received comments. TABC considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Ashleigh Jons, Deputy Director of Training, has determined that during each year of the first five years the proposed amendments are in effect, there will be no fiscal impact on state or local governments because of enforcing or administering the amended rules, other than that imposed by the statute. Ms. Jons made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments. Ms. Jons also does not anticipate any measurable effect on local employment or the local economy because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Jons expects that enforcing or administering the amended rules will have the public benefit of implementing SB 998's opioid-related training requirements, providing clarity by removing outdated lan-

guage from current rules, and simplifying the process TABC uses to ensure necessary updates are made to alcoholic beverage-related training. Ms. Jons does not expect the proposed amendments will impose economic costs on persons required to comply with the amended rules.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TABC has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TABC is not required to prepare a regulatory flexibility analysis.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TABC has determined that for each year of the first five years that the proposed amendments are in effect, they:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TABC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TABC will consider any written comments on the proposal that are received by TABC no later than 5:00 p.m., central time, on December 31, 2023. Send your comments to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov) or to the Office of the General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127. TABC staff will hold a public hearing to receive oral comments on the proposed amendments at 10:00 a.m. on December 14, 2023. **THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY.** Interested persons should visit the TABC's public website at [www.tabc.texas.gov](http://www.tabc.texas.gov), or contact TABC Legal Assistant Kelly Johnson at (512) 206-3367, prior to the meeting date to receive further instructions.

## SUBCHAPTER B. MANDATORY CURRICULUM AND COURSE OF INSTRUCTION

### 16 TAC §§50.3 - 50.6

**STATUTORY AUTHORITY.** TABC proposes the amendments pursuant to TABC's rulemaking authority under Texas Alcoholic Beverage Code §5.31 and §106.14(b). Section 5.31 authorizes TABC to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. Section 106.14(b)

requires TABC to adopt rules or policies establishing the minimum requirements for approved seller training programs.

**CROSS-REFERENCE TO STATUTE.** The proposed amendments implement Alcoholic Beverage Code §§5.61, 28.20, 32.26, and 106.14.

#### §50.3. *Mandatory Course Curriculum.*

(a) - (e) (No change.)

(f) When the executive director or their designee changes the curriculum, the commission will post notice in the *Texas Register* and on the commission's website that such changes have been made. ~~[In developing the original mandatory curriculum pursuant to subsection (a) of this section, the commission will conduct work group meetings with members representing a cross-section of interested parties. After receiving input from the work group, the staff of the commission will present its recommended mandatory curriculum to the commissioners at an open meeting. After the original mandatory curriculum is developed, the commission will review it after every session of the legislature to determine if changes are required. If changes to the curriculum are required simply to update it to reflect legislative changes, the commission will make such changes and post notice in the *Texas Register* and on the commission's website that such changes have been made. If the commission wants to make other changes to the curriculum, it will publish notice of such intent in the *Texas Register* and on the commission's website.]~~

#### §50.4. *Commission Approval of Classroom-Based Course of Instruction.*

(a) (No change.)

(b) All classroom-based training materials and courses of instruction must be submitted to the commission for approval.

(1) A classroom-based course of instruction must be paced to provide a minimum of 140 ~~[120]~~ minutes of active instruction and student participation in the mandatory curriculum.

(2) The 140-minute ~~[120-minute]~~ requirement excludes time taken for breaks and the administration of the Commission Standard Competence Test.

(3) The 140-minute ~~[120-minute]~~ requirement is based on a 6th grade comprehension and reading skills level.

(4) (No change.)

(c) Upon approval by the commission, a classroom-based school may present a course of instruction including optional material in addition to the mandatory curriculum if:

(1) - (3) (No change.)

(4) additional time is added to the course of instruction to ensure that 140 ~~[120]~~ minutes are devoted entirely to the mandatory curriculum.

(d) (No change.)

#### §50.5. *Commission Approval of Internet-Based Course of Instruction.*

(a) (No change.)

(b) An internet-based course of instruction shall be presented at a 6th grade fluency level of 180 words per minute and must be equivalent to 140 ~~[120]~~ minutes of time.

(c) - (d) (No change.)

#### §50.6. *Management of Classroom-Based Course of Instruction.*



(a) (No change.)

(b) A student who misses more than 10% of the required 140 [120] minutes of class instruction shall not be allowed to take the Commission Standard Competence Test and may not be given a Seller Server Certificate based on his attendance at that session.

(c) (No change.)

(d) Each session must be presented in a continuous block of instruction. Instruction may be interrupted by brief breaks, but they must be limited in number and duration. Time spent in a break or taking the Commission Standard Competence Test shall not be included in the 140-minute [~~120-minute~~] mandatory curriculum attendance requirement.

(e) - (h) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 14, 2023.

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James Person

General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 206-3230



## SUBCHAPTER E. SELLER SERVER CERTIFICATES

### 16 TAC §50.29

The amendments are proposed pursuant to TABC's rulemaking authority under §5.31 and §106.14(b) of the Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code. Section 106.14(b) provides that TABC shall adopt rules or policies establishing the minimum requirements for approved seller training programs.

§50.29. *Seller Server Certificate Requirements.*

(a) To receive a seller server certificate from a seller server school certified under this chapter, a student must:

(1) complete either a 140-minute [~~120-minute~~] classroom-based course of instruction or an internet-based, self-paced course of instruction;

(2) - (3) (No change.)

(b) - (c) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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James Person

General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3230



## TITLE 22. EXAMINING BOARDS

### PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

#### CHAPTER 72. BOARD FEES, LICENSE APPLICATIONS, AND RENEWALS

##### 22 TAC §72.21

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of 22 TAC §72.21 (Requirements for Military Spouses). The Board will propose a new §72.21 in a separate rulemaking action.

Recent changes to Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses) have expanded the methods by which the spouse of an active duty military member may obtain a license to practice chiropractic in Texas or have a license from another jurisdiction recognized by the Board. The proposed new §72.21 will reflect those changes.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is an increased ability for a military spouse to practice chiropractic in Texas.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of the current 22 TAC §72.21. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

(2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does require a decrease in fees paid to the Board.

(5) The proposed repeal does create a new regulation.

(6) The proposed repeal does repeal existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: [tbce@tbce.state.tx.us](mailto:tbce@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email. Also, please note the new email address above for submitting comments to the Board.

This repeal is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and §§55.002 - 55.006, and 55.009 (which require the Board to adopt rules relating to alternative licensing methods for military members, veterans, and military spouses).

No other statutes or rules are affected by this proposed repeal.

§72.21. *Requirements for Military Spouses.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 14, 2023.

TRD-202304243

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6700



## 22 TAC §72.21

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.21 (Requirements for Military Spouses). The current §72.21 is being repealed in a separate rulemaking action.

Recent changes to Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses) have expanded the methods by which the spouse of an active duty military member may obtain a license to practice chiropractic in Texas or have a license from another jurisdiction recognized by the Board. This proposed new §72.21 reflects those changes and delineates the four methods.

In general, the requirements are: First, a military spouse who is licensed in good standing in another jurisdiction may obtain a Board license within 30 days by providing written notice to the Board along with proof of residency.

Second, a military spouse who previously held a now-expired Texas license but currently has a license from another jurisdiction may be issued a new license by following the application requirements of §77.2 (License Application).

Third, a military spouse who has never held a license in Texas or in any other jurisdiction may nonetheless be issued a license if the spouse can demonstrate professional competency through other means that are satisfactory to the Board's executive director; the spouse will still be required to pass professional examinations.

And fourth, a military spouse may practice chiropractic in Texas without obtaining a Board license if the spouse holds a license in good standing in another jurisdiction, notifies the Board, provides proof of residency, and submits a copy of the military member's military identification card.

The proposed rule also provides an administrative process for appealing a denial of a license or authority to practice under these four methods, and for waiving of Board application fees.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is an increased ability for a military spouse to practice chiropractic in Texas.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.21. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(1) The proposed rule does not create or eliminate a government program.

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed rule does require a decrease in fees paid to the Board.

(5) The proposed rule does create a new regulation.

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: [tbce@tbce.state.tx.us](mailto:tbce@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register*. Please include the rule name and number in the

subject line of any comments submitted by email. Also, please note the new email address above for submitting comments to the Board.

The rule is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and §§55.002 - 55.006, and 55.009 (which require the Board to adopt rules relating to alternative licensing methods for military members, veterans, and military spouses).

No other statutes or rules are affected by this proposed rule.

§72.21. Requirements for Military Spouses.

(a) This section applies to an individual who is the spouse of an active duty member of the United States armed forces (military member).

(b) This section states licensing requirements established under Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses); this section does not modify any rights provided under federal law.

(c) The spouse of a military member may obtain a Texas license from the Board by other than the process required by §72.2 of this title (relating to License Application) of this chapter or have a license from another jurisdiction recognized by the Board in one of four ways:

(1) The spouse of a military member may be issued a license to practice chiropractic in Texas if the spouse is currently licensed in good standing in a jurisdiction with licensing requirements substantially similar to Texas Occupations Code Chapter 201.

(A) Before issuing a license to practice chiropractic under this paragraph, the spouse of a military member shall provide to the Board:

(i) written notification of the intent to practice chiropractic in Texas; and

(ii) proof of residency in Texas, including the military member's permanent change of duty station orders.

(B) Not later than the 10th day after the spouse of a military member provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall verify if the spouse is licensed in good standing in another jurisdiction.

(C) Not later than the 30th day after the spouse of a military member provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall issue a license if the information satisfies the Board.

(D) If the Board approves a license under subparagraph (A) of this paragraph, the license shall be valid for a period the same as any biennial license or 12 months from the date of issuance, whichever is longer.

(2) The Board may issue a license to the spouse of a military member who previously held a Texas license that expired while the spouse and the military member lived in another state within the five years preceding the new application date, and who currently holds a license in good standing in a jurisdiction with substantially similar licensing requirements to Texas Occupations Code Chapter 201. The spouse of a military member seeking a license under this subsection shall comply with the application requirements of §77.2 of this title (relating to License Application) of this chapter.

(3) The spouse of a military member who has never held a license in Texas or any other jurisdiction may apply for a license by

showing professional competency by other means (other than examination results), to the satisfaction of the executive director, through verified military service, training, or education.

(4) The spouse of a military member may practice chiropractic in Texas without obtaining a license from the Board if the spouse currently holds a license in good standing from another jurisdiction with licensing requirements substantially similar to those in Texas Occupations Code Chapter 201.

(A) The spouse of a military member seeking to practice chiropractic in Texas under this paragraph shall provide the Board with:

(i) written notification of the intent to practice chiropractic in Texas; and

(ii) proof of residency in Texas, including the military member's permanent change of duty station orders; and

(iii) a copy of the military member's current military identification card.

(B) Not later than the 30th day after the spouse of a military member provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall notify the spouse of the spouse's authority to practice chiropractic in Texas.

(C) The spouse of a military member who practices chiropractic under this paragraph may do so only for the time the military member is permanently stationed in Texas but not to exceed three years.

(D) In the event of a divorce or a similar event, the spouse may continue to practice chiropractic in Texas under this paragraph until the third anniversary of the date the spouse received the confirmation described in subparagraph (B) of this paragraph.

(d) The Board shall notify in writing all holders of licenses issued under this section of the requirements to renew the license with the Board.

(e) The spouse of a military member practicing in Texas under this section shall comply with all statutes and Board rules relating to chiropractic practice and are subject to disciplinary action by the Board.

(f) The Board shall exempt the spouse of a military member eligible for a license or the authority to practice under this section from application and exam fees.

(g) The spouse of a military member seeking a license or the authority to practice under this section shall undergo a criminal history background check.

(h) The Board shall maintain and update a list of jurisdictions with substantially similar licensing requirements as Texas Occupations Code Chapter 201.

(i) If the Board administratively denies an application for a license or the authority to practice under this section, an applicant may appeal the decision to the full Board.

(j) If the full Board denies an application for a license or the authority to practice under this section, the applicant may request a hearing at the State Office of Administrative Hearings.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 14, 2023.

TRD-202304244  
Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
Earliest possible date of adoption: December 31, 2023  
For further information, please call: (512) 305-6700



## 22 TAC §72.22

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of 22 TAC §72.22 (Requirements for Military Members and Veterans). The Board will propose a new §72.22 in a separate rulemaking action.

Recent changes to Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses) have expanded the methods by which an active duty military member or veteran may obtain a license to practice chiropractic in Texas or have a license from another jurisdiction recognized by the Board. The proposed new §72.21 will reflect those changes.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rulemaking is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rulemaking will be in effect the public benefit is an increased ability for a military member or veteran to practice chiropractic in Texas.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal 22 TAC §72.21. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

- (1) The proposed repeal does not create or eliminate a government program.
- (2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed repeal does not require a decrease in fees paid to the Board.
- (5) The proposed repeal does not create a new regulation.
- (6) The proposal does not repeal existing Board rules for an administrative process.
- (7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: [tbce@tbce.state.tx.us](mailto:tbce@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email. Also, please note the new email address above for submitting comments to the Board.

The repeal is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and §§55.002 - 55.006, and 55.009 (which require the Board to adopt rules relating to alternative licensing methods for military members, veterans, and military spouses).

No other statutes or rules are affected by this proposed repeal.

*§72.22. Requirements for Military Members and Veterans.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 14, 2023.

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Christopher Burnett  
General Counsel  
Texas Board of Chiropractic Examiners  
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For further information, please call: (512) 305-6700



## 22 TAC §72.22

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.22 (Requirements for Military Members and Veterans). The current §72.22 is being repealed in a separate rulemaking action.

Recent changes to Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses) have expanded the methods by which an active duty military member or veteran may obtain a license to practice chiropractic in Texas or have a license from another jurisdiction recognized by the Board. This proposed new §72.21 reflects those changes and delineates the four methods.

In general, the requirements are: First, a military member or veteran who is licensed in good standing in another jurisdiction may obtain a Board license within 30 days by providing written notice to the Board along with proof of residency.

Second, a military member or veteran who previously held a now-expired Texas license but currently has a license from another jurisdiction may be issued a new license by following the application requirements of §77.2 (License Application).

Third, a military member or veteran spouse who has never held a license in Texas or in any other jurisdiction may nonetheless be issued a license if the military member or veteran spouse can demonstrate professional competency through other means that are satisfactory to the Board's executive director; the military member or veteran will still be required to pass professional examinations.

And fourth, a military member only may practice chiropractic in Texas without obtaining a Board license if the military member holds a license in good standing in another jurisdiction, notifies the Board, provides proof of residency, and submits a copy of the military member's military identification card.

The proposed rule also provides an administrative process for appealing a denial of a license or authority to practice under these four methods, and for waiving of Board application fees.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is an increased ability for a military spouse to practice chiropractic in Texas.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.21. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

- (1) The proposed rule does not create or eliminate a government program.
- (2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed rule does require a decrease in fees paid to the Board.
- (5) The proposed rule does create a new regulation.
- (6) The proposal does repeal existing Board rules for an administrative process.
- (7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: [tbce@tbce.state.tx.us](mailto:tbce@tbce.state.tx.us); or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email. Also, please note the new email address above for submitting comments to the Board.

The rule is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic),

and §§55.002 - 55.006, and 55.009 (which require the Board to adopt rules relating to alternative licensing methods for military members, veterans, and military spouses).

No other statutes or rules are affected by this proposed rule.

§72.22. Requirements for Military Members and Veterans.

(a) This section applies to an individual who is an active duty member of the United States armed forces (military member) or a veteran.

(b) This section states licensing requirements established under Texas Occupations Code Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses); this section does not modify any rights provided under federal law.

(c) A military member may obtain a Texas license from the Board by other than the process required by §72.2 of this chapter (relating to License Application) or have a license from another jurisdiction recognized by the Board in one of four ways.

(1) A military member or veteran may be issued a license to practice chiropractic in Texas if the military member or veteran is currently licensed in good standing in a jurisdiction with licensing requirements substantially similar to Texas Occupations Code Chapter 201.

(A) Before practicing chiropractic under paragraph (1) of this subsection, a military member or veteran shall provide to the Board:

(i) written notification of the intent to practice chiropractic in Texas; and

(ii) proof of residency in Texas, including the member's permanent change of duty station orders.

(B) Not later than the 10th day after a military member or veteran provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall verify if the military member or veteran is licensed in good standing in another jurisdiction.

(C) Not later than the 30th day after a military member or veteran provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall issue a license if the information satisfies the Board.

(D) If the Board approves a license under this section, the license shall be valid for a period the same as any biennial license or 12 months from the date of issuance, whichever is longer.

(2) The Board may issue a license to a military member or veteran who previously held a Texas license that expired while the military member or veteran lived in another state for at least six months within the five years preceding the application date, and the military. A military member or veteran seeking a license under this subsection shall comply with the application requirements of §77.2 of this chapter (relating to License Application).

(3) A military member or veteran who has never held a license in Texas or any other jurisdiction may apply for a license by showing professional competency by other means (other than examination results), to the satisfaction of the executive director, through verified military service, training, or education.

(4) A military member only may practice chiropractic in Texas without obtaining a license from the Board if the military member currently holds a license in good standing from another jurisdiction with licensing requirements substantially similar to those in Texas Occupations Code Chapter 201.

(A) A military member seeking the authority to practice chiropractic in Texas under paragraph (4) of this subsection shall provide the Board with:

(i) written notification of the intent to practice chiropractic in Texas; and

(ii) proof of residency in Texas, including the member's permanent change of duty station orders; and

(iii) a copy of the military member's current active duty military identification card.

(B) Not later than the 30th day after a military member provides the Board with the information required under subparagraph (A) of this paragraph, the Board shall notify the military member that the member has the authority to practice chiropractic in Texas.

(d) The Board shall notify in writing all holders of licenses issued under this section of the requirements to renew the license with the Board.

(e) The Board shall maintain and update a list of jurisdictions with substantially similar licensing requirements as Texas Occupations Code Chapter 201.

(f) The Board shall exempt a military member or veteran eligible for a license under this section from application and exam fees.

(g) The Board shall exempt a military member or veteran from any fee or penalty for failing to timely renew a license if the failure was due to active duty military service.

(h) A military member or veteran seeking a license or authority to practice under this section shall undergo a criminal history background check.

(i) A military member or veteran practicing in Texas under this section shall comply with all statutes and Board rules relating to chiropractic practice and is subject to disciplinary action by the Board.

(j) If the Board administratively denies an application for a license under subsection (c) of this section, an applicant may appeal the decision to the full Board.

(k) If the full Board denies an application for a license under subsection (c) of this section, the applicant may request a hearing at the State Office of Administrative Hearings.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 14, 2023.

TRD-202304246

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 305-6700



## PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

### CHAPTER 341. LICENSE RENEWAL

#### 22 TAC §341.3

The Texas Board of Physical Therapy Examiners proposes amending 22 TAC §341.3. Qualifying Continuing Competence Activities. The amendments are proposed in order to clarify certain activities that qualify for continuing competence units (CCUs).

The amendments broaden the category of residencies and fellowships by allowing completion of a residency or fellowship accredited by an entity other than the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE) and mentorship of a resident or fellow in an approved program to qualify for CCUs, and requires the Board to maintain a list of approved residencies and fellowships. Additionally, the amendments eliminate oPTion as a qualifying activity as the Federation of State Boards of Physical Therapy (FSBPT) has discontinued the self-assessment tool.

#### Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in effect there would be no loss of revenue, and there would be no fiscal implication to units of local government as a result of enforcing or administering the rules.

#### Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period the amendment is in effect the public benefit will be to ensure that licensees are afforded quality opportunities to engage in continuing competence activities. There will be no economic cost to licensees.

#### Local Employment Economic Impact Statement

The amendment is not anticipated to impact a local economy, so a local employment economic impact statement is not required.

#### Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

#### Government Growth Impact Statement

During the first five-year period this amendment is in effect, the impact on government growth is as follows:

(1) The proposed rule amendment will neither create nor eliminate a government program.

(2) The proposed rule amendment will neither create new employee positions nor eliminate existing employee positions.

