

The Texas Forensic Science Commission (“Commission”) proposes an amendment to 37 Tex. Admin. Code §651.5 to add "footwear and tire tread comparison" and "analysis of nucleic acids other than human DNA" to the list of forensic disciplines and procedures subject to Commission accreditation requirements. The amendments are necessary to update the rule language in Title 37, Part 1, Chapter 651, Subchapter A, §651.5 to reflect adoptions made by the Commission at its May 26, 2017 and November 3, 2017 quarterly meetings. The adoptions were made in accordance with the Commission’s accreditation authority to subject or exempt from the crime laboratory accreditation process a type of analysis, examination, or test as described in Tex. Code. Crim. Proc. art. 38.01§ 4-d(b).

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendment will be 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 will be no anticipated effect on local employment or the local economy as a result of the proposal.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be accurate and updated rules.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has determined that the proposed amendment will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the rules as proposed.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission 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 Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendment will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by December 27, 2017 to be considered by the Commission.

Statutory Authority. The amendment is proposed under Tex. Code Crim. Proc. art 38.01 §4-d.

Cross reference to statute. The proposal affects 37 Tex. Admin. Code §651.5.

<rule>

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER A. ACCREDITATION

§651.5. Forensic Disciplines and Procedures Subject to Commission Accreditation.

(a) Forensic analysis/recognized accreditation. This section describes a discipline or category of analysis that involves forensic analysis for use in a criminal proceeding and for which accreditation is available from a recognized accrediting body.

(b) By discipline or category of analysis. A crime laboratory may apply for Commission accreditation for one or more of the following disciplines:

(1) Seized Drugs. Categories of analysis may include one or more of the following categories: qualitative determination, quantitative measurement, weight measurement, and volume measurement;

(2) Toxicology. Categories of analysis may include one or more of the following categories: qualitative determination and quantitative measurement;

(3) Forensic Biology. Categories of analysis may include one or more of the following categories: collection, DNA-STR, DNA-YSTR, DNA-Mitochondrial, DNA-SNP, body fluid identification, relationship testing, microbiology, [and]individual characteristic database, and nucleic acids other than human DNA;

(4) Firearms/Toolmarks. Categories of analysis may include one or more of the following categories: collection, physical comparison, determination of functionality, length measurement, serial number restoration, trigger pull force measurement, qualitative chemical determination, distance determination, ejection pattern determination, trajectory determination, product (make/model) determination, and individual characteristic database;

(5) Document Examination. Categories of analysis may include one or more of the following categories: document authentication, physical comparison, and product determination;

(6) Materials (Trace). Categories of analysis may include one or more of the following categories: collection, physical determination, chemical determination, physical/chemical comparison, product (make/model) determination, gunshot residue (collection and qualitative determination), footwear and tire tread (collection, enhancement, physical comparison and product (make/model) determination), and fire debris and explosives (qualitative determination);

or

(7) other discipline and its related categories of analysis if accredited by a recognized accrediting body and approved by the Commission.

(c) Cross-disciplines and categories of analysis. A laboratory may choose to assign a particular discipline or category of analysis to a different administrative section or unit in the laboratory than the sections indicated herein.

(d) If an accreditation for a category of analysis is accompanied by the term 'only' or a similar notation, the Commission will deem the accreditation to exclude other categories of analysis in that discipline.

(e) Accreditation of a confirmation test procedure does not carry automatic accreditation of an associated field, spot, screening, or other presumptive test.