

**12. Discussion and possible action on current commission proposed rule changes to title 37 TAC, Chapter 439, Examinations for Certification, including but not limited to, Subchapter A, Examinations For On-Site Delivery Training, §439.1, Requirements — General, §439.3, Definitions, §439.7, Eligibility, §439.9, Grading, and §439.11, Commission-Designated Performance Skill Evaluations.**

**CHAPTER 439**  
**EXAMINATIONS FOR CERTIFICATION**  
**SUBCHAPTER A**  
**EXAMINATIONS FOR ON-SITE DELIVERY TRAINING**

**§439.1 Requirements—General.**

- (a) The administration of examinations for certification, including performance skill evaluations, shall be conducted in compliance with commission rules and; as applicable, with:
  - (1) International Fire Service Accreditation Congress (IFSAC) regulations; or
  - (2) National Board on Fire Service Professional Qualifications (Pro Board) regulations for examinations administered by the Texas A&M Engineering Extension Service. Only Pro Board examinations administered by the Texas A&M Engineering Extension Service will be accepted by the commission for certification. In order for a Pro Board document to be accepted for certification, it must:
    - (A) List the commission issued course approval number for which the examination was conducted;
    - (B) Indicate that the examination was conducted in English; and
    - (C) List any special accommodations provided to the examinee. The commission may not issue a certificate for an examination conducted under special accommodations other than those specified in §439.13 of this title (relating to Special Accommodations for Testing).
- (b) It is incumbent upon commission staff, committee members, training officers and field examiners to maintain the integrity of the state certification examination process (or portion thereof) for which they are responsible.
- (c) The commission shall reserve the authority to conduct an annual review of Pro Board examinations, procedures, test banks, and facilities utilized by the Texas A&M Engineering Extension Service. The commission may also conduct a review at any time for cause and as deemed necessary to ensure the integrity of the certification examination process.
- (d) Exams will be based on the job performance requirements and knowledge and skill components of the applicable NFPA standard for that discipline, if a standard exists and has been adopted by the commission. If a standard does not exist or has not been adopted by the commission, the exam will be based on curricula as currently adopted in the commission's Certification Curriculum Manual.
- (e) Commission examinations that receive a passing grade shall expire two years from the date of the examination.
- (f) An examination for Basic Structure Fire Protection shall consist of four sections: Fire Fighter I, Fire Fighter II, Hazardous Materials Awareness Level, and Hazardous Materials Operations

Level including the Mission-Specific Competencies for Personal Protective Equipment and Product Control. **The examinee must pass each section of the examination with a minimum score of 70% in order to qualify for certification.**

- (g) An examination for Basic Fire Inspector shall consist of three sections: Inspector I, Inspector II, and Plan Examiner I. **The examinee must pass each section of the examination with a minimum score of 70% in order to qualify for certification.**
- (h) An examination for Basic Structure Fire Protection and Intermediate Wildland Fire Protection shall consist of five sections: Fire Fighter I, Fire Fighter II, First Responder Awareness, First Responder Operations, and Intermediate Wildland Fire Protection. **The examinee must pass each section of the examination with a minimum score of 70% in order to qualify for certification.**
- (i) All other state examinations consist of only one section.
- (j) The individual who fails to pass a commission examination for state certification will be given one additional opportunity to pass the examination or **section(s)** [~~section~~] thereof. This opportunity must be exercised within 180 days after the date of the first failure. [~~An individual who passes the applicable state certification examination but fails to pass a section thereof for an IFSAC seal(s) will be given one additional opportunity to pass the section thereof. This opportunity must be exercised within two years after the date of the first attempt.~~] An examinee who fails to pass the examination within the required time may not sit for the same examination again until the examinee has re-qualified by repeating the curriculum applicable to that examination.
- (k) An individual may obtain a new certificate in a discipline which was previously held by passing a commission proficiency examination.
- (l) If an individual who has never held certification in a discipline defined in §421.5 of this title (relating to Definitions), seeks certification in that discipline, the individual shall complete all certification requirements.
- (m) If an individual completes **a commission** [~~an~~] approved training program, **or a program** that has been evaluated and deemed equivalent to a certification curriculum approved by the commission, such as an out-of-state or military training program or a training program administered by the State Firemen's and Fire Marshals' Association of Texas, the individual **may use only one of the following examination processes for certification:**
- (1) pass a commission examination; or**
  - (2) submit documentation of the successful completion of the Pro Board examination process administered by the Texas A&M Engineering Extension Service; and**
  - (3) meet any other certification requirements in order to become eligible for certification as fire protection personnel.**
  - (4) An individual cannot use a combination of the two examination processes in this subsection *from a single commission approved class* for certification. An individual who chooses to submit to the commission examination process may not utilize the**

~~**other process toward certification.** [must pass a commission examination for certification status and meet any other certification requirements in order to become eligible for certification by the commission as fire protection personnel.]~~

(n) An individual or entity may petition the commission for a waiver of the examination required by this section if the person's certificate expired because of the individual's or employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with commission renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order, ruling or agreement restoring the applicant to employment.