(3) The proposed rule amendment will neither increase nor decrease future legislative appropriations to the agency.

(4) The proposed rule amendment will neither require an increase nor a decrease in fees paid to the agency.

(5) The proposed amendment will revise an existing rule by clarifying activities that qualify for continuing competence units (CCUs).

(6) The proposed rule amendment will neither repeal nor limit an existing regulation.

(7) The proposed rule amendment will neither increase nor decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule amendment will neither positively nor adversely affect this state's economy.

**Takings Impact Assessment** The proposed rule amendment will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

#### Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendments will not increase costs to regulated persons.

#### Public Comment

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 1801 Congress Ave, Suite 10.900, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

#### Statutory Authority

The amendment is proposed under Texas Occupation Code §453.102, which authorizes the board to adopt rules necessary to implement chapter 453.

#### Cross-reference to Statute

The proposed amendment implements provisions in Sec. 453.254, Occupations Code that pertains to continuing competence.

#### §341.3. *Qualifying Continuing Competence Activities.*

Licenses may select from a variety of activities to fulfill the requirements for continuing competence. These activities include the following:

- (1) - (4) (No change.)
- (5) Advanced Training, Certification, and Recognition.
  - (A) - (B) (No change.)

(C) Residency or fellowship relevant to physical therapy. The Board will maintain and make available a list of approved residencies and fellowships. [The residency or fellowship must be accredited by the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).] This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) The residency or fellowship must be successfully completed within the 24 months prior to the license expiration date.

(ii) Completion of the residency or fellowship is valued at up to 30 CCUs.

(iii) If selected for audit, the licensee must submit a copy of the certificate of graduation indicating completion of the fellowship or residency.

(D) Mentorship of a resident or fellow in an approved [American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE) accredited] residency or fellowship program. This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.

(i) Mentorship of a resident or fellow for a minimum of 150 hours of 1:1 mentoring is valued at 10 CCUs. The Board will

consider partial credit for those mentors who provide mentorship for only a portion of the residency or fellowship.

(ii) Licensees may submit a maximum of 20 CCUs for this activity.

(iii) If selected for audit, the licensee must submit a copy of a letter from the [~~accredited~~] residency or fellowship program confirming participation as a clinical mentor, with the dates and number of hours served as a clinical mentor.

~~[(E) The self-assessment tool of the Federation of State Boards of Physical Therapy (FSBPT). This activity type is automatically approved and is assigned a standard approval number by the board-approved organization.]~~

~~[(i) Completion of oPtion is valued at 3 CCUs.]~~

~~[(ii) If selected for audit, the licensee must submit a copy of the FSBPT certificate of completion.]~~

(6) - (7) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 15, 2023.

TRD-202304281

Ralph Harper

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 305-6900



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 1. GENERAL ADMINISTRATION SUBCHAPTER G. NOTICE AND PROCESSING PERIODS FOR PERMIT APPLICATIONS

##### 28 TAC §1.814

The Texas Department of Insurance (TDI) proposes new 28 TAC §1.814, concerning occupational and business permits and licenses for military service members, military veterans, and military spouses. Section 1.814 implements Senate Bill 422, 88th Legislature, 2023, and Chapter 55 of the Occupations Code and aligns TDI's rules with 50 USC §4025a.

**EXPLANATION.** Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes. The bill also amended Occupations Code §55.004(d) to apply residency rules to military service members and §55.005(a) to require that licensing agencies' processing and issuance of a li-

cense to a military service member, veteran, or spouse be completed within 30 days after application filing.

New §1.814 implements Chapter 55 of the Occupations Code, including §55.0041 as amended by SB 422, by describing the alternative licensing procedures and requirements for license applications by military service members, veterans, and spouses. Under new §1.814, these licensing procedures and requirements apply to all licenses issued by TDI, including the State Fire Marshal's Office. New §1.814 also aligns such procedures and requirements with 50 USC §4025a, which provides for the portability of professional licenses of servicemembers and their spouses.

Proposed subsection (a) of §1.814 provides applicable definitions. Proposed subsection (b) addresses conflicts with other sections in Title 28 of the Administrative Code. Proposed subsection (c) clarifies the applicability of the proposed section. Proposed subsection (d) describes the alternative licensing requirements available to military service members, veterans, and spouses. Proposed subsection (e) provides for extension of the deadline for license renewal and related fee exemption for military service members who hold a Texas license. Proposed subsection (f) provides for exemption from payment of license application and examination fees. Proposed subsection (g) provides for reciprocity for out-of-state licenses for military service members and military spouses, consistent with SB 422. Proposed subsection (h) includes provisions applicable only to military service members and military spouses who are administrators. Proposed subsection (i) provides for expedited licensing procedures. Proposed subsection (j) provides for crediting of a military service member or veteran's military service, training, or education toward apprenticeship requirements or other license requirements. Proposed subsection (k) gives guidance on residency documentation requirements. Proposed subsection (l) provides for TDI's identification of states with licensing requirements that are substantially equivalent to Texas requirements.

Separate proposals amend or repeal sections in Chapters 7, 15, 19, 25, and 34 of Title 28 of the Administrative Code for consistency with the provisions in this section.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jodie Delgado, director of the Agent and Adjuster Licensing Office, has determined that during each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the new section, other than that imposed by the statute. Ms. Delgado made this determination because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new section.

Ms. Delgado does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed new section is in effect, Ms. Delgado expects that administering and enforcing the proposed section will have the public benefit of ensuring that TDI's rules conform to Occupations Code §55.0041.

Ms. Delgado expects that the proposed new section will not increase the cost of compliance with Occupations Code §55.0041 because it does not impose requirements beyond those in the statute. Occupations Code §55.0041 requires TDI to allow mili-

tary service members and military spouses to engage in a business or occupation in Texas using a current license issued by another state with substantially equivalent licensing requirements. As a result, the cost associated with the proposed new section does not result from its enforcement or administration.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed new section will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons. Even if it did, no additional rule amendments are required under Government Code §2001.0045 because the proposed new section is necessary to implement legislation. The proposed rule implements Occupations Code §55.0041, as amended by SB 422.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will require a decrease in fees paid to the agency;
- will create a new regulation;
- will not expand or repeal an existing regulation;
- will increase the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 3, 2024. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 3, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes new §1.814 under Occupations Code §§55.002, 55.004(a), 55.0041, 55.007, and 55.008 and Insurance Code §§36.109, 4001.005, and 36.001.



Occupations Code §55.002 requires state agencies to adopt rules to exempt certain military service members from increased fees and penalties for failure to timely renew a license.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section. In addition, Occupations Code §55.0041(f) authorizes state agencies to adopt rules for the issuance of a license to a military service member or military spouse who receives confirmation from TDI of licensure verification and authorization to engage in the business or occupation under Occupations Code §55.0041.

Occupations Code §55.007, which addresses license eligibility requirements for military service members and military veterans, requires state agencies to adopt rules necessary to implement the section. In addition, Occupations Code §55.007(c) provides that such rules may not apply to certain applicants who hold a restricted license or has an unacceptable criminal history.

Occupations Code §55.008, which addresses apprenticeship requirements for certain applicants with military experience, requires TDI to adopt rules necessary to implement the section.

Insurance Code §36.109, which addresses renewal extension for certain persons performing military service, authorizes the commissioner to adopt rules as necessary to implement the section.

Insurance Code §4001.005 authorizes the commissioner to adopt rules necessary to implement Title 13 of the Insurance Code and to meet minimum requirements of federal law.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 1.814 implements Occupations Code §§55.002 - 55.009.

§1.814. Military Service Member, Military Veteran, and Military Spouse.

(a) Definitions.

(1) The definitions for terms defined in Occupations Code §55.001, concerning Definitions, are applicable to this section, including the terms "military service member," "military veteran," and "military spouse."

(2) for purposes of this section, "license" has the same meaning as "permit," as defined in §1.802 of this title (relating to Definitions), unless the context clearly indicates otherwise, and "licensee" includes anyone who holds a permit issued by the agency.

(b) Conflict. To the extent that provisions in this section conflict with provisions in any other section in this title, this section controls.

(c) Applicability. The provisions in this section apply to all permits as defined in §1.802 of this title, including licenses and certificates of authority for administrators under Chapter 7, Subchapter P of this title (relating to Administrators); surplus lines agents under Chapter 15, Subchapter B of this title (relating to Surplus Lines Agents); insurance professionals under Chapter 19, Subchapter I of this title

(relating to General Provisions Regarding Fees, Applications, and Renewals); and insurance premium finance companies under Chapter 25, Subchapter B of this title (relating to Licensing and Regulation); and licenses issued by the state fire marshal under Chapter 34 of this title (relating to State Fire Marshal).

(d) Alternative licensing requirements. Consistent with Occupations Code §55.004, concerning Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses, an applicant for a license who is a military service member, military veteran, or military spouse may complete the following alternative procedures for licensing:

(1) Resident licensing by reciprocity for military service members and military spouses. An applicant who is a military service member or military spouse and who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license may apply for a Texas resident license as provided in subsection (g) of this section.

(2) Resident licensing by reciprocity for military veterans. An applicant who is a military veteran and who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license may apply for a Texas resident license subject to the applicable qualifications for resident licenses as provided in this title and subject to subsection (f) of this section.

(3) Expired resident licenses. An applicant who is a military service member, military veteran, or military spouse and whose Texas resident license has been expired for fewer than five years preceding the application date may request that TDI waive the examination requirement. An applicant requesting this waiver must submit to the applicable licensing office or division of the agency:

(A) a new license application;

(B) identification indicating that the applicant is a military service member; military veteran; or military dependent, if a military spouse;

(C) evidence that the applicant has completed all required continuing education for the periods the applicant was licensed and paid all fines as required under this title; and

(D) a request for waiver that includes an explanation that justifies waiver of the licensing examination.

(e) License renewal extension and fee exemption.

(1) As specified in Occupations Code §55.003, concerning Extension of License Renewal Deadlines for Military Service Members, a military service member who holds a license is entitled to two additional years to complete any requirements related to the renewal of the license, including continuing education requirements, and to submit a renewal application including the following:

(A) the licensee's name, address, and license number;

(B) the licensee's military identification indicating that the individual is a military service member; and

(C) a statement requesting up to two years of additional time to complete the renewal, including continuing education requirements.

(2) A military service member specified in paragraph (1) of this subsection is exempt from additional fees or penalties required under this title for failure to renew a license in a timely manner, as specified in Occupations Code §55.002, concerning Exemption from Penalty for Failure to Renew License.

(3) A military service member specified in paragraph (1) of this subsection must satisfy the continuing education requirement for which the compliance period has been extended before satisfying the continuing education requirement for any other period.

(4) A military service member serving in a combat theater, as provided for in Insurance Code §36.109, concerning Renewal Extension for Certain Persons Performing Military Service, may apply for an exemption from or an extension of time for meeting license renewal requirements, including continuing education requirements. The licensee must request the exemption or extension before the end of the applicable reporting period and must include:

(A) a copy of the order for active duty status, service in a combat theater, or other positive documentation of military service that will demonstrate that the licensee is prevented from compliance;

(B) a clear request for either an extension or exemption, or both;

(C) a statement indicating whether the request is for an extension or exemption, or both, from continuing education requirements or from license renewal;

(D) the expected duration of the assignment; and

(E) any other information the licensee believes may assist the agency or that the agency requests, on a case-by-case basis.

(f) Fee exemptions.

(1) Consistent with Occupations Code §55.009, concerning License Application and Examination Fees, the following applicants are not required to pay any applicable license application fee or examination fee that is otherwise payable to the agency:

(A) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(B) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license.

(2) The fee exemption under paragraph (1) of this subsection does not apply to license renewal application fees.

(3) To qualify for the fee exemption under paragraph (1)(A) of this subsection, the applicant must submit as applicable:

(A) the license application, with a request for waiver of the application fee and examination fee;

(B) identification indicating that the applicant is a military service member or military veteran; and

(C) documentation that the applicant's military service, training, or education substantially meets all the requirements for the license.

(4) To qualify for the fee exemption under paragraph (1)(B) of this subsection, the applicant must submit as applicable:

(A) the license application, with a request for waiver of the application fee and examination fee; and

(B) identification indicating that the applicant is a military service member, military veteran, or military spouse.

(g) Reciprocal licenses for military service members and military spouses.

(1) A military service member or military spouse who is licensed in a state with substantially equivalent requirements to those of Texas is eligible for a Texas resident license while the military service member is stationed at a military installation in Texas.

(2) A license granted under paragraph (1) of this subsection is effective for a period of three years from the date the applicant receives confirmation from the agency of receipt of the items described in paragraph (4)(A) - (C) of this subsection and may not be renewed.

(3) Consistent with 55 USC §4025a, concerning Portability of Professional Licenses of Servicemembers and Their Spouses, if military orders require the military service member to continue to be stationed in Texas past the expiration of the license as described in paragraph (2) of this subsection, the licensee may apply for a new license under paragraph (1) of this subsection. A licensee seeking a new license under this paragraph must submit to the applicable licensing office or division of the agency documentation of the military order or orders requiring that the military service member continue to be stationed in Texas past the license expiration date.

(4) To apply for a license under this subsection, the applicant must provide to the applicable licensing office or division of the agency:

(A) an application notifying the agency of the applicant's intent to operate in Texas;

(B) proof of the applicant's residency in Texas and a copy of the applicant's military identification card; and

(C) evidence of good standing from the state with substantially equivalent requirements to the requirements of this state.

(5) Within 30 days after the applicant's submission of the items described in paragraph (4) of this subsection, the agency will verify the applicant's good standing status described in paragraph (4)(C) of this subsection.

(h) Administrators.

(1) A military service member or military spouse who is licensed as an administrator in a state with substantially equivalent requirements as those found in §7.1604 of this title (relating to Application for Certificate of Authority) and Insurance Code Chapter 4151, concerning Third-Party Administrators, may engage as an administrator while the military service member is stationed at a military installation in Texas.

(2) A military service member or military spouse seeking to engage as an administrator under this subsection must:

(A) submit an application notifying the agency of the military service member or military spouse's intent to engage as an administrator in Texas;

(B) submit to the agency proof of the applicant's residency in Texas and a copy of the applicant's military identification card; and

(C) show evidence of good standing from a jurisdiction with substantially equivalent requirements as those found in §7.1604 of this title and Insurance Code Chapter 4151.

(3) Notwithstanding §7.1604 of this title, a military service member or military spouse seeking to engage as an administrator under this subsection will not be assessed any application fees under that section.

(4) A military service member or military spouse authorized to engage as an administrator must comply with and adhere to all other laws and rules applicable to administrators.

(i) Expedited license procedure. Within 30 days of the filing of a license application by a military service member, military veteran, or military spouse, the agency will process the application and issue the license to an applicant who qualifies for the license under subsection (d) of this section, subject to other qualification requirements under this title.

(j) Credit for military service, training, or education.

(1) An applicant who is a military service member or military veteran may submit to the agency documentation of the applicant's military service, training, or education. Such military service, training, or education, after verification by the agency, will be credited to license requirements other than examination requirements. This subsection will not apply to an applicant who holds a restricted license issued by another jurisdiction or who has an unacceptable criminal history.

(2) If an apprenticeship is required for the license, an applicant who is a military service member or military veteran may submit to the agency documentation of the applicant's military service, training, or education that is relevant to the occupation. Such military service, training, or education, after verification by the agency, will be credited to the apprenticeship requirements.

(k) Residency. For an application for a license that has a residency requirement for license eligibility, an applicant who is a military service member or military spouse may establish residency for the purposes of this section by providing the applicable licensing office or division of the agency with a copy of the permanent change of station order or other military order requiring the military service member to be stationed in Texas, or any other documentation of residency for license eligibility permitted under this title.

(l) States with substantially equivalent requirements. For the purposes of this section, the agency will work with non-Texas jurisdictions to:

(1) Identify, with respect to each type of license issued by the agency, the jurisdictions that have licensing requirements that are substantially equivalent to the requirements for the license in Texas; and

(2) Verify that a military service member or military spouse is licensed in good standing in a jurisdiction described in paragraph (1) of this subsection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555



## CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

### SUBCHAPTER P. ADMINISTRATORS

#### 28 TAC §7.1603

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §7.1603, concerning the certificate of authority required for administrators. The amendments to §7.1603 implement Senate Bill 422, 88th Legislature, 2023, which amended Occupations Code §§55.004(d), 55.0041, and 55.005(a).

EXPLANATION. Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, TDI has separately proposed new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and 50 USC §4025a. New §1.814 applies to all licenses, permits, certifications, and other authorizations issued by TDI, including certificates of authority for administrators.

Section 7.1603 requires that persons holding themselves out as administrators must hold a certificate of authority under Insurance Code Chapter 4151. Subsections (a), (c), (d), (e), and (f) currently include requirements for military spouses seeking authorization to or who are currently authorized in other states to engage as an administrator. This proposal will remove these provisions, including part of subsection (a), and subsections (c), (d), (e) and (f), which apply to military spouses, because they are made redundant by proposed new §1.814. Amendments also insert the titles of cited Insurance Code provisions in subsection (a).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jodie Delgado, director of the Agent and Adjuster Licensing Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments other than that imposed by the statute. Ms. Delgado made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Delgado does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amended section is in effect, Ms. Delgado expects that administering and enforcing the proposed amendments will have the public benefits of eliminating redundant provisions and ensuring that TDI's rules conform to Occupations Code §55.0041 in a consistent way.

Ms. Delgado expects that the proposed amendments will not increase the cost of compliance because they do not create or impose any requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amended section will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. There are no additional costs as a result of this proposal because it only removes existing regulations made redundant by new regulations. No additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will limit an existing regulation;
- will decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 3, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 3, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §7.1603 under Occupations Code §55.0041(e) and Insurance Code §36.001.

Occupations Code §55.0041(e), which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Amendments to §7.1603 implement Occupations Code §§55.004(d), 55.0041, and 55.005(a).

§7.1603. *Certificate of Authority Required.*

(a) Unless a person meets an exemption under Insurance Code §§4151.002, concerning Exemptions, 4151.004, concerning Applicability to Certain Insurers and Health Maintenance Organizations, or 4151.0021, concerning Applicability to Certain Processing Agents, a person acting as or holding themselves out as an administrator must hold a certificate of authority under Insurance Code Chapter 4151, concerning Third-Party Administrators. [A military spouse who meets the criteria described in subsection (e) of this section is eligible to apply for a temporary certificate of authority.]

(b) An administrator contractor and an administrator subcontractor must hold a certificate of authority under Insurance Code Chapter 4151.

{(c) A military spouse who is licensed as an administrator in a state with substantially equivalent requirements as those found in §7.1604 of this title (relating to Application for Certificate of Authority) and Insurance Code Chapter 4151 may engage as an administrator while the military service member to whom the military spouse is married is stationed at a military installation in this state for a period of three years from the date the spouse receives the confirmation described by subsection (d) of this section.}

{(d) A military spouse seeking to engage as an administrator must:}

{(1) submit an application notifying TDI of the military spouse's intent to engage as an administrator in Texas;}

{(2) submit to TDI proof of the spouse's residency in Texas and a copy of the spouse's military identification card; and}

{(3) show evidence of good standing from a jurisdiction with substantially equivalent requirements as those found in §7.1604 of this title and Insurance Code Chapter 4151.}

{(e) Notwithstanding §7.1604 of this title, a military spouse seeking to engage as an administrator will not be assessed any application fees under that section.}

{(f) A military spouse authorized to engage as an administrator must comply and adhere to all other laws and rules applicable to administrators.}

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Jessica Barta

General Counsel

Texas Department of Insurance

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## CHAPTER 15. SURPLUS LINES INSURANCE SUBCHAPTER B. SURPLUS LINES AGENTS

### 28 TAC §15.101

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §15.101, concerning the licensing of surplus lines agents. Amendments to §15.101 implement Senate Bill 422, 88th Legislature, 2023.

**EXPLANATION.** Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, TDI has separately proposed new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and 50 USC §4025a. Proposed new §1.814 applies to all licenses, permits, certifications, and other authorizations issued by TDI, including surplus lines agent licenses.

Section 15.101 addresses requirements for the licensing of surplus lines agents, and subsection (g) provides licensing requirements for military spouses. Proposed amendments remove subsection (g), which is made redundant by proposed new §1.814, and redesignate the subsections that follow subsection (g) to reflect its removal. In addition, amendments in subsections (b), (e), and (f) and redesignated subsections (g) and (h) add the titles of cited Insurance Code sections, and an amendment to subsection (f) revises the capitalization of the word "commissioner," for consistency with current TDI rule drafting style.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jodie Delgado, director of the Agent and Adjuster Licensing Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments other than that imposed by the statute. Ms. Delgado made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Delgado does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amended section is in effect, Ms. Delgado expects that administering and enforcing the proposed amendments will have the public benefits of eliminating a redundant provision and ensuring that TDI's rules conform to Occupations Code §55.0041 in a consistent way.

Ms. Delgado expects that the proposed amendments will not increase the cost of compliance because the amendments do not create or impose any requirements.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons. There are no

additional costs as a result of this proposal because it only removes existing regulations made redundant by new regulations. No additional rule amendments are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will limit an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 3, 2024. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 3, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes amendments to §15.101 under Occupations Code §55.0041(e) and Insurance Code §36.001.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires in subsection (e) that state agencies adopt rules to implement the section.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS-REFERENCE TO STATUTE.** The amendment of §15.101 implements Occupations Code §§55.004(d), 55.0041, and 55.005(a).

*§15.101. Licensing of Surplus Lines Agents.*

(a) Persons performing any of the following surplus lines insurance activities are required to have a surplus lines agent license:

(1) supervising unlicensed staff engaged in activities described in subsection (b) of this section, although unlicensed intermediary supervisors may supervise unlicensed staff engaging in these activities if the ultimate supervisor is licensed;

(2) negotiating, soliciting, effecting, procuring, or binding surplus lines insurance contracts for clients or offering advice, counsel, opinions, or explanations of surplus lines insurance products to agents or clients beyond the scope of underwriting policies or contracts, except for a general lines property and casualty agent making a referral of surplus lines business to a surplus lines agent that then completes the surplus lines transaction; or

(3) receiving any direct commission or variance in compensation based on the volume of surplus lines premiums taken and received from, or as a result of, another person selling, soliciting, binding, effecting, or procuring surplus lines insurance policies, contracts, or coverages, except for a general lines property and casualty agent making a referral of surplus lines business to a surplus lines agent that then completes the surplus lines transaction.

(b) The following activities, if supervised by a surplus lines agent, do not require a surplus lines agent license if the employee does not receive any direct commission from selling, soliciting, binding, effecting, or procuring insurance policies, contracts, or coverages, and the employee's compensation is not varied by the volume of premiums taken and received:

(1) full-time clerical and administrative services, including, but not limited to, the incidental taking of information from clients; receipt of premiums in the office of a licensed agent; or transmitting to clients, as directed by a licensed surplus lines agent, prepared marketing materials or other prepared information and materials including, without limitation, invoices and evidences of coverage;

(2) contacting clients to obtain or confirm information necessary to process an application for surplus lines insurance so long as the contact does not involve any activities for which a license would be required under subsection (a)(2) of this section;

(3) performing the task of underwriting any insurance policy, contract, or coverage, including and without limitation, pricing of the policy or contract; or

(4) contacting clients, insureds, agents, other persons, and insurers to gather and transmit information regarding claims and losses under the policy to the extent the contact does not require a licensed adjuster as set forth under Insurance Code Chapter 4101, concerning Insurance Adjusters.

(c) This section must not be construed to prohibit distribution of agency profits to unlicensed persons, including shareholders, partners, and employees.

(d) Before TDI issues a surplus lines agent license, the applicant must submit the following:

(1) an appropriate, fully completed written application; and

(2) the fee specified by §19.801 and §19.802 of this title (relating to General Provisions and Amount of Fees, respectively).

(e) Texas-resident applicants, and nonresident applicants who do not hold a surplus lines license in their state of residence or whose state of residence does not license Texas residents on a reciprocal basis as determined by TDI, must meet all licensing requirements set forth in Insurance Code Chapter 981, concerning Surplus Lines Insurance.

Nonresident applicants under this section must also comply with Insurance Code §4056.051, concerning Application for Nonresident Agent License; Criminal History.

(f) Nonresident applicants who hold a surplus lines agent license in good standing in the agent's state of residence and meet the requirements of Insurance Code §4056.052, concerning Issuance of License to Nonresident Agent Licensed in Other State, must meet all the licensing requirements of Insurance Code Chapter 981 to the extent that the requirements are not waived by the commissioner [~~Commissioner~~] under Insurance Code §4056.055, concerning Waiver of Requirements for Nonresident Agent Licensed in Other State or Jurisdiction.

~~[(g) Military spouses who are licensed in a state with substantially equivalent requirements to those of this state are eligible for a license while the military service member to whom the military spouse is married is stationed at a military installation in this state. This license is effective for a period of three years from the date the spouse receives the confirmation described by paragraph (1) of this subsection.]~~

~~[(1) The military spouse must:]~~

~~[(A) submit an application notifying TDI of the military spouse's intent to operate under the license in Texas;]~~

~~[(B) submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card; and]~~

~~[(C) show evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of this state.]~~

~~[(2) Notwithstanding subsection (d)(2) of this section and §19.801 and §19.802 of this title, a military spouse will not be assessed any application fees under those sections.]~~

~~[(g) [(h)] Notwithstanding any other subsection of this section, nonresident applicants are not required to obtain a general property and casualty agent license if they meet the requirements of Insurance Code §981.203(a-1), concerning Qualifications for Surplus Lines License.~~

~~[(h) [(i)] Each surplus lines agent license issued to an agent will be valid for a term as established under Insurance Code §4003.001, concerning License Expiration, and Chapter 19, Subchapter I of this title (relating to General Provisions Regarding Fees, Applications, and Renewals). The license may be renewed by submitting a renewal application and a nonrefundable license fee as specified by §19.801 and §19.802 of this title.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555



## CHAPTER 19. LICENSING AND REGULATION OF INSURANCE PROFESSIONALS

The Texas Department of Insurance (TDI) proposes to repeal §19.803 and to amend §19.810 in Subchapter I of 28 TAC Chapter 19 and to amend §19.1004 in Subchapter K of 28 TAC Chapter 19. These sections concern the licensing of insurance professionals. The proposed repeal and amendments implement Senate Bill 422, 88th Legislature, 2023, which amended Occupations Code §§55.004(d), 55.0041, and 55.005(a).

**EXPLANATION.** Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, TDI has separately proposed new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and 50 USC §4025a. Proposed new §1.814 applies to all licenses, permits, certifications, and other authorizations issued by TDI, including insurance professional licenses.

The proposed amendments are described in the following paragraphs.

**Section 19.803.** The proposal repeals §19.803, which provides procedures for licensing of military service members, military veterans, and military spouses, because this section will be superseded by new 28 TAC §1.814.

**Section 19.810.** The amendments to §19.810 remove outdated effective date references in subsection (a) and replace cross-references to §19.803 in subsection (b) with cross-references to new 28 TAC §1.814. The amendments also correct erroneous cross-references in subsection (f), correct a grammatical error in subsection (h)(1), and insert the titles of cited Insurance Code and Administrative Code provisions in subsections (a), (c)(2), and (h)(1).

**Section 19.1004.** The amendments to §19.1004 remove subsection (f), which provides for licensing-related exemptions and extensions for military service members. Subsection (f) is superseded by new 28 TAC §1.814. Amendments also update cross-references to subsection (f) and redesignate the subsections that follow subsection (f) to reflect its removal. In addition, amendments insert the titles of cited Insurance Code and Administrative Code provisions in subsection (b) and redesignated subsections (f) and (g).

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jodie Delgado, director of the Agent and Adjuster Licensing Office, has determined that during each year of the first five years the sections as proposed are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the proposed sections, other than that imposed by the statute. Ms. Delgado made this determination because the sections as proposed do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amended sections.

Ms. Delgado does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the sections as proposed are in effect, Ms. Delgado

expects that administering and enforcing the proposed sections will have the public benefits of updating and eliminating redundant provisions and ensuring that TDI's rules conform to Chapter 55 of the Occupations Code in a consistent way.

Ms. Delgado expects that the sections as proposed will not increase the cost of compliance because the proposed sections do not create or impose any requirements.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the sections as proposed will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons. There are no additional costs as a result of this proposal because it only removes existing regulations made redundant by new regulations. No additional rule amendments are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the sections as proposed are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will limit and repeal existing regulations;
- will not decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 3, 2024. Send your comments to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 3, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

# SUBCHAPTER I. GENERAL PROVISIONS REGARDING FEES, APPLICATIONS, AND RENEWALS

## 28 TAC §19.803

STATUTORY AUTHORITY. TDI proposes the repeal of §19.803 under Occupations Code §§55.002, 55.004(a), 55.0041, 55.007, and 55.008 and Insurance Code §§36.109, 4001.005, and 36.001.

Occupations Code §55.002 requires state agencies to adopt rules to exempt certain military service members from increased fees and penalties for failure to timely renew a license.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section. In addition, Occupations Code §55.0041(f) authorizes state agencies to adopt rules for the issuance of a license to a military service member or military spouse who provides confirmation from TDI of licensure verification and authorization to engage in the business or occupation under Occupations Code §55.0041.

Occupations Code §55.007, which addresses license eligibility requirements for military service members and military veterans, requires state agencies to adopt rules necessary to implement the section.

Occupations Code §55.008, which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to implement the section.

Insurance Code §36.109, which addresses renewal extension for certain persons performing military service, authorizes the commissioner to adopt rules as necessary to implement the section.

Insurance Code §4001.005 authorizes the commissioner to adopt rules necessary to implement Title 13 of the Insurance Code and to meet minimum requirements of federal law.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed repeal of §19.803 implements Occupations Code §§55.002 - 55.009.

§19.803. *Military Service Member, Military Veteran, and Military Spouse.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Jessica Barta  
General Counsel  
Texas Department of Insurance  
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For further information, please call: (512) 676-6555



## 28 TAC §19.810

STATUTORY AUTHORITY. TDI proposes amendments to §19.810 under Occupations Code §§55.002, 55.004(a), and 55.0041 and Insurance Code §§36.109, 4001.005, and 36.001.

Occupations Code §55.002 requires state agencies to adopt rules to exempt certain military service members from increased fees and penalties for failure to timely renew a license.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041 which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Insurance Code §36.109, which addresses renewal extension for certain persons performing military service, authorizes the commissioner to adopt rules as necessary to implement the section.

Insurance Code §4001.005 authorizes the commissioner to adopt rules necessary to implement Title 13 of the Insurance Code and to meet minimum requirements of federal law.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed amendments to §19.810 implement Occupations Code §§55.002 - 55.004, 55.0041, and 55.006.

§19.810. *License Renewal and Application for an Expired License.*

(a) Applicability. [~~This section becomes applicable to licensees and applicants on June 1, 2018. Prior to June 1, 2018, license renewal and reissuances will be processed under the regulations in effect prior to the adoption of this section.~~] This section applies to the renewal of a license and application for an expired license under Insurance Code Title 13, concerning Regulation of Professionals, that was issued or renewed on or after November 1, 2015.

(b) Conflicts with other sections. To the extent that this section conflicts with §1.814 [~~§19.803~~] of this title (relating to Military Service Member, Military Veteran, and Military Spouse) in the application of this section and §1.814 [~~§19.803~~] to military service members, military veterans, and military spouses, §1.814 [~~§19.803~~] controls.

(c) Unexpired license. A licensee may apply for renewal of a license that has neither expired nor been suspended or revoked by:

(1) submitting to TDI the required renewal application fee and renewal application; and

(2) completing the applicable continuing education requirement within the reporting period and prior to the expiration of the license, as required under Insurance Code §4004.055, concerning Conduct, Disciplinary Actions, and Sanctions.



(d) Noncompliance with subsection (c) of this section. If the licensee does not comply with subsection (c) of this section, the license will not be renewed and will expire on the expiration date.

(e) Renewal of a license that has been expired for 90 days or less. A licensee may renew a license that has been expired for 90 days or less. The licensee must submit to TDI within 90 days after the license expiration date:

- (1) the required renewal application fee;
- (2) an additional fee equal to one-half of the required renewal application fee;
- (3) a completed renewal application; and
- (4) evidence demonstrating that the licensee has:

(A) completed the applicable continuing education requirement before the license expired; or

(B) completed continuing education after the license expired and paid all applicable fines as required under Insurance Code §4004.055.

(f) Effect of renewal or nonrenewal of expired license. If the licensee completes each item listed in subsection (c) [(d)] of this section for an unexpired license as described, or completes each item listed in subsection (e) of this section within 90 days after the license expiration date, and the license is renewed, the license will be renewed effective as of the license expiration date. If the licensee fails to complete each item listed in subsection (c) of this section prior to the expiration date, or subsection (e) [(d)] of this section within 90 days after the license expiration date, as applicable, the license cannot be renewed, and the individual cannot engage in the business of insurance in the capacity granted by that license effective as of the license's expiration date and continuing until the individual obtains a new license as provided in subsection (g) or (h) of this section.

(g) License expired for more than 90 days. If an individual's license has been expired for more than 90 days, but less than one year, the individual may apply for the expired license without an examination. The individual must submit to TDI within one year after the date the license expired:

- (1) a new original application;
- (2) the required application fee;
- (3) an additional fee equal to one-half of the required application fee; and [;]
- (4) evidence demonstrating that the licensee has:

(A) completed the applicable continuing education requirement before the license expired; or

(B) completed continuing education after the license expired and paid all applicable fines as required under Insurance Code §4004.055.

(h) License expired for one year or more. If an individual's license has been expired for one year or more, to obtain the expired license the individual must:

(1) complete the requirements for a [an] new license described in §§19.805 - 19.807 of this title (relating to Application for a New Individual License, Application for a Provisional Permit, and Application for a Temporary License), including reexamination, if applicable; and

(2) for a license that expired, was canceled, revoked, or not renewed on or after November 1, 2015, evidence demonstrating that the licensee:

(A) completed the applicable continuing education requirement before the license expired; or

(B) completed continuing education after the license expired and paid all applicable fines as required under Insurance Code §4004.055.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Jessica Barta

General Counsel

Texas Department of Insurance

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## SUBCHAPTER K. CONTINUING EDUCATION, ADJUSTER PRELICENSING EDUCATION PROGRAMS, AND CERTIFICATION COURSES

### 28 TAC §19.1004

STATUTORY AUTHORITY. TDI proposes amendments to §19.1004 under Occupations Code §§55.002, 55.004(a), and 55.0041 and Insurance Code §§36.109, 4001.005, and 36.001.

Occupations Code §55.002 requires state agencies to adopt rules to exempt certain military service members from increased fees and penalties for failure to timely renew a license.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Insurance Code §36.109, which addresses renewal extension for certain persons performing military service, authorizes the commissioner to adopt rules as necessary to implement the section.

Insurance Code §4001.005 authorizes the commissioner to adopt rules necessary to implement Title 13 of the Insurance Code and to meet minimum requirements of federal law.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed amendments to §19.1004 implement Occupations Code §55.003 and Insurance Code §36.109.

§19.1004. *Licensee Exemption from and Extension of Time for Continuing Education.*

(a) Any exemption or extension granted to a licensee under subsections (b) - (f) [(b) - (g)] of this section applies to all license types held by the licensee. Nothing within this subchapter may be construed as preventing TDI from auditing a licensee to confirm the continued existence of circumstances supporting the exemption or extension.

(b) An agent who held a Texas resident license issued under Insurance Code Article 21.07-1, as Group I, legal reserve life insurance agent or general lines life, accident, and health insurance agent; Article 21.07-3, as managing general agent; or Article 21.14, as local recording agent, solicitor, general lines property and casualty agent, or insurance service representative, for at least 20 years or more as of December 31, 2002, is exempt from completing the required number of continuing education hours in §19.1003 of this title (relating to Licensee Hour and Completion Requirements). Agents must confirm that they qualify for this exemption by submitting a written request to TDI indicating that they have met the longevity requirement. TDI or TDI's designee will provide written notice that an agent qualifies for this exemption. Agents that qualified for the longevity exemption authorized under the Insurance Code prior to September 1, 2001, remain qualified and do not have to reapply for this exemption.

(c) A licensee who on or after January 1, 2003, has been continuously licensed by TDI for at least 20 years is exempt from completing the required number of continuing education hours in §19.1003 of this title. For purposes of this subsection "continuously licensed" means that the licensee has held a TDI issued license for the entire period of time without any lapse in excess of 90 days in which the licensee was not licensed or failed to renew a license. The exemption will apply beginning with the reporting period in which the licensee reaches the 20th year of licensure. TDI or TDI's designee will provide written notice to the licensee that a licensee qualifies for this exemption. Licensees may not claim the exemption prior to receiving written notice that they qualify for the exemption. Licensees may submit a written request to TDI to evaluate their longevity status.

(d) Nonresident licensees, are subject to the following requirements:

(1) A nonresident licensee, including an adjuster with a designated home state adjuster license issued by a state other than Texas, who is in compliance with the licensee's resident state's or adjuster's designated home state's continuing education requirements are not required to complete the continuing education requirement under this subchapter. A licensee may qualify for this exemption based on the following:

(A) the licensee's state of residence, or adjuster's designated home state, claimed in the licensee's original application;

(B) by sending written notification to TDI or its designee stating that the licensee is a resident of another state, or the adjuster has a designated home state other than Texas, with a certificate of good standing; or

(C) by sending any other document acceptable to TDI, showing that the licensee has a resident license or an adjuster's designated home state adjuster license in good standing in that state.

(2) A designated home state adjuster licensee who designates Texas as the licensee's home state is not exempt under this subsection and must complete continuing education under the same requirements as a Texas resident adjuster as required under §19.1003(e) of this title.

(e) Licensees who meet the criteria of illness, medical disability, or circumstances beyond the control of the licensee may apply for

an exemption or extension of time to complete their continuing education requirement without incurring a fine or a waiver, in whole or in part, of the continuing education requirement. Business reasons do not constitute circumstances beyond the control of the licensee. TDI will establish the duration of the extension when it is granted. If the circumstances supporting the extension continue beyond the granted extension period, the licensee may reapply for an exemption or extension. The licensee's application must include the information set forth in paragraphs (1) - (6) of this subsection:

(1) a written statement of the exact nature of the illness, medical disability, or other extenuating circumstances beyond the control of the licensee that have prevented or will prevent the licensee from completing the required hours within the reporting period;

(2) evidence regarding the illness or medical disability of the licensee and circumstances beyond the control of the licensee;

(3) a written assessment of whether the condition is temporary, permanent, or unknown;

(4) a written statement as to whether the licensee will be able to perform activities including any acts of an agent or adjuster during the exemption or extension period being requested;

(5) the estimated date when the licensee will be able to perform any activities including any acts of an agent or adjuster in accordance with the medical reports or other documents pertaining to circumstances beyond the control of the licensee; and

(6) any other information that may be of assistance in evaluating the request.