### **§439.3 Definitions.**

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

(1) Certificate of Completion -- A statement by the provider of training certifying that an individual has successfully completed a commission-approved certification curriculum or phase program for a particular discipline, including having been evaluated by field examiners on performance skills identified by the commission. The certificate of completion qualifies an individual to take an original certification examination. **The certificate expires two years from the date of completion. If an individual does not take the certification examination prior to the expiration of the certificate of completion, he or she must again complete the curriculum in order to obtain a new certificate of completion.**

(2) Curriculum -- The competencies established by the commission as a minimum requirement for certification in a particular discipline.

(3) Designee -- An entity or individual approved by commission staff to administer commission certification examinations and/or performance skills in accordance with this chapter.

(4) Eligibility -- A determination of whether or not an individual has met the requirements set by the commission and would therefore be allowed to take a commission examination.

(5) Endorsement of eligibility -- A statement testifying to the fact that an individual has met all requirements specified by the commission and is qualified to take a commission examination. An endorsement of eligibility will be issued by a member of the commission staff.

- (6) Examination -- A state test which an examinee must pass as one of the requirements for certification.
- (7) Examinee -- An individual who has met the commission requirements and therefore qualifies to take the commission examination.
- (8) Field examiner -- An individual authorized to evaluate performance skills in commission approved curricula. The field examiner must possess a Fire Instructor Certification or other instructor qualification as allowed by §427.307(h) and (i) of this title (relating to On-Site and Distance Training Provider Staff Requirements) for Wildland courses only, complete the on-line commission field examiner course, and sign an agreement to comply with the commission's testing procedures. The field examiner must be approved by the commission to instruct all subject areas identified in the curriculum that he or she will be evaluating. The field examiner must repeat the examiner course every two years and submit a new Letter of Intent.
- (9) Lead Examiner -- A member of the commission staff or a designee who has been assigned by the commission to administer a commission examination.
- (10) Letter of Intent -- A statement, signed by an individual applying to the commission for field examiner status, that he or she is familiar with the commission's examination procedures, and agrees to abide by the policies and guidelines as set out in Chapter 439 of this title (relating to Examinations for Certification).

**(11) Sectional examination -- A test that covers one section of a multiple-section examination.**

**§439.5 Procedures.**

- (a) Procedures for conducting examinations are determined by the commission.
- (b) All application processing fees due to the commission must be paid in a timely manner. Late payments shall be assessed a late fee in accordance with §437.13 of this title (relating to Processing Fees for Test Application).
- (c) Each examination must be administered by a lead examiner.
- (d) The lead examiner must:
- (1) ensure that the tests remain secure and that the examination is conducted under conditions warranting honest results;
  - (2) monitor the examination while in progress;
  - (3) control entrance to and exit from the test site;
  - (4) assign or re-assign seating; and
  - (5) bar admission to or dismiss any examinee who fails to comply with any of the applicable provisions of this chapter.

- (e) All official grading and notification must come from the commission or its designee. The preliminary test results shall be made available within seven (7) business days after completion of the examination.

**§439.7 Eligibility.**

- (a) An examination may not be taken by an individual who currently holds an active certificate from the commission in the discipline to which the examination pertains, unless required by the commission in a disciplinary matter, or test scores have expired and the individual is testing for IFSAC seals.
- (b) An individual who passes an examination and is not certified in that discipline, will not be allowed to test again **if the original examination grade is still active**, ~~[until 30 days before the expiration date of the previous examination]~~ unless required by the commission in a disciplinary matter.
- (c) In order to qualify for a commission examination, the examinee must:
- (1) meet or exceed the minimum requirements set by the commission as a prerequisite for the specified examination;
  - (2) submit a test application with documentation showing completion of a commission approved curriculum and any other prerequisite requirements, along with the appropriate application processing fee(s).
  - (3) receive from the commission an "Endorsement of Eligibility" letter and provide this letter to the lead examiner.
  - (4) bring to the test site, and display upon request, government issued identification which contains the name and photograph of the examinee;
  - (5) report on time to the proper location; and
  - (6) comply with all the written and verbal instructions of the lead examiner.
- (d) No examinee shall be permitted to:
- (1) violate any of the fraud provisions of this section;
  - (2) disrupt the examination;
  - (3) bring into the examination site any books, notes, or other written materials related to the content of the examination;
  - (4) refer to, use, or possess any such written material at the examination site;
  - (5) give or receive answers or communicate in any manner with another examinee during the examination;