~~[(f) A military service member may request an exemption or extension as follows:]~~

~~[(1) a military service member is entitled to two additional years to complete the continuing education requirements specified in this subchapter and may request the extension under §19.803(e) of this title; and]~~

~~[(2) a military service member serving in a combat theater, as provided for in Insurance Code §36.109, may apply to TDI for an exemption from or an extension of time for meeting the continuing education requirements or extending the licensee's license renewal under §19.803(f) of this title.]~~

~~[(g) An individual holding a risk manager license is exempt from the continuing education requirements under this subchapter for any license held by the individual, if the individual demonstrates in writing to TDI that the individual has held one of the following designations listed in Insurance Code §4153.055, concerning Exemptions from Examination and Continuing Education Requirement, for a period of not less than 30 years:~~

~~(1) certified insurance counselor,~~

~~(2) associate in risk management, or~~

~~(3) certified risk manager.~~

~~[(h) A licensee holding only a funeral prearrangement life insurance agent license or a life insurance not exceeding \$25,000 agent license and meeting the requirements specified in Insurance Code §4054.159, concerning Continuing Education Exemption, or Insurance Code §4054.207, concerning Continuing Education Exemption, is exempt from completing the continuing education requirements in this subchapter. A licensee claiming this exemption must attest to meeting this requirement during each reporting period with the licensee's license renewal.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 25. INSURANCE PREMIUM FINANCE

### SUBCHAPTER B. LICENSING AND REGULATION

#### 28 TAC §25.24

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §25.24, concerning applications for an insurance premium finance company license. The proposed amendments to §25.24 implement Senate Bill 422, 88th Legislature, 2023, which amended Occupations Code §§55.004(d), 55.0041, and 55.005(a).

**EXPLANATION.** Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, TDI has separately proposed new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and with 50 USC §4025a. Proposed new §1.814 applies generally to all licenses, permits, certifications, and other authorizations issued by TDI, including insurance premium finance company licenses.

Section 25.24 addresses requirements for insurance premium finance company licenses, and subsections (c) and (d) of §25.24 provide alternative licensing procedures for military spouses and related application fee exemption. This proposal removes subsections (c) and (d) because they will be made redundant by proposed new §1.814. In addition, subsection (b) is amended to remove a reference to subsection (d).

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jodie Delgado, director of the Agent and Adjuster Licensing Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amended section, other than that imposed by the statute. Ms. Delgado made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amended section.

Ms. Delgado does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amended section is in effect, Ms. Delgado expects that administering and enforcing the proposed amendments will have the public benefits of removing redundant provisions and ensuring that TDI's rules conform to Occupations Code §55.0041 in a consistent way.

Ms. Delgado expects that the proposed amendments will not increase the cost of compliance because the amendments do not create or impose any requirements.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposal will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this proposal does not impose a possible cost on regulated persons. There are no additional costs as a result of this proposal because it only removes existing regulations made redundant by new regulations. No additional rule amendments are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed amended section is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will limit an existing regulation;
- will decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 3, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on January 3, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §25.24 under Occupations Code §55.0041 and Insurance Code §651.003 and §36.001.

Occupations Code §55.0041, which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Insurance Code §651.003 authorizes the commissioner to adopt rules necessary to administer Insurance Code Chapter 651.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Amended §25.24 implements Occupations Code §55.0041.

§25.24. *License Application.*

(a) An applicant for an insurance premium finance company license must file an application Form PF1 with TDI. The application must include the following as applicable:

- (1) List of Principals (Form PF2);
- (2) Premium Finance Application Questionnaire (Form PF3);
- (3) Biographical Affidavit (Form PF4) for each individual named on Form PF2;
- (4) General statement of experience giving applicant's qualifications;
- (5) List of Other States of Licensure (Form PF5);
- (6) Appointment of Statutory Agent and Consent to Service (Form PF6);
- (7) Sworn financial statement;
- (8) Sample Business Operation forms;
- (9) \$400 Investigation Fee;
- (10) Partnership agreement;
- (11) Certified copy of Assumed Name Certificate as on file with the County Clerk or Secretary of State;
- (12) Originally certified copy of Articles of Incorporation from the Office of the Secretary of State or equivalent office in another state;
- (13) Certified copy of Bylaws;
- (14) Certified copy of Minutes;
- (15) Current Franchise Tax Certificate of Good Standing or letter of exemption issued by the Texas Comptroller of Public Accounts; and
- (16) Certified copy of Certificate of Authority issued by the Texas Secretary of State (foreign corporations only).

(b) ~~On~~ Except as provided by subsection (d) of this section, notification by TDI of approval of the application, the applicant must submit a license fee as follows:

- (1) Licenses issued January 1 through June 30--\$200;
- (2) Licenses issued July 1 through December 31--\$100.

~~[(e) Military spouses who are licensed in a state with substantially equivalent requirements to those of this state are eligible for a license while the military service member to whom the military spouse is married is stationed at a military installation in this state. This license is effective for a period of three years from the date the spouse receives confirmation from the Texas Department of Insurance of receipt of the items described by this subsection. The military spouse must:]~~

~~[(1) submit an application notifying TDI of the military spouse's intent to operate under the license in Texas;]~~

~~[(2) submit to TDI proof of the military spouse's residency in Texas and a copy of the spouse's military identification card; and]~~

~~[(3) show evidence of good standing from the jurisdiction with substantially equivalent requirements to the requirements of this state.]~~

~~[(d) A military spouse will not be assessed any application fees under this section.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Jessica Barta

General Counsel

Texas Department of Insurance

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## CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance (TDI) proposes to repeal 28 TAC §§34.524, 34.631, 34.726, and 34.833, concerning licenses issued to military service members, military veterans, and military spouses. The proposed repeals implement Senate Bill 422, 88th Legislature, 2023 and Chapter 55 of the Occupations Code.

EXPLANATION. Chapter 55 of the Occupations Code provides for alternative licensing procedures and requirements for military service members, military veterans, and military spouses. Before the passage of SB 422, Occupations Code §55.0041 required licensing agencies to recognize the out-of-state licenses of military spouses. SB 422 amended §55.0041 to also apply to military service members and to incorporate additional changes.

As part of the implementation of SB 422, TDI has separately proposed new 28 TAC §1.814, which provides alternative licensing procedures and requirements for license applications by military service members, military veterans, and military spouses, consistent with Occupations Code Chapter 55 and 50 USC §4025a. Proposed new §1.814 applies to all licenses, permits, certifications, and other authorizations issued by TDI, including those issued by the state fire marshal.

Section 34.524 addresses the waiver of application and examination fees, as well as alternative licensing options for military service members, veterans, and spouses, as it relates to fire extinguisher rules.

Section 34.631 addresses the waiver of application and examination fees, as well as alternative licensing options for military service members, veterans, and spouses, as it relates to fire alarm rules.

Section 34.726 addresses the waiver of application and examination fees, as well as alternative licensing options for military service members, veterans, and spouses, as it relates to fire sprinkler rules.

Section 34.833 addresses the waiver of application and examination fees, as well as alternative licensing options for military service members, veterans, and spouses, as it relates to the sale and storage of fireworks.

This proposal repeals these sections, which are made redundant by proposed new §1.814.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Jodie Delgado, director of the Agent and Adjuster Licensing Office, has determined that during each year of the first five years the proposed repeals are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the repeals other than that imposed by the statute. Ms. Delgado made this determination because the proposed repeals do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed repeals.

Ms. Delgado does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed repealed sections are in effect, Ms. Delgado expects that administering and enforcing the proposed repeals will have the public benefits of eliminating redundant sections and ensuring that TDI's rules conform to Occupations Code §55.0041 in a consistent way.

Ms. Delgado expects that the proposed repeals will not increase the cost of compliance because the repeals do not create or impose any requirements.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed repeals will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that the proposed repeals do not impose a possible cost on regulated persons. There are no additional costs as a result of this proposal because it only removes existing sections made redundant by a new section. No additional rule repeals are required under Government Code §2001.0045.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed repeals are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will repeal existing regulations;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on January 3, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the TDI no later than 5:00 p.m., central time, on January 3, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

## SUBCHAPTER E. FIRE EXTINGUISHER RULES

### 28 TAC §34.524

**STATUTORY AUTHORITY.** TDI proposes the repeal of §34.524 under Occupations Code §§55.004(a), 55.0041(e), and 55.008(b) and Insurance Code §§6001.051(b), 6001.052(c), and 36.001.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041(e), which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement the section.

Occupations Code §55.008(b), which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to implement the section.

Insurance Code §6001.051(b) provides that the commissioner may issue rules necessary to administer Insurance Code Chapter 6001 through the state fire marshal.

Insurance Code §6001.052(c) requires the commissioner to prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under Insurance Code Chapter 6001.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §34.524 implements Occupations Code Chapter 55.

§34.524. *Military Service Members, Military Veterans, or Military Spouses.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER F. FIRE ALARM RULES

### 28 TAC §34.631

STATUTORY AUTHORITY. TDI proposes the repeal of §34.631 under Occupations Code §§55.004(a), 55.0041(e), and 55.008(b) and Insurance Code §6002.051(b) and §36.001.

Occupations Code §55.004(a) requires TDI to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041(e), which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement §55.0041.

Occupations Code §55.008(b), which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to implement the section.

Insurance Code §6002.051(b) provides that the commissioner may adopt rules as necessary to administer Insurance Code Chapter 6002, including rules the commissioner considers necessary to administer the chapter through the state fire marshal.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §34.631 implements Occupations Code Chapter 55.

§34.631. *Military Service Members, Military Veterans, or Military Spouses.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER G. FIRE SPRINKLER RULES

### 28 TAC §34.726

STATUTORY AUTHORITY. TDI proposes the repeal of §34.726 under Occupations Code §§55.004(a), 55.0041(e), and 55.008(b) and Insurance Code §6003.051(b) and §36.001.

Occupations Code §55.004(a) requires TDI to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041(e) requires state agencies to adopt rules to implement §55.0041.

Occupations Code §55.008(b), which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to implement the section.

Insurance Code §6003.051(b) provides that the commissioner may issue rules necessary to administer Insurance Code Chapter 6003 through the state fire marshal.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §34.726 implements Occupations Code Chapter 55.

§34.726. *Military Service Members, Military Veterans, or Military Spouses.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

### 28 TAC §34.833

STATUTORY AUTHORITY. TDI proposes the repeal of §34.833 under Occupations Code §§55.004(a), 55.0041(e), 55.008(b), and 2154.052, and Insurance Code §36.001.

Occupations Code §55.004(a) requires state agencies to adopt rules for the issuance of a license to certain military service members, military veterans, and military spouses.

Occupations Code §55.0041(e), which addresses recognition of out-of-state licenses of military service members and military spouses, requires state agencies to adopt rules to implement §55.0041.

Occupations Code §55.008(b), which addresses apprenticeship requirements for certain applicants with military experience, requires state agencies to adopt rules necessary to the section.

Occupations Code §2154.052 authorizes the commissioner to issue rules to administer Insurance Code Chapter 2154 requires the commissioner to adopt rules regulating issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state and adopt rules for applications for licenses and permits.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §34.833 implements Occupations Code Chapter 55.

§34.833. *Military Service Members, Military Veterans, or Military Spouses.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 13. TEXAS COMMISSION ON FIRE PROTECTION

#### CHAPTER 421. STANDARDS FOR CERTIFICATION

##### 37 TAC §§421.1, 421.3, 421.17

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 421, Standards For Certification, concerning §421.1 Procedures for Meetings, §421.3, Minimum Standards Set by the Commission, and §421.17, Requirement to Maintain Certification.

##### BACKGROUND AND PURPOSE

The purpose of the proposed amendments to rule §421.1 is to provide information regarding the appointment of advisory committees as mentioned in 37 Texas Administrative Code, Chapter 463, Advisory Committees, Practice and Procedures. Proposed amendments to §421.3 include the following functional descriptions: Plans Examiner, Fire and Safety Educator I, Fire

and Safety Educator II, and Fire Marshal. Proposed amendments to §421.17 outlines new guidelines for expired certifications from one year to greater than one year but no longer than five years.

##### FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Executive Director, has determined that for each year of the first five-year period, the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

##### PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be more accurate, clear, and concise rules regarding the appointment of any advisory committee or ad hoc committee appointed by the commission.

##### LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amended section is in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

##### ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

##### GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will not result in a decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

##### TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does

not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

#### COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government, and, therefore, are not subject to Texas Government Code §2001.0045.

#### ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

#### REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to [deborah.cowan@tcfp.texas.gov](mailto:deborah.cowan@tcfp.texas.gov).

#### STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code, §419.008(f), which authorizes the commission to appoint advisory committees to assist it in the performance of its duties.

#### CROSS-REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

#### §421.1. *Procedures for Meetings.*

~~[(a)]~~ The Commission may maintain advisory committees and ad hoc committees to assist with rulemaking, curriculum development, and the performance of the Commission's duties. Rules related to these committees are outlined in the 37 Texas Administrative Code (TAC), Chapter 463, Advisory Committees, Practices and Procedures. ~~[These committee names, make up, term limits, roles and meeting requirements will be outlined within this rule. These committees shall exist for no more than five (5) years and shall be reviewed and evaluated for continuance before the end of the fifth year.]~~

~~[(b)]~~ Time and place. The committees shall meet at such time and place in the State of Texas as they deem proper.]

~~[(c)]~~ Meeting called. Meetings shall be called by the chairman, by the Commission, or upon the written request of a quorum of members.]

~~[(d)]~~ Quorum. A majority of members shall constitute a quorum.]

~~[(e)]~~ Members. Committee members serve at the will of the Commission and may serve six-year staggered terms but may not serve more than two (2) consecutive terms.]

~~[(f)]~~ Officers. Committee Officers shall consist of a chairman and vice-chairman appointed by the Commission.]

~~[(g)]~~ Responsibility. Committee responsibilities shall be established by the Commission.]

~~[(h)]~~ Effective Date. All committees will have designated effective dates not to exceed five years without review and reestablishment by the Commission.]

~~[(i)]~~ Removal. It is a ground for removal from an advisory committee appointed by the Commission if a member is absent from more than half of the regularly scheduled committee meetings that the mem-

ber is eligible to attend during a calendar year unless the absence is excused by a majority vote of the committee.]

~~[(j)]~~ Effective in 2021, the Commission established three (3) advisory committees, the Curriculum and Testing, Firefighter Advisory, and Health and Wellness. These committees will expire in 2026 unless reviewed and reestablished by the Commission. The Commission has established two (2) ad hoc committees, 427 and 435, which will exist for the period of time needed, not to exceed two years.]

#### §421.3. *Minimum Standards Set by the Commission.*

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

(b) Functional position descriptions.

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

(A) Qualifications. Successfully complete a commission approved course; achieve a passing score on written and performance certification examinations; must be at least 18 years of age; generally, the knowledge and skills required show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, drag, and balance weight equivalent to the average human weight; ability to interpret in English, written and oral instructions; ability to work effectively in high stress situations; ability to work effectively in an environment with loud noises and flashing lights; ability to function through an entire work shift; ability to calculate weight and volume ratios; ability to read and understand English language manuals including chemical, medical and technical terms, and road maps; ability to accurately discern street signs and address numbers; ability to document in English, all relevant information in prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other emergency response personnel. Good manual dexterity with ability to perform all tasks related to the protection of life and property; ability to bend, stoop, and crawl on uneven surfaces; ability to withstand varied environmental conditions such as extreme heat, cold, and moisture; and ability to work in low or no light, confined spaces, elevated heights and other dangerous environments.

(B) Competency. A basic fire fighter must demonstrate competency handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 1 of the commission's Certification Curriculum Manual.

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



(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: familiarity with geographic and physical components of an airport; ability to use and understand communication equipment, terminology, and procedures utilized by airports; ability and knowledge in the application of fire suppression agents; and ability to effectively perform fire suppression and rescue operations.

(B) Competency. Basic fire fighting and rescue personnel must demonstrate competency handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 2 of the commission's Certification Curriculum Manual.

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

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: familiarity with geographic and physical components of a navigable waterway; ability to use and understand communication equipment, terminology, and procedures used by the maritime industry; and knowledge in the operation of fire fighting vessels.

(B) Competency. A marine fire fighter must demonstrate competency in handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 3 of the commission's Certification Curriculum Manual.

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

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

(B) Competency. A fire inspector must demonstrate competency in conducting inspections utilizing equipment and skills in accordance with the objectives in Chapter 4 of the commission's Certification Curriculum Manual.

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

(A) Qualifications. Successfully complete a commission approved course; achieve a passing score on certification examinations; be at least 18 years of age; generally, the knowledge and skills required to show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, and balance weight equivalent to weight of common tools and equipment necessary for conducting an investigation; ability to interpret written and oral instructions; ability to work effectively with the public; ability to work effectively in a hazardous environment; ability to function through an entire work shift; ability to calculate area, weight and volume ratios; ability to read and understand English language manuals including chemical, legal and technical terms, building plans and road maps; ability to accurately discern street signs and address numbers; ability to document, in writing, all relevant information in a prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other personnel. Good manual dexterity with the ability to perform all tasks related to fire investigation; ability to bend, stoop, and walk on uneven surfaces; ability to climb ladders; ability to withstand varied environmental conditions such as extreme heat, cold and moisture; and the ability to work in low light, confined spaces, elevated heights, and other potentially dangerous environments.

(B) Competency. A fire investigator or arson investigator must demonstrate competency in determining fire cause and origin utilizing equipment and skills in accordance with the objectives in Chapter 5 of the commission's Certification Curriculum Manual.

(6) Hazardous Materials Technician personnel. The following general position description for hazardous materials personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the hazardous materials technician operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: successfully complete a commission approved course; achieving a passing score on the certification examination; the ability to analyze a hazardous materials incident, plan a response, implement the planned response, evaluate the progress of the planned response, and terminate the incident.

(B) Competency. A hazardous materials technician must demonstrate competency handling emergencies resulting from releases or potential releases of hazardous materials, using specialized chemical protective clothing and control equipment in accordance with the objectives in Chapter 6 of the commission's Certification Curriculum Manual.

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

(A) Qualifications. In addition to the qualifications for awareness and operations level personnel, the Hazardous Materials Incident Commander is an individual who has met all the job perfor-

mance requirements of Hazardous Materials Incident Commander as defined in Chapter 8 of NFPA 472, Competence of Responders to Hazardous Materials Incidents/Weapons of Mass Destruction. The individual should demonstrate knowledge in the policies, plans, and procedures regarding hazardous materials response as adopted by the local jurisdiction; and all components of the incident command system and their proper utilization.

(B) Competency. In addition to the competencies of awareness and operations level personnel, a Hazardous Materials Incident Commander must demonstrate competency in such areas as: analyzing an incident via the collection of information and an estimation of potential outcomes; planning appropriate response operations; implementing a planned response; evaluating the progress of a planned response and revising as necessary; terminating an incident; conducting a post-incident critique; and reporting and documenting an incident in a manner consistent with local, state, and federal requirements.

(8) Driver/Operator-Pumper personnel. The following general position description for driver/operator-pumper personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the driver/operator-pumper of a fire department pumper operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: ability to perform specified routine test, inspection, and maintenance functions; ability to perform practical driving exercises; ascertain the expected fire flow; ability to position a fire department pumper to operate at a fire hydrant; ability to produce effective streams; and supply sprinkler and standpipe systems.

(B) Competency. A driver/operator-pumper must demonstrate competency operating a fire department pumper in accordance with the objectives in Chapter 7 of the commission's Certification Curriculum Manual.

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

(A) Qualifications. In addition to the qualifications for basic structural fire protection and Fire Instructor I personnel: the ability to supervise personnel, and assign tasks at emergency operations; the ability to direct personnel during training activities; the ability to recommend action for member-related problems; the ability to coordinate assigned tasks and projects, and deal with inquiries and concerns from members of the community; the ability to implement policies; the ability to perform routine administrative functions, perform preliminary fire investigation, secure an incident scene and preserve evidence; the ability to develop pre-incident plans, supervise emergency operations, and develop and implement action plans; the ability to deploy assigned resources to ensure a safe work environment for personnel, conduct initial accident investigation, and document an incident.

(B) Competency. A Fire Officer I must demonstrate competency in handling emergencies and supervising personnel utilizing skills in accordance with the objectives in Chapter 9 of the commission's Certification Curriculum Manual.

(10) Fire Officer II personnel. The following general position description for Fire Officer II personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Officer II operating in the State of Texas. It is

ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for Fire Officer I and Fire Instructor I personnel: the ability to motivate members for maximum job performance; the ability to evaluate job performance; the ability to deliver life safety and fire prevention education programs; the ability to prepare budget requests, news releases, and policy changes; the ability to conduct pre-incident planning, fire inspections, and fire investigations; the ability to supervise multi-unit emergency operations, identify unsafe work environments or behaviors, review injury, accident, and exposure reports.

(B) Competency. A Fire Officer II must demonstrate competency in supervising personnel and coordinating multi-unit emergency operations utilizing skills in accordance with the objectives in Chapter 9 of the commission's Certification Curriculum Manual.

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

(A) Qualifications. A Fire Officer III is a midlevel supervisor who performs both supervisory and first-line managerial functions. In addition to the qualifications and competency for Fire Officer II, the Fire Officer III is an individual who has met all the job performance requirements of Fire Officer III as defined in Chapter 6 of NFPA 1021, Standard for Fire Officer Professional Qualifications. Typical duties of an individual at the Fire Officer III level include: establishing procedures for hiring, assignment, and professional development of personnel; developing public service/partnership and programs; preparing budgets and budget management systems; planning for organizational resource management; evaluating inspection and public safety programs and plans; managing multi-agency plans and operations; serving as Incident Commander at expanding emergency incidents for all hazard types; and developing and managing a departmental safety program.

(B) Competency. A Fire Officer III must demonstrate competency doing research; analyzing data and using evaluative techniques; developing proposals; developing, preparing, and implementing various procedures and programs within an organization; managing personnel resources; preparing and managing budgets; utilizing techniques to encourage personnel participation and development; and working in top-level positions within the incident command system.

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

(A) Qualifications. A Fire Officer IV is an upper level supervisor who performs both supervisory and managerial functions. In addition to the qualifications and competency for Fire Officer III, the Fire Officer IV is an individual who has met all the job performance requirements of Fire Officer IV as defined in Chapter 7 of NFPA 1021, Standard for Fire Officer Professional Qualifications. Typical duties of an individual at the Fire Officer IV level include: administering job performance requirements; evaluating and making improvements to department operations; developing long-range plans and fiscal projections; developing plans for major disasters; serving as Incident Commander at major incidents for all hazard types; and administering comprehensive risk management programs.

(B) Competency. A Fire Officer IV must demonstrate competency in appraising and evaluating departmental programs to ensure adherence to current laws and best practices; developing medium and long-range plans for organizations; and assuming a top-level leadership role in both the organization and community.

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

(A) Qualifications. In addition to successfully completing a commission approved course and achieving a passing score on the certification examination: must have the ability to deliver instructions effectively from a prepared lesson plan; the ability to use instructional aids and evaluation instruments; the ability to adapt to lesson plans to the unique requirements of both student and the jurisdictional authority; the ability to organize the learning environment to its maximum potential; the ability to meet the record-keeping requirements of the jurisdictional authority.

(B) Competency. A Fire Service Instructor I must demonstrate competency in delivering instruction in an environment organized for efficient learning while meeting the record-keeping needs of the authority having jurisdiction, utilizing skills in accordance with the objectives in Chapter 8 of the commission's Certification Curriculum Manual.

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

(A) Qualifications. In addition to successfully completing a commission approved course, achieving a passing score on the certification examination, and meeting the qualifications for Fire Service Instructor I: the ability to develop individual lesson plans for a specific topic, including learning objectives, instructional aids, and evaluation instruments; the ability to schedule training sessions based on the overall training plan of the jurisdictional authority; the ability to supervise and coordinate the activities of other instructors.

(B) Competency. A Fire Service Instructor II must demonstrate competency in developing individual lesson plans; scheduling training sessions; and supervising other instructors, utilizing skills in accordance with the objectives in Chapter 8 of the commission's Certification Curriculum Manual.

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

(A) Qualifications. In addition to successfully completing a commission approved course, achieving a passing score on the certification examination, and meeting the qualifications for Fire Service Instructor II: the ability to develop comprehensive training curricula and programs for use by single or multiple organizations; the ability to conduct organizational needs analysis; and the ability to develop training goals and implementation strategies.

(B) Competency. A Fire Service Instructor III must demonstrate competency in developing comprehensive training cur-

ricula and programs; conducting organizational needs analysis; and developing training goals and implementation strategies, utilizing skills in accordance with the objectives in Chapter 8 of the commission's Certification Curriculum Manual.

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

(A) Qualifications. An Incident Safety Officer is an individual who has met the requirements of Fire Officer Level I specified in NFPA 1021, Standard for Fire Officer Professional Qualifications and Chapter 6 of NFPA 1521, Standard for Fire Department Safety Officer and has the knowledge, skill, and abilities to manage incident scene safety. Typical Incident Safety Officer duties include risk and resource evaluation; hazard identification and communication; action plan reviews; safety briefings; accident investigation; post incident analysis; and participation in safety committee activities.

(B) Competency. An Incident Safety Officer must demonstrate competency in management of incident scene safety through a working knowledge of the various emergency operations as prescribed by the local jurisdiction; an understanding of building construction; fire science and fire behavior; managing an organization's personnel accountability system; and incident scene rehabilitation methodology.

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

(A) Qualifications. A Basic Wildland Fire Fighter is an individual who has met the requirements of Chapter 5 of NFPA 1051, Standard for Wildland Fire Fighter Professional qualifications, and should demonstrate knowledge in: wildland fire behavior; fireline safety and use; limitations of personal protective equipment; fire shelter use; fire suppression tactics and techniques in wildland settings; and have an understanding of the fire fighter's role within the local incident management system.

(B) Competency. A Basic Wildland Fire Fighter must demonstrate competency in such areas as: maintaining personal protective equipment and assigned fire suppression tools and equipment; the ability to quickly prepare for a response when notified; recognizing hazards and unsafe situations in a wildland fire; securing a fire line; mopping up a fire area; and patrolling a fire area so as to ensure fire control.

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

(A) Qualifications. In addition to the qualifications and competency for the Basic Wildland Fire Fighter, the Intermediate Wildland Fire Fighter is an individual who has met the requirements of Chapter 6 of NFPA 1051, Standard for Wildland Fire Fighter Professional qualifications, and should demonstrate knowledge in: basic map

reading; use of a locating device such as a compass; radio procedures as adopted by the local jurisdiction; and record keeping.

(B) Competency. An Intermediate Wildland Fire Fighter must demonstrate competency in such areas as: the ability to lead a team of fire fighters in the performance of assigned tasks while maintaining the safety of personnel; implementing appropriate fireline construction methods and other techniques for protection of exposed property; operation of water delivery equipment; securing an area of suspected fire origin and associated evidence; and serving as a lookout in a wildland fire.

(19) Plans Examiner personnel. The following general position description for Plans Examiner personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Plans Examiner operating in the State of Texas.

(A) Qualifications. A Plans Examiner is an individual who has met the requirements of Plans Examiner specified in NFPA 1030 (1031) Chapter 8, Standard for Professional Qualifications for Fire Prevention Program Positions.

(B) Competency. A Plans Examiner analyzes building construction, hazardous processes, and architectural drawings or plans to ensure compliance with building and fire codes. This individual is also charged with reviewing plans for new construction as well as modifications to existing structures to ensure that applicable fire and life safety codes are followed.

(20) Fire and Life Safety Educator I personnel. The following general position description for Fire and Life Safety Educator I personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire and Life Safety Educator I, operating in the State of Texas.

(A) Qualifications. A Fire and Life Safety Educator I is an individual who has met the requirements of Fire and Life Safety Educator I specified in NFPA 1030 (1035) Chapter 9, Standard for Professional Qualifications for Fire Prevention Program Positions.

(B) Competency. A Fire and Life Safety Educator I must demonstrate competency in the ability to coordinate and deliver existing educational programs and information designed to reduce risks within the community.

(21) Fire and Life Safety Educator II personnel. The following general position description for Fire and Life Safety Educator II personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire and Life Safety Educator II operating in the State of Texas.

(A) Qualifications. A Fire and Life Safety Educator II is an individual who has met the requirements of Fire and Life Safety Educator II specified in NFPA 1030 (1035) Chapter 10, Standard for Professional Qualifications for Fire Prevention Program Positions.

(B) Competency. A Fire and Life Safety Educator II must demonstrate competency in the ability to prepare educational programs and information to meet identified needs to reduce risks within the community.

(22) Fire Marshal personnel. The following general position description for Fire Marshal personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the Fire Marshal operating in the State of Texas.

(A) Qualifications. A Fire Marshal is an individual who has met the requirements of Fire Marshal specified in NFPA 1030

(1037) Chapter 4 & 5, Standard for Professional Qualifications for Fire Prevention Program Positions.

(B) Competency. A person designated to provide delivery, management, or administration of fire-protection- and life-safety-related codes and standards, investigations, community risk reduction, education, or prevention services for local, county, state, provincial, federal, tribal, or private sector jurisdictions as adopted or determined by that entity.

§421.17. *Requirement to Maintain Certification.*

(a) All full-time or part-time employees of a fire department or local government assigned duties identified as fire protection personnel duties must maintain certification by the commission in the discipline(s) to which they are assigned for the duration of their assignment.

(b) In order to maintain the certification required by this section, the certificate(s) of the employees must be renewed annually by complying with §437.5 of this title (relating to Renewal Fees) and Chapter 441 of this title (relating to Continuing Education) of the commission standards manual.

(c) Except for subsection (d) of this section, or upon determination by the Agency Chief when special circumstances are presented, an individual whose certificate has been expired for greater than one year but no longer than five years, may renew their certification once they comply with the CE requirements for the period of time their certification was inactive, as outlines in 37 TAC, Chapter 441, Continuing Education, and they pay all applicable certification renewal fees for the period of time that their certification was inactive, as required in 37 TAC, Chapter 437, Fees [or longer may not renew the certificate previously held]. Individuals whose certification has been expired longer than five years, may not renew the certificate previously held. To obtain a new certification, an individual must meet the requirements in Chapter 439 of this title (relating to Examinations for Certification).

(d) A military service member whose certificate has been expired for three years or longer may not renew the certificate previously held. To obtain a new certification, the person must meet the requirements in Chapter 439 of this title. In order to qualify for this provision, the individual must have been a military service member at the time the certificate expired and continued in that status for the duration of the three-year period.

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 16, 2023.

TRD-202304303

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 936-3841

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CHAPTER 467. FIRE MARSHAL  
SUBCHAPTER A. MINIMUM STANDARDS  
FOR BASIC FIRE MARSHAL CERTIFICATION

### 37 TAC §467.3, §467.5

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 467, Fire Marshal, §467.3, Minimum Standards for Basic Fire Marshal Certification, and §467.5, Examination Requirement.

#### BACKGROUND AND PURPOSE

The proposed amendments are initiated because of a change in the examination requirements for Basic Fire Marshal as reflected in the proposed §467.5. Proposed changes in §467.3 correct grammatical errors.

#### FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

Michael Wisko, Agency Chief, has determined that for each year of the first five-year period, the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4).

#### PUBLIC BENEFIT AND COST NOTE

Mr. Wisko has also determined under Texas Government Code §2001.024(a)(5) that for each year of the first five years the amendments are in effect the public benefit will be accurate, clear, and concise rules.

#### LOCAL ECONOMY IMPACT STATEMENT

There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code §2001.022 and 2001.024(a)(6).

#### ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Wisko has determined there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these amendments. Therefore, no economic impact statement or regulatory flexibility analysis, as provided by Texas Government Code §2006.002, is required.

#### GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined under Texas Government Code §2006.0221 that during the first five years the amendments are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriation;
- (4) the rules will not result in a decrease in fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand a regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

#### TAKINGS IMPACT ASSESSMENT

The commission has determined that no private real property interests are affected by this proposal and this proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

#### COSTS TO REGULATED PERSONS

The proposed amendments do not impose a cost on regulated persons, including another state agency, a special district, or a local government, and, therefore, is not subject to Texas Government Code §2001.0045.

#### ENVIRONMENTAL IMPACT STATEMENT

The commission has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

#### REQUEST FOR PUBLIC COMMENT

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register*, to Michael Wisko, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768, or e-mailed to amanda.khan@tcfp.texas.gov.

#### STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.036, which authorizes the commission to adopt rules establishing the requirements for certification.

#### CROSS-REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

#### *§467.3. Minimum Standards for Basic Fire Marshal Certification.*

In order to be certified as a Basic Fire Marshal, an individual must:

- (1) hold Basic Fire Inspector certification through the Commission [~~commission~~]; and
- (2) hold Basic Fire Investigator or Basic Arson Investigator certification through the Commission [~~commission~~]; and
- (3) hold Fire and Life Safety Educator I certification through the Commission [~~commission~~]; and
- (4) complete a Commission-approved [~~commission-approved~~] Fire Marshal program and successfully pass the Commission [~~commission~~] examination as specified in Chapter 439 of this title (relating to Examinations for Certification); and An approved Fire Marshal program must consist of the following:
  - (5) [~~An approved Fire Marshal program must consist of the~~] completion of a Commission-approved [~~commission-approved~~] Fire Marshal Curriculum as specified in Chapter 15 of the Commission's [~~commission's~~] Certification Curriculum Manual.

#### *§467.5. Examination Requirements* [~~Requirement~~].

- (a) Examination requirements in Chapter 439 of this title (relating to Examinations for Certification) must be met to receive Basic Fire Marshal certification.

(b) Individuals will be permitted to take the Commission examination for Basic Fire Marshal certification by documenting the following:

- (1) Basic Inspector certification through the Commission [and Basic Fire Investigator]; and
- (2) Basic Fire Investigator or Basic Arson Investigator certification through the Commission; and
- (3) Fire and Life Safety Educator I certification through the Commission; or
- (4) the equivalent IFSAC seals and completing a Commission-approved Basic Fire Marshal curriculum.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-202304310

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3841



## PART 15. TEXAS FORENSIC SCIENCE COMMISSION

### CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

The Texas Forensic Science Commission (Commission) proposes rulemaking to 37 Texas Administrative Code Chapter 651 DNA, CODIS, Forensic Analysis, and Crime Laboratories, Subchapter A, Accreditation, amendments to §§651.3, 651.8 and 651.11; Subchapter B, Accreditation-Related Actions, amendments to §§651.101 - 651.104; new §651.105; and the repeal of Subchapter B, Accreditation-Related Actions and Procedure for Hearing Appeal, §651.105 and §651.106, Subchapter C, Forensic Analyst Licensing Program, repeal of §651.216; Subchapter D, Procedure for Processing Complaints and Laboratory Self-Disclosures, amendments to §§651.305 - 651.308, the repeal of §651.309 and proposes new Subchapter E, Appeals, §651.402. Some changes are responsive to the 88th Texas Legislature's passage of SB 991 and HB 3474, which clarify the Commission's existing appeals process to allow a crime laboratory to appeal to the Judicial Branch Certification Commission any determination that the laboratory has committed professional negligence or professional misconduct, or otherwise violated a rule or order of the Commission.

**Background and Justification.** Under the revised rules, both forensic analyst licensees and crime laboratories subject to the Commission's jurisdiction may appeal disciplinary actions, findings of professional negligence or professional misconduct or violations of the code of professional responsibility, or other rules or orders of the Commission to the Judicial Branch Certification Commission. Before the passage of SB 991 and HB 3474, the Code of Criminal Procedure only provided an appeals process for *forensic analyst licensing disciplinary actions*. The

Commission also makes other non-substantive edits to its accreditation rules that provide clarity to the Commission's process for initiating accreditation-related actions and that correspond with the changes to its appeals process, including clarification that the Commission may suspend the accreditation of a crime laboratory. The rulemaking also provides that in investigations in which an investigative panel are deemed unnecessary, the Commission must instruct staff to conduct the investigation, a practice already in place by the Commission but clarified in the rule proposal. The rulemaking further clarifies the Commission's General Counsel may make recommendations to the Commission on the dismissal of certain complaints that fall outside of the Commission's jurisdiction. Finally, the rulemaking replaces the former process for stipulated agreements of appeals with a similar process for disposition by agreement. These amendments are necessary to reflect adoptions made by the Commission at its July 21, 2023, quarterly meeting at which the Commission voted to incorporate changes to its administrative rules responsive to the legislative changes.

**Fiscal Note.** Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the proposal is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rulemaking. The rules effectuate revisions to the Commission's appeals process responsive to legislative changes applicable to the Commission's enabling act, Code of Criminal Procedure, Article 38.01.

**Rural Impact Statement.** The Commission expects no adverse economic effect on rural communities as the rules do not impose any direct costs or fees on municipalities in rural communities.

**Public Benefit/Cost Note.** Ms. Tomlin has also determined that for each year of the first five years the proposal is in effect, the anticipated public benefit is a uniform and clear appeals process for crime laboratories and forensic analyst licensees subject to the Commission's jurisdiction. There is no economic cost to persons required to comply with the rules in response to the changes proposed by the rulemaking.

**Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses.** As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposal will not have an adverse economic effect on any small or micro-business because there are no anticipated economic costs to any person or crime laboratory. The revised rules provide a process for crime laboratories to appeal determinations of professional negligence or misconduct, violations of the code of professional responsibility or other rules or orders issued by the Commission to the Judicial Branch Certification Commission.

**The Takings Impact Assessment.** Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Government Growth Impact Statement.** Ms. Tomlin has determined that for the first five-year period, implementation of the proposal will have no government growth impact. Pursuant to

the analysis required by Government Code 2001.0221(b), 1) the proposed rules do not create or eliminate a government program; 2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed rules does not increase or decrease future legislative appropriations to the agency; 4) the proposed rules do not require a fee; 5) the proposed rules do not create a new regulation; 6) the proposed rules do not expand, limit, or repeal an existing regulation; 7) the proposed rules do not increase or decrease the number of individuals subject to the rule's applicability; and 8) the proposed rules have no effect on the state's economy.

**Environmental Rule Analysis.** The Commission has determined that the proposed rules are not brought with specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that the proposed rules are not a "major environmental rule," as defined in Government Code §2001.0225. As a result, the Commission asserts the preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

**Request for Public Comment.** The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by January 5, 2023, to be considered by the Commission.

## SUBCHAPTER A. ACCREDITATION

### 37 TAC §§651.3, 651.8, 651.11

**Statutory Authority.** The rules are proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

**Cross-reference to statute.** The proposal affects Tex. Code Crim. Proc. art. 38.01.

#### §651.3. *Recognition Process.*

The Commission must [shall] recognize an accrediting body under this section if the Commission determines that the accrediting body:

- (1) issues an accreditation that is accepted throughout the relevant scientific community and appropriate or available to a crime laboratory or other entity that conducts forensic analyses of physical evidence for use in criminal proceedings;
- (2) has established adequate accreditation criteria reasonably likely to facilitate [ensure] trustworthy forensic analysis;
- (3) requires a periodic competency audit or review of the personnel, facilities, and procedures employed by a crime laboratory or other entity to conduct a forensic analysis; and
- (4) withholds, grants, or withdraws its accreditation of a crime laboratory or other entity based on its own determination of a reasonable likelihood of meaningful corrective action for each deficiency noted during the periodic audit or review.

#### §651.8. *Full Commission Accreditation.*

(a) **Issuance and renewal.** The Commission may issue or renew accreditation under this section.

(b) **Application.** An applicant for full Commission accreditation must [shall] complete and submit to the Commission a current Laboratory Accreditation Form and attach copies of the following:

(1) an accreditation certificate and letter of notification of accreditation from a recognized accrediting body; and

(2) each document provided by the recognized accrediting body that identifies the discipline or category of analysis for which the laboratory has received accreditation and any limitation or restriction regarding that accreditation.

(c) **Additional information.** The Commission may require additional information to properly evaluate the application either as part of the original application or as supplemental information.

(d) **Reports to the Commission:**[;]

(1) If accredited by ANAB, a laboratory must [shall] provide the Commission with a copy of each accreditation assessment report, including but not limited to any on-site surveillance assessment report, off-site surveillance assessment report, scope extension assessment report, Federal Bureau of Investigation Quality Assurance Standards Audit for Forensic DNA Testing Laboratories report, ABFT Checklist report, as well as any management system's internal or external audit report, or any other reports required pursuant to compliance with accreditation by the laboratory within 5 days of completion or receipt of the report [Annual Accreditation Review Report]. If accredited by A2LA [another recognized accrediting body], a laboratory must [shall] provide the Commission with a copy of each equivalent report within 5 days of completion or receipt of the report [annual accreditation assessment].