- (6) communicate at any time or in any way, the contents of an examination to another person for the purpose of assisting or preparing a person to take the examination;
  - (7) steal, copy, or reproduce any part of the examination;
  - (8) engage in any deceptive or fraudulent act either during an examination or to gain admission to it;
  - (9) solicit, encourage, direct, assist, or aid another person to violate any provision of this section; or
  - (10) bring into the examination site any electronic devices.
- (e) No person shall be permitted to sit for any commission examination who has an outstanding debt owed to the commission.

#### **§439.9 Grading.**

- (a) If performance skills are required as a part of the examination, the examinee must demonstrate performance skill objectives in a manner consistent with performance skill evaluation forms provided by the Commission. The evaluation format for a particular performance skill will determine the requirements for passage of the skill. Each performance skill evaluation form will require successful completion of one of the following formats:
  - (1) all mandatory tasks; or
  - (2) an accumulation of points to obtain a passing score of at least 70%; or
  - (3) a combination of both paragraphs (1) and (2) of this subsection.
- (b) The minimum passing score on each examination or section thereof ~~[as outlined in §439.1(d) of this title (relating to Requirements -- General)]~~ shall be 70%. This means that 70% of the total possible active questions must be answered correctly. The Commission may, at its discretion, invalidate any question.
- (c) If the Commission invalidates an examination score for any reason, it may also, at the discretion of the Commission, require a retest to obtain a substitute valid test score.

#### **§439.11 Commission-Designated Performance Skill Evaluations.**

- (a) The commission-designated performance evaluations are randomly selected from each subject area within the applicable curriculum containing actual skill evaluations. This applies only for curricula in which performance standards have been developed.
- (b) **The** ~~[During the course of instruction, the ]~~training provider shall test ~~[ for competency, ]~~the commission designated performance skills **for competency**. The skill evaluations **may only** ~~[may be scheduled at any time during the course, but must ]~~take place after all training on the identified subject area has been completed. The date(s), time(s) and location(s) for the commission designated skill evaluations must be submitted on the commission designated

skill schedule contained within the Training Prior Approval system. The commission must be notified immediately of any deviation from the submitted commission designated skill schedule. All skills must be evaluated by a commission approved field examiner.

- (c) In order to qualify for the commission certification examination, the student must successfully complete and pass all designated skill evaluations. The student may be allowed two attempts to complete each skill. A second failure during the evaluation process will require remedial training in the failed skill area with a certified instructor before being allowed a third attempt. A third failure shall require that the student repeat the entire certification curriculum.

**(d) If performance skill evaluations are not conducted for a student during the course of instruction, they must be conducted within ninety (90) days following the end date of the course. If performance skill evaluations are not conducted within the ninety (90) day period, the student must repeat the course. The ninety (90) day period may be extended for students who were unable to complete their performance skill evaluations due to injury, illness, military commitment, or other situation beyond their control.**

- (e)** ~~(d)~~ The training facility must maintain records (electronic or paper) of skills testing on each examinee. The records must reflect the results of the evaluation of skills, the dates the evaluation of skills took place, and the names of the field examiners who conducted the evaluations.

- (f)** ~~(e)~~ For certification disciplines in which an IDLH environment may exist, all skill testing participants shall have available for use NFPA compliant PPE and SCBA as defined in §435.1 of this title (relating to Protective Clothing) and §435.3 of this title (relating to Self-Contained Breathing Apparatus).

### **§439.13 Special Accommodations for Testing.**

- (a) Special accommodation testing is for those individuals that have a documented disability which may hamper their success on a Texas Commission on Fire Protection written examination. Some accommodations that can be allowed are:
- (1) A testing room to oneself (examinee is allowed to read the questions out loud to him or herself). To accommodate the request the examinee will have to test in the Commission's Austin headquarters location or any location deemed appropriate by the Commission.
  - (2) The test to be split in two with up to an hour break in between (no access to the first half of the examination will be allowed during or after the break). To accommodate the request the examinee will have to test in the commission's Austin headquarters location or any location deemed appropriate by the Commission.
  - (3) The questions to be printed in a larger font (approximately 7% larger).
  - (4) The test to be copied on off-white paper (i.e., cream colored).
  - (5) The use of highlighters or a highlighter sheet.

- (6) Any requests that changes the condition of the examination or the examination process.
- (b) If the applicant is seeking a special accommodation test, the applicant must submit written documentation of the disability and a written statement as to which of the allowable accommodations is being requested. The applicant may ask for accommodations not listed above. The request will be reviewed and the applicant will receive a written response regarding the Commission's position on the request.