(2) A laboratory must [shall] provide the Commission with a copy of all substantive communications [correspondence and each report or communication] between the laboratory and the recognized accrediting body. The laboratory must [shall] submit the copy to the Commission no later than 10 [30] days after the date the laboratory receives or transmits the correspondence, report, or communication.

(3) A laboratory that either voluntarily makes a decision to discontinue accreditation or is informed by its accrediting body of the accrediting body's decision to discontinue its accreditation in [discontinues] a specific forensic discipline or category of analysis[;]

[~~(A)~~] [~~if known beforehand,~~] must [should] submit written notification to the Commission no later than [at least 30 days before the effective date of the discontinuation; or]

[~~(B)~~] 5 business days after [if unknown beforehand, shall submit written notification to the Commission at least] the effective date of the discontinuation.

(e) **Federal forensic laboratories.** A federal forensic laboratory is deemed to be accredited by the Commission without application provided that the laboratory is accredited by a recognized accrediting body as provided under §651.4 of this subchapter (relating to List of Recognized Accrediting Bodies). A laboratory deemed accredited is not subject to the reporting requirements of this subchapter or the processes provided under Subchapter B of this chapter (relating to Complaints, Special Review, and Administrative Action).

#### §651.11. *Automatic Withdrawal or Suspension of Commission Accreditation.*

The Commission must [shall] automatically withdraw, suspend, or designate as inactive:

(1) the full Commission accreditation for a laboratory, discipline, or subdiscipline at the date and time that the recognized accrediting body withdraws, suspends, or designates as inactive the [its relevant] laboratory, discipline, or subdiscipline accreditation; or

(2) the provisional Commission accreditation for a laboratory, discipline, or subdiscipline at the date and time that the recognized

accrediting body notifies the Commission that the laboratory has withdrawn its application for the relevant laboratory, discipline, or subdiscipline accreditation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

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For further information, please call: (512) 784-0037



## SUBCHAPTER B. ACCREDITATION-RELATED ACTIONS [AND PROCEDURE FOR HEARING AND APPEAL]

### 37 TAC §§651.101 - 651.105

Statutory Authority. The rules are proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

#### §651.101. [Complaint] Process for Initiating Accreditation-Related Actions.

(a) [Question or complaint.] If the Commission learns of a fact or circumstance from a laboratory's recognized accrediting body, or receives a third-party complaint regarding the reliability of a laboratory, or the validity of a procedure, examination, or test conducted by the laboratory since the date of application for Commission accreditation, the Commission may take any of the following actions:

(1) coordinate with the laboratory's recognized accrediting body regarding information needed to address the issue(s) and any additional steps to facilitate resolution of the issue(s); [if a complaint has been filed, communicate further with the complainant to assess if further action is merited;]

(2) refer the matter to the laboratory's director for evaluation, audit, correction, or other appropriate action;

(3) initiate an audit under §651.102 of this title (relating to [Commission] Audit);

(4) issue a letter to the laboratory:

(A) requesting an immediate response and explanation of the matter;

(B) requiring the laboratory permit or arrange for an immediate inspection or audit of the matter; or

(C) explaining the action to be taken by the Commission in the matter;

(5) notify [or refer the matter to] a law enforcement agency or prosecutor with jurisdiction [and recommend appropriate criminal action]; and

[(6) refer the matter to a district judge and recommend appropriate action to convene a court of inquiry under Code of Criminal Procedure, Chapter 52; and]

(6) [(7)] any other actions deemed appropriate by the Commission.

[(b) Source and scope. A question or complaint may be raised by any source, including an individual, entity, or audit or an investigation by the Commission pursuant to §651.301(a)(3) or (b) of this chapter. The scope of any action taken or proposed by the Commission under this section shall be determined by the Commission, based on the nature of the question or complaint.]

(b) [(e)] Records. The Commission may maintain a public record of a laboratory's accreditation or approval status.

(1) The Commission may maintain in [on] the public record a notation of an action taken under this subchapter, including a question, complaint or audit.

(2) A question, complaint, or audit is public information when in the possession of the Commission, except as provided by the Code of Criminal Procedure Article 38.01 §10 or other applicable law.

*§651.102. [Commission] Audit of Quality Assurance Matters.*

(a) The Commission may, at any reasonable time, enter the premises or audit the records, reports, procedures, or other quality assurance matters of a crime laboratory that is accredited or seeking accreditation under this chapter.

(b) [(a)] If the Commission determines there is reasonable cause to believe a laboratory has failed to maintain quality assurance standards as [provided under the laboratory's specific policy] required by its recognized accrediting body [or the FBI DNA Quality Assurance Audit Document], or has otherwise engaged in acts or omissions [conduct] raising questions about the reliability or validity of the forensic analysis performed in the laboratory, or has violated any rule in this chapter, the Commission may take appropriate action, including one or more of the following:

(1) direct the laboratory to conduct an internal audit and implement appropriate corrective action;

(2) order the laboratory to obtain, at its own expense, an [a special] external audit by a subject matter expert [an auditor] approved by the Commission and the laboratory's recognized accrediting body and provide the expert's [that] report to the Commission within a reasonable time frame determined by the Commission;

[(3) notify the laboratory that further forensic analysis is not approved by Commission;]

(3) [(4)] initiate an evaluation of continued accreditation [under Subchapter A of this chapter (relating to Accreditation)]; or

(4) [(5)] any other actions deemed appropriate by the Commission.

(c) [(b)] An audit under this subchapter must [shall] comply with minimum standards for audits or inspections as established by the Commission.

[(e) The Commission may at any reasonable time enter the premises or audit the records, reports, procedures, or other quality assurance matters of a crime laboratory that is accredited or seeking accreditation under this chapter.]



(d) A laboratory, facility, or entity that must be accredited under Code of Criminal Procedure, Article 38.01 §4-d must [shall], as part of the accreditation process, agree to consent to any request for cooperation by the Commission that is made as part of the exercise of the Commission's duties under this subchapter.

(e) The Commission may require a laboratory, facility, or entity required to be accredited under Code of Criminal Procedure, Article 38.01 §4-d to pay any costs incurred for accrediting, inspecting, or auditing to ensure compliance with the accreditation process.

*§651.103. Corrective Action Plan.*

(a) If a laboratory is subject to an [a Commission] audit that resulted in a determination that corrective action is needed [an adverse finding by the Commission], the laboratory shall propose a corrective action plan and submit the plan to the Commission within 30 days from the date [that] the laboratory receives the subject matter expert's report[audit]. [If the laboratory has been notified that further forensic analysis is suspended, the plan should identify the date that the laboratory intends to reinstate approved forensic analysis.]

(b) A proposed corrective action plan under this section must fully address each adverse finding and identify appropriate corrective action.

(c) The Commission must [shall] promptly review a proposed corrective action plan and take the following action:

- (1) approve the corrective action plan; or
- (2) decline to approve the corrective plan and identify necessary revisions to the plan.

(d) The Commission must [shall] notify the laboratory in writing of approval or disapproval of the audit response. If not approved, the Commission must [shall] notify the laboratory of required corrective action, and the laboratory must [shall] implement the corrective action in a timely manner specified in the notification, except as provided by subsection (e) of this section.

(e) A laboratory must [shall] implement and complete an approved corrective action plan described in subsection (d) of this section, unless the laboratory demonstrates good cause for extension to the Commission before the due date for completion.

*§651.104. Withdrawal or Suspension of Commission Accreditation for Statute or Rule Violation.*

(a) Withdrawal or Suspension for Violation. The Commission by a majority vote of a quorum of Commission members may withdraw or suspend accreditation of [for] a laboratory, discipline, or subdiscipline if the laboratory:

- (1) violates article 38.01 of the Code of Criminal Procedure;
- (2) fails to respond meaningfully within five business days to a letter issued by the Commission under this subchapter;
- (3) fails to timely submit to an audit or other internal or external review required under this subchapter; [or]
- (4) fails to allow or substantially interferes with an inspection or audit conducted under this subchapter; or
- (5) violates the code of professional responsibility set forth in subchapter C, §651.219.

(b) Withdrawal or Suspension Pursuant to a Finding or Recommendation from an Audit or Commission Investigation. The Commission by a majority vote of a quorum of Commission members, may withdraw or suspend the accreditation for a laboratory, discipline, or

subdiscipline if the Commission determines the integrity, reliability, or validity of the laboratory, discipline, or forensic analysis can no longer be ensured pursuant to a finding or recommendation that resulted from:

(1) an audit by a subject matter expert conducted under §651.102 of this subchapter (relating to [Commission] Audit of Quality Assurance Matters); or

(2) any other [an] investigation by the Commission pursuant to this chapter or the Code of Criminal Procedure, Article 38.01 §4.

*§651.105. Reinstatement of Commission Accreditation.*

(a) An accredited laboratory that has had Commission accreditation withdrawn, suspended, or designated as inactive automatically under §651.11 of this title based on the actions of the laboratory's recognized accrediting body (relating to Automatic Withdrawal or Suspension of Commission Accreditation) may have its accreditation reinstated by the Commission, if the laboratory shows that it presently meets or exceeds the quality assurance standards required by the laboratory's recognized accrediting body.

(b) An accredited laboratory that has had Commission accreditation withdrawn or suspended under §651.104 of this title (relating to Withdrawal or Suspension of Commission Accreditation) may have its accreditation reinstated by the Commission. If the laboratory:

(1) shows that it presently meets or exceeds the quality assurance standards required by the laboratory's recognized accrediting body;

(2) demonstrates resolution or pending resolution of all non-conformities or other issues identified by the Commission; and

(3) the Commission or its Designee determines that issues identified with respect to the integrity, reliability, or validity of the forensic analysis, discipline, or subdiscipline for which accreditation was withdrawn or suspended were resolved by the laboratory to the extent possible.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

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**SUBCHAPTER B. ACCREDITATION-RELATED ACTIONS AND PROCEDURE FOR HEARING AND APPEAL**

**37 TAC §651.105, §651.106**

Statutory Authority. The repeals are proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

§651.105. *Procedure for Hearing on and Appeal of an Adverse Final Accreditation Decision or Final Accreditation Action by the Commission.*

§651.106. *Reinstatement of Commission Accreditation.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Texas Forensic Science Commission

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## SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

### 37 TAC §651.216

Statutory Authority. The rule is proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

§651.216. *Disciplinary Action.*

~~{(a) The Commission may take disciplinary action against a license holder or applicant for a license under certain limited circumstances as set forth in Article 38.01, Code of Criminal Procedure.}~~

~~(a) [(b)] Professional Misconduct Finding. On a determination by the Commission that a license holder or applicant for a license has committed professional misconduct in accordance with the definition provided in §651.202 of this subchapter (relating to Definitions) and under Article 38.01, Code of Criminal Procedure or violated Article 38.01, Code of Criminal Procedure, or a rule or order of the Commission, the Commission may:~~

- ~~(1) revoke or suspend the person's license;~~
- ~~(2) refuse to renew the person's license;~~
- ~~(3) reprimand the license holder; or~~
- ~~(4) deny the person a license.~~

~~(b) [(e)] Probation. The Commission may place on probation a person whose license is suspended. If a license suspension is probated, the Commission may require the license holder to:~~

- ~~(1) report regularly to the Commission on matters that are the basis of the probation; or~~
- ~~(2) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the Commission in those areas that are the basis of the probation.~~

~~(c) [(d)] Factors in Determining Possible Adverse Action.~~

~~(1) In determining the appropriate disciplinary action against a license holder or in assessing whether a prospective applicant must [shall] be granted a license, the Commission may consider the following factors:~~

- ~~(A) the seriousness of the violation;~~
- ~~[(B) the prevalence of misconduct by the individual;]~~
- ~~(B) [(C)] the individual's disciplinary [conduet] history[; including any investigative history by the Commission];~~
- ~~(C) [(D)] the harm or potential harm to the laboratory or criminal justice system as a whole;~~
- ~~(D) [(E)] attempted concealment of the act by the individual;~~
- ~~(E) [(F)] any other relevant factors.~~

~~(2) The Commission considers the following factors in determining whether a less severe or less restrictive disciplinary action is warranted:~~

- ~~(A) candor in addressing the violation, including self-reported and voluntary admissions of the misconduct or violation;~~
- ~~(B) acknowledgement of wrongdoing and willingness to cooperate with the Commission;~~
- ~~(C) changes made by the individual to ensure compliance and prevent future misconduct;~~
- ~~(D) rehabilitative potential;~~
- ~~(E) other relevant circumstances reducing the seriousness of the misconduct; or~~
- ~~(F) other relevant circumstances lessening responsibility for the misconduct.~~

~~(3) The license holder or license applicant will [shall] have the burden to present evidence regarding any mitigating factors that may apply.~~

~~(4) This rule will [shall] not be construed to deny any licensee or applicant subject to disciplinary action by the Commission the right to introduce mitigating evidence in a hearing before the Judicial Branch Certification Commission. This rule also will [shall] not be construed to deny the Texas Forensic Science Commission the right to introduce any evidence supporting any of the factors described above in a hearing before the Judicial Branch Certification Commission.~~

~~(d) A license holder has a right to notice and appeal to the Judicial Branch Certification Commission as described in Subchapter E of this chapter.~~

~~[(e) Disciplinary Proceedings by the Judicial Branch Certification Commission. The Commission shall give written notice by certified mail of a determination described by subsection (a) of this section to a license holder who is the subject of the determination. The notice must:]~~

- ~~[(1) include a brief summary of the alleged misconduct or violation;]~~
- ~~[(2) state the disciplinary action taken by the Commission; and]~~
- ~~[(3) inform the license holder of the license holder's right to a hearing before the Judicial Branch Certification Commission on the occurrence of the misconduct or violation, the imposition of the disciplinary action, or both. ]~~

[(f) Hearing Request. Not later than the 20th day after the date the license holder receives the notice under subsection (d) of this section, the license holder may request a hearing by submitting a written request to the Judicial Branch Certification Commission. If the license holder fails to timely submit a request, the Commission's disciplinary action becomes final and is not subject to review by the Judicial Branch Certification Commission.]

[(g) Judicial Branch Certification Commission Hearing. If the license holder requests a hearing, the Judicial Branch Certification Commission shall conduct a hearing to determine whether there is substantial evidence to support the determination under subsection (a) of this section that the license holder committed professional misconduct or violated this subchapter or a Commission rule or order under this subchapter. If the Judicial Branch Certification Commission upholds the determination, the Judicial Branch Certification Commission shall determine the type of disciplinary action to be taken. The Judicial Branch Certification Commission shall conduct the hearing in accordance with the procedures provided by Subchapter B, Chapter 153, Government Code, as applicable, and the rules of the Judicial Branch Certification Commission.]

[(h) License Status.]

[(1) If a license holder makes timely and sufficient application for the renewal of a license, the existing license does not expire until the application has been finally determined by the Commission. If the application is denied or the terms of the new license are limited, the existing license does not expire until the last day for seeking review of a Commission decision or a later date fixed by order of the Judicial Branch Certification Commission or Administrative Regional Presiding Judges.]

[(2) A revocation, suspension, annulment, or withdrawal of a license is not effective unless, before institution of Commission proceedings:]

[(A) the Commission gives notice by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action; and]

[(B) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license.]

[(3) A Forensic Analyst License remains valid unless it expires without timely application for renewal, is amended, revoked, suspended, annulled or withdrawn, or the denial of a renewal application becomes final. The term or duration of a license is tolled during the period the license is subjected to review by the Judicial Branch Certification Commission or Administrative Regional Presiding Judges. However, the term or duration of a license is not tolled if, during review by the Judicial Branch Certification Commission or Administrative Regional Presiding Judges, the licensee engages in the activity for which the license was issued.]

[(i) Interpreters for Deaf or Hearing Impaired Parties and Witnesses.]

[(1) In an appeal of a disciplinary action by the Commission, the Commission shall provide an interpreter whose qualifications are approved by the Texas Department of Assistive and Rehabilitative Services to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.]

[(2) In this section, "deaf or hearing impaired" means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others.]

[(j) Informal Disposition of Disciplinary Action Appeals. Unless precluded by law, an informal disposition may be made of an appeal of a disciplinary action by the Commission by:]

- [(1) stipulation;]
- [(2) agreed settlement;]
- [(3) consent order; or]
- [(4) default.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

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For further information, please call: (512) 784-0037



## SUBCHAPTER D. PROCEDURE FOR PROCESSING COMPLAINTS AND LABORATORY SELF-DISCLOSURES

### 37 TAC §§651.305 - 651.308

Statutory Authority. The rules are proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

§651.305. *Complaint and Self-disclosure Screening.*

(a) Complaints and self-disclosures will [shall] be considered initially through the CSC [CDS&C]. The chair of the CSC [CDS&C] must [shall] present the complaints and disclosures before the Commission with a recommendation for disposition. The CSC [CDS&C] may recommend the following dispositions:

- (1) dismiss the complaint or disclosure;
- (2) accept the complaint or disclosure [and submit for action by an Investigation Panel];
- (3) recommend the Commission use its discretion to review the matter for educational purposes;
- (4) recommend no further action by the laboratory is necessary at this time; or
- (5) take such other action as appropriate.

(b) The CSC [CDS&C] may assign staff to collect preliminary information related to a complaint or self-disclosure, including research into the status of any underlying criminal or civil case and whether the complaint or self-disclosure addresses a forensic analysis subject to investigation by the Commission.

(c) An actor named in a complaint or self-disclosure and the involved accredited laboratory, facility or entity may be given an opportunity but is not required to provide a written reply, offering any reasons for or against accepting the complaint or disclosure for investigation.

(d) The following factors may be considered when a complaint or self-disclosure is screened by the CSC [~~CDSC~~] and considered by the Commission:

- (1) whether the Commission has investigative jurisdiction;
- ~~[(2) the availability of the person who was the defendant in the criminal action associated with the forensic evidence;]~~
- (2) ~~[(3)]~~ the availability of any actor who conducted any part of the forensic analysis;
- (3) ~~[(4)]~~ the length of time between the forensic analysis and the complaint or disclosure;
- (4) ~~[(5)]~~ the availability of records in connection with the forensic analysis and any associated litigation;
- (5) ~~[(6)]~~ the status of any criminal case or civil litigation associated with the forensic analysis;
- (6) ~~[(7)]~~ the potential for additional relevant forensic analysis;
- (7) ~~[(8)]~~ any other factor that would enhance or detract from a complete and accurate investigation of the forensic analysis and any alleged negligence or misconduct;
- (8) ~~[(9)]~~ the availability of funds to complete an investigation; and
- (9) ~~[(10)]~~ the opportunity for the investigation and report to educate the forensic science community, advance the standards and training associated with such a forensic analysis or identify legislative recommendations for strengthening a field of forensic science.

(e) Upon reaching a recommended initial disposition for a complaint or self-disclosure, the CSC [~~CDSC~~] shall provide a summary of the recommendation to the Commission's presiding officer for presentation to a quorum of Commissioners.

(f) Following action by the Commission [a quorum of Commissioners] regarding the disposition of any complaint or self-disclosure, the Commission must [shall] notify the complainant, actor involved in the forensic analysis and the laboratory, facility, or entity of the disposition.

(g) To ensure thorough consideration of all complaints and self-disclosures, complainants and laboratories submitting self-disclosures should make such submissions at least fifteen (15) business days before a particular quarterly Commission meeting to have the complaint or self-disclosure considered at that meeting. The Commission reserves the right to consider any complaint or disclosure that does not meet the 15-day deadline at the next quarterly meeting.

(h) A Commission member may, by formal motion, request that the full Commission reconsider a dismissed complaint or disclosure if the member identifies new evidence of professional negligence or professional misconduct that was not previously considered by the Commission. The new evidence may be derived from either:

- (1) information in the existing record that the complainant believes was not considered by the Commission previously; or

(2) new information brought to the Commission's attention that was not previously considered by the Commission.

(i) A motion described under subsection (h) of this section may be made only if the Commissioner believes in good faith that the information will have a material impact on the Commission's analysis of the complaint or disclosure pursuant to its screening criteria.

(j) After considering the member's motion, the Commission must [shall] vote to:

- (1) affirm the original decision to dismiss the complaint or self-disclosure; or
- (2) re-open the complaint or disclosure.

(k) The Commission must [shall] notify the complainant and the appropriate laboratory, facility or entity in writing of the results of the Commission's vote under subsection (h) of this section.

(l) The Commission must [shall] conduct an appropriate investigation of a complaint or disclosure reopened under subsection (j)(2) of this section.

*§651.306. Dismissal for Lack of Jurisdiction.*

(a) Autopsy-related complaints. The Commission's General Counsel may make a recommendation that the Commission dismiss complaints related to the portion of an autopsy conducted by a medical examiner or licensed physician as falling outside the Commission's statutory jurisdiction [~~without bringing the complaint before the Complaint Screening Committee or a quorum of Commissioners for consideration~~].

(b) DNA mixture complaints. The General Counsel may recommend that the Commission refer complaints and requests involving DNA mixtures to the statewide DNA Mixture Triage Team or other responsible entity [~~without bringing the complaints and requests before the Complaint Screening Committee or a quorum of Commissioners for consideration~~]. The General Counsel must [shall] provide the total number of complaints and inquiries referred to the statewide DNA Mixture Triage Team to the Commission at each quarterly meeting during which such referrals are made.

(c) Non-forensic analysis complaints. The General Counsel may recommend that the Commission dismiss the following categories of complaints [~~without bringing the complaints before the Complaint Screening Committee or a quorum of Commissioners for consideration~~]:

(1) those the General Counsel does not consider to include a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action;

(2) those the General Counsel believes constitute a presumptive test performed for the purpose of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or

(3) those the General Counsel believes constitute an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of the evidence to a criminal action.

(d) Right to re-open. Any Commission member has a right to reopen cases dismissed pursuant to subsections (a) - (c) of this section. Commission staff must present a summary ~~[maintain a list] of complaints dismissed under this subsection to the Commission for approval by a majority of a quorum of commissioners at each quarterly meeting [a quorum of commissioners].~~

*§651.307. Investigative Panels.*

(a) Panel procedure. After ~~the Commission votes [a quorum of Commissioners vote]~~ to conduct an investigation, for complex investigations, the Commission's presiding officer may ~~[shall]~~ nominate at least three members of the Commission to an Investigation Panel ("Panel") subject to the approval of a majority of a quorum of Commissioners. ~~[; and the Investigation Panel shall elect one of the members as chair of the Panel].~~

(b) Panel investigation. ~~[A Panel shall coordinate any investigation voted upon by the Commission.]~~ For investigations in which a Panel is created, the ~~[; The]~~ Panel initially must ~~[shall]~~ specify the focus of the investigation, communicate with the entities or individuals involved in the investigation, and collect any appropriate records. The Panel also may initiate contact with any governmental agency, individual, or entity to inquire about assistance in a full investigation. The Panel may:

- (1) collect and review appropriate documents as necessary;
- (2) conduct interviews with appropriate individuals;
- (3) issue notification of results or refer the case to a governmental or other relevant agency or accrediting body, pursuant to a written communication, memorandum of understanding, or other appropriate agreement between the agencies;
- (4) contract with a subject matter expert if needed; or
- (5) take such other action as appropriate.

(c) ~~All Panel meetings [Limitation on panel meetings held by telephone. Commission Panels may meet by telephone for information-gathering purposes only. However, all deliberative discussions by Panels] must [shall] be held in in-person meetings or by videoconference, in accordance with the Texas Open Meetings Act.~~

(d) Investigations Facilitated by Staff. For investigations in which an Investigative Panel is deemed unnecessary, the Commission must instruct staff to conduct the investigation, which must include the same activities described in §651.307(b).

(e) ~~[(d)]~~ Referral of investigative cases to the Office of Capital and Forensic Writs. The Commission may review and refer cases that are the subject of an investigation under §651.301(a) or (b) of this subchapter to the Office of Capital and Forensic Writs in accordance with Section 78.054(b), Government Code.

(1) General procedure for referral to the Office of Capital and Forensic Writs. A majority of a quorum of Commissioners may recommend referral of a case accepted for investigation by the Commission under §651.301(a) or (b) of this subchapter (relating to Purpose) to the Office of Capital and Forensic Writs.

(2) Written referral and corresponding documents. The Commission Presiding Officer or Designee must ~~[shall]~~ provide each recommended case referral in writing, including all documents in the Commission's possession related to the case and any investigative report issued, to the Office of Capital and Forensic Writs Director or Designee for determination regarding potential legal representation no later than ten (10) business days from the date the Commission recommends referral.

*§651.308. Investigative Reports.*

(a) Written report requirements. If the Commission approves a full investigation, the Panel or Staff shall coordinate the completion of the investigation and draft a written report, including a recommendation for final disposition to the Commission. ~~[a quorum of Commissioners. The Panel may delegate the initial draft of the report to Commission staff.].~~ An investigative report or recommendation is not final and does not represent the conclusions of the Commission until a final report is adopted and issued by a majority of a ~~[the]~~ quorum of Commissioners. ~~[Following consideration of the recommendation for final disposition from the Investigation Panel, the] The Commission must [shall] issue a report using the criteria set forth in Article 38.01, Code of Criminal Procedure.~~

(b) Investigations of accredited crime laboratories and accredited forensic disciplines only. For investigations involving accredited crime laboratories and accredited forensic disciplines, the Commission may:

- (1) find there is insufficient credible information to conclude that professional negligence or professional misconduct occurred in the forensic analysis;
- (2) find there is sufficient evidence to conclude that professional negligence or professional misconduct occurred in the forensic analysis;
- (3) require retrospective re-examination of evidence as appropriate;
- (4) require corrective action and follow-up as appropriate.

(c) All Commission investigations. For all Commission investigations, regardless of whether they involve accredited crime laboratories and accredited forensic disciplines, the Commission's report may:

- (1) make observations regarding the integrity and reliability of the forensic analysis conducted;
- (2) identify applicable best practices; and
- (3) make other relevant recommendations.

(d) Any finding by the Commission is not a comment upon the guilt or innocence of any individual and is not necessarily a basis for relief in litigation or in any other forum. Reports of the Commission are not admissible in a civil or criminal action.

(e) The Commission must ~~[shall]~~ make the final report available to the public on the Commission's website and provide a copy, as applicable, to the:

- (1) prosecutor, judge, defendant and defense attorney involved in the underlying criminal case, if any;
- (2) Board of Pardons and Paroles;
- (3) Director of the Department of Public Safety;
- (4) Governor;
- (5) Lieutenant Governor;
- (6) Speaker of the House of Representatives;
- (7) complainant; and
- (8) actor(s) and accredited laboratory, facility, or entity involved in any part of the forensic analysis.

(f) Open records limitation. Pursuant to Code of Criminal Procedure, Article 38.01 §10, information that is filed as part of an allegation of professional misconduct or professional negligence or that is obtained during an investigation of an allegation of professional mis-

conduct or professional negligence is not subject to release until the conclusion of an investigation by the Commission.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

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For further information, please call: (512) 784-0037



### 37 TAC §651.309

Statutory Authority. The repeal is proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

*§651.309. Procedure for Hearing on and Appeal of a Final Investigative Report by the Commission Regarding an Individual Not Licensed Under this Chapter or an Entity that Performs Forensic Analysis as the Term is Defined in Article 38.01, Code of Criminal Procedure.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## SUBCHAPTER E. NOTICE TO AND APPEALS BY LICENSE HOLDERS AND CRIME LABORATORIES

### 37 TAC §651.402

Statutory Authority. The rule is proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to investigate and regulate crime laboratories and forensic analysts under Article 38.01 §§ 4, 4-a, and 4-d. It also conforms to changes made by SB 991 and HB 3474.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

### §651.402. Notice and Hearing Request.

(a) The Commission must give written notice by certified mail to a license holder or crime laboratory that is the subject of any disciplinary action, finding of professional negligence or professional misconduct, violation of the code of professional responsibility, or violation of another rule or order of the Commission. The notice must:

(1) include a brief summary of the professional negligence, professional misconduct, violation of the code of professional responsibility, or other rule or statutory violation;

(2) state the disciplinary action taken by the Commission;  
and

(3) inform the license holder or crime laboratory of their right to a hearing before the Judicial Branch Certification Commission on the occurrence of the professional negligence or misconduct or rule violation, or the imposition of a disciplinary action.

(b) for purposes of this subchapter, "disciplinary action" against a license holder or crime laboratory includes any of the following actions: revocation or suspension of an individual's license or a crime laboratory's accreditation; refusal to renew an individual's license or a crime laboratory's accreditation; or formal reprimand of a license holder or crime laboratory.

(c) Hearing Request. Not later than the 20th day after the date the license holder or crime laboratory receives the notice under subsection (a) of this section, the license holder or crime laboratory may accept the Commission determination or disciplinary action or request a hearing by submitting a written request to the Judicial Branch Certification Commission. If the license holder or crime laboratory fails to timely submit a request, the Commission's action becomes final and is not subject to review by the Judicial Branch Certification Commission. Hearing requests may be submitted via email to [info@fsc.texas.gov](mailto:info@fsc.texas.gov).

(d) Judicial Branch Certification Commission Hearing. If the license holder or crime laboratory requests a hearing, the Judicial Branch Certification Commission must conduct a hearing to determine whether there is substantial evidence to support the determination under subsection (a) of this section that the negligence, misconduct, or violation occurred. If the Judicial Branch Certification Commission upholds the determination, the Judicial Branch Certification Commission shall determine the type of disciplinary action to be taken. The Judicial Branch Certification Commission must conduct the hearing and any appeal of that Commission's decision, in accordance with the procedures provided by Subchapter B, Chapter 153, Government Code, as applicable, and the rules of the Judicial Branch Certification Commission.

(e) Disposition by Agreement. Any disciplinary matter may be disposed of by agreement, unless precluded by law. The agreement must be in writing and may be in the form of a stipulation, a settlement agreement, or a consent order. The Commission may approve or reject the agreement. If the Commission rejects the agreement, the respondent has a right to a hearing on the disciplinary matter before the Judicial Branch Certification Commission per subsection (d) of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

### SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

#### 37 TAC §§651.207 - 651.209

The Texas Forensic Science Commission ("Commission") proposes amendments to 37 Texas Administrative Code Chapter §651.207 Forensic Analyst Licensing Requirements, Including License Term, Fee, and Procedure for Denial of Application and Reconsideration, §651.208 Forensic Analyst and Technician License Renewal, and §651.209 Forensic Analyst and Forensic Technician License Expiration and Reinstatement. The amendments change the Commission's forensic analyst and forensic technician license expiration dates to expire on the licensee's birthdate.

**Background and Justification.** Under the revised rules, forensic analyst and forensic technician licenses will expire on the last day of the licensee's birth month after each two-year license cycle, rather than every two years from their initial application. Prior to these changes and the inception of the Commission's forensic analyst licensing program on January 1, 2019, a majority of the Commission's licenses expired at the same time in the even-numbered years in the Fall, placing a heavy administrative burden both on Commission staff and licensees waiting on their licenses to be renewed at the same time. The proposed changes also include a monthly proration of the required fees and continuing forensic education requirements for current and first-time license applicants depending on the number of months in the applicant's first license term. The proposed changes also require all new license applicants to complete the Commission's Mandatory Legal and Professional Responsibility Course. These amendments are necessary to reflect adoptions made by the Commission at its July 21, 2023, quarterly meeting at which the Commission voted to transition to licenses expiring on licensees' birthdates to ease the administrative burden on Commission staff and to require all new license applicants to complete the Commission's Mandatory Legal and Professional Responsibility Course.

**Fiscal Note.** Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the new rules are in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rule amendments. The amendments change the expiration dates of forensic analyst and forensic technician licensees. The proposal includes a provision addressing the proration of licensing fees for renewing and new applicants for licensure in accordance with the new birthdate expiration schedule, so that the Commission incurs no loss or increase in revenue during the transition to birthdate expirations.

**Rural Impact Statement.** The Commission expects no adverse economic effect on rural communities as the proposal does not impose any direct costs or fees on municipalities in rural communities.

**Public Benefit/Cost Note.** Ms. Tomlin has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit is a more efficient renewal process for forensic analysts and forensic technicians in the State of Texas. There is no economic cost to persons required to comply with the rule in response to the changes proposed by the rulemaking.

**Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses.** As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or crime laboratory. The revised rules provide a new expiration policy for forensic analysts and forensic technicians in the State of Texas so that licenses expire on the licensees' birthdates rather than two years from the date of their initial licensure.

**The Takings Impact Assessment.** Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Government Growth Impact Statement.** Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact. Pursuant to the analysis required by Government Code 2001.221(b): 1) the proposed rules do not create or eliminate a government program; 2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed rules does not increase or decrease future legislative appropriations to the agency; 4) the proposed rules requires payment of prorated licensing fees by current licensees adjusted to equal the amount a forensic analyst or technician would pay over a four-year period for renewal of their forensic analyst or forensic technician license under the current license renewal fees; 5) the proposed rules do not create a new regulation; 6) the proposed rules do not expand, limit, or repeal an existing regulation; 7) the proposed rules do not increase or decrease the number of individuals subject to the rule's applicability; and 8) the proposed rules have no effect on the state's economy.

**Environmental Rule Analysis.** The Commission has determined that the proposed rules are not brought with specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that the proposed rules are not a "major environmental rule," as defined in Government Code §2001.0225. As a result, the Commission asserts the preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

**Request for Public Comment.** The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by January 5, 2023, to be considered by the Commission.

Statutory Authority. The rules are proposed under the general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 §§ 3-a and its authority to license forensic analysts under 4-a(b).

Cross reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01.

*§651.207. Forensic Analyst and Forensic Technician Licensing Requirements, Including Initial License Term[;] and Fee, Minimum Education and Coursework, General Forensic Examination, Proficiency Monitoring and Mandatory Legal and Professional Responsibility Training [and Procedure for Denial of Application and Reconsideration].*

(a) Issuance. The Commission may issue an individual's Forensic Analyst or Forensic Technician License under this section.

(b) Initial License Term. A Forensic Analyst or Forensic Technician license holder must renew the license holder's license on the last day of the license holder's birth month in the second year after issuance of the initial license.

(c) [(b)] Application. Before being issued a Forensic Analyst or Forensic Technician License, an applicant must [shall]:

(1) demonstrate that he or she meets the definition of Forensic Analyst or Forensic Technician set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians [Screeners] for the twenty-four months of the Initial License Term. If the Analyst or Technician's Initial License Term under subsection (b) of this section exceeds twenty-four months, the Analyst or Technician shall pay an additional prorated amount of \$8.33 per month (for Analysts) and \$5.42 per month (for Technicians) for each month exceeding two years. If the Analyst or Technician's Initial License Term under subsection (b) of this section is less than twenty-four months, the Analyst or Technician shall pay a prorated amount of \$8.33 per month (for Analysts) and \$5.42 per month (for Technicians) for each month in the Initial License Term;

[(B) Biennial renewal fee of \$200 for Analyst and \$130 for Technicians/Screeners.]

(B) [(C)] Temporary License fee of \$100;

(C) [(D)] Provisional License fee of \$110 for Analysts and \$75 for Technicians[;] An applicant who is granted a provisional license and has paid the required fee will not be required to pay an additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted;

(D) [(E)] License Reinstatement fee of \$220;

(E) [(F)] De Minimis License fee of \$200 per ten (10) licenses;

(F) [(G)] Uncommon Forensic Analysis License fee of \$200 per ten (10) licenses; and/or

(G) [(H)] Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts or voluntarily taking the exam under the Unaccredited Discipline Exception described in subsection (g)(5)(C) of this section;

(4) provide accurate and current address and employment information to the Commission and update the Commission within five

(5) business days of any change in address or change of employment. Licensees are required to provide a home address, email address, and employer name and address on an application for a license; and

(5) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(d) [(e)] Minimum Education Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) Seized Drugs Technician. An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) Toxicology (Toxicology Analyst (Alcohol Only, Non-interpretive), Toxicology Analyst (General, Non-interpretive), Toxicologist (Interpretive)). An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) Toxicology Technician. An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) Forensic Biology (DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician). An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) Firearm/Toolmark Analyst. An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) Firearm/Toolmark Technician. An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(9) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(10) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(11) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in subsection (f) or (j) of this section applies.

(e) [(d)] Specific Coursework Requirements.



(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Toxicology. An applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the alcohol analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry and two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicologist (Interpretive). A toxicologist who provides interpretive opinions regarding human performance related to the results of toxicological tests (alcohol and general) for court or investigative purposes must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science (Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in subparagraphs (A) - (C) of this paragraph must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing effective September 1, 2011. An applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(4) Firearm/Toolmark Analyst. An applicant must have a three-semester credit hour (or equivalent) college-level statistics course

from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all materials (trace) license applicants must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in materials (trace) limited to impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement.

(6) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(f) [(e)] Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(g) [(f)] Waiver of Specific Coursework Requirements and/or Minimum Education Requirements for Lateral Hires, Promoting Analysts and Current Employees. Specific coursework requirements and minimum education requirements are considered an integral part of the licensing process; all applicants are expected to meet the requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements or minimum education requirements. The Commission Director or Designee may waive one or more of the specific coursework requirements or minimum education requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

- (A) The American Board of Forensic Toxicology;
- (B) The American Board of Clinical Chemistry;
- (C) The American Board of Criminalistics;
- (D) The International Association for Identification; or

(E) The Association of Firearm and Toolmark Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.

(4) An applicant must request a waiver of specific coursework requirements and/or minimum education requirements at the time the application is filed.

(5) An applicant requesting a waiver from specific coursework requirements and/or minimum education requirements shall file any additional information needed to substantiate the eligibility for the waiver with the application. The Commission Director or Designee shall review all elements of the application to evaluate waiver request(s) and shall grant a waiver(s) to qualified applicants.

(h) [(g)] General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Analyst License must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam or Modified General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their laboratory director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Expiration of Provisional License if Special Dispensation Exam Unsuccessful. If the 90-day period during which special dispensation is granted expires before the applicant successfully completes the exam requirement, the applicant's provisional license expires.

(2) Modified General Forensic Analyst Licensing Exam. Technicians in any discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(3) Examination Requirements for Promoting Technicians. If a technician passes the modified General Forensic Analyst Licensing Exam and later seeks a full Forensic Analyst License, the applicant must complete the portions of the General Forensic Analyst Exam that were not tested on the modified exam.

(4) Credit for Pilot Exam. If an individual passes the Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this section should he or she later become subject to the licensing requirements and eligible for a Forensic Analyst License.

(5) Eligibility for General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam.

(A) Candidates for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam must be employees of a crime laboratory accredited under Texas law to be eligible to take the exam.

(B) Student Examinee Exception. A student is eligible for the General Forensic Analyst Licensing Exam one time if the student:

(i) is currently enrolled in an accredited university as defined in §651.202 of this subchapter (relating to Definitions);

(ii) has completed sufficient coursework to be within 24 semester hours of completing the requirements for graduation at the accredited university at which the student is enrolled; and

(iii) designates an official university representative who will proctor and administer the exam at the university for the student.

(C) Crime Laboratory Management and Unaccredited Forensic Discipline Exception. An Employee of a crime laboratory accredited under Texas law who is either part of the crime laboratory's administration or management team or authorized for independent case-work in a forensic discipline listed below is eligible for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam:

(i) forensic anthropology;

(ii) the location, identification, collection or preservation of physical evidence at a crime scene;

(iii) crime scene reconstruction;

(iv) latent print processing or examination;

(v) digital evidence (including computer forensics, audio, or imaging);

(vi) breath specimen testing under Transportation Code, Chapter 724, limited to analysts who perform breath alcohol calibrations; and

(vii) document examination, including document authentication, physical comparison, and product determination.