**§439.19 Number of Test Questions.**

- (a) Each examination may have two types of questions: pilot and active. Pilot questions are new questions placed on the examination for statistical purposes only. These questions do not count against an examinee if answered incorrectly.
- (b) The number of questions on an~~[the state]~~ examination, **sectional examination, or retest** will be based upon the **specific examination, or** number of recommended hours **for a** ~~[in the]~~ particular curriculum or section **as shown in the table below.** ~~[being tested. The standard is outlined below]~~ **Any pilot questions added to an examination, sectional examination, or retest will be in addition to the number of exam questions.**

<del>[Recommended Hours</del>	<del>No. Questions</del>	<del>Maximum No. Pilot Questions</del>	<del>Time Allowed</del>
<del>30 or less</del>	<del>25</del>	<del>5</del>	<del>30 minutes</del>
<del>31-100</del>	<del>50</del>	<del>5</del>	<del>1 hour</del>
<del>101-200</del>	<del>75</del>	<del>10</del>	<del>1.5 hours</del>
<del>201-300</del>	<del>100</del>	<del>15</del>	<del>2 hours</del>
<del>301-400</del>	<del>125</del>	<del>20</del>	<del>2.5 hours</del>
<del>401 or more</del>	<del>150</del>	<del>25</del>	<del>3 hours]</del>

<u>Examination</u>	<u>Section</u>	<u>Number of Exam Questions</u>	<u>Maximum Possible Number of Pilot Questions</u>	<u>Time Allowed</u>
<b>Basic Structure FP</b>	<b><u>Hazardous Materials Awareness</u></b>	<b><u>25</u></b>		
	<b><u>Hazardous Materials Operations</u></b>	<b><u>25</u></b>		
	<b><u>Firefighter I</u></b>	<b><u>100</u></b>		
	<b><u>Firefighter II</u></b>	<b><u>75</u></b>		
	<b><u>TOTAL</u></b>	<b><u>225</u></b>	<b><u>25</u></b>	<b><u>4.5 Hours</u></b>
<b>Basic Fire Inspector</b>				
<b>Basic Fire Inspector</b>	<b><u>Inspector I</u></b>	<b><u>50</u></b>		
	<b><u>Inspector II</u></b>	<b><u>50</u></b>		
	<b><u>Plan Examiner I</u></b>	<b><u>50</u></b>		
	<b><u>TOTAL</u></b>	<b><u>150</u></b>	<b><u>25</u></b>	<b><u>3.0 Hours</u></b>
<b>Basic Structure FP/ Intermediate Wildland FP</b>				
<b>Basic Structure FP/ Intermediate Wildland FP</b>	<b><u>Hazardous Materials Awareness</u></b>	<b><u>25</u></b>		
	<b><u>Hazardous Materials Operations</u></b>	<b><u>25</u></b>		
	<b><u>Firefighter I</u></b>	<b><u>100</u></b>		
	<b><u>Firefighter II</u></b>	<b><u>75</u></b>		
	<b><u>Intermediate Wildland FP</u></b>	<b><u>25</u></b>		
	<b><u>TOTAL</u></b>	<b><u>250</u></b>	<b><u>25</u></b>	<b><u>5.0 Hours</u></b>
<b>FOR ALL OTHER EXAMINATIONS, SECTIONAL EXAMINATIONS, AND RETESTS</b>				
	<b><u>Recommended Hours</u></b>	<b><u>Number of Exam Questions</u></b>	<b><u>Maximum Possible Number of Pilot Questions</u></b>	<b><u>Time Allowed</u></b>
<b>IF THE RECOMMENDED HOURS FOR THE CURRICULUM OR SECTION IS:</b>	<b><u>Less than 30</u></b>	<b><u>25</u></b>	<b><u>5</u></b>	<b><u>30 Minutes</u></b>
	<b><u>31 to 100</u></b>	<b><u>50</u></b>	<b><u>5</u></b>	<b><u>1.0 Hour</u></b>
	<b><u>101 to 200</u></b>	<b><u>75</u></b>	<b><u>10</u></b>	<b><u>1.5 Hours</u></b>
	<b><u>201 to 300</u></b>	<b><u>100</u></b>	<b><u>15</u></b>	<b><u>2.0 Hours</u></b>
	<b><u>301 to 400</u></b>	<b><u>125</u></b>	<b><u>20</u></b>	<b><u>2.5 Hours</u></b>
	<b><u>401 or More</u></b>	<b><u>150</u></b>	<b><u>25</u></b>	<b><u>3.0 Hours</u></b>