(i) [(h)] Proficiency Monitoring Requirement.

(1) An applicant must demonstrate participation in the employing laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements of the laboratory's accrediting

body as of the date of the analyst's application, must be provided on the Proficiency Monitoring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework by the laboratory or employing entity.

~~[(t) License Term and Fee.]~~

~~[(1) A Forensic Analyst License shall expire two years from the date the applicant is granted a license.]~~

~~[(2) Application Fee. An applicant or licensee shall pay the following fee(s) as applicable:]~~

~~[(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Screeners:]~~

~~[(B) Biennial renewal fee of \$200 for Analysts and \$130 for Technicians/Screeners:]~~

~~[(C) Provisional License fee of \$110 for Analysts and \$75 for Technicians/Screeners:]~~

~~[(D) License Reinstatement fee of \$220:]~~

~~[(E) De Minimis License fee of \$200 per ten (10) licenses; or]~~

~~[(F) Uncommon Forensic Analysis License fee of \$200 per ten (10) licenses.]~~

~~[(3) An applicant who is granted a provisional license and has paid the required fee will not be required to pay an additional initial application fee if the provisional status is removed within one year of the date the provisional license is granted.]~~

~~[(j) Mandatory Legal and Professional Responsibility Course:~~

~~[(1) All Forensic Analyst and Forensic Technician License applicants must complete the current Commission-sponsored mandatory legal and professional responsibility update at the time of their application or demonstrate that they have taken the training within the 12-month period preceding the date of their application.]~~

~~[(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.]~~

~~[(j) Procedure for Denial of Application and Reconsideration.]~~

~~[(1) Application Review. The Commission Director or Designee must review each completed application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter.]~~

~~[(2) Denial of Application. The Commission, through its Director or Designee, may deny an application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.]~~

~~[(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the application.]~~

~~[(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about~~

~~which reconsideration is requested, and set forth the grounds for the request for reconsideration.]~~

~~[(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.]~~

~~[(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.]~~

~~[(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.]~~

~~§651.208. Forensic Analyst and Forensic Technician License Renewal.~~

~~(a) Timing of Application for Renewal. The Commission may renew an individual's Forensic Analyst or Forensic Technician License up to 60 days before the expiration of the individual's license term.~~

~~(b) Renewal Term. The renewal date of a Forensic Analyst or Forensic Technician License will be every two years on the last day of the license holder's birth month [expires two years from the date the initial application was granted].~~

~~(c) Renewal Fees. The biennial renewal fee is \$200 for Forensic Analysts and \$130 for Forensic Technicians. Fees for Forensic Analysts and Forensic Technicians seeking to renew their licenses between January 1, 2024 and December 31, 2025, will be pro-rated on a monthly basis depending upon the birth month of the renewing license holder and the number of months in the renewal term as describe in subsection (b) of this section. The pro-rated fee will be assessed at \$8.33 per month (for Forensic Analysts) and \$5.42 per month (for Forensic Technicians).~~

~~[(e) Effective date. A renewed Forensic Analyst or Forensic Technician License takes effect on the date the licensee's previous license expires.]~~

~~(d) Application. An applicant for a Forensic Analyst or Forensic Technician License renewal shall complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Renewal Application provided by the Commission, pay the required fee, attach documentation of fulfillment of Continuing Forensic Education and other requirements set forth in this section.~~

~~(e) Proficiency Monitoring Certification Form for Renewal Applicants Employed by an Accredited Laboratory. An applicant for a Forensic Analyst or Forensic Technician License renewal must provide an updated copy of the Commission's Proficiency Monitoring Certification form demonstrating the applicant participates in the laboratory's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's requirements as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties. The form must be:~~

~~(1) signed by the licensee's authorized laboratory representative; and~~

~~(2) designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized or currently participating in a training program to become authorized to perform supervised or independent forensic casework.~~

(f) Proficiency Monitoring Certification Form for Renewal Applicants Not Employed at an Accredited Laboratory or at an Accredited Laboratory in a Forensic Discipline Not Covered by the Scope of the Laboratory's Accreditation.

(1) An applicant for a Forensic Analyst or Forensic Technician license renewal who is employed by an entity other than an accredited laboratory or performs a forensic examination or test at an accredited laboratory in a forensic discipline not covered by the scope of the laboratory's accreditation must provide:

(A) an updated copy of the Commission's Proficiency Monitoring Certification form demonstrating the applicant participates in the laboratory or employing entity's process for intra-laboratory comparison, inter-laboratory comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring as applicable to the Forensic Analyst or Forensic Technician's specific forensic discipline and job duties:

(i) signed by the licensee's authorized laboratory representative; and

(ii) designating the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent forensic casework;

(B) written proof of the Forensic Science Commission's approval of the laboratory or employing entity's proficiency monitoring activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties; and

(C) written documentation of performance in conformance with expected consensus results in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved proficiency monitoring activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties.

(g) Continuing Forensic Education Including Mandatory Legal and Professional Responsibility [Update]:

(1) Forensic Analyst and Forensic Technician Licensees must complete a Commission-sponsored mandatory legal and professional responsibility update by the expiration of each two-year license cycle as provided by the Commission. Forensic Technicians are not required to complete any other continuing forensic education requirements listed in this section.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

(3) All forensic analysts shall be required to satisfy the following Continuing Forensic Education Requirements by the expiration of each two-year license cycle:

(A) Completion of thirty-two (32) continuing forensic education hours per 2-year license cycle.

(B) Sixteen (16) hours of the thirty-two (32) must be discipline-specific training, peer-reviewed journal articles, and/or conference education hours. If a licensee is licensed in multiple forensic disciplines, at least eight (8) hours of discipline-specific training in each forensic discipline are required, subject to the provisions set forth in subsection (f) of this section.

(C) The remaining sixteen (16) hours may be general forensic training, peer-reviewed journal articles, and/or conference education hours that include hours credited for the mandatory legal and professional responsibility training.

(4) Continuing forensic education programs will be offered and/or designated by the Commission and will consist of independent, online trainings, readings, and participation in recognized state, regional, and national forensic conferences and workshops.

(5) Approved continuing forensic education hours are applied for credit on the date the program and/or training is delivered.

(h) Timeline for Exemption from Supplemental Continuing Forensic Education Requirements. Where a current licensee adds a forensic discipline to the scope of his or her license, the following continuing forensic education requirements apply for the supplemental forensic discipline:

(1) If the supplemental forensic discipline is added less than six (6) months prior to the expiration of the analyst's current license, no additional discipline-specific training is required for the supplemental forensic discipline.

(2) If the supplemental forensic discipline is added six (6) months or more but less than eighteen (18) months prior to the expiration of the analyst's current license, four (4) additional discipline-specific training hours are required for the supplemental forensic discipline.

(3) If the supplemental forensic discipline is added eighteen (18) months or more prior to the expiration of the analyst's current license, eight (8) additional discipline-specific training hours are required for the supplemental forensic discipline.

(i) If an applicant fails to fulfill any or all of the requirements pertaining to license renewal, continuing forensic education and the mandatory legal and professional responsibility update, the applicant may apply to the Commission for special dispensation on a form to be provided on the Commission's website. Upon approval by the Commission, the applicant may be allowed an extension of time to fulfill remaining continuing forensic education requirements.

(j) Temporary Exception to Continuing Forensic Education Requirements During January 2024 to December 2026 Transition from Application to Birthdate-Based Renewal Terms. For any licensee who has less than two years to complete the continuing forensic education requirements in (g) of this section as a result of the transition from application-based renewal to birthdate-based renewal, the number of required continuing education hours in (g)(3)(A) (B) for license renewal shall be pro-rated based on the number of months in the renewal term.

(k) Subsections (j) and (k) of this section expire on December 31, 2026.

§651.209. Forensic Analyst and Forensic Technician License Expiration, [and] Reinstatement, and Procedure for Denial of Initial Application and Reconsideration.

(a) Forensic Analyst and Forensic Technician License Expiration.

(1) When a Forensic Analyst or a Forensic Technician fails to renew his or her license on or before the last day of the license term, the license is considered inactive. The inactive status shall begin on the day immediately following the last day of the license term.

(2) A license that is deemed inactive based on failure to renew may be reinstated within the ninety (90) day period following the last day of the license term. When a Forensic Analyst or Technician

fails to renew by the 90th day after the last day of the license term, the license status shall change from inactive to expired.

(b) Notice of License Status Based on Failure to Renew. Within fifteen (15) days of the last day of the license term when the license has not been renewed, the Commission shall notify the licensee in writing of the change in license status to inactive. If the inactive license is not renewed within ninety (90) days of the last day of the license term and is therefore deemed expired, the Commission shall notify the licensee in writing of the change in license status from inactive to expired. Notice is not required where the Commission obtains confirmation in writing from the Forensic Analyst or Technician that he or she does not intend to renew his or her license.

(c) The Commission may reinstate an inactive or expired Forensic Analyst or Technician License upon fulfillment of the following requirements by the licensee:

- (1) payment of a \$220 license reinstatement fee;
- (2) updating of current continuing forensic education requirements status with the Commission; and
- (3) completion of a form demonstrating that except for making proper application, the Forensic Analyst or Technician was eligible for licensure by the Commission during the period the license was inactive due to failure to renew.

(d) Additional Requirements for Expired Licenses. Once a license has expired, the following requirements must be fulfilled before the license is reinstated:

- (1) Successful completion of the General Forensic Analyst Licensing Exam Requirement as described in §651.207(g) of this subchapter (relating to Forensic Analyst Licensing Requirements Including License Term, Fee and Procedure for Denial of Application and Reconsideration).
- (2) Fulfillment of current specific coursework requirements applicable to the forensic discipline as described in §651.207(d) of this subchapter.

(e) Exception for Licensees Who Change Roles or Experience a Gap in Employment by an Accredited Laboratory. A licensee who changes roles to a position that does not require a license or who experiences a gap in employment at an accredited laboratory for reasons other than professional misconduct, may notify the Commission by submitting a Declaration of Inactivity form; a licensee whose license is inactive due to a role change or gap in employment shall not be subject to the reinstatement requirements of this section should the licensee seek to reestablish licensure in the future.

(f) Specific Coursework and Minimum Education Requirements to Reinstate an Inactive License. A Forensic Analyst or Technician reinstating an inactive license under this section is subject to specific coursework and minimum education requirements in place at the time the Commission initially granted his or her license.

(1) Application Review. The Commission Director or Designee must review each completed application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the application.

(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

(g) Procedure for Denial of Application and Reconsideration.

(1) Application Review. The Commission Director or Designee must review each completed application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the application.

(4) Request for Reconsideration. The applicant may request that the Commission reconsider the denial on or before the 20th day after the applicant receives notice from the Commission. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a written request for reconsideration where the applicant may appear and present testimony at its next meeting following the request if the request is received at least 15 business days prior to the Commission's next scheduled quarterly meeting. Otherwise, the Commission must consider a written request for reconsideration at its second quarterly meeting following the request.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration on or before the fifteenth day after the meeting in which the Commission rendered its final decision.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 13, 2023.

TRD-202304219



## SUBCHAPTER F. DNA QA DATABASE; STORAGE AND REMOVAL OF CERTAIN DNA RECORDS

### 37 TAC §§651.501 - 651.503

The Texas Forensic Science Commission (Commission) proposes new Subchapter F DNA QA Database; Storage and Removal of Certain DNA Records to 37 Texas Administrative Code Chapter 651. The amendments are responsive to the 88th Texas Legislature's passage of HB 3506, which requires the Commission to adopt prescribed rules for the removal of elimination sample DNA records from a crime laboratory's deoxyribonucleic acid (DNA) Quality Assurance (QA) database, a database maintained by a crime laboratory and used to identify possible contamination or other quality assurance events with respect to a DNA sample.

**Background and Justification.** Under the new rules, the Commission, in accordance with HB 3506: (1) requires all crime laboratories that maintain a DNA QA database to maintain the database separately from any other local, state, or federal database, including the CODIS DNA database established by the Federal Bureau of Investigation; (2) prohibits crime laboratories from uploading or storing a DNA record created from an elimination sample, or any other information derived from that record, in any database other than the DNA QA database maintained by the crime laboratory; and (3) requires each crime laboratory that maintains a DNA QA database to, not later than three months after the date on which a forensic DNA analysis of an elimination sample is completed, remove from the DNA QA database the DNA record created from the elimination sample and any other information derived from that record that is contained in the database. The new rules are necessary to reflect the proposals made by the Commission at its October 20, 2023, quarterly meeting at which the Commission voted to propose new rules responsive to the 88th Texas Legislature's passage of HB 3506.

**Fiscal Note.** Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the new rule is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed new rule.

**One-for-One Rule Requirement for Rules with a Fiscal Impact.** Because Ms. Tomlin has determined that the rules do not have a fiscal impact that imposes a cost on a regulated person, including another state agency, a special district, or a local government, the agency is not required to take further action under Government Code § 2001.0045.

**Rural Impact Statement.** The Commission expects no adverse economic effect on rural communities as the new rule does not

impose any direct costs or fees on municipalities in rural communities.

**Public Benefit/Cost Note.** Ms. Tomlin has also determined that for each year of the first five years the new rule is in effect, the anticipated public benefit is a clearer and more efficient timeline and rules for crime laboratories maintaining and storing sensitive genetic information related to elimination samples, which are blood samples or other biological samples or specimens voluntarily provided victims of an offense or another individual not involved in the alleged offense whose DNA is likely to be present at the scene of the crime often used by investigators or analysts to isolate and identify the DNA of a potential perpetrator.

**Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses.** As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or crime laboratory.

**Government Growth Impact Statement.** Ms. Tomlin has determined that for the first five-year period, implementation of the proposed new rules will have no government growth impact. Pursuant to the analysis required by Government Code 2001.0221(b): (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; (4) the proposed rule does not require any change in fees; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand, limit, or repeal an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rule has no effect on the state's economy.

**Probable Economic Costs to Persons Required to Comply with Proposal.** Ms. Tomlin has determined for the first five-year period that the rules are in effect, there is no anticipated economic cost to persons who are required to comply with the proposed rules.

**The Takings Impact Assessment.** Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**Environmental Rule Analysis.** Ms. Tomlin has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that this proposed rule is not a "major environmental rule," and defined by Government Code § 2001.0225. As a result, the Commission asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

**Request for Public Comment.** The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by January 5, 2023, to be considered by the Commission.

Statutory Authority. The new rule is proposed under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a and its authority to regulate crime laboratories under Article 38.01 § 3-b(a). It also conforms to changes made by HB 3506. This proposal has been reviewed by legal counsel and found to be within the state agency's authority to adopt.

Cross-reference to statute. The proposal affects Tex. Code Crim. Proc. art. 38.01. No other codes, articles, or statutes are affected by this proposal.

§651.501. Purpose.

Generally. This subchapter contains the Texas Forensic Science Commission (Commission) rules adopted under Code of Criminal Procedure, Article 38.01 § 4-e that govern the storage and removal of certain DNA records maintained in a crime laboratory's DNA QA database.

§651.502. Definitions.

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

(1) DNA--deoxyribonucleic acid.

(2) DNA QA Database--a database maintained by a crime laboratory and used to identify possible contamination or other quality assurance events with respect to a DNA sample.

(3) Elimination sample--a blood sample or other biological sample or specimen voluntarily provided by the victim of an offense or another individual not involved in the alleged offense whose DNA is likely to be present at the scene of the crime to isolate and identify the DNA of a potential perpetrator.

(A) The designation of any sample as an "elimination sample" is based upon factual information provided by the submitting law enforcement or other investigative agency.

(B) Samples maintained by a crime laboratory for the purpose of administering a blind proficiency testing program are not considered elimination samples subject to this subchapter.

(4) QA--quality assurance system in a crime laboratory.

§651.503. DNA QA Database; Storage and Removal of Certain DNA Records.

(a) Requirement to Maintain DNA QA Database Separately. A crime laboratory's DNA QA database must be maintained separately from any other local, state, or federal database, including the CODIS DNA database established by the Federal Bureau of Investigation.

(b) Prohibited Upload of Elimination Samples. Crime laboratories are prohibited from uploading or storing a DNA record created from an elimination sample, or any other information derived from that record, in any database other than the DNA QA database maintained by the crime laboratory. Nothing in this subchapter prohibits a crime laboratory from maintaining case information, including DNA records, as required to comply with accrediting body standards or applicable law, including but not limited to article 39.14, Code of Criminal Procedure.

(c) Prohibited Access to DNA QA Database Records. Crime laboratories are prohibited from allowing any other person, other than authorized users, access to the crime laboratory's DNA QA database.

(d) Timeline for Removal of Elimination Samples. Crime laboratories that maintain a DNA QA database must, not later than three months after the date on which a forensic DNA analysis of an elimination sample is completed, remove from the DNA QA database the DNA record created from the elimination sample and any other information derived from that record that is contained in the database.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 16, 2023.

TRD-202304296

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 784-0037



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 4. EMPLOYMENT PRACTICES

##### SUBCHAPTER B. JOB APPLICATION PROCEDURES

###### 43 TAC §4.10, §4.15

The Texas Department of Transportation (department) proposes the amendments to §4.10 and §4.15, concerning to Job Application Procedures.

###### EXPLANATION OF PROPOSED AMENDMENTS

The purpose of the amendments is to align the rules with changes made by Senate Bill No. 1376, Acts of the 88th Legislature, Regular Session, 2023, relating to employment preferences for members of the military and their spouses. S.B. 1376 amended Government Code, Chapter 657, by expanding the state's employment preference for veterans to the spouse of a member of the United States armed forces or Texas National Guard serving on active duty as well as the spouse of a veteran if the spouse is the primary source of income for the household and the veteran has a total disability rating based either on having a service-connected disability with a disability rating of at least 70 percent or on individual unemployability. The bill grants the spouse priority in the order of preference after a veteran, with or without a disability, but before a qualifying surviving spouse or qualifying orphan of a veteran. The bill also replaces references to veteran's employment preference with references to a military employment preference and includes military members and their dependents.

Amendment to §4.10, Purpose, replaces the reference to employment preference for veterans with employment preference for military related service to align with the new terminology that was added by Senate Bill 1376, Acts of the 87th Legislature, Regular Session, 2023.

Amendment to §4.15, Preferences, updates the heading of Government Code, Chapter 657.

###### FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments

as a result of the department's or commission's enforcing or administering the proposed rules.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

David McMillan, Director, Human Resources Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

#### PUBLIC BENEFIT

David McMillan has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be realized efficiencies in the department's employment practices.

#### COSTS ON REGULATED PERSONS

David McMillan has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

#### GOVERNMENT GROWTH IMPACT STATEMENT

David McMillan has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

David McMillan has determined that a written takings impact assessment is not required under Government Code, §2007.043.

#### SUBMITTAL OF COMMENTS

Written comments on the amendments to §§4.10 and 4.15, may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Employment Practices." The deadline for receipt of comments is 5:00 p.m. on January 1, 2024. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

#### CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 657.

##### *§4.10. Purpose.*

It is the policy and practice of the Texas Transportation Commission and the Texas Department of Transportation to ensure and promote internal and external equal employment opportunity and to use affirmative action to achieve these ends. In keeping with this policy and with the requirements of Transportation Code, §§201.401-201.404 and Government Code, Chapters 656, 657, and 672, this subchapter prescribes the procedures for notifying potential applicants of vacant positions within the department, making applications for employment, and obtaining employment preferences related to military service and for [veterans or] former foster children.

##### *§4.15. Preferences.*

The department will give an applicant employment preference over other applicants who do not have greater qualifications for the same position, if the applicant:

(1) qualifies for employment preference under Government Code, Chapter 657, Military [Veteran's] Employment Preferences; or

(2) is entitled to an employment preference under Government Code, Chapter 672, Employment Preference For Former Foster Children.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 16, 2023.

TRD-202304302

Leonard Reese

Senior General Counsel

Texas Department of Transportation

Earliest possible date of adoption: December 31, 2023

For further information, please call: (512) 486-5081